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TRIAL CHAMBER I

Before: Judge Adrian Fulford, President
Judge Elizabeth Odio Benito, Judge
Judge René Blattmann, Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

Public Document
Submission of the Prosecution's Updated Summary of Presentation of Evidence

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Table of Contents

- I. Introduction
- II. The Armed Conflict
 - A. The District of Ituri
 - B. Existence of Armed Conflict
 - C. The Accused's Awareness of the Armed Conflict
 - D. Nexus between the Armed Conflict and the Alleged Crimes
 - E. Characterisation of the Armed Conflict
- III. Individual Criminal Responsibility for Co-perpetration
- IV. The Common Plan and the Role of the Accused
 - A. The Common Plan
 - 1. The Policy of Broad Recruitment
 - 2. Pattern of Large-Scale Enlistment/Conscription of Child Soldiers
 - 3. Establishment of Training Camps
 - 4. Regular Visits to Training Camps by Senior FPLC Commanders
 - 5. Deployment of Recruits without Regard to Age
 - 6. Use of Child Soldiers as Bodyguards
 - B. The Role of the Accused
 - 1. From September 2000 to September 2002, Thomas Lubanga Created the UPC/FPLC as a Vehicle to Secure and Maintain Political and Military Domination of the Ituri Region
 - 2. From September 2000 until 13 August 2003, Thomas Lubanga Assumed Leadership and Command of the UPC/FPLC
 - 3. From Early September 2002 until 13 August 2003, Thomas Lubanga Oversaw and Ensured Effective Implementation of UPC/FPLC Policies, including the Common Plan of Furthering the UPC/FPLC War Effort by Conscripting, Enlisting and Using Children, Including Children under the Age of 15, to Participate Actively in Hostilities

- a. Lubanga had direct and ongoing contacts with the other co-perpetrators in the common plan
 - i. Telephonic and radio communications
 - ii. Correspondence
 - iii. Meetings
- b. Lubanga visited and inspected FPLC military training camps
- c. Lubanga oversaw the conduct of military affairs and appointed the senior ranks within the FPLC
- d. Lubanga secured financing for the UPC/FPLC and negotiated the provision of weapons and other military equipment

4. From Early September 2002 until 13 August 2003, Thomas Lubanga Had Knowledge that, as Applied, UPC/FPLC Policies – and in Particular, the Common Plan – Systematically Resulted in the Conscription, Enlistment, and Use of Children, Including Children under the Age of 15, to Participate Actively in Hostilities

- a. Knowledge Shown by Attempts to Deflect Responsibility through Sham Demobilization and/or Sham Prohibition of Child Soldiers
- b. Knowledge Attributable to Lubanga's Role
- c. Knowledge Attributable to the Scale of Under-age 15 Child Soldier Recruitment, Enlistment and Use

5. From Early September 2002 until 13 August 2003, Thomas Lubanga Directly Took Part in the Conscription, Enlistment and Use of Children, Including Children under the Age of 15, to Participate Actively in Hostilities

- a. Thomas Lubanga Used Children as Bodyguards
- b. Thomas Lubanga Actively Recruited Children under 15 to Join the UPC/FPLC and to Participate in Hostilities

V. Individual Cases of UPC/FPLC Conscription, Enlistment and/or Use of Children, Including Children under the Age of 15, to Participate Actively in Hostilities

VI. Conclusion

I. Introduction

1. In or about 2000, Thomas LUBANGA assumed control of a Hema militia operating in the Ituri district of the Democratic Republic of the Congo (DRC). The group, which had no name at the time, pursued a policy of using child soldiers, among others, to further its principal objective of securing political domination over the Ituri region through armed force. Once he became leader, Thomas LUBANGA recast the militia in his own vision as a hybrid political-military structure, composed, over time, of the Union des Patriotes Congolais (UPC) and the Forces Patriotiques pour la Libération du Congo (FPLC), and commonly referred to jointly as the UPC.¹ As leader of the UPC/FPLC political-military structure, Thomas LUBANGA used his political skills, and his contacts in the DRC, Rwanda and Uganda, to secure increased financing and heightened legitimacy for the UPC/FPLC; to obtain power over lucrative gold mines located in the town of Mongbwalu; and to continue the organizational policy of enlisting and conscripting children, including under the age of 15 years, and using them to take part in the armed conflict in Ituri.
2. As a result of his conduct, on 28 August 2006, Thomas LUBANGA was charged with three war crimes: conscripting children into armed groups, enlisting children into armed groups, and using children to participate actively in hostilities, in the context of a conflict of a non-international character, pursuant to Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute.² On 29 January 2007, the Pre-Trial Chamber confirmed the above charges against Thomas LUBANGA and also ordered him to stand trial on three additional war crimes, based on identical conduct, in the context of a conflict of an international character, pursuant to Articles 8(2)(b)(xxvi) and 25(3)(a) of the Rome Statute.³
3. This document summarizes the main points of the Prosecution's case and the principal evidence the Prosecution presently intends to offer at trial in support of these charges. Section II addresses various issues relating to the armed conflict in Ituri during the relevant time periods determined by the Pre-Trial Chamber (hereafter "the relevant time periods")⁴: the

¹ Throughout this document, except where particular circumstances dictate otherwise, reference is generally made to the "UPC/FPLC" to reflect the unified structure that Thomas LUBANGA envisioned and created.

² Document Containing the Charges, 28 August 2006, ICC-01-04-01/06.

³ Pre-Trial Chamber I, Situation in the Democratic Republic of Congo: In the Case of The Prosecutor v. Thomas Lubanga, Decision on the confirmation of charges, 29 January 2007, at paras. 200 – 226, and *dispositif*.

⁴ The Pre-Trial Chamber found sufficient evidence to establish substantial grounds to believe that, from early September 2002 to 13 August 2003, Thomas LUBANGA incurred criminal responsibility as a co-perpetrator within the meaning of Article 25(3)(a) of the Rome Statute for the crimes at issue. Pre-Trial Chamber I, Situation in the Democratic Republic of Congo: In the Case of The Prosecutor v. Thomas Lubanga, Decision on the confirmation of charges, 29 January 2007 at para. 410. The Pre-Trial Chamber further found sufficient evidence to

existence of the conflict, Thomas LUBANGA's awareness of the armed conflict, the nexus between the armed conflict and the charged crimes, and the character (international or non-international) of the conflict. Section III sets forth the Prosecution's theory of co-perpetration as the mode of liability applicable to Thomas LUBANGA's role in the crimes charged in the Document Containing the Charges. Section IV describes the common plan charged in the Document Containing the Charges, details how the plan was applied in practice, and places Thomas LUBANGA at the core of the common plan. Section V describes six individual cases of children, all under the age of 15 years, whom the UPC/FPLC recruited, enlisted, and/or used to participate actively in hostilities. Section VI concludes.

II. The Armed Conflict

A. The District of Ituri

4. Ituri⁵ is a district of the Province Orientale of the DRC, bordering Uganda to the East, and Sudan to the North. Its population has been estimated between 3.5 and 5.5 million people from about 18 ethnic groups.⁶ Among the bigger groups are, alongside the Alur and Bira communities, the Hema, the Lendu and the Ngiti.⁷ The district's capital is the city of Bunia, regularly inhabited by about 100,000 inhabitants.⁸ In 2002 and 2003, Bunia hosted tens of thousands of refugees.⁹
5. Ituri is an area rich in valuable natural resources, including gold, diamonds, colombo tantalite (coltan), timber and oil.¹⁰ Mongbwalu, a town located about 45 km northwest of

establish substantial grounds to believe that, from early September 2002 until at least the end of 2003, there existed a common plan among Thomas LUBANGA, Chief Kahwa Panga Mandro (UPC Deputy National Secretary for Defence), Rafiki Saba (UPC Chief of Security), Floribert Kisembo (FPLC Chief of Staff), Bosco Ntaganda (FPLC Deputy Chief of Staff for Military Operations), and other FPLC senior commanders, to further the UPC and FPLC war effort by (i) recruiting, voluntarily or forcibly, young people into the FPLC; (ii) subjecting them to military training; and (iii) using them to participate actively in military operations and as bodyguards. Pre-Trial Chamber I, Situation in the Democratic Republic of Congo: In the Case of The Prosecutor v. Thomas Lubanga, Decision on the confirmation of charges, 29 January 2007 at para. 377.

⁵ Map of the Ituri district, DRC-OTP-0165-0773. Ituri is composed of five territories: Djugu, Irumu, Aru, Mahagi, and Mambasa. These in turn are divided into *collectivités*. *Collectivités* are subdivided into *groupements*.

⁶ MONUC Special report on the events in Ituri, January 2002-December 2003 (hereinafter "Monuc Special Report"), DRC-OTP-0074-0422 at 0427.

⁷ MONUC Special report, DRC-OTP-0074-0422, at 0428.

⁸ MONUC Special report, DRC-OTP-0074-0422 at 0427.

⁹ MONUC Special report, DRC-OTP-0074-0422 at para. 12; HRW "Ituri Covered in Blood", DRC-OTP-0074-0797 at 0817..

¹⁰ MONUC Special report on the events in Ituri, January 2002-December 2003, DRC-OTP-0074-0422 at 0429; HRW "Ituri Covered in Blood", DRC-OTP-0074-0797 at 0815.

Bunia, contains one of the most important gold mines in the world.¹¹ Ituri's resources have always attracted great interest and, at times, great strife. The struggle to control these resources has been at the heart of the armed conflict¹² and has deepened the mistrust between ethnic communities, subject to the manipulation by internal and external actors.¹³

B. Existence of the Armed Conflict

6. Since early 1996, the district of Ituri, and the DRC Eastern Provinces in general, have been at the forefront of two successive regional wars, which involved armed forces from several African countries. What is commonly referred to as the "First Congo War", which took place between 1996 and 1997, led to the overthrow of long-time DRC President Mobutu Sésé Seko by the Alliance des forces démocratique pour la libération du Congo (AFDL) of Laurent-Désiré Kabila. The "Second Congo War" lasted at least from 1998 to 2003, when the DRC Transitional Government was installed pursuant to the *Accord Global et Inclusif*. This period of sustained and widespread violence - which fragmented the country, heightened ethnic divisions, caused enormous loss of life and physical dislocation, and weakened or destroyed many of the structures of governance in the Eastern Provinces - underlay and helped exacerbate long-standing political and social tensions in Ituri.¹⁴
7. In 1998, the Ituri district was taken over by the rebel movement Rassemblement Congolais pour la Démocratie (RCD), at the time supported by the Ugandan army – the Ugandan People's Defence Forces (UPDF) – and the Rwandan army – then called the Rwandan Patriotic Army (RPA).¹⁵ The RCD soon split into the RCD-Goma, a faction of the RCD based in Goma, North-Kivu and backed by Rwanda; and the RCD/ML, backed by Uganda.¹⁶
8. Starting in mid-1999, disagreements in Ituri escalated and crystallized into a broader violent conflict among an array of armed militia aligned largely along ethnic lines.¹⁷ In early 2002, Ituri came under the control of the RCD/ML.¹⁸ Fighting between Hema and Lendu militia

¹¹ MONUC Special report, DRC-OTP-0074-0422 at para. 16; HRW: "Ituri Covered in Blood", DRC-OTP-0074-0797 at 0815; An extensive overview is available in the report HRW "The curse of gold", DRC-OTP-0074-0628.

¹² Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, DRC-OTP-0131-0221 at paras. 12, 118-122.

¹³ "Twelfth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo" of 18 October 2002, DRC-OTP-0131-0389 at para. 15.

¹⁴ HRW "Ituri Covered in Blood", DRC-OTP-0074-0797 at 0808; HRW: "The curse of gold", DRC-OTP-0074-0628 at 0649.

¹⁵ MONUC Special report on the events in Ituri, January 2002-December 2003, DRC-OTP-0074-0422 at 0429.

¹⁶ MONUC Special report, DRC-OTP-0074-0422 at paras. 17 to 26.

¹⁷ MONUC Special report, DRC-OTP-0074-0422.

¹⁸ MONUC Special report, DRC-OTP-0074-0422 at 0430.

intensified. From, at the latest, mid-2002 onwards, a sustained and extensive armed conflict existed among the organizations purporting to represent these and other ethnic groups¹⁹.

9. Amidst a web of constantly changing alliances and successive platforms, the following armed groups, among others, planned and/or carried out military operations in Ituri at different times in 2002 and/or 2003: the UPC/FPLC, the Front des Nationalistes et Intégrationnistes (FNI), the Parti pour l'Unité et la Sauvegarde de l'Intégrité du Congo (PUSIC), the Forces Populaires pour la Démocratie au Congo (FPDC), the Forces Armées du Peuple Congolais (FAPC), and the Front de Résistance Patriotique de l'Ituri (FRPI).²⁰
10. The fighting was aggravated by the involvement of both national and international actors, predominately from Uganda and Rwanda, who supported one or the other of the various Ituri-based militia at different times.²¹
11. Thus, Ugandan Government Officials from 2000 to the end of October 2002, and Rwanda Government Officials, from mid-2002 to about June 2003, aided the Hema militia and, once it existed, the FPLC. Among other assistance, these external governments provided, *inter alia*, military training, equipment such as weapons and ammunition, and military expertise.²²
12. Inter-governmental bodies have repeatedly and consistently concluded that an armed conflict existed in Ituri during the relevant time periods.²³ In May 2003, in light of the unabated conflict, the United Nations Security Council determined “*that the situation in the Ituri region and in Bunia in particular constitutes a threat to the peace process in the Democratic Republic*

¹⁹ *Ibid.*

²⁰ The different armed groups are commented upon in the MONUC Special report, DRC-OTP-0074-0422 at 0468-0471. An overview of the attacks conducted by the mentioned groups is available in the same MONUC Special Report at 0472 to 0483. Representatives of these groups participated in April 2003 in the Ituri Pacification Committee: see for example Video, DRC-OTP-0083-0008 (minutes 00.21.25-01.33.51) and Video, DRC-OTP-0127-0065 (minutes 00.00.00-01.01.02).

²¹ HRW “Ituri Covered in Blood”, DRC-OTP-0074-0797 at 0805 to 0815.

²² Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at paras. 47,86 to 95; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at paras. 78 to 80, 176; Statement DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at paras. 173, 229, 233, 236; MONUC Special report on the events in Ituri, January 2002-December 2003, DRC-OTP-0074-0422 at para. 27-31; HRW “Ituri Covered in Blood”, DRC-OTP-0074-0797 at 0809-0815; Video (interview Thomas LUBANGA), DRC-OTP-1001-0008 (minutes 00.58.24-01.48.40); Video (interview Chief KAHWA), DRC-OTP-0081-0006 (minutes 00.12.39-00.13.58); Video (interview MONUC Colonel Daniel VOLLOT), DRC-OTP-1001-0004 (minutes 01.12.18-01.52.59); Video, DRC-OTP-1002-0006 (minutes 00.00.01-00.25.13); Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0301 at 0301, DRC-OTP-0191-0567 at 0590 – 0593, DRC-OTP-0191-0598 at 0599 – 0601 and 0611 – 0612.

²³ “Twelfth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo” of 18 October 2002 (covering the period from 5 June 2002 to 11 October 2002), DRC-OTP-0131-0389, at para. 15 ; “Thirteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo” of 21 February 2003 (hereafter “Thirteenth SG Report”) (covering the period since 11 October 2002), DRC-OTP-0131-0045 at para. 9, 11, 12.

of the Congo and to the peace and security in the Great Lakes region”²⁴ and, acting pursuant to Chapter VII of the United Nations Charter, authorised “the deployment ... of an Interim Emergency Multinational Force [IMEF] in Bunia in close coordination with MONUC ...”²⁵, which was empowered “...to take all necessary measures to fulfil its mandate.”²⁶ From 12 June 2003 onwards, as part of Operation Artemis, several member states of the European Union (EU) and a number of other states contributed troops to an EU force that deployed in Bunia as part of the IMEF and in accordance with the Security Council mandate.

13. On 28 July 2003, the Security Council pronounced itself “[d]eeply concerned by the continuation of hostilities in the eastern part of the Democratic Republic of the Congo, particularly ... and in Ituri, and by the grave violations of human rights and of international humanitarian law that accompany them,”²⁷ and requested the Secretary-General “to deploy in the Ituri district, as soon as possible” a “tactical brigade-size force.”²⁸ As a consequence, in September 2003, the UN deployed the MONUC Ituri Brigade, significantly adding to the limited number of previously-deployed UN troops in the region.
14. Notwithstanding these efforts, the combat persisted.²⁹ In sum, from August 2002 up until December 2007, armed violence in Ituri has resulted in the killing of approximately 5,000 civilians and the internal displacement of hundreds of thousands.

C. Thomas LUBANGA’s Awareness of the Armed Conflict

15. During the relevant time periods, Thomas LUBANGA was aware of the existence of an armed conflict in Ituri.
16. In a declaration of 13 August 2002,³⁰ Thomas LUBANGA stated that “[D]e grands forfaits ont été commis, notamment l’entretien et l’armement des combattants de guerres tribales,

²⁴ UNSC Resolution 1484 of 30 May 2003, DRC-OTP-0154-0668.

²⁵ UNSC Resolution 1484 of 30 May 2003, DRC-OTP-0154-0668.

²⁶ UNSC Resolution 1484 of 30 May 2003, DRC-OTP-0154-0668.

²⁷ UNSC Resolution 1493 (2003) of 28 July 2003, DRC-OTP-0131-0167, Amongst the grave violations of international humanitarian law the Security Council explicitly listed at para. 13 of the resolution “the continued recruitment and use of children in the hostilities in the Democratic Republic of the Congo, especially in ...and in Ituri.” and reiterated “the request addressed to all parties ... to prove the Special Representative of the Secretary-General with information on the measures that they have taken to put an end to the recruitment and use of children in their armed components ...”.

²⁸ Ibid, at para. 27.

²⁹ Fourteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, of 17 November 2003, DRC-OTP-0074-0215 at para. 3. “The situation in Ituri has been particularly serious. Approximately 420 civilians have been killed in Bunia in fighting between Lendu and Hema militias ... Widespread rape and looting also occurred. A significant number of the victims of the abuses have been minors”.

³⁰ Point de presse tenue par le front pour la réconciliation et pour la paix (FRP), DRC-OTP-0113-0135 at 0140.

l'insémination de la haine et de la division dans les différentes communautés Ituriennes” and continues to say that “[L]es Ituriens, ne voulant pas demeurer dans le cycle infernal de violence, ont signé plusieurs accords de cessation des hostilités.” In the same document, Thomas LUBANGA recommended, *inter alia*, to the Iturian people the following: “*Le FRP demande à tous les fils et filles de l'Ituri d'arrêter les massacres et tous les actes de destructions et chacun en ce qui le concerne doit œuvrer pour la paix. De cesser de cultiver et de manifester tout acte de violence et de haine. De soutenir les actions de pacification du gouvernement*”.

17. On 15 November 2002, Thomas LUBANGA signed, on behalf of the UPC, “The Kampala Understanding between RCD-ML and UPC”³¹, which contained the following statements: “*After a review of the security situation in Eastern- Congo and intensive discussions on the need for peace in Ituri in accordance with Lusaka and Luanda Agreements and, in order to put an end to the senseless killings and forestall a humanitarian crisis in Ituri, the Congolese leaders of RCD-ML and UPC agree as follows: “1. RCD-ML and UPC shall cease hostilities at all fronts in Ituri immediately*”.
18. On 4 January 2003, as UPC President, Thomas LUBANGA, sent a message to the Congolese people in Ituri,³² in which he made numerous references to the armed conflict, including, *inter alia*, the following statement: “*L’année 2002 qui vient de s’achever, a connu des événements tels qu’ils auront marqué à jamais l’histoire et la vie socio-politique de l’Ituri, cette région du Nord-Est de la République Démocratique du Congo caractérisée depuis quatre ans par une rébellion doublée d’une guerre ethnique des plus atroces et de plus inhumaines.*” Thomas LUBANGA also stated that “[L]a détermination de nos éléments des Forces Patriotiques pour la Libération du Congo, FPLC en abrégé (auxquels nous rendons un vibrant hommage) a permis de maîtriser la situation sécuritaire à plus ou moins 80%.”³³
19. On 14 August 2003, in a draft “Déclaration politique des responsables politiques et militaires de l’Ituri, réunis en concertation du 16 au 17 Août à Kinshasa”,³⁴ amongst others, Thomas LUBANGA for the UPC/RP (Reconciliation et Paix) and NDJABU NGABU for the FNI declared the following: “*Vu les drames et atrocités indescriptibles vécus par la population*

³¹ The Kampala Understanding between RCD-ML and UPC, DRC-OTP-0106-0187 at 0187.

³² Message de son Excellence Monsieur le Président de l’Union des Patriotes Congolais pour la réconciliation et la paix à la population congolaise de l’Ituri à l’occasion de nouvel an 2003 et de prestation de serment des secrétaires nationaux et les secrétaires nationaux adjoints, DRC-OTP-0113-0145 at 0145.

³³ Ibid, DRC-OTP-0113-0145 at 0147.

³⁴ Déclaration politique des responsables politiques et militaires de L’Ituri, réunies en concertation du 16 au 17 Août 2003 à Kinshasa, DRC-OTP-0093-0814 at 0814.

congolaise de l'Ituri depuis bientôt cinq longues années;" leading the signatories to undertake that "... nous nous engageons fermement à mettre fin aux massacres, pillages, exactions et toute autre forme de violation des Droits de l'Homme dont nous sommes accusés".³⁵

20. Finally, on 14 May 2004, the parties to the armed conflict, amongst them again the FNI and the UPC, signed a treaty³⁶ that indicated the following: "*Désireux de participer à la pacification et à la restauration de l'autorité de L'Etat sur l'ensemble du territoire national; considérant le caractère urgent et prioritaire de la mise en œuvre du programme de désarmement et réinsertion communautaire pour L'Ituri élaboré par le Gouvernement de Transition; ... Exprimons en outre nos remerciements à l'endroit de la Communauté Internationale pour son soutien au processus de pacification de l'Ituri et formulons le souhait que cette implication demeure constante dans toutes les phases de l'exécution du programme de Désarmement et de Réinsertion Communautaire en Itur.*".³⁷

D. Nexus between the Armed Conflict and the Alleged Crimes

21. The criminal conduct with which Thomas LUBANGA is charged took place in the context of and was associated with the armed conflict in Ituri: Children under the age of 15 years were enlisted and conscripted in order to undergo military training; the purpose of the training was to use them in hostilities.³⁸

E. Characterisation of the Armed Conflict

22. As the summary of evidence contained in Section II.B ("Existence of the Armed Conflict"), *supra*, indicates, the Prosecution maintains that, during the relevant time periods, there existed in Ituri, at a minimum, an armed conflict of a non-international character.
23. In the Decision on the confirmation of the charges, the Pre-Trial Chamber found that "*there is sufficient evidence to establish substantial grounds to believe that, as a result of the presence of the Republic of Uganda as an occupying power, the armed conflict which occurred in the Ituri region can be characterised as an armed conflict of an international character from July 2002 to 2 June 2003.*"³⁹ Consistent with this decision, and with the decision of the Trial

³⁵ Ibid, DRC-OTP-0093-0814 at 0815.

³⁶ Acte d'engagement de Kinshasa, DRC-OTP-0098-0291.

³⁷ Ibid, DRC-OTP-0098-0291 at 0292; In different filmed speeches, Thomas LUBANGA indicates the existence of an armed conflict, for example Video (interview Thomas LUBANGA), DRC-OTP-1001-0008 (minutes 00.58.24-01.48.40); Video, DRC-OTP-0127-0059 (minutes 00.13.25-00.18.15).

³⁸ MONUC Special report, DRC-OTP-0074-0422 at 0463; See also further, Section V, Individual Cases.

³⁹ Confirmation Decision, at para. 220.

Chamber of 13 December 2007,⁴⁰ the Prosecution is prepared to present all evidence in its possession pertaining to both the international and the national aspects of the armed conflict, so that the Trial Chamber can determine the appropriate legal characterization applicable to the present case.⁴¹

24. From late 1998 to early June 2003, the UPDF was present in the Ituri region.⁴² During this time, UPDF military operations were had an important role in shaping local political dynamics. The UPDF's influence over the Congolese rebel groups during its presence in the Ituri region is sometimes characterized as that of a "king-maker."⁴³
25. The UPDF helped the UPC to capture Bunia in August 2002.⁴⁴ When the UPC/FPLC allied with the RCD-Goma backed by Rwanda in late 2002,⁴⁵ Uganda then helped create the PUSIC as an opposing Congolese rebel group⁴⁶ and also attempted to forge an alliance, the Front pour L'Intégration et Paix en Ituri (FIPI), among opposing Congolese militias in February 2003.⁴⁷

⁴⁰ ICC-01/04-01/06-1084, 13 December 2007, at paras. 20-50, concluding that it is premature at this stage to authorize the Prosecution to withdraw one or more of the charges, wholly or in part, and a decision to modify the legal characterization of facts can occur only after having heard the evidence; The decision states in para. 50 that "the prosecution should be prepared to call, and the defence should be in position to address, all the available evidence on the issue of whether the relevant conduct took place in the context of, and was associated with, and international armed conflict."

⁴¹ The Transcript of the hearing on 20 November 2007, ICC-01-04-01-06-T-61-ENG at pages 36-51 and in particular 41 and 42; Inevitably, the Prosecution will lead evidence covering the entire duration of UPDF's presence in the Ituri region which goes beyond the time period relevant to the charges.

⁴² MONUC Special report, DRC-OTP-0074-0422 at 0426; According to the facts established in *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgment, 19 December 2005, I.C.J. Reports 2005 paras. 39 and 76, a UPDF battalion was sent to Bunia in August 1998 and the UPDF subsequently launched military operations capturing strategic airfields and river ports in northern and eastern parts of the DRC, see DRC-OTP-0180-0656 at 0694; Video, DRC-OTP-1001-0016 (minutes 01.07.03-01.40.16); Video, DRC-OTP-0087-0014 (minutes 00.12.00-00.48.43 and 01.13.00-01.32.28); Video, DRC-OTP-0120-0294 (minutes 00.35.28-02.21.25); Video, DRC-OTP-0127-0061 (minutes 00.00.06-00.33.36).

⁴³ AI report titled "Democratic Republic of Congo on the Precipice: The Deepening Human Rights and Humanitarian Crisis in Ituri", DRC-OTP-0154-1301, at 1305-1308 and in particular at 1306; ICG report titled "Congo Crisis: Military intervention in Ituri", DRC-OTP-1015-0592 at 0600; For a short description of Congolese rebel groups and their relationship with Uganda, see MONUC Special report, DRC-OTP-0074-0422 at 0468 to 0471.

⁴⁴ HRW "Ituri: Covered in Blood", DRC-OTP-0074-0797, at 0824 and 0825; Video, DRC-OTP-0123-0009 (minutes 00.38.43-00.44.09).

⁴⁵ MONUC Special report, DRC-OTP-0074-0422 at 0430 and 0434; AI report titled "Democratic Republic of Congo, Ituri: a need for protection, a thirst for justice", DRC-OTP-0019-0153 at 0155; For further discussion of Rwandan influence on UPC, see statement of DRC-OTP-WWWW-0014, DRC-OTP-0178-0006 at paras. 132-136; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at paras. 84-98, 101; Statement of DRC-OTP-WWWW-0157, DRC-OTP-1006-0054 at para. 82; Video, DRC-OTP-0120-0294 (minutes 02.21.25-03.04.57).

⁴⁶ MONUC Special report, DRC-OTP-0074-0422 at 0468; Video (interview Thomas LUBANGA), DRC-OTP-1001-0008 (minutes 01.11.00-01.12.00); Video, DRC-OTP-1002-0002 (minutes 00.05.00-00.24.14).

⁴⁷ MONUC Special report, DRC-OTP-0074-0422 at 0434; AI report titled "Democratic Republic of Congo, Ituri: a need for protection, a thirst for justice", DRC-OTP-0019-0153 at 0155; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at paras. 196, 201, 203, 213, 215-226.

Eventually, in March 2003, the UPDF and the FNI/FRPI drove the UPC/FPLC out of Bunia.⁴⁸ The UPDF began to withdraw from the Ituri region in late April 2003.⁴⁹ The UPDF withdrew completely from Bunia around 6 May 2003 and continued its withdrawal from other areas of the Ituri region until early June 2003.⁵⁰

26. Successive DRC governments repeatedly tried to reassert their authority in Ituri by securing the withdrawal of the UPDF. The Lusaka Ceasefire Agreement signed by, *inter alia*, the DRC and Uganda in July 1999⁵¹ and the Luanda Agreement, signed by the DRC and Uganda in September 2002⁵², called for the withdrawal of the UPDF from the territories of the DRC. The UN Security Council denounced Uganda for violating the sovereignty and territorial integrity of the DRC and repeatedly demanded withdrawal of the UPDF from the territories of the DRC.⁵³
27. During the period the UPDF was present, the DRC government was incapable of exercising its sovereign duties in Ituri, and the UPDF substituted its own authority. The UPDF widely intervened in local administration and shaped political developments: The UPDF's firm grasp of local administration further assisted it to exploit natural resources in Ituri.⁵⁴ The international community viewed the level of authority the UPDF exercised as sufficient to make Uganda responsible for the security of the Ituri region.
28. Having taken over key areas of the Ituri region, UPDF General James KAZINI created the new province of "Kabili-Ituri" and appointed Adèle LOTSOVE as governor of the Ituri District in June 1999.⁵⁵ Uganda remained a prominent party to the political and diplomatic framework designed to establish transitional administrative structures in Ituri. In the Luanda Agreement

⁴⁸ Interim Report of the UN Special Rapporteur, DRC-OTP-0074-0195 at 0203; Video, DRC-OTP-1001-0016 (minutes 01.12.19-01.15.25).

⁴⁹ Interim Report of the UN Special Rapporteur, DRC-OTP-0074-0195 at 0203

⁵⁰ Report titled "Ituri Follow-up", DRC-OTP-0044-0333 at 0354; Twelfth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, DRC-OTP-0131-0389 at 0390.

⁵¹ The open source text of the Agreement is available at <http://www.iss.co.za/AF/profiles/DR Congo/cdreader/bin/2lusaka.pdf>.

⁵² The text of the Agreement, DRC-OTP-0136-0072 at 0073; The open source text of the Agreement is available at http://www.usip.org/library/pa/drc_uganda/drc_uganda_09062002.html.

⁵³ UNSC Resolution 1304, DRC-OTP-0131-0447 at 0448; UNSC Resolution 1417, DRC-OTP-0131-0234 at 0237 and 0238; The original text of the Resolution 1417 is available at <http://www.un.org/Docs/scres/2002/sc2002.htm>.

⁵⁴ UN Group of Experts Report on Exploitation of Natural Resources, DRC-OTP-0131-0321 at 0325; HRW "Ituri: Covered in Blood", DRC-OTP-0074-0797 at 0815-0817.

⁵⁵ MONUC Special report, DRC-OTP-0074-0422 at 0431; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0066-0002 at paras. 91-117; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 82; For a summary of Uganda's intervention in local administration, see also HRW "Ituri: Covered in Blood", DRC-OTP-0074-0797 at 0809 and 0810.

signed in September 2002, Uganda and the DRC agreed to jointly establish the Ituri Pacification Committee (IPC) in return for Uganda's promise to withdraw its troops.⁵⁶

29. In September 2002, the UN Secretary General recommended to the Security Council that, given the prevailing volatile environment, the UPDF should continue to discharge security responsibilities until a suitable Congolese alternative emerged.⁵⁷ In March 2003, the Accord de cessation des hostilités en Ituri signed by Congolese rebel groups and witnessed by, *inter alia*, the DRC and Uganda explicitly gave Uganda the responsibility to secure the Ituri region.⁵⁸
30. The UPDF's withdrawal from Bunia and surrounding areas in May 2003 created a power vacuum⁵⁹. UPDF General Kale KAYIHURA warned of the dangers produced by a UPDF departure without an effective peacekeeping force and administration.⁶⁰ After the rapid withdrawal of the UPDF, conflicts among Congolese militia erupted as they battled for control of Bunia.⁶¹ With the DRC Government still lacking the capacity to fill the gap, the UN Security Council authorized the deployment of the Interim Emergency Multinational Force in Bunia in May 2003⁶² and further authorized MONUC forces to use all necessary means to protect civilians in Ituri region.⁶³
31. UPC/FPLC military operations, and, in particular, military attacks specifically cited under the "Individual cases" section of the Document Containing the Charges,⁶⁴ took place within that context and were closely linked to the UPDF's presence in Ituri.⁶⁵

III. Co-perpetration Liability

32. One of the modes of liability established by the Rome Statute is co-perpetration. Pursuant to Article 25(3)(a), "a person shall be criminally responsible and liable for punishment for a crime

⁵⁶ The text of the Agreement is available at DRC-OTP-0136-0072 at 0073; For example in Video, DRC-OTP-0083-0008 (minutes 00.08.25-00.14.13) and minutes (00.43.04-01.13.23), UPDF General Kale KAYIHURA explains the presence of the UPDF in Ituri and how it ensured the starting of the IPC.

⁵⁷ Special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, DRC-OTP-0180-0643, at 0652.

⁵⁸ DRC-OTP-0107-0198 at 0198.

⁵⁹ Several videos show the withdrawal of the UPDF forces from Ituri in May 2003: Video, DRC-OTP-0081-0002 (minutes 00.35.53-00.51.08); Video, DRC-OTP-0082-0013 (minutes 00.00.00-01.30.00); Video, DRC-OTP-0082-0018 (minutes 00.28.11-01.34.36); Video, DRC-OTP-0083-0005 (minutes 00.40.02-00.41.36 and minutes 01.14.30-01.33.43); Video, DRC-OTP-0083-0008 (minutes 00.08.25-00.14.13); Video DRC-OTP-0087-0012 (minutes 00.13.13.-00.34.05).

⁶⁰ HRW "Ituri: Covered in Blood", DRC-OTP-0074-0797 at 0810; AI report titled "Democratic Republic of Congo, Ituri: a need for protection, a thirst for justice" DRC-OTP-0019-0153 at 0156.

⁶¹ Interim Report of the UN Special Rapporteur, DRC-OTP-0074-0195 at 0203 and 0204; AI report titled "Democratic Republic of Congo, Ituri: a need for protection, a thirst for justice", DRC-OTP-0019-0073.

⁶² UNSC Resolution 1493, DRC-OTP-0131-0167.

⁶³ UNSC Resolution 1493, DRC-OTP-0131-0167 at 0171.

⁶⁴ ICC-01/04-01/06-356-Conf-Anx I, 28 August, 2006, at paras. 43-4, 52-4, 55-6, 62-3, 71-4, 76, 82, 84.

⁶⁵ Confirmation Decision, see in particular paras. 175, 177-8, 185-92, and the evidence discussed therein.

within the jurisdiction of the Court if that person: (a) Commits such a crime ... jointly with another....”⁶⁶

33. The concept of co-perpetration incorporates two objective elements. First, there must exist a common plan or agreement between two or more persons, which amounts to or involves the commission of a crime.⁶⁷ Second, the accused must have exercised functional control over the implementation of the common plan by reason of the central task or role assigned to him, and provided a substantial contribution to the implementation of the common plan.⁶⁸ Functional control exists, not only where the accused has actually made an essential contribution to the commission of the crime, but also where (i) the role assigned to the accused *ex ante* was central to the implementation of the plan, and (ii) it appears in retrospect that his contribution was substantial, though not essential.⁶⁹
34. The concept of co-perpetration incorporates two subjective elements. First, the Prosecution must show that the objective elements of the crimes alleged were committed with both “intent and knowledge”.⁷⁰ To this end, the Prosecution will prove that the accused was both aware of the existence of the facts relevant to the objective elements of the crimes and accepted the

⁶⁶ This mode of liability is mirrored in a number of domestic jurisdictions. To a limited extent it has been applied by international courts and tribunals. In addition to the ICC-01/04-01/06-796-Conf-tEN, see *Prosecutor v. Stakić*, IT-97-24-T, Judgement, 31 July 2003, paras. 440-442 and 468-498. The Appeals Chamber invalidated the relevant parts of the Trial Judgement, finding that the mode of liability of co-perpetration, as defined and applied by the Trial Chamber, does not have support in customary international law. Consequently, it invalidated the relevant parts of the Trial Judgement: *Prosecutor v. Stakić*, IT-97-24-A, Appeals Judgement, 22 March 2006, para. 62. See also *Prosecutor v. Gacumbitsi*, ICTR-2001-64-A, Judgement, 7 July 2006, Separate Opinions of Judge Schomburg (para. 17) and Judge Shahabuddeen (paras. 42-52).

⁶⁷ The common plan need not be specifically directed at the commission of a crime, but must at least involve the commission of a crime, i.e. it “must include an element of criminality”: *Lubanga* Confirmation Decision, para. 344; see also *Stakić* Trial Judgement, para. 440; *Gacumbitsi* Separate Opinion Schomburg, para. 17.

⁶⁸ Claus Roxin, *Täterschaft und Tatherrschaft*, Berlin, New York, Walter de Gruyter, Seventh Edition, 2000 (“Roxin”), p. 280: “funktionelle Tatherrschaft”.

⁶⁹ Roxin, *ibid*, p. 282-285. According to Roxin, in many instance it is not possible to determine after the commission of a crime whether the contribution of the accused was essential. This would often be an abstract and theoretical assessment. See BHGSt 39, 1 – Mauerschützen I, (section III, 1(b), para. 72): <http://www.servat.unibe.ch/dfr/bs039001.html>. See Tröndle/Fischer, 54th ed, Art 25, para. 12a; Leipziger Kommentar, Vol. I, 12th ed., Art 25, para. 188. The ICTY jurisprudence, based on a more limited description of its modes of liability, covers a range of situations where persons have worked together to achieve the commission of a crime under the rubric of Joint Criminal Enterprise. Some of these discussions may usefully inform the interpretation of co-perpetration enshrined in Article 25(3)(a) of the Rome Statute (the Statute) (see *Gerhard Werle*, Individual Criminal Responsibility in Article 25 ICC Statute, J.I.C.L. 5(2007), p. 961-962 and *The Prosecutor v. Brđanin*, IT-99-36-A, Judgement, 3 April 2007, para.430).

⁷⁰ Article 30(1) of the Statute. With respect to the contextual requirements of the offences alleged, the Prosecution submits that the accused is merely required to be aware of the factual circumstances establishing the existence of an armed conflict and not to make a legal evaluation that such an armed conflict either existed or was international or non-international in nature.

substantial likelihood⁷¹ that his acts or omissions would result in the realization of these objective elements.⁷² Second, the Prosecution must establish that the accused was aware of the factual circumstances establishing his liability as a co-perpetrator. To this end, the Prosecution will show that i) the accused was aware of the substantial likelihood that implementing the Common Plan would amount to or involve the commission of the crime(s);⁷³ and ii) the accused was aware of the factual circumstances that enabled him to exercise functional control over the crime(s); namely, that he was aware of the centrality or importance of his role in the Common Plan.⁷⁴

IV. The Common Plan and the Role of the Accused

35. Thomas LUBANGA's criminal responsibility for the conscription, enlistment and use of children under the age of 15 years to participate in hostilities was manifested through a common plan (hereafter the "common plan") among himself, Chief Kahwa Panga Mandro (UPC Deputy National Secretary for Defence), Rafiki Saba (UPC Chief of Security), Floribert Kisembo (FPLC Chief of Staff), Bosco Ntaganda (FPLC Deputy Chief of Staff for Military Operations), and other senior FPLC commanders, including Commander Tchalingonza (in charge of the South East sector). The goal of the common plan, which existed from early September 2000 to 13 August 2003, was to further the UPC/FPLC war effort by all means, including (i) recruiting⁷⁵ and enlisting⁷⁶ young people, including young people under the age of 15, into the UPC/FPLC,⁷⁷ (ii) subjecting them to military training,⁷⁸ and (iii) using them to participate actively in military operations and as bodyguards.

A. The Existence of the Common Plan

⁷¹ *Lubanga* Confirmation Decision, para. 353 where "substantial likelihood" is defined as follows: "there is a likelihood that it "will occur in the ordinary course of events")".

⁷² *Lubanga* Confirmation Decision, paras. 351-352. The Prosecution notes that the Pre-Trial Chamber interpreted the requirement of intent so as to encompass *dolus eventualis* (see *Lubanga* Confirmation Decision, paras. 352-354).

⁷³ *Lubanga* Confirmation Decision, paras. 361-365. The Prosecution submits that there is no need to establish *mutual* awareness and acceptance by *all* co-perpetrators that the Common Plan amounts to or involves the commission of a crime.

⁷⁴ *Lubanga* Confirmation Decision, paras. 366-367.

⁷⁵ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032 at para. 16.

⁷⁶ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196 at 0213. Witness says that if they refused to board the truck they would "kill them".

⁷⁷ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 70, 71 and DRC-OTP-0174-0002 at paras. 33-37; Statement of DRC-OTP-WWWW-0031, DRC-OTP-0162-0002 at para. 46; Statement of witness DRC-OTP-WWWW-0012, DRC-OTP-0105-085, paras. 79, 80; Statement of DRC-OTP-WWWW-0116, DRC-OTP-0174-0025, paras. 19,20,25,57.

⁷⁸ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 70; Statement of DRC-OTP-WWWW-0116, DRC-OTP-0174-0025, paras. 19,20,25,57.

36. The existence of the common plan can be inferred from the following:

The Policy of Broad Recruitment

37. The military wing of the UPC, eventually named the FPLC,⁷⁹ required the recruitment – through conscription and enlistment – of a constant supply of soldiers to fill the ranks of the UPC military apparatus.⁸⁰ To meet this need, the UPC established an even more structured policy and implemented a widespread campaign⁸¹ of conscription and enlistment of soldiers in large numbers⁸², including men, women and youth without regard to their age.⁸³ The UPC enlisted whoever was available. In some instances, the UPC even re-recruited previously demobilised child soldiers.⁸⁴

Pattern of large scale enlistment and conscription of child soldiers

38. The UPC/FPLC recruitment campaign shows a consistent pattern of repeated and large scale enlistment and conscription of children⁸⁵, including those under the age of 15 years, into the UPC/FPLC. Forcible conscription of children by the UPC/FPLC included individual cases of abductions⁸⁶, large scale abductions⁸⁷ and other forms of forced recruitment drives⁸⁸, which

⁷⁹ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0174-0002 at paras. 50-51; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422, para. 47; Transcript of DRC-OTP-WWWW-0089, DRC-OTP-0174-0612 at 0614- 0615 and, 0625; FPLC letter dated 21 November 2002, DRC-OTP-0091-0778.

⁸⁰ Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422, para. 43; Investigator's notes of DRC-OTP-WWWW-0031, DRC-OTP-0150-0275 at para11; See also DECLARATION OFFICIELLE No UPC-RP/01/2002, signed by Thomas LUBANGA on 14 September 2002. Demonstrates the UPC had a military force as of September 2002 DRC-OTP-0037-0264.

⁸¹ Statement of DRC-OTP-WWWW-0031, DRC-OTP-0161-0617 at para35; Transcript of DRC-OTP-WWWW-0089, DRC-OTP-0174-0678 at 0686; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085, at para. 79; Statement of DRC-OTP-WWWW-0024, DRC-OTP-0126-0189 at paras. 39-43.

⁸²HRW "Ituri Covered in Blood", DRC-OTP-0074-0797 at 0850-0851; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para97.

⁸³ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para156-157; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para167; Transcript of DRC-OTP-WWWW-0038, DRC-OTP-0161-2809 at 2835.

⁸⁴ Statement of DRC-OTP-WWWW-0031, DRC-OTP-0161-0617 at para. 129; Statement of DRC-OTP-WWWW-0116, DRC-OTP-0174-0025 at paras. 51-66.

⁸⁵ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 70.

⁸⁶; Transcript of Video, DRC-OTP-0173-0510 at 0513; Statement of DRC-OTP-WWWW-0014DRC-OTP-0165-0999 at para157; Statement of DRC-OTP-WWWW-0157, DRC-OTP-0164-0534 at para. 15-16; Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para23; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 DRC-OTP-0108-0123 at para. 19; Statement of DRC-OTP-WWWW-0041, at para161-164; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para20; Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0264 at 0281 and 0282, and DRC-OTP-0180-0332 at 0334.

⁸⁷ "Ituri Covered in Blood", (DRC-OTP-0074-0797 at 0851); Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para169; Statement of DRC-OTP-WWWW-0031, DRC-OTP-0161-0617 at para34; Statement of DRC-OTP-WWWW-0089, DRC-OTP-0174-0678 at pages 7, 13, 20, DRC-OTP-0174-0642 at pages 9- 11, 16, DRC-OTP-0174-1229 at pages 3 to 4, DRC-OTP-0174-1089 at pages 23 to 25, 30 to 31, DRC-OTP-0147-0570 at page 4; Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090 at paras. 34-37.

⁸⁸ Transcript of Video, DRC-OTP-0173-0510 at 0513.

were directly or indirectly targeted at youths, including those under the age of 15.⁸⁹ In some circumstances, the very children under 15 years who were themselves abducted were forced by their commanders to arrest and abduct children, including girls under the age of 15, into the UPC⁹⁰.

39. As part of its broad child recruitment policy, the UPC/FPLC leadership systematically pressured Hema families in UPC/FPLC-controlled territories to provide children for military service.⁹¹ Emissaries and propaganda were employed to encourage Hema youth to join the UPC/FPLC military.⁹²
40. In addition to forced conscription, the UPC/FPLC also increased its military capacity by enlisting youth voluntarily⁹³, including youth under the age of 15 years, into its ranks. The UPC/FPLC accepted for enlistment⁹⁴ as children soldiers who joined following the loss of family members⁹⁵, some of whom were pursuing a desire for revenge for such loss.⁹⁶ The UPC/FPLC enlisted other youth who joined as a result of social pressure brought to bear on

⁸⁹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at paras 12, 21; Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 23 - 24; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at paras. 60, 61; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at paras. 20, 22; United Nations High Commissioner for Human Rights, Situation des Droits de l'Homme en République de Démocratique du Congo, DRC-OTP-0151-0518 at 0520; Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196 at 0316, where the abduction of children took place daily; Video, DRC-OTP-0116-0005 (minutes 00.00.00-00.29.25); Video, DRC-OTP-0116-0011 (minutes 00.41.52-01.00.37); Video, DRC-OTP-0159-0441 (minutes 00.00.00-00.04.36); Video, DRC-OTP-0127-0058 (minutes 00.20.03-00.29.00); Video, DRC-OTP-0080-0002 (minutes 00.34.57-00.39.14).

⁹⁰ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196 at 0310, 0311.

⁹¹ Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 95; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para 162-164; MONUC Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, DRC-OTP-0152-0286 at para 90; MONUC "Histoires Individuelles", DRC-OTP-0152-0274 at 0277; HRW "Ituri Covered in Blood", DRC-OTP-0074-0797 at 0851; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999, at paras 155-156; Transcript of DRC-OTP-WWWW-0089, DRC-OTP-0174-0612 at 0639, DRC-OTP-0174-0642 at 0645, DRC-OTP-0174-0678 at 0686 and 0689; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0174-0002 at para 35; Statement of DRC-OTP-WWWW-0030, at para 55; Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072 at para 73. Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0332 at 0333 and 0337 and further; Video, DRC-OTP-0152-0132 (minutes 00.14.31-00.20.30).

⁹² Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para. 161; Transcript of DRC-OTP-WWWW-0089, DRC-OTP-0174-0729 at 0734-0736, 0739-0740; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0536 at 0542 -0543, DRC-OTP-0191-0627 at 0628 - 0630, 0636.

⁹³ Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para. 29; Statement of DRC-OTP-WWWW-0038, at page 10; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 21-22; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 251.

⁹⁴ Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 93; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at paras. 28, 29.

⁹⁵ Transcript of Video, DRC-OTP-0175-0353 at 355; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 21; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 251.

⁹⁶ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 21.

them by family⁹⁷, peers⁹⁸ or the community as a whole.⁹⁹ Other motivations for voluntary enlistment were the benefits proffered by the UPC/FPLC to child soldier recruits such as the promise of opportunity to protect family from a perceived threat¹⁰⁰, the allure of a military role¹⁰¹, or the simple prospect of being fed.¹⁰²

41. The number of youths, including children under the age of 15 years, in ranks of the UPC/FPLC was significant. One witness states that during the time the UPC/FPLC controlled Bunia, he rarely saw adult military; rather, he mostly saw children of a young age, between 12-14 years old.¹⁰³ A battalion commander within the UPC/FPLC states that the FPLC had up to seven hundred child soldiers,¹⁰⁴ He also states that the battalion he commanded had up to 50 child soldiers from the ages of 14 to 16 years old.¹⁰⁵

Establishment of training camps

42. In order to prepare child recruits for combat, including those under 15 years of age, the UPC/FPLC established several military training camps,¹⁰⁶ in Centrale¹⁰⁷, Rwampara¹⁰⁸, Mandro¹⁰⁹, Irumu¹¹⁰, Bule¹¹¹, Bogoro¹¹², Sota¹¹³, Mongbwalu¹¹⁴ and Bunia.¹¹⁵ The child

⁹⁷ Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para60; Statement of DRC-OTP-WWWW-0031, DRC-OTP-0162-0002 at para34.

⁹⁸ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0174-0002 at para. 37.

⁹⁹ Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at pages 113, 114; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para161-164 .

¹⁰⁰ Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 113; Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072 at para74.

¹⁰¹ Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 114; Statement of DRC-OTP-WWWW-0031, DRC-OTP-0162-0002 at para. 108; Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072 at para72.

¹⁰² Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 114; Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072 at para72.

¹⁰³ Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072 at para. 47.

¹⁰⁴ Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0182-0587 at 0604.

¹⁰⁵ Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0264 at 0280.

¹⁰⁶ Transcript of DRC-OTP-WWWW-0089, DRC-OTP-0174-0816 at 0831-0832; Table on Training Camps, DRC-OTP-0172-0266.

¹⁰⁷; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 45.

¹⁰⁸ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para24; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at pages 58, 59; Video, DRC-OTP-0120-0293 at minutes 08:31, 11:13, 29:55, 31:10; Transcript of DRC-OTP-WWWW-0041, DRC-OTP-0174-0612 at 0621; Statement of DRC-OTP-WWWW-0213,, DRC-OTP-0180-0090 at paras. 26-27.

¹⁰⁹ Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para115; HRW "Ituri Covered in Blood", DRC-OTP-0074-0797 at 0851; Transcript of DRC-OTP-WWWW-0038, DRC-OTP-0161-2502 at 2512-2515, DRC-OTP-0161-2809 at 2812; Statement of DRC-OTP-WWWW-0157, DRC-OTP-0164-0534 at para19-25; Statement of DRC-OTP-WWWW-0089, DRC-OTP-0147-0570 at 0571; Transcript of DRC-OTP-WWWW-0089, DRC-OTP-0174-0642 at 0661, DRC-OTP-0174-0678 at 0685, DRC-OTP-0174-0759 at 0761;); Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0287 at 0302 and 0303; Views of Mandro training camp are available in Video, DRC-OTP-0082-0016 (minutes 00.02.58-00.47.20).

¹¹⁰ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para22; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at paras. 22-23.

soldiers spent, on average, two months¹¹⁶ at these locations where they learned basic military concepts and skills, such as discipline and morale,¹¹⁷ saluting, drill, and weaponry training and rudimentary combat tactics.¹¹⁸ At the conclusion of training, the child soldiers were usually issued with a uniform and weapon,¹¹⁹ signifying their readiness to participate in UPC/FPLC military operations.¹²⁰

Regular visits to training camps by Senior UPC/FPLC commanders

43. As discussed more fully in section 3(b), *infra*, high ranking UPC/FPLC commanders, including Thomas LUBANGA, inspected the training camps while child soldiers were visibly present.¹²¹

Deployment of recruits without regard to age

44. Following the completion of training, child soldiers were deployed by the UPC/FPLC in military operations no differently from any other soldier, with complete disregard for their

¹¹¹ Special Report on Events in Ituri, DRC-OTP-0129-0267 at para153; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para23; Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090 at paras. 40-52

¹¹² MONUC “Histoires Individuelles”, DRC-OTP-0152-0274 at 0281 at para. 28; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0114-0015 at para. 42; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0646 at 0651 – 0654.

¹¹³ MONUC, Report on Child Soldiers in Ituri, DRC-OTP-0152-0249 at 0255; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 348.

¹¹⁴ Transcript of DRC-OTP-WWWW-0038, DRC-OTP-0161-2649 at 2693; Transcript of DRC-OTP-WWWW-0017, DRC-OTP-0174-1562 at 1583; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 43.

¹¹⁵ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 173.

¹¹⁶ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para31; MONUC “Histoires Individuelles”, DRC-OTP-0152-0274 at para. 32.

¹¹⁷; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 69; Transcript of Video, DRC-OTP-0120-0375; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para25; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para167-168; Transcript of DRC-OTP-WWWW-0089, DRC-OTP-0174-0759 at 0766.

¹¹⁸ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 24; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 26; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at pages 64, 65; Statement DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at paras. 163-164; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at paras251-254; Transcript of DRC-OTP-WWWW-0089, DRC-OTP-0174-0759 at 0763, 0764, 0767, 0768 and 0770.

¹¹⁹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 32; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para31; Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para41; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para24; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at pages 30, 32, 45; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0567 at 0588 – 0589.

¹²⁰ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para45; Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para33; Transcript of DRC-OTP-WWWW-0089, DRC-OTP-0174-0759 and DRC-OTP-0174-0777; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0536 at 0550 – 0551.

¹²¹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para30; Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para34; Video, DRC-OTP-0120-0293, minutes 00:03:10 and further); Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para168; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at paras. 251-256; Transcript of DRC-OTP-WWWW-0038, DRC-OTP-0161-2809 at 2826; Statement of DRC-OTP-WWWW-0116, DRC-OTP-0174-0025 at para25; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0536 at 0560 – 0562.

age.¹²² The UPC/FPLC used child soldiers in front line combat roles,¹²³ where they inflicted and suffered casualties.¹²⁴ Examples of combat operations in the time period September 2002 to September 2003 in which child soldiers were used by the UPC/FPLC are Libi and Mbau (October 2002)¹²⁵, Lenga and Fataki,¹²⁶ Lipri (February/March 2003)¹²⁷, Kobu (February/March 2003)¹²⁸, Bogoro (February/March 2003)¹²⁹, Bunia (August 2002 and May 2003)¹³⁰, Songolo¹³¹ and Djugu and Mongbwalu (late 2002 and June 2003)¹³².

Use of child soldiers as bodyguards

45. Child soldiers were also regularly used as escorts/bodyguards for National Secretaries, Command Staff and UPC/FPLC members, informants and as guards for UPC/FPLC facilities.¹³³

¹²² Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para253; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at pages 72, 73; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para86; Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0182-0587 at 0605.

¹²³ Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para171; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 179; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para253; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at paras. 61, 62; Transcript of DRC-OTP-WWWW-0038, DRC-OTP-0161-2809 at 2813, 2814 and 2820;. Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0182-0587 at 0604.

¹²⁴ Transcript of DRC-OTP-WWWW-0038, DRC-OTP-0161-2809 at 2816; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para43; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para171.

¹²⁵ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 41-46.

¹²⁶ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011 at pages 9-11.

¹²⁷ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at paras. 43-45; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at paras. 39-43; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 41

¹²⁸ Transcript of DRC-OTP-WWWW-0038, DRC-OTP-0161-2697 at 2703-2704, DRC-OTP-0161-2729 at 2755-2757.

¹²⁹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para51; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 65.

¹³⁰ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 86.

¹³¹ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032 at para. 99.

¹³² Statement of DRC-OTP-WWWW-0010, DRC-OTP-0123-0122 at paras68-70; Statement of DRC-OTP-WWWW-0157, DRC-OTP-0164-0534 at para. 26; Statement of DRC-OTP-WWWW-0089, DRC-OTP-0174-0904 at 0926-0937, DRC-OTP-0174-0569 at 0572.

¹³³; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 40; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para33; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at pages 29, 30, 99,100, 101, ICC-01-04-1-6-T-39-EN [21Nov2006Edited], at pages 88, 90; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para31; Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 52,59-61,63,64; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at paras. 142, 143, 175, 176, 178, 179, 183, 184; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at paras. 251 to 256; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at paras158 to 173; Transcript of DRC-OTP-WWWW-0038, DRC-OTP-0161-2602 at 0498-0499, DRC-OTP-0161-2458 at 2491-2492, DRC-OTP-0161-2809 at 2823-2824, DRC-OTP-0161-2809 at 2815-2816, 2821-2824; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0174-0002 at paras. 39, 40; Statement of DRC-OTP-WWWW-0089, DRC-OTP-0174-1121 at pages 22-23, DRC-OTP-0174-1154 at pages 17-19, DRC-OTP-0174-1299 at pages 1312-1313; Statement of DRC-OTP-WWWW-0030, DRC-OTP-0151-0583 at para53; Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072 at para. 51.

B. The Role of the Accused

46. During the time he was in power, Thomas LUBANGA was the chief architect and enforcer of UPC/FPLC policies, including the common plan. The principal indicia of Thomas LUBANGA's central role in the articulation and execution of the common plan are highlighted below.

1. FROM SEPTEMBER 2000 TO SEPTEMBER 2002, THOMAS LUBANGA CREATED THE UPC/FPLC AS A MEANS TO SECURE AND MAINTAIN POLITICAL AND MILITARY DOMINATION OF THE ITURI REGION

47. Thomas LUBANGA, a citizen of the Democratic Republic of the Congo (DRC),¹³⁴ was born of Hema ethnicity¹³⁵ in Djiba, in the then Republic of Congo, on 29 December 1960.¹³⁶ In late 1999/early 2000,¹³⁷ following an advanced course of education¹³⁸ which led to his professional appointment at the University of Cepromad,¹³⁹ Thomas LUBANGA established himself on the political scene in the region,¹⁴⁰ eventually as the Member of the Assembly of the Province of Ituri.¹⁴¹
48. In 2000, Thomas LUBANGA decided to create his own organization,¹⁴² in order to secure and maintain political and military control over the Ituri region.¹⁴³ On 15 September 2000,¹⁴⁴

¹³⁴ Curriculum Vitae, DRC-OTP-0092-0378; "Attestation No Just.30/DCC/416/2004 tenant lieu de certificate de nationalité congolaise, DRC-OTP-0092-0378 at 0386.

¹³⁵ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 53; Statement of witness DRC-OTP-WWWW-0030, DRC-OTP-0151-0583 at para. 97; IRIN "Kampala, Kinshasa say UPC claims of Bunia massacres 'are false'", DRC-OTP-0074-0048; Amnesty International "Democratique Republic of Congo. Ituri: a need for protection, a thirst for justice" DRC-OTP-0154-1054 at 1061; Centre of African Studies, University of Copenhagen "The Formation of New Political Complexes: Dynamics of Conflict in Ituri", DRC-OTP-0168-0006 at 0021; ICG: "Congo Crisis: Military Intervention in Ituri", DRC-OTP-0003-0424 at 0434; HRW "Ituri Covered in Blood", DRC-OTP-0074-0797 at 0808.

¹³⁶ Curriculum Vitae, DRC-OTP-0092-0378; Attestation de Naissance, DRC-OTP-0092-0378 at 0385.

¹³⁷ Statement of witness DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 79-80.

¹³⁸ From 1979 to 1985, Thomas LUBANGA studied at the University in Kisangani and graduated in psychology of work. Curriculum Vitae, DRC-OTP-0092-0378; Statement of witness DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 81.

¹³⁹ Curriculum Vitae, DRC-OTP-0092-0378.

¹⁴⁰ Statement of witness DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 84.

¹⁴¹ Curriculum Vitae, DRC-OTP-0092-0378.

¹⁴² Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 95; Curriculum Vitae, DRC-OTP-0092-0378.

¹⁴³ Declaration Officielle de l'UPC/RP No UPC-RP/05/2002 dated 22 Octobre 2002 is signed by Thomas LUBANGA as President: "The UPC-RP is a political-military movement", DRC-OTP-00164-0452; Letter from Thomas LUBANGA to the Belgian Government stating "the UPC/RP is a political-military movement created in 2000 with the aim of militating for a new political and military order in DRC", DRC-OTP-0029-0294; Video (interview with LUBANGA), DRC-OTP-1001-0008 (minutes 01.08.00-01.09.50) where he says, "[T]here is the political aspect and thus political problems here in Ituri. And those political problems it's what we, we live, specially as a political-military movement. We took arms in 2000, in September. It was to react to the mediocrity and irresponsibility of the RCD/ML in this area (...) Our action as UPC is one of political action with national

together with others,¹⁴⁵ he launched the UPC in Bunia¹⁴⁶ and was unanimously acclaimed President.¹⁴⁷ Thereafter, he remained the indispensable element of UPC policy and practice.¹⁴⁸ Keenly aware of the centrality of armed force to political power in Ituri, Thomas LUBANGA and his supporters saw the UPC as the umbrella name for a political-military movement, to be composed predominantly of Hema people.¹⁴⁹

49. Even as he moulded the UPC into a powerful organisation in its own right, Thomas LUBANGA held senior positions in other groups that struggled for dominance of Ituri politics in 2000 and 2001. In the summer of 2000, Thomas LUBANGA joined the Rassemblement Congolais pour la Démocratie - Mouvement de Libération (RCD-ML), which formed part of the Front de Libération du Congo(FLC).¹⁵⁰ At the end of 2000, Thomas LUBANGA spent some months in Uganda,¹⁵¹ where he received military training.¹⁵² In 2001, he was briefly the FLC's Deputy National Secretary for Youth and Sports,¹⁵³ before serving as Commissioner for Transport and Communication,¹⁵⁴ then as Minister of Defence,¹⁵⁵ of the alliance between the UPC and the *Rassemblement Congolais pour la Démocratie – Kisangani/Mouvement de Libération* (RCD-K-ML).

character. And around our political actions, there are plenty of adversities between us and the RCD/ML because in 2002, on 9 August, we completely chased the RCD/ML out of Ituri. So we occupied all of Ituri (...)"

¹⁴⁴ Statute of the UPC, DRC-OTP-0091-0039; Decret No 013/UPC/RP/CAB/PRES/2002 du 30 Octobre 2002, DRC-OTP-0113-0124; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 85; Video, DRC-OTP-0127-0060 (minutes 00.47.22-00.49.12 and minutes 01.30.03-01.31.27).

¹⁴⁵ Statute of the UPC, DRC-OTP-0091-0039 at 0047; Statute of the UPC, 15 September 2000, DRC-OTP-0014-0140.

¹⁴⁶ Statute of the UPC, DRC-OTP-0014-0140 at page 2, 11; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 95; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at paras. 85-88.

¹⁴⁷ Declaration Officielle de l'UPC/RP No UPC-RP/05/2002 dated 22 Octobre 2002, DRC-OTP-00164-0452; *Curriculum Vitae*, DRC-OTP-0092-0378.

¹⁴⁸ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0066-0002 at para. 114; "Note synoptique sur état de la procédure-dossier de l'Ituri", DRC-OTP-0118-0429.

¹⁴⁹ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at paras. 95, 97; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at paras. 91, 169-171.

¹⁵⁰ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0174-0002 at para. 95, 101.

¹⁵¹ Statement of witness DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 77; Statement of witness DRC-OTP-WWWW-0026, DRC-OTP-0109-0065 at para. 31.

¹⁵² Statement of witness DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 77; Statement of witness DRC-OTP-WWWW-0026, DRC-OTP-0109-0065 at para. 31.

¹⁵³ *Curriculum Vitae*, DRC-OTP-0092-0378; Statement of witness DRC-OTP-WWWW-0026, DRC-OTP-0109-0065 at para. 31; Statement of witness DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 53

¹⁵⁴ *Curriculum Vitae*, DRC-OTP-0092-0378.

¹⁵⁵ *Curriculum Vitae*, DRC-OTP-0092-0378; Statement of witness DRC-OTP-WWWW-0014, DRC-OTP-006-0002 at para. 49. Statement of witness DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 95. Statement of witness DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 93. Statement of witness DRC-OTP-WWWW-0026, DRC-OTP-109-0065at para. 31.

50. In April 2000, Thomas LUBANGA rallied mutinous Hema officers and soldiers from within the *Armée du Peuple Congolais* (APC, the military wing of the RCD-K-ML) and arranged to send them for training in Uganda.¹⁵⁶
51. On 17 April 2002, the UPC issued a public declaration, breaking away from RCD-K-ML and launching itself as a distinct political-military movement. Both the political and military wings of the UPC were thereafter collectively known as the UPC with Thomas LUBANGA serving as both President and Commander-in-Chief.¹⁵⁷
52. Over the following months, Thomas LUBANGA and other UPC leaders planned and prepared the consolidation of UPC political and military control over Ituri. Even while he was in detention in Kinshasa from June¹⁵⁸ to end-August 2002,¹⁵⁹ Thomas LUBANGA appointed Richard LONEMA as interim UPC leader¹⁶⁰ with instructions to continue to develop the military wing of the UPC and to recruit soldiers.¹⁶¹ During Thomas LUBANGA's detention in Kinshasa, Floribert KISEMBO was stationed in Bunia and oversaw UPC troops in the town, while KAHWA and NTAGANDA were leading UPC units as operational commanders.¹⁶² LONEMA coordinated all three of them.¹⁶³ When Thomas LUBANGA returned on or about 25 August 2002¹⁶⁴ he imposed a formal structure on this growing organization.¹⁶⁵
53. In September 2002, Thomas LUBANGA formally named the UPC's military wing the FPLC. He immediately became FPLC Commander-in-Chief¹⁶⁶ and held this position throughout the

¹⁵⁶ Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para. 26, 30; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 67, 70; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 78-80.

¹⁵⁷ See document on request for provisions signed by KISEMBO and HOYETI where the President of the UPC is referred to as the Commander in-Chief of the FPLC in Bunia, DRC-OTP-0091-0778.

¹⁵⁸ Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at paras. 105, 107; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para. 50-67; Statement of DRC-OTP-WWWW-0014, DRC-OTP-065-0999 at para. 61.

¹⁵⁹ Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 139; Statement of DRC-OTP-WWWW-0014, DRC-OTP-065-0999 at para. 61.

¹⁶⁰ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0066-0002 at para. 79; Video, DRC-OTP-0123-0009 (minutes 00.38.43 to 00.44.09); Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para. 64.

¹⁶¹ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 67.

¹⁶² Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 68; Statement of DRC-OTP-WWWW-0026, DRC-OTP-0109-0065 at para. 70.

¹⁶³ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 68; See also Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at paras. 97-98 regarding Thomas LUBANGA's second detention in Kinshasa and the delegation of interim leadership to Djokaba.

¹⁶⁴ Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 139.

¹⁶⁵ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 68.

¹⁶⁶ DRC-OTP-0014-0254. UPC Circular no.14; "Suivi dossier Démobilisation" dated 27 January 2003, DRC-OTP-0029-0275; FPLC letter dated 21 November 2002, DRC-OTP-0091-0778; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0422 at para. 63; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 35; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 148; and also DRC-OTP-0029-0244 where Thomas LUBANGA is referred to as Chief of the Hema Military, 02 September 2002; Video, DRC-

relevant time periods.¹⁶⁷ At Thomas LUBANGA's direction, the pre-existing Hema militias were incorporated into the FPLC¹⁶⁸ as soldiers and officers in a hierarchically-organized army which included a Chief of General Staff and two deputies (in charge of, respectively, operations and administration/logistics). Staff officers for personnel, intelligence, logistics and civilian and military operations reported to the Chief of General Staff.¹⁶⁹ Thomas LUBANGA and the UPC set up the military structure of the FPLC with a conventional military structure, and from its inception, the FPLC received financial support and arms from supporters of the UPC.¹⁷⁰

54. Thomas LUBANGA was instrumental in obtaining political, financial and social support for the UPC/FPLC, both within Ituri and beyond. He led the delegation that went to Kampala in June 2002 to secure Ugandan government backing.¹⁷¹ He used his contacts and other assets to win and retain the allegiance of local Hema community leaders.¹⁷²
55. Under Thomas LUBANGA's direction, the UPC/FPLC sought, and for a time achieved, military control over the Kilo Moto gold mines in Mongbwalu¹⁷³, a significant source of financial revenue for the organization.¹⁷⁴ Control of gold in Mongbwalu helped make the UPC/FPLC and Thomas LUBANGA particularly, an attractive interlocutor for outside supporters interested in exploiting Ituri's rich resources.¹⁷⁵ Access to gold was sufficiently important for the UPC/FPLC to establish its Etat-Major in Mongbwalu from December 2002 to February 2003.¹⁷⁶

OTP-0127-0063 (minutes 00.00.13 to 00.03.01); Video, DRC-OTP-0120-0294 (minutes 02.28.34-02.28.58), Video, DRC-OTP-0127-0059 (minutes 01.21.54-01.29.42).

¹⁶⁷ Order of 21 October 2002, DRC-OTP-0029-0274; Order of 27 January 2003, DRC-OTP-0029-0275; Note Circulaire No 014/EMG/FPLC/COMDT/2003 of 5 June 2003, DRC-OTP-0014-0254.

¹⁶⁸ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para.9; Statement of DRC-OTP-WWWW-0004 DRC-OTP-0041-0002 at para. 95.

¹⁶⁹ See DRC-OTP-0109-0122, an FPLC Intelligence Report from the G2 Intelligence Chief to the President of the UPC; and DRC-OTP-0091-0769 FPLC report from Chief-Major General Kisémbé document for information to President of UPC and to Cabinet Director of the UPC.

¹⁷⁰ Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at paras. 62-75; and 194-197.; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0174-0002 at paras. 16-17 and DRC-OTP-0041-0002 at para. 152.

¹⁷¹ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0066-0002 at paras. 55, 58; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at paras. 50-56.

¹⁷² Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 95-97; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at paras.10, 15, 35.

¹⁷³ Transcript of DRC-OTP-WWWW-0187 DRC-OTP-0182-0478 at 0481.

¹⁷⁴ The UPC controlled Mongbwalu and oversaw the Kilo Moto gold mines from 22 November 2002 to 13 March 2003. HRW "The Curse of Gold", DRC-OTP-0074-0628 at 0661; Statement of DRC-OTP-WWWW-0026, DRC-OTP-0109-0065 at paras. 95, 99 and 100.

¹⁷⁵ HRW "The Curse of Gold", DRC-OTP-0074-0628 at 0661.

¹⁷⁶ DRC-OTP-WWWW-0026, DRC-OTP-0109-0065 at paras. 99-100.

2. FROM SEPTEMBER 2000 UNTIL 13 AUGUST 2003, THOMAS LUBANGA ASSUMED LEADERSHIP AND COMMAND OF THE UPC/FPLC

56. As President and Commander-in-Chief of the UPC/FPLC¹⁷⁷, Thomas LUBANGA established a system of government which conducted its affairs through the presidency and the Secretariat General.¹⁷⁸ He appointed ministers, held regular meetings with them and developed an organised system of communication, record keeping, accounting, and revenue collection.¹⁷⁹ Thomas LUBANGA's staff would regularly update him on the activities of their departments within the UPC.¹⁸⁰
57. Thus, Thomas LUBANGA convened regular meetings¹⁸¹ with UPC/FPLC commanders at his headquarters in Bunia to whom he gave instructions¹⁸²; regularly received reports from UPC Ministries, armed units of the FPLC and their respective commanders.¹⁸³ In fact prior to military operations, Thomas LUBANGA would meet with his Chief of Staff of the FPLC in order to plan the operations.¹⁸⁴ Thomas LUBANGA also established Presidential commissions;

¹⁷⁷ See DRC-OTP-0091-0778 FPKLC document on request for provisions signed by KISEMBO and HOYETI where the President of the UPC is referred to as the Commander in-Chief of the FPLC in Bunia.

¹⁷⁸ See DRC-OTP-0024-0788 UPC document signed by Thomas LUBANGA on 15 May 2003, a mission order to TINANZABO.

¹⁷⁹ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 95-98; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 147; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0174-0002 at paras. 50-52; UPC letter at DRC-OTP-0091-0773, dated 11 November 2002 from the National Secretary for Culture, Arts and Tourism to the President of the UPC transmitting to the President an activity report; Letter at DRC-OTP-0089-0060 dated 14 January 2003 from the National Secretary "à l'Intérieur et aux affaires coutumières" addressed to the President of the UPC, transmitting to the President a list of nominations for members of his Cabinet, further to the President's Decree No. 18; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0354 at 0378, DRC-OTP-0191-0383 at 0385.

¹⁸⁰ DRC-OTP-0024-0773, UPC Document from Secretariat for Commerce and Industry providing information to Thomas LUBANGA pursuant to LUBANGA's request, 04 October 2002, and DRC-OTP-0091-0773, a report from National Secretary for Culture, Art and Tourism; Transcript of Interview of DRC-OTP-WWWW-0055, DRC-OTP-0191-0412, 0422 – 0423.

¹⁸¹ Statement of DRC-OTP-WWWW-0030, DRC-OTP-0151-0583 at para. 34; Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196 at 0283; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at paras. 55-56; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 99-103; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para. 91; Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0182-0478 at 0482.

¹⁸² Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 99-103; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 150, DRC-OTP-0174-0002 at para. 52-53; Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0233 at 0245.

¹⁸³ Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at paras. 55-56; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 99-103; , FPLC Intelligence Report from the G2 Intelligence Chief to the President of the UPC, DRC-OTP-0109-0122; UPC Situation Journaliere du 23 Decembre 2002, DRC-OTP-0127-0126.

¹⁸⁴ Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0233 at 0245 to 0246.

appointed and dismissed members of the UPC executive and officers in the FPLC¹⁸⁵; made policy decisions and gave orders to military commanders¹⁸⁶; and presided over military committees.¹⁸⁷ The Statute of the UPC formally endowed the Secretariat General, the executive organ of the movement, with the power to execute the President's orders.¹⁸⁸ There was nothing the FPLC could undertake that was not known to the UPC and Thomas LUBANGA, no matter how trivial.¹⁸⁹

58. Notwithstanding the extensive formal structures he established, in practice, Thomas LUBANGA enjoyed and often exercised the undisputed power to make decisions.¹⁹⁰ Thomas LUBANGA only received technical advice from the UPC/FPLC movement's National Secretaries.¹⁹¹ Thomas LUBANGA *"used to take most of the decisions himself without consulting with the members of the movement's executive."*¹⁹²
59. Thomas LUBANGA dominated¹⁹³ the UPC/FPLC to the extent that he was variously described by those who knew and worked with him as a *"dictator"*¹⁹⁴, and *"Supreme Commander"*.¹⁹⁵ There was little space for debate in most UPC/FPLC executive meetings.¹⁹⁶ Rather, Thomas

¹⁸⁵ Statement of DRC-OTP-WWWW-0026, DRC-OTP-0109-0065 at paras. 61-69; Presidential Decree No. 16 dated 2 December 2002, DRC-OTP-0089-0057; See also Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0412 at 0416 - 0417, where Thomas LUBANGA dismissed a FPLC commander.

¹⁸⁶ Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 102.

¹⁸⁷ Statement of DRC-OTP-WWWW-0026, DRC-OTP-0109-0065 at para. 72; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 65; Statement of DRC-OTP-WWWW-0089, DRC-OTP-0175-0973 at 0978.

¹⁸⁸ Statute of the UPC DRC-OTP-0014-0140 at 0147.

¹⁸⁹ DRC-OTP-0091-0728, UPC Document from UPC National Secretary of Justice from December 2002 on the apprehension of a motorcycle by the FPLC.

¹⁹⁰ Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 144; Statement of DRC-OTP-WWWW-0026, DRC-OTP-109-0065 at para. 61, 73.

¹⁹¹ Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at paras. 144 and 145; Kristine Peduto, ICC-01-04-01-06-T-38-EN[20Nov2006Corrected], at page 49, lines 5 - 9.

¹⁹² Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0111 at para. 144, relating what he was told by Daniel Litsha; UPC letter dated 30 November 2002 at DRC-OTP-0089-0069.

¹⁹³ See for example Video, DRC-OTP-0103-0008 (minutes 00.56.17-00.57.52); Video, DRC-OTP-0120-0294 (minutes 00.28.48-00.35.28); Video, DRC-OTP-0123-0006 (minutes 00.00.40-00.02.38); Video, DRC-OTP-0127-0061 (minutes 00.49.24-00.49.49, minutes 01.01.53-01.03.03); Video, DRC-OTP-0127-0063, minutes 00.00.00-00.03.01; Video, DRC-OTP-0120-0294 (minutes 02.22.33, 02.28.34, 02.38.06, 02.41.22, 02.54.02-03.00.43); Video, DRC-OTP-0080-0002 (minutes 00.11.34).

¹⁹⁴ Statement of DRC-OTP-WWWW-0012, at paras. 145, relating what he was told by Daniel Litsha.

¹⁹⁵ "Suivi dossier Démobilisation" dated 27 January 2003, DRC-OTP-0029-0275; FPLC letter dated 21 November 2002, DRC-OTP-0091-0778; FPLC military logistics document concerning supplies copied to Commandant Supreme DRC-OTP-0014-0255; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422) paras. 63, 99; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 35; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 54, 148; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para. 96; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0301 at 0319 - 0320.

¹⁹⁶ Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 145; UPC letter dated 30 November 2002, DRC-OTP-0089-0069.

LUBANGA often simply gave orders to executive members and “yelled at them as if they were children”.¹⁹⁷

3. FROM EARLY SEPTEMBER 2002 UNTIL 13 AUGUST 2003, THOMAS LUBANGA OVERSAW AND ENSURED EFFECTIVE IMPLEMENTATION OF UPC/FPLC POLICIES, INCLUDING THE COMMON PLAN OF FURTHERING THE UPC/FPLC WAR EFFORT BY CONSCRIPTING, ENLISTING AND USING CHILDREN, INCLUDING CHILDREN UNDER THE AGE OF 15 YEARS, TO PARTICIPATE ACTIVELY IN HOSTILITIES

60. Thomas LUBANGA had *de facto and de jure* ultimate authority to ensure effective implementation of UPC/FPLC policies, including the common plan of furthering UPC/FPLC war effort by conscripting, enlisting and using children including, children under the age of 15 years, to participate actively in hostilities.
61. Given the human resource needs of the UPC/FPLC’s military objectives, Thomas LUBANGA and co-perpetrators¹⁹⁸ set in place and enforced policies to conscript, enlist and use whoever could be deployed into combat, including children under the age of 15 years.
62. The most compelling evidence of Thomas LUBANGA’s central role in the coordination and implementation of the common plan can be derived from his own statements. During an inspection to the Rwampara camp on 12 February 2003, Thomas LUBANGA gave following address to soldiers, including children visibly under age 15 years:
63. *“I am Thomas LUBANGA the president of our party, the UPC.... You are used to ... talking with our commanders ... who are ... helping with this ... work ... of training ... who are ... building the army ... everyday. I am with them all the time but there is a lot of work... And ... sometimes my work requires me to go abroad or I have meetings all the time ... So it is difficult for me to meet with you all the time.... The Chief of Staff, Commander Bosco, comes to see you. Does he come here? Does he come here regularly? ... If he does not come, you tell me..... Continue your training. We are keeping an eye on you all the time. So that we can know your problems ... and solve them. You said a while ago that the Operations Commander ... Commander Bosco comes to see you regularly. If you have difficulties, tell him. And they will*

¹⁹⁷ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 100.

¹⁹⁸ Chief Kahwa Panga Mandro (UPC Deputy national Secretary for Defence), Rafiki Saba (UPC Chief of Security), Floribert Kisembo (FPLC Chief of Staff), Bosco Ntaganda (FPLC Deputy Chief of Staff for Military Operations), and other senior FPLC commanders. See also DRC-OTP-0102-0009 (minutes 00.32-05-01.01.00 and minutes 01.37.00-01.40.19); Video, DRC-OTP-0120-0295 (minutes 02.49.34-02.52-45).

*get to a higher level ... of our leadership. Because he is a senior leader of our army, the FPLC.”*¹⁹⁹

64. DRC-OTP-WWWW-0010, one of the individual former girl child soldiers, can be seen on this video and was present when Thomas LUBANGA addressed the recruits at Rwampara on 12 February 2003.²⁰⁰
65. Thomas LUBANGA's visit to Rwampara is evidence of his actions to further and implement the plan to recruit children under the age of 15. Equally compelling is the fact *that in* early February 2003, DRC-OTP-WWWW-0187, a UPC/FPLC battalion commander states that during a meeting where, amongst others, Floribert KISEMBO and Bosco NTAGANDA were present, Thomas LUBANGA gave orders for children to be recruited from Hema families in the villages. Several days later, Thomas LUBANGA visits the Rwampara military training camp and addresses the recruits. Both these events demonstrate Thomas LUBANGA's direct actions to further and implement the plan to recruit and use children under the age of 15.²⁰¹
66. Thomas LUBANGA's key overall co-ordinating and supervisory role in the development, furtherance and implementation of the common plan was manifested in the following ways:

a. Thomas LUBANGA had direct and ongoing contacts with the other joint co-perpetrators in the common plan, including with those subordinate UPC/FPLC commanders known as being active in recruiting, training and using children in hostilities, such as NTAGANDA, TCHALIGONZA and Chief KAHWA.

These contacts included the following:

(i) Telephonic/Radio Communications

67. UPC/FPLC officers employed sophisticated communications devices to maintain close and frequent contact with each other and with Thomas LUBANGA.²⁰² These facilities – which included satellite²⁰³ and mobile phones, and Motorola²⁰⁴ and other hand-held radios²⁰⁵ –

¹⁹⁹ Confirmation Decision para. 400, quoting transcript of video material, DRC-OTP-0120-0343, line 159 to DRC-OTP-0120-0344, line 185. Video, DRC-OTP-0120-0293.

²⁰⁰ Transcript of DRC-OTP-WWWW-0010, DRC-OTP-0188-0184 at 0540; Video, DRC-OTP-0120-0293 (minutes 00:10:44).

²⁰¹ Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0175-0824 at 0337.

²⁰² Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 173; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at paras. 55-56; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0383, at 0398; See Thomas LUBANGA's speech in Video, DRC-OTP-0102-0003 (minute 00.06.58) where he states being in contact with TCHALIGONZA.

²⁰³ Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072 at para. 51; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para. 55; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0066-0002 at para. 258; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0439 at 0451.

enabled Thomas LUBANGA to exercise command and control over UPC/FPLC troops²⁰⁶ and to remain informed about military operations, the political situation in Ituri, and developments in UPC/FPLC training camps.²⁰⁷ By late 2002, nearly all of the officers had radios.²⁰⁸ Thus, for significant portions of time when he was not in Bunia, including in August 2002 and August 2003 when he was in Kinshasa,²⁰⁹ Thomas LUBANGA nonetheless maintained regular contact with NTAGANDA,²¹⁰ KISEMBO²¹¹ and other senior UPC/FPLC members.²¹² Thomas LUBANGA expected to be informed of what was happening in UPC/FPLC-held territory²¹³ and radio communication was established with high level commanders, including Thomas LUBANGA, each time the troops moved a few kilometres.²¹⁴ The UPC/FPLC kept a logbook of radio communications which includes records of operational orders, operation situation reports and deployment instruction²¹⁵. By August 2002, the information-sharing system was sufficiently well-developed that the UPC/FPLC leadership, including Thomas LUBANGA, received information of military operations and other significant events all over Ituri, including in Mongwalu²¹⁶, Aru, Mahagi.²¹⁷

²⁰⁴ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 154; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para. 55; DRC-OTP-WWWW-0038, DRC-OTP-0161-2649 at 2685-2692.; Transcript of DRC-OTP-WWWW-0017, DRC-OTP-0175-0076 at 0084-0087; Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196 at 0254;

²⁰⁵ Transcript of DRC-OTP-WWWW-0038, DRC-OTP-0161-2649 at 2685-2692.; Transcript of DRC-OTP-WWWW-0017, DRC-OTP-0175-0076 at 0084-0087; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 263-266; Statement of DRC-OTP-WWWW-0026, DRC-OTP-0109-0065 at para. 55; Video DRC-OTP-0102-0003.

²⁰⁶ Statement of DRC-OTP-WWWW-0089, DRC-OTP-0147-0570 at para. 25.

²⁰⁷ Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para. 56; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 101-103.

²⁰⁸ Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 173.

²⁰⁹ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0066-0002 at paras. 37, 63, 64, 85; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 179.

²¹⁰ Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at paras. 55-56; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 101.

²¹¹; Statement of DRC-OTP-WWWW-0089, DRC-OTP-0147-0570 at para. 25; Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196 at 0278; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 101; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0383, at 0395 and transcript DRC-OTP-0191-0439, at 0453 and 0454.

²¹² Statement of DRC-OTP-WWWW-0014, DRC-OTP-0066-0002 at paras. 37, 63, 64 and 85.

²¹³ See DRC-OTP-0109-0122, an FPLC Intelligence Report from the G2 Intelligence Chief to the President of the UPC; and DRC-OTP-0091-0769 FPLC report from Chief-Major General Kiseembo document for information to President of UPC and to Cabinet Director of the UPC, as evidence that all matters were copied to Thomas LUBANGA.

²¹⁴ Statement of DRC-OTP-WWWW-0089, DRC-OTP-0147-0570 at para. 25; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0383 at 0398.

²¹⁵ Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0439 at 0455; FPLC Logbooks, DRC-OTP-0017-0003 and DRC-OTP-0017-0033.

²¹⁶ FPLC Logbooks, DRC-OTP-0017-0003 and DRC-OTP-0017-0033.

²¹⁷ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 78.

(ii) Correspondence

68. In practice, UPC/FPLC commanders regularly copied Thomas LUBANGA in name, and/or in his position as Commander-in-Chief, on correspondence and reporting concerning core topics that were essential to the fulfilment of the common plan, including, *inter alia*, military logistics and supplies, military command posts and areas of operation, and means of communication.²¹⁸

(iii) Meetings

69. Thomas LUBANGA, NTAGANA, KISEMBO, Aimable RAFIKI, NEMBE, Prince MUGABO, Ali MBUYI and Eric MBABAZI regularly convened security and related meetings at Thomas LUBANGA's home.²¹⁹
70. During the UPC/FPLC delegation's visit to Aru, in September/October 2002, two separate meetings were held, military and civilian. At the meetings' conclusion, the leading members of the UPC/FPLC delegation – Adele Lotsove MUGISA, KISEMBO, and Chief KAHWA – all reported to LUBANGA via INMARSAT and Thuraya satellite telephone.²²⁰

b. Thomas LUBANGA inspected UPC/FPLC military training camps where young recruits including those under the age of 15 years, were being trained for armed combat. He spoke to them and encouraged them to fight.

71. The statements of DRC-OTP-WWWW-0007²²¹, DRC-OTP-WWWW-0010,²²² and DRC-OTP-WWWW-0297²²³ describe Thomas LUBANGA's visits to the training camps at Centrale, Rwampara, Irumu and Langu, sometime between early September 2002 and 13 August 2003,

²¹⁸ FPLC military logistics document concerning supplies copied to Commandant Supreme, DRC-OTP-0014-0255; FPLC military logistics document re: deliveries of ammunition and supplies, copied to Commandant Supreme, DRC-OTP-0014-0256; FPLC military logistics document relating to ammunition supplies, copied to Commander in Chief, DRC-OTP-0014-0257; FPLC military logistics document relating to food supplies, copied to Commandant Supreme, DRC-OTP-0014-0258; FPLC military document relating to unit commands, copied to Commander in Chief, DRC-OTP-0014-0268; FPLC military document relating to unit commands, copied to Commander in Chief, DRC-OTP-0014-0269; UPC document relating to FPLC military command posts and areas of operation, copied to President UPC/RP, DRC-OTP-0014-0270; FPLC military document relating to Thuraya satellite telephone, from Bosco Ntaganda to UPC President, DRC-OTO-0014-0272.

²¹⁹ Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 101; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para. 81; Statement of DRC-OTP-WWWW-0004, DRC-OTP-0174-0002 at para. 52; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0383, at 0408 and 409 and transcript DRC-OTP-0191-0412, at 0423 to 0425 and transcript DRC-OTP-0191-0412, at 0435 to 0430.

²²⁰ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 48.

²²¹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0129 at para. 30.

²²² Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 34.

²²³ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196 at 0280.

when young UPC/FPLC recruits, including those under the age of 15 years, were beginning their military training.²²⁴

72. The regularity and formality of Thomas LUBANGA's visits to the military training camps are demonstrated by the existence of a particular "protocol" at the camps, requiring the soldiers, including the children under the age of 15 to lift their rifles, rest them on their shoulders and march past Thomas LUBANGA with legs straight, when Thomas LUBANGA visited.²²⁵

c. Thomas LUBANGA oversaw the conduct of military affairs and appointed the senior ranks within the UPC/FPLC, thus ensuring the existence and coherence of the military structure into which the children were incorporated.

73. From early September 2002 military matters were handled by Thomas LUBANGA and Chief KAHWA (UPC/FPLC Deputy National Secretary for Defence), until, after the departure of Chief KAHWA from the UPC, such matters came under the exclusive remit of Thomas LUBANGA. On 3 September 2002, Thomas LUBANGA officially appointed Bosco NTAGANDA UPC/FPLC Deputy Chief of the General Staff, in charge of military operations. Bosco NTAGANDA served in this capacity until December 2003, when Thomas LUBANGA promoted him to FPLC Chief of the General Staff.²²⁶

d. Thomas LUBANGA secured financing for the UPC/FPLC and negotiated the provision of weapons and other military equipment, including such as would be used by children in hostilities.

74. Thomas LUBANGA secured financing for the UPC/FPLC²²⁷ including from businessmen.²²⁸ In a TV interview Thomas LUBANGA stated that the UPC/FPLC army was well-equipped "because there are people who have understood the value of our revindications, or our objectives, and they give us a hand so that we can improve the state of the army."²²⁹ As Thomas LUBANGA made clear, Uganda was a primary source of weapons purchases for the

²²⁴ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 31 (Thomas LUBANGA "periodically visited the training camps to speak to the new recruits").

²²⁵ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 30.

²²⁶ UN Special Report on the Events in Ituri, January 2002-December 2003, DRC-OTP-0074-0422 at 0468.

²²⁷ Statement of DRC-OTP-WWWW-0004, DRC-OTP-0041-0002 at para. 153; Statute of the UPC, DRC-OTP-0014-0140 at Art.36 and Art. 54; Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0356 at 0359 and DRC-OTP-0182-0478 at 0480 and 0481 and 0482; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0354, at 0378 and transcript DRC-OTP-0191-0383, at 0385.

²²⁸ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 11; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0354 at 0378, DRC-OTP-0191-0383 at 0385 – 0387.

²²⁹ Video (interview with Thomas LUBANGA), DRC-OTP-1001-0008 (minutes 01.03-00-01.04.00); Video, DRC-OTP-0082-0016 (minutes 00.09.09-00.12.45, minutes 00.16.17-00.16.38 and minutes 00.24.32-00.26.47)

UPC/FPLC.²³⁰ Thomas LUBANGA's involvement in the financing of the UPC/FPLC is evidenced by his frequently being copied on documents addressing financial matters.²³¹

4. FROM EARLY SEPTEMBER 2002 UNTIL 13 AUGUST 2003, THOMAS LUBANGA HAD KNOWLEDGE THAT, AS APPLIED, UPC/FPLC POLICIES – AND IN PARTICULAR, THE COMMON PLAN OF FURTHERING UPC/FPLC WAR EFFORT BY CONSCRIPTING, ENLISTING AND USING CHILDREN, INCLUDING CHILDREN UNDER THE AGE OF 15 - SYSTEMATICALLY RESULTED IN THE CONSCRIPTION, ENLISTMENT AND USE OF CHILDREN, INCLUDING CHILDREN UNDER THE AGE OF 15, TO PARTICIPATE ACTIVELY IN HOSTILITIES

75. Thomas LUBANGA's knowledge that the application of the common plan systematically resulted in the conscription, enlistment and use of children, including children under the age of 15 years, to participate actively in hostilities, is shown in three principal ways:
 - a. Knowledge Shown by Attempts to Deflect Responsibility through Sham Demobilization and/or Sham Prohibition of Child Soldiers*
76. Throughout his tenure as president and commander-in-chief, Thomas LUBANGA engaged repeatedly in sham efforts to prohibit the use of, and/or to demobilise, child soldiers. Never intended to be enforced, these purported bans and/or demobilisation orders had one aim – to deflect and ward off public criticism of the UPC/FPLC's child recruitment practices. Two of his military subordinates within the UPC/FPLC will testify that they never saw or implemented such demobilisation orders²³². They show that Thomas LUBANGA was well aware of the UPC/FPLC's systematic conscription, enlistment and use of child soldiers.²³³
77. A letter dated 21 October, 2002, on UPC letterhead, signed by Thomas LUBANGA as President of the UPC and bearing the seal of the Presidency of the Commandant Chef d'Etat

²³⁰ Video (interview with Thomas LUBANGA), DRC-OTP-1001-0008 (minutes 01.16.25-01.17.00). Referring to Uganda, LUBANGA says "yes, it happened to us too, buying weapons there."; Statement of DRC-OTP-WWW-0014 DRC-OTP-0165-0999 at paras. 133,134.

²³¹ Letter from Clement ASIA ONDIA to the chief of Finance in ARU, copying the UPC/RP President, DRC-OTP-0089-0039; Letter from Thomas LUBANGA to Savo, Parquet, DRC-OTP-0089-0046; Letter from Agustin KISEMBO BITAMARA to the UPC/RP President, DRC-OTP-0090-0073.

²³² DRC-OTP-WWW-0187 and DRC-OTP-WWW-0055, a battalion commander and [REDACTED] with the FPLC respectively.

²³³ UPC Circular on 5 June 2003 is an example of sham demobilisation but evidence of knowledge of the recruitment of child soldiers DRC-OTP-0014-0254. See also DRC-OTP-0094-0155, UPC Presidential Decree 04/94 and 04/95; See also Transcript of DRC-OTP-WWW-0055, DRC-OTP-0191-0646 at 0658 - 0661, where he says that he received complaint from a mother about her child being in the army.

Major General of the FPLC, acknowledges the developing FPLC practice of recruiting children (both girls and boys) into the FPLC, and purports to prohibit any further child enrolment.²³⁴

78. On 27 January 2003, Thomas LUBANGA signed a *Letter Suivi Dossier Demobilisation enfants soldats de la FPLC* as President of the UPC and Commander in Chief of FPLC.²³⁵
79. By decree dated 1 June 2003, Thomas LUBANGA, in his capacity as President of the UPC/FPLC, ordered the demobilisation from the UPC/FPLC of any individual under the age of 18 years. The decree makes clear, not only that persons under 18 years were serving in the ranks of the UPC/FPLC in numbers large enough to warrant an order to demobilise them, but also that Thomas LUBANGA was aware of this fact. In practice, this order, like others, was never executed. It was never intended to be, particularly insofar as systematic UPC/FPLC recruitment, enlistment and use of soldiers under the age of 15 years proceeded continuously during and after the period in which the decree was issued. Rather, the decree was an elaborate “masquerade” – a “public relations operation” - designed to give the appearance of ending the practice of unlawfully enlisting child soldiers while adamantly refusing to do so.²³⁶ The Chief of Intelligence of the FPLC and one of the battalion commanders with the UPC/FPLC did not see nor was appraised of either the 21 October 2002 demobilisation order or 27 January 2003 order.²³⁷
80. In a meeting with Save the Children in January 2003, Thomas LUBANGA acknowledged what he said were isolated cases of children in the UPC.²³⁸ In June 2003, Thomas LUBANGA said that the FPLC would demobilise 68 children as a gesture of cooperation with Save the Children. However, only ten children were finally demobilised.²³⁹
81. In late 2002 the Mothers’ Forum of Ituri complained to Thomas LUBANGA about the recruitment of children. Although the UPC/FPLC opened a small demobilization centre, recruitment of children continued.²⁴⁰
82. Further, Irin, the UN humanitarian news and information service reported on the recruitment of child soldiers by Thomas LUBANGA’s UPC.²⁴¹

²³⁴ Letter from Thomas LUBANGA to Commandant Chef d’Etat-Major Général, FPLC cc Secrétaire National Adjoint à la Défense, DRC-OTP-0029-0274.

²³⁵ Letter from Thomas LUBANGA to Commandant Chef d’Etat-Major Général, FPLC, DRC-OTP-0029-0275

²³⁶ Decret no. 01bis/UPC/RP/CAB/PRES/2003, DRC-OTP-0151-0299; Evidence of Kristine PEDUTO, ICC-01-04-01-06-T-37-EN[15Nov2006Edited] at page 107.

²³⁷ Transcript of DRC-OTP-WWWW-0187 DRC-OTP-0182-0631 at 0634 and further; Transcript of DRC-OTP-WWWW-0055 DRC-OTP-0192-0080 at 0092: the witness states that he has never heard of orders or decrees from TLD on the demobilisation of child soldiers.

²³⁸ Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072 at para. 55.

²³⁹ Letter from Thomas LUBANGA to the Chef d’Etat Major, DRC-OTP-0029-0274.

²⁴⁰ HRW “Ituri Covered in Blood”, DRC-OTP-0074-0797.

b. Knowledge Attributable to Thomas LUBANGA's Role

83. By virtue of his unique role as leader of the UPC/FPLC, Thomas LUBANGA was apprised on numerous occasions of the extent to which the organisation's military force relied upon child soldiers, including those under 15 years of age.
84. In his position as UPC/FPLC commander in chief, Thomas LUBANGA was regularly briefed – including by other co-perpetrators – about the general situation in Ituri and, in particular, about UPC/FPLC military operations and the situation in the UPC/FPLC military training camps, where many children were sent.²⁴² In fact Thomas LUBANGA was communicating every day with his Chief of Staff of the FPLC, Floribert KISEMBO.²⁴³
85. Thomas LUBANGA knew about the pervasive use of child soldiers in the UPC/FPLC because:
 - a. He had given children their uniforms and seen them during parades.²⁴⁴ Thomas LUBANGA repeatedly visited UPC/FPLC military training camps²⁴⁵ where he addressed young recruits, including those under the age of 15 years.²⁴⁶ In the course of such visits, and more generally, Thomas LUBANGA saw children in military uniforms.²⁴⁷ Additionally, he presided over public meetings and rallies in Bunia at which child soldiers were present²⁴⁸
 - b. There were 20 to 30 children in the unit, comprised of about 400 soldiers, dedicated to his protection, the *Unite de Protection Presidentielle*. Amongst them were children of 12, 13 and 14 years.²⁴⁹

²⁴¹ DRC-OTP-0074-0005, 07 February 2003.

²⁴² Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para. 55, 56, 65, 81; Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 57, 60 and 69; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 103.

²⁴³ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196 at 0278.

²⁴⁴ Statement of DRC-OTP-WWWW-0016, DRC-OTP-00126-422 at para. 255; Video, DRC-OTP-0120-0293; Video, DRC-OTP-0082-0016 (minutes 00.16.17-00.16.38).

²⁴⁵ Transcript of DRC-OTP-WWWW-0297/DRC-OTP-0192-0196, at 0313, 0314.

²⁴⁶ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para 31 - Thomas LUBANGA "periodically visited the training camps to speak to the new recruits"; See also Rwampara Video, DRC-OTP-0120-0293 to be tendered by DRC-OTP-WWWW-0030.

²⁴⁷ See Rwampara Video, DRC-OTP-0120-0293 to be tendered by DRC-OTP-WWWW-0030; Transcript of DRC-OTP-WWWW-0007, DRC-OTP-0181-0605 at 0625 where he says that Thomas LUBANGA would hold meetings with Floribert KISEMBO and Bosco at the Mandro training centre after which weapons would be distributed

²⁴⁸ Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para. 172.

²⁴⁹ Statement of DRC-OTP-WWWW-0016, DRC-OTP-00126-422 at para 255; Statement of DRC-OTP-WWWW-0213 DRC-OTP-0180-0090, para 92; Video, DRC-OTP-0127-0061 (minutes 00.36.07-00.36.28 and minutes 01.53.00-01.54.00); Video, DRC-OTP-1008-0008 (minutes 00.34.53-00.35.23); Video, DRC-OTP-1001-0010 (minutes 00.39.00-00.40.48 and minutes 00.45.00).

- c. Of his direct dealing with many UPC/FPLC commanders with whom he was in regular contact. In one encounter around 15 August 2002, Richard LONEMA – whom Thomas Thomas LUBANGA appointed to the role of coordinator and interim UPC/FPLC leader while he was in detention in Kinshasa - told DRC-OTP-WWWW-0014 to [REDACTED], and added that the UPC had everything that was needed to train them.²⁵⁰ Many UPC leaders and FPLC commanders used children under the age of 15 years as personal bodyguards.²⁵¹ Escorts, many 12 and 13 years of age, were provided to the UPC National-Secretaries, as well as to Adele Lotsove MUGISA, first appointed UPC Finance Minister in 2002 and several months later re-appointed UPC Social Affairs Minister, and Melanie LUMBULUMBA, the wife of KISEMBO..
- d. He had long experience with using children, including children under 15 years of age, in armed militias that supported his objectives. During a visit to Rwampara military training camp in mid-2002, Thomas LUBANGA, speaking to an audience which included many young recruits, including under 15 years of age, *“encouraged us to withstand the difficulties of the training until the end because it was to free our country from the Ugandans and the Lendu.... He added that it was not the responsibility of others to make the Congo free, but our own.”*²⁵²

c. Knowledge Attributable to the Scale of Recruitment and Use of Children Under 15 Years Old

86. Children under the age of 15 years were voluntarily and forcibly recruited into the UPC/FPLC and actively participated in UPC/FPLC military operations and as bodyguards to protect military objectives, on such a scale, and to such an extent,²⁵³ that, in view of his central role in

²⁵⁰ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 189.

²⁵¹ Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para. 62; DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at paras. 176, 178, 179; Statement of DRC-OTP-WWWW-0016, DRC-OTP-0126-0422 at para. 255; DRC-OTP-WWWW-0004, DRC-OTP-0174-0002 at para. 39,40; Statement of DRC-OTP-WWWW-0187, DRC-OTP-0175-0819; Evidence of Kristine PEDUTO, Testimony ICC-0104-0106-T-37-EN [15 Nov 2006] and ICC-0104-0106-T-39-EN [21 Nov 2006], at page 100; Statement of DRC-OTP-WWWW-0017, DRC-OTP-0167-0021 at 185 to 220, DRC-OTP-0174-1441 at 1445-1446; Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at para. 173.

²⁵² Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 34.

²⁵³ Statement of DRC-OTP-WWWW-0031, DRC-OTP-0162-0002 at paras. 32-34.

coordinating UPC/FPLC activities, Thomas LUBANGA was clearly aware of (and indeed actively endorsed and sought to encourage) these practices.²⁵⁴

87. A number of observers and/or visitors to Bunia have noted that, during the relevant time period, children under the age of 15 years were visibly present among FPLC soldiers guarding UPC buildings in Bunia.²⁵⁵ No one who came to UPC headquarters could have avoided seeing the young recruits.²⁵⁶
88. In December 2002 staff at the NGO, Save-the-Children, drafted a “texte d’alarme” decrying the widespread use of child soldiers. Although the document did not specify a particular armed group, it was drafted with the UPC in mind.²⁵⁷
89. UPC/FPLC military training camps Centrale²⁵⁸ (12 km north of Bunia), Rwampara²⁵⁹ (15 km Southeast of Bunia), and Mandro²⁶⁰ (15 km east of Bunia), in all of which young recruits under 15 were receiving military training, were all located close to Thomas LUBANGA’s residence in Bunia.²⁶¹
90. LUBANGA knew of the use of child soldiers because this was brought to the attention of UPC/FPC secretaries by *notables*. The UPC/FPLC secretaries did not dispute the existence of child soldiers; rather, they justified it by underscoring the UPC/FPLC’s need for troops.²⁶²
91. In sum, the inference is compelling that the failure to act for a period of approximately 13 months by the Thomas LUBANGA, who had substantial knowledge of crimes of enlistment,

²⁵⁴ See DRC-OTP-0109-0136, page 6, of FPLC Document from Eric BAMBAZI, Chief of G5 to the Chief of the FPLC where reference is made to the recruitment of children from villages, 6 November 2002.

²⁵⁵ Evidence of Kristine Peduto, ICC-04-01-01-06-T-37-EN[15Nov2006Edited], at pages 29-32; Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072, para. 47 (During the time that the UPC controlled Bunia, he rarely saw adult military; rather, he saw mostly children between 12 and 14 years of age); Statement of DRC-OTP-WWWW-0024, DRC-OTP-0126-0189 at para. 41 (The recruitment of children in the UPC army was a systematic and widespread practice which was indicated by the large number of children, between seven and 18 years of age, walking in the streets of Bunia in military uniforms and with arms, or having integrated UPC commander groups);

²⁵⁶ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 164 and 168; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0598 at 0615 - 0618 where children were guarding roadblocks leading to the President’s house

²⁵⁷ Statement of DRC-OTP-WWWW-0111, DRC-OTP-0152-0072 at para. 48.

²⁵⁸; Statement of DRC-OTP-WWWW-0007,,DRC-OTP-0108-0123 para. 42.

²⁵⁹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 24;. Evidence of Kristine PEDUTO, ICC-01-04-01-06-T-37-EN[15Nov2006Edited], at page 58-59; Video, DRC-OTP-0120-0293.

²⁶⁰ Statement of DRC-OTP-WWWW-0012, DRC-OTP_0105-00085 para. 115; HRW “Ituri Covered in Blood”, DRC-OTP-0163-0291, at 0305 and 0312.

²⁶¹ Statement of DRC-OTP-WWWW-0007,DRC-OTP-0108-0123 at para. 30-31; Statement of DRC-OTP-WWWW-0012, DRC-OTP-0105-0085 at para. 103,115; Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 56; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 45-46; MONUC Special Report, DRC-OTP-0074-0422 at para. 29; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 23.

²⁶² Statement of DRC-OTP-WWWW-0031 DRC-OTP-0161-0617 at para. 58.

conscription and use of child soldiers, yet refused to act upon that knowledge given his material ability to do so as overall commander/leader of the UPC/FPLC, bespeaks a deliberate intent to recruit child soldiers in furtherance of the common plan.

5. FROM EARLY SEPTEMBER 2002 UNTIL 13 AUGUST 2003, THOMAS LUBANGA DIRECTLY TOOK PART IN THE CONSCRIPTION, ENLISTMENT AND USE OF CHILDREN, INCLUDING CHILDREN UNDER THE AGE OF 15 YEARS, TO PARTICIPATE ACTIVELY IN HOSTILITIES

a. Thomas LUBANGA Used Children under 15 Years as Bodyguards

92. Thomas LUBANGA, like other most senior UPC/FPLC commanders²⁶³ such as Floribert KISEMBO²⁶⁴ and Bosco NTAGANDA²⁶⁵, personally used young recruits, including those under the age of 15 years, as bodyguards.²⁶⁶
93. On 30 May 2003, when Thomas LUBANGA was present inside his residence in Mudzi-Pela, a neighbourhood of Bunia, he was guarded by children wearing uniforms and armed with Kalashnikovs, including at least one whose physical appearance clearly showed that he was under the age of 15 years.²⁶⁷ Further, generally in Thomas LUBANGA's compound there were at times 15 to 17 children, armed and in military uniform.²⁶⁸
94. Video images played at the Aru residence of Jerome KAKWAVU depicted Thomas LUBANGA together with bodyguards who appeared to be under 15 years of age.²⁶⁹
95. During a meeting in January 2003 between representatives of a non-governmental monitoring organization and Thomas LUBANGA at the UPC/FPLC Etat-Major, Thomas LUBANGA was wearing a military uniform, and the residence was guarded by a number of child soldiers between 12 and 14 years of age.²⁷⁰

²⁶³ Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0646 at 0657 – 0658.

²⁶⁴ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 31; Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0309 at 0320; Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258 at 0283.

²⁶⁵ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 52, 58, 61, 63 and 64; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 31; Transcript of DRC-OTP-WWWW-0010 DRC-OTP-0188-0682 at 0692.

²⁶⁶ Evidence of Kristine Peduto, ICC-01/04-01/06-T-37-EN[15Nov2006edited], at page 29-30 and 100; Evidence of Kristine Peduto ICC-01/04-01/06-T-39-EN[21Nov2006edited], at page 88-90 and 98; Transcript of DRC-OTP-WWWW-0010 DRC-OTP-0188-0682 at 0692; Video, DRC-OTP-0127-0061 (minutes 00.36.07-00.36.28 and minutes 01.53.00-01.54.00); Video, DRC-OTP-1008-0008 (minutes 00.34.53-00.35.23); Video DRC-OTP-1001-0010 (minutes 00.39.00-00.40.48 and minutes 00.45.00).

²⁶⁷ Evidence of Kristine Peduto, ICC-04-01-01-06-T-37-EN[15Nov2006Edited], at page 100 and ICC-04-01-01-06-T-39-EN[21NovEdited], at page 98.

²⁶⁸ Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0309 at 0318-0319.

²⁶⁹ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999, at para. 178.

²⁷⁰ Statement of DRC-OTP-WWWW-0111, para. 51.

b. Thomas LUBANGA Actively Recruited Children under 15 years to Join the UPC/FPLC and to Participate in Armed Combat

96. Thomas LUBANGA and other UPC/FPLC co-founders organized recruitment campaigns and used emissaries²⁷¹ in Bunia and surrounding areas to persuade or compel Hema families to send their children to join the UPC/FPLC.²⁷² Orders were sent to UPC/FPLC officials to ensure that recruitments took place, including that the Hema community families give up one of their children.²⁷³ Thomas LUBANGA himself also decreed that each Hema family must contribute to the war efforts by providing a child.²⁷⁴
97. Thomas LUBANGA also took part in forcibly recruiting individual child soldiers. In February 2003, on the road to the Mongbwalu market where he was visiting his family, a 14 year old boy was taken in a vehicle in which Thomas LUBANGA was traveling with six soldiers. Three other children were also caught. Thomas LUBANGA told the boys that they would go as far as Beni and that they would become rich. The boys were all taken to the UPC/FPLC camp at Mandro where there were a lot of soldiers and where they received one week of training in handling GPMG weapons, rocket launchers and “rapides”. Afterward, the young boy was sent to a small village to provide security with about 30 other persons.²⁷⁵
98. During numerous visits to UPC/FPLC training camps, LUBANGA encouraged young recruits, including those under age 15, to participate in hostilities.²⁷⁶ Particularly telling was a visit by LUBANGA to the Rwampara camp on 12 February 2003, captured on videotape:
- “What we are doing, and we are doing it together with you, is to build an army....I wish you ... good training, do it, persevere, and tomorrow you will stand with a weapon and a uniform.... This army that we are protecting here is not a joke. It is an important army.... And already the work that our army is doing now is of value to us all.... When you finish, others will come behind you ... we are forming this army and everybody feels ... ‘I am a useful soldier.’ ... You stand facing the ... history of the country and you know you are a useful soldier. We, as*

²⁷¹ Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 194.

²⁷² Statement of DRC-OTP-WWWW-0041, DRC-OTP-0147-0002 at paras. 163-164.

²⁷³ Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0332 at 0337; Evidence of Kristine Peduto, ICC-01-01-06-T-37-EN[15Nov2006Edited], at page 94-96.

²⁷⁴ Transcript of DRC-OTP-WWWW-0187, DRC-OTP-0180-0332 at 0337; Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0536 at 0542 – 0543.

²⁷⁵ PTC 385; MONUC “Histoires Individuelles - Bunia (Ituri) Enfants-Soldats 26/03/2003”, DRC-OTP-0152-0274 at 0278.

²⁷⁶ Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0627 at 0628 – 0630, 0636 where he says that village elders were used to recruit soldiers; Rwampara Video, DRC-OTP- 0120-0293; See also examples described in section 3(b), *supra*.

*leaders, are doing everything so that you can get that benefit and meaning.... Therefore ... continue to suffer for a few days ... so that ... you finish the training, and then ... after the training ... they will give you work.... It is for our benefit, it is for the benefit of ... our country ... it is for the benefit of our party”.*²⁷⁷

99. The video recording of this visit makes clear that:

(i) LUBANGA considers the children at the camp as soldiers in his speech when he says: *“Soldiers... Even those who have weapons... Even those who have pieces of wood... even those with empty ... hands...”*²⁷⁸

(ii) There is no difference between the conduct of the children and that of the uniformed soldiers. The children act and behave as soldiers and obey orders.²⁷⁹

(iii) There is no difference as far as the weapons are concerned: uniformed soldiers also have sticks. These sticks are used as genuine weapons, even in the military parade.²⁸⁰

(iv) Thomas LUBANGA states that *“[w]e are making that effort... For you to finish the training, for you to get a weapon....”*²⁸¹

V. Individual Cases of UPC/FPLC Conscription, Enlistment and/or Use of Children, Including Children under the Age of 15, to Participate Actively in Hostilities

100. Consistent with the common plan, DRC-OTP-WWWW-0011, DRC-OTP-WWWW-0007, DRC-OTP-WWWW-0008, DRC-OTP-WWWW-0010, DRC-OTP-WWWW-0297, DRC-OTP-WWWW-0298, DRC-OTP-WWWW-0294 and DRC-OTP-WWWW-0213 (“the child witnesses”), together with many other children under 15 years of age, were conscripted, enlisted, and/or used to participate actively in hostilities by the UPC/FPLC between the beginning of September 2002 and 13 August 2003. The individual cases of the child witnesses – including what they experienced, saw and/or were told by others – are characterised by a number of common features:

Forced Recruitment by UPC/FPLC

101. The recruitment of the children was typically undertaken through coercion by UPC/FPLC soldiers²⁸², on occasion through physical violence.²⁸³ UPC/FPLC soldiers would abduct

²⁷⁷ Transcript of Video DRC-OTP-0120-0293, DRC-OTP-0120-0335, at 0348.

²⁷⁸ Video, DRC-OTP-0120-0293.

²⁷⁹ Video, DRC-OTP-0120-0293 (minute 11:13).

²⁸⁰ Video, DRC-OTP-0120-0293 (minutes 29:55 and 31:10).

²⁸¹ Video, DRC-OTP-0120-0293 (minute 08.10, minute 11.13, minute 22.55, minute 31.10 and minute 14.50)

²⁸² Transcript of DRC-OTP-WWWW-0008, DRC-OTP-0188-0320 at 0346.

²⁸³ Statement of DRC-OTP-WWWW-0298,, DRC-OTP-0184-0011 at para. 19.

children from schools²⁸⁴ and force them onto trucks²⁸⁵, and in some circumstances threaten them with death and beatings should they refuse to board the trucks.²⁸⁶

Training Camps

102. After recruitment by UPC/FPLC soldiers and commanders²⁸⁷, each child was brought to UPC/FPLC military training camps together with other children, including children under 15 years of age.²⁸⁸ In the camps, they were divided into different groups and placed under the orders of a UPC/FPLC commander.²⁸⁹
103. The training, usually over a two-month period²⁹⁰, included exercises such as, *inter alia*, running, climbing and crawling,²⁹¹ military drills, assembling and disassembling of weapons²⁹². The child witnesses were trained in the use of weapons: first by using a stick²⁹³,

²⁸⁴ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, para. 21; Transcript of DRC-OTP-WWWW-0007, DRC-OTP-0188-0549 at 0568.

²⁸⁵ Transcript of DRC-OTP-WWWW-0055, DRC-OTP-0191-0646 at 0669.

²⁸⁶ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196 at 0213. Witness says that if they refused to board the truck they would “kill them”.

²⁸⁷ Transcript of DRC-OTP-WWWW-0007, DRC-OTP-0188-0549 at 0569, 0570, 0576; Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011 at paras. 19, 20.

²⁸⁸ Statement of DRC-OTP-WWWW-0010, at para. 23, 24; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at paras 22, 23; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 22; Transcript of DRC-OTP-WWWW-0007, DRC-OTP-0188-0549 at 0570; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para 22; Video, DRC-OTP-0127-0061 (minutes 36.07-36.28).

²⁸⁹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 24; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 25; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at paras. 22, 24; Statement of DRC-OTP-WWWW-0008, at paras. 23, 25; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 164; MONUC SIT Report of 20 June, 2003, DRC-OTP-0065-0311 at paras. 90-92; MONUC CPS 'Report on Child Soldiers in Ituri', DRC-OTP-0152-0249 at 0250.

²⁹⁰ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 25; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para 40; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 31; MONUC “Histoires Individuelles”, DRC-OTP-0152-0274 at 0284, Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 64.

²⁹¹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para 26; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 27; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para 24; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para 26; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 65; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 169; Statement of DRC-OTP-WWWW-0015, DRC-OTP-0127-0074 at para. 21; Statement of DRC-OTP-WWWW-0294, at para. 50.

²⁹² Transcript of DRC-OTP-WWWW-0297 DRC-OTP-0192-0196, at 0221.

²⁹³ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 31; DRC-OTP-0161-1362 DRC-OTP-WWWW-0294, at para. 50; Video, DRC-OTP-0120-0293 (minute 00.30.07 and further).

afterwards by using firearms.²⁹⁴ In addition to this standard training, the girls were tasked to prepare food.²⁹⁵

Strict Camp Discipline

104. The child witnesses were subjected to strict military discipline, which ranged from (in the case of others) corporal punishment and detention to execution.²⁹⁶ They were taught to sing military songs.²⁹⁷ They never received a salary²⁹⁸ or medical care.²⁹⁹
105. Senior UPC/FPLC commanders, including Thomas LUBANGA³⁰⁰, Bosco NTAGANDA and Floribert KISEMBO, saw the child witnesses during inspections of the training camps or during combat.³⁰¹
106. At the camps, the child witnesses were taught that Thomas LUBANGA was the head of the organisation and the Supreme Chief. The other commanders in the camp always referred to him as such.³⁰² The child witnesses were told that, under Thomas LUBANGA, Bosco NTAGANDA and Floribert KISEMBO were the next two most important commanders.³⁰³

²⁹⁴ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 31; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para27; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para24; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 26; Statement of DRC-OTP-WWWW-0297DRC-OTP-WWWW-0015, at para21; Video, DRC-OTP-0120-0293 (minute 00.30.07 and further).

²⁹⁵ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015at para26; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para26; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para29; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], page 49.

²⁹⁶ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para27; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para29; Statement of DRC-OTP-WWWW-0007, at para28; Statement of DRC-OTP-WWWW-0008, at paras. 27 and 28; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at page 69-71; Statement of DRC-OTP-WWWW-0014, DRC-OTP-0165-0999 at para. 167; Statement of DRC-OTP-WWWW-0089, DRC-OTP-0174-0612 at page 9; Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, paras. 46-48.

²⁹⁷ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras28 and 29; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para25; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para26; Evidence of Kristine PEDUTO, ICC-01-04-01-06-T-37-EN [15NOV2006 Edited], at page 45; Statement of DRC-OTP-WWWW-0294, at para50; Video, DRC-OTP-0120-0293 (minute 00.00.05 and further)

²⁹⁸ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 40; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para27; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para27; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 25; Statement of DRC-OTP-WWWW-0111, at para. 74.

²⁹⁹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 29; Statement of DRC-OTP-WWWW-0008 at para. 30.

³⁰⁰ Statement of DRC-OTP-WWWW-0010, at para34; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para31; Video, DRC-OTP-0120-0293 (minute 00.00.00 - minute 00.38.05).

³⁰¹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 34, 68; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para.31; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para31, 42; Video, DRC-OTP-0120-0293 (minute 00.00.00 to minute 00.38.05); Video, DRC-OTP-0082-0016 (minute 00.09.09 - minute 00.12.45); Statement of DRC-OTP-WWWW-0213 DRC-OTP-0180-0090 para. 52.

³⁰² Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para36; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para31; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para36; Statement of DRC-OTP-WWWW-0008, at para33; Video, DRC-OTP-0120-0293 (minute 00.09.38 and further).

³⁰³ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 36; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para.31; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 6;

107. At the conclusion of their training, each of the child witnesses was given a military uniform and a weapon.³⁰⁴

Use as Bodyguards

108. They were then used as bodyguards together with other children, including children under the age of 15.³⁰⁵ It was widely known that UPC/FPLC commanders – including Thomas LUBANGA, Bosco NTAGANDA and Floribert KISEMBO³⁰⁶ - commonly used children, including those under 15 years of age, as bodyguards. The tasks of bodyguards included accompanying the commanders in their daily activities³⁰⁷ and carrying their weapons, Motorola radio and other military and/or communications equipment.³⁰⁸

Participation in Hostilities

109. The child witnesses were ordered to participate actively with the commanders in hostilities³⁰⁹ against the Lendu,³¹⁰ and to kill all Lendu.³¹¹ Often, they were forced to fight at the frontlines³¹² under threat of death.³¹³

Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para33; Video, DRC-OTP-0120-0293 (minute 00.10.40 and further).

³⁰⁴ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para41; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para24; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para32; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para31; Evidence of Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], page 45; Video, DRC-OTP-0120-0293 (minute 00.14.51 and further)

³⁰⁵ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para52; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para34; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para33; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para31. Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011 at para92

³⁰⁶ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para56; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para31; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para38; Video, DRC-OTP-0120-0293 (minutes 00.37.25 and further); Transcript of DRC-OTP-WWWW-0297DRC-OTP-0192-0258 at 0283

³⁰⁷ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 54 and further; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para34; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 34; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 31.

³⁰⁸ Statement of DRC-OTP-WWWW-0010, at paras. 35 and 54; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para33; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 31.

³⁰⁹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para43 and further; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para40 and further; Statement of DRC-OTP-WWWW-0007,, DRC-OTP-0108-0123 at para43 and further; Statement of DRC-OTP-WWWW-0008, at para40 and further.

³¹⁰ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para43; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at paras. 37, 40, 41, 46, 47; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para44; Statement of DRC-OTP-WWWW-0008, at para. 42; See also Expert Report, DRC-OTP-0180-0856 at 0860 which concludes that at the time of examination (5 December 2007) witness was between 16 and 17 years of age

³¹¹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para37; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para37, 40; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 46; Statement of DRC-OTP-WWWW-0008 para36; See Video, DRC-OTP-0127-0058 (minutes 00.04.55-00.10.06)

³¹² Statement of DRC-OTP-WWWW-0010, at para. 44; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 41; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 46; Statement of

110. Typically before and after battle, the child witnesses would be counted by their commanders and their names would be called out.³¹⁴
111. As a result of the fighting, some of the child witnesses sustained injuries;³¹⁵ and some saw other children die in battle.³¹⁶ Following a victory, the battle dead would be buried in mass-graves. Following a defeat, they were left behind.³¹⁷
112. After the battles, some of the commanders would address the soldiers, including the children, telling them to not be tired of fighting and defeating the enemy.³¹⁸

DRC-OTP-WWWW-0011

113. In 2002, DRC-OTP-WWWW-0011, born on [REDACTED]³¹⁹ and was living with [REDACTED] following the death of his mother.³²⁰ While in [REDACTED], FPLC soldiers told DRC-OTP-WWWW-0011 that his mother had been killed by the Lendus.³²¹
114. By the end of 2002 DRC-OTP-WWWW-0011 met FPLC soldiers in [REDACTED] who offered to permit him to join their army in order to get military training and fight the Lendu enemies.³²² Motivated by his fury against the Lendu, DRC-OTP-WWWW-0011 immediately accepted the offer thinking that this would be his chance to avenge the murder of his mother.³²³
115. The same day, without returning to [REDACTED] to inform DRC-OTP-WWWW-0011's grandmother, the UPC/FPLC soldiers drove DRC-OTP-WWWW-0011 somewhere close to the village of [REDACTED].³²⁴ After arriving in the village, DRC-OTP-WWWW-0011 joined a

DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para41; Audio, DRC-OTP-0066-0055 (minutes 00.00.00 - minute 00.07.50 and minute 00.00.00 - minute 00.19.40)

³¹³ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 39; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para45; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 43.

³¹⁴ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 38; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para39; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para35.

³¹⁵ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 48; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para44; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 41.

³¹⁶ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 45; Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 42.

³¹⁷ Statement of witnesses DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para45; DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para36; Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para41; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 35.

³¹⁸ Transcript of DRC-OTP-WWWW-0297DRC-OTP-0192-0196, at 0303.

³¹⁹ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 preamble; See also Expert Report, DRC-OTP-0180-0856 at 0860 which concludes that at the time of examination (5 December 2007) witness was over between the ages of 16 and 17 years of age.

³²⁰ Statement of DRC-OTP-WWWW-0011, at paras. 11 and 12.

³²¹ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 21.

³²² Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 20.

³²³ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 21.

³²⁴ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 22.

group of new recruits, composed of some adults and around sixty children of DRC-OTP-WWWW-0011's age, who were brought to the UPC/FPLC military camp in [REDACTED].³²⁵

116. Upon their arrival, all new recruits were provided with a military uniform and a rifle.³²⁶ The next day, military training commenced. DRC-OTP-WWWW-0011 and other boys of his age were trained by Commander TSHITSHA.³²⁷ The training consisted of physical exercises and exercises on the use of weapons.³²⁸ They trained three days a week and stood guard the other days.³²⁹ There was discipline in the camp and DRC-OTP-WWWW-0011 himself was beaten in the beginning.³³⁰
117. During the training, which lasted approximately two months, the camp was visited by Bosco NTAGANDA and Floribert KISEMBO, who were permanently accompanied by bodyguards: both adults and children of the age of the DRC-OTP-WWWW-0011.³³¹
118. After the training had concluded, DRC-OTP-WWWW-0011 and four other young recruits were made the bodyguards of Commander [REDACTED].³³² In this capacity DRC-OTP-WWWW-0011 accompanied the Commander during his daily activities³³³ and assured his close protection during battle. Commander [REDACTED] said that if he refused to fight he would be killed or put into prison.³³⁴
119. In February 2003, DRC-OTP-WWWW-0011 fought alongside Commander TSHITSHA at the frontlines in Lipri³³⁵ a place where he fought twice³³⁶. He also fought in the village of BARIE³³⁷. DRC-OTP-WWWW-0011 and other young recruits of his age were ordered to perform reconnaissance.³³⁸ During the battle, DRC-OTP-WWWW-0011 killed a person for the first time in his life, leaving him traumatized.³³⁹ Fearing the reaction of his Commander, who

³²⁵ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para23; Statement of DRC-OTP-WWWW-0017, DRC-OTP-0175-0007; Statement of DRC-OTP-WWWW-0030; Statement of DRC-OTP-WWWW-0031, DRC-OTP-0161-0617; Statement of DRC-OTP-WWWW-0038.

³²⁶ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 24.

³²⁷ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 25.

³²⁸ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 27.

³²⁹ Transcript of DRC-OTP-WWWW-0011, DRC-OTP-0188-0032 at 0051.

³³⁰ Transcript of DRC-OTP-WWWW-0011, DRC-OTP-0188-0032 at 0057.

³³¹ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 31.

³³² Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at paras. 34 and 40.

³³³ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 34.

³³⁴ Transcript of DRC-OTP-WWWW-0011, DRC-OTP-0188-0063 at 0070.

³³⁵ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 40, 41.

³³⁶ Transcript of DRC-OTP-WWWW-0011, DRC-OTP-0188-0088 at 0112.

³³⁷ Transcript of DRC-OTP-WWWW-0011, DRC-OTP-0188-0063 at 0075.

³³⁸ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015 at para. 41.

³³⁹ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015at para. 42.

had threatened to kill recruits who hesitated to fight³⁴⁰, DRC-OTP-WWWW-0011 continued shooting his weapon. That day DRC-OTP-WWWW-0011 saw many of his friends killed³⁴¹. Commander TSHITSHA was also killed.³⁴²

120. After the attack, DRC-OTP-WWWW-0011 and the other recruits retreated to Mongbwalu, where they met with Floribert KISEMBO and Bosco NTAGANDA.³⁴³ The next day, DRC-OTP-WWWW-0011, who was now placed under the command of Bosco NTAGANDA, was ordered by the latter to re-attack Lipri. In complying with the order, DRC-OTP-WWWW-0011 emptied five magazines of ammunition during the fighting.³⁴⁴
121. Upon his return to the UPC/FPLC military camp of [REDACTED], DRC-OTP-WWWW-0011 was asked by Bosco NTAGANDA to fight again in another village. As DRC-OTP-WWWW-0011 was profoundly affected by what had happened, and as he disapproved of what he had done, he asked for permission to stay in the camp, which was granted.³⁴⁵
122. Approximately one month later, DRC-OTP-WWWW-0011 fled from the UPC/FPLC and was admitted into a demobilisation program.³⁴⁶ As a result of his experience fighting for the UPC/FPLC, DRC-OTP-WWWW-0011 has severe psychological deficits and suffers from nightmares.³⁴⁷

DRC-OTP-WWWW-0007 and DRC-OTP-WWWW-0008

123. In early 2003, witness DRC-OTP-WWWW-0007, who was born on [REDACTED]³⁴⁸, was at his parents' house in the village of [REDACTED], when UPC/FPLC soldiers entered and, without explanation, ordered him to follow them to obtain military training. A few hours later, the UPC/FPLC soldiers returned to the same house to abduct [REDACTED]³⁴⁹, DRC-OTP-WWWW-0008, born on [REDACTED].³⁵⁰

³⁴⁰ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015at para. 39, 42.

³⁴¹ Transcript of DRC-OTP-WWWW-0011, DRC-OTP-0188-0088 at 0111.

³⁴² Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015, at para. 42.

³⁴³ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015, at para. 43.

³⁴⁴ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015, at para. 46.

³⁴⁵ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015, at para. 48.

³⁴⁶ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015, at para. 49.

³⁴⁷ Statement of DRC-OTP-WWWW-0011, DRC-OTP-0114-0015, at para. 50.

³⁴⁸ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 preamble; See also Expert Report, DRC-OTP-0180-0835 at 0839 which concludes that at the time of examination (5 December 2007) witness was over the 18 years of age.

³⁴⁹ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 20.

³⁵⁰ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 preamble; Birth certificate of DRC-OTP-WWWW-0008, DRC-OTP-0132-0015; Expert Report, DRC-OTP-0180-0856 at 0860 which concludes that at the time of examination (5 December 2007) witness was between 16 and 17 years of age.

124. The practice of UPC/FPLC soldiers of abducting children by force was well known by the civilian population. Knowing that they would be killed if they objected to the abductions, family members of these two witnesses did nothing.³⁵¹
125. After his abduction, DRC-OTP-WWWW-0007 was ordered to enter into a truck in which there were other abducted children, including school-mates. He was brought to the UPC/FPLC military camp of [REDACTED].³⁵² On the way, the truck repeatedly stopped to allow UPC/FPLC soldiers to capture additional children from the road. During the transport, UPC/FPLC soldiers made sure the children could not flee.³⁵³ On that day children aged between 10 and 17 were abducted and driven to [REDACTED] camp.³⁵⁴
126. DRC-OTP-WWWW-0008 was brought to the centre of [REDACTED] where the UPC/FPLC soldiers had grouped many other children of his age as well as adolescents and adults. The group was forced to walk to the FPLC military camp of [REDACTED]. Along the way, the UPC/FPLC soldiers beat them at the slightest hint of fear or despair, telling them that they should not cry because during the war it would be worse.³⁵⁵
127. At [REDACTED] camp, the new recruits were divided into groups and the cousins were separated.³⁵⁶ The groups were composed of around fifty recruits, and included both adult soldiers and children of the age of the witnesses, including boys and girls.³⁵⁷
128. The next day, military training started. DRC-OTP-WWWW-0007 was instructed by Commander KARWAKARWA³⁵⁸ and DRC-OTP-WWWW-0008 by Commander PITCHEN.³⁵⁹ The training was mainly of a practical nature, and included, *inter alia*, saluting, marching and climbing. In addition, the recruits were taught how to shoot firearms.³⁶⁰
129. During the training DRC-OTP-WWWW-0008 was told that the UPC/FPLC was going to fight all the way to Kinshasa to chase out the President and replace him with Thomas LUBANGA.³⁶¹

³⁵¹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 19; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 20.

³⁵² Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at paras. 21, 22.

³⁵³ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at paras. 21, 22.

³⁵⁴ Transcript of DRC-OTP-WWWW-0007, DRC-OTP-0181 -0579 at 0589.

³⁵⁵ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 22.

³⁵⁶ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 22.

³⁵⁷ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 22; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at paras 23 and 24.

³⁵⁸ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 24.

³⁵⁹ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 25.

³⁶⁰ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 24; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 26.

³⁶¹ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 25.

130. DRC-OTP-WWWW-0007 received special training in the Protocol to be used during the regular visit of Thomas LUBANGA to the camp.³⁶² This Protocol differed from the one used for other visitors.³⁶³
131. After about two months, once the military training was completed, the children were supplied with military uniforms and a rifle.³⁶⁴ DRC-OTP-WWWW-0007 was made the bodyguard of Commander [REDACTED]³⁶⁵ together with another three children of his age. DRC-OTP-WWWW-0008 was made the bodyguard of Commander [REDACTED].³⁶⁶
132. In their capacity as bodyguards, the witnesses accompanied the commanders during their daily activities and provided them with close protection during combat.
133. DRC-OTP-WWWW-0007 together with other children and adult soldiers participated in the UPC/FPLC attacks on Lipri in February 2003.³⁶⁷
134. Before the attack, DRC-OTP-WWWW-0007 and the other recruits were visited by Bosco NTAGANDA who addressed the troops to bolster their morale.³⁶⁸ During battle Commander [REDACTED] instructed DRC-OTP-WWWW-0007 to form a single front with the other recruits, and said that the recruits that stayed behind the front should be killed, as they were probably trying to escape.³⁶⁹
135. During the fight, DRC-OTP-WWWW-0007 was wounded in his foot.³⁷⁰ Fearing being killed by his Commander, DRC-OTP-WWWW-0007 for the first time in his life shot a person. He emptied two magazines.³⁷¹
136. After his wound had healed, DRC-OTP-WWWW-0007 was ordered by Commander KASANGAKI to participate in the FPLC attack on Bogoro in February 2003. Following this order, the witness again fought on the frontline in Bogoro.³⁷² DRC-OTP-WWWW-0007 was taken to Mandro camp where he saw Thomas LUBANGA speaking to the young recruits.³⁷³

³⁶² Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 30.

³⁶³ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 30.

³⁶⁴ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 32; Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 31.

³⁶⁵ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 33.

³⁶⁶ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 31.

³⁶⁷ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 43.

³⁶⁸ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 42.

³⁶⁹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 46.

³⁷⁰ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 44.

³⁷¹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 45.

³⁷² Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 51; A group of child soldiers under the command of KASANGAKI can be seen in Video, DRC-OTP-0081-0007 (minutes 00.26.02-00.34.04).

³⁷³ Transcript of DRC-OTP-WWWW-0007/DRC-OTP-0181-0605 at 0626.

137. In February 2003 DRC-OTP-WWWW-0008 was ordered to accompany Commander PITCHEN to participate in the attack on Lipri³⁷⁴, during which he was wounded in his left foot.³⁷⁵ Following the orders of his Commander, DRC-OTP-WWWW-0008 emptied four magazines of ammunition and killed a number of persons. While shooting, the witness was terrified and regretted his actions since he felt that they were not right, but his Commander urged him to continue.³⁷⁶
138. After the military campaign in Lipri, DRC-OTP-WWWW-0008 was [REDACTED] at the UPC/FPLC military camp in [REDACTED]. [REDACTED], the witness was also tasked to recruit new children of his age, which he did. He falsely told the family members of children he took that the children would receive military training and return afterwards. This was a lie since, as he knew, the children were sent to the battlefield immediately after being trained.³⁷⁷
139. At the end of 2003, following the order of KAKWAVU, the Commander of the then UPC/FPLC Sector North, both DRC-OTP-WWWW-0007 and DRC-OTP-WWWW-0008 were admitted into a demobilisation program.³⁷⁸
140. As a result of their recruitment, both children lost all contact with their parents.³⁷⁹ In addition, as a result of fighting for the UPC/FPLC, DRC-OTP-WWWW-0007 suffers severe psychological deficits, manifested in his fear of loud noise or people crying.³⁸⁰

DRC-OTP-WWWW-0010

141. DRC-OTP-WWWW-0010, was born on [REDACTED]³⁸¹ and was on the road from [REDACTED] in August 2002, when she was abducted by UPC/FPLC soldiers.³⁸²
142. That day, people fled the UPC attacks on [REDACTED] en masse, including DRC-OTP-WWWW-0010 and her family. In the general confusion, the witness lost sight of her family. She then saw armed soldiers advancing in the opposite direction, towards [REDACTED]. DRC-OTP-WWWW-0010 didn't pay much attention until she realised that the armed soldiers

³⁷⁴ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 39 and further.

³⁷⁵ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 41.

³⁷⁶ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 43.

³⁷⁷ Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 45.

³⁷⁸ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 53 and Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 48.

³⁷⁹ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 11 and Statement of DRC-OTP-WWWW-0008, DRC-OTP-0108-0064 at para. 11.

³⁸⁰ Statement of DRC-OTP-WWWW-0007, DRC-OTP-0108-0123 at para. 55.

³⁸¹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122, preamble; See also Expert Report, DRC-OTP-0180-0849 at 0853 which concludes that at the time of examination (5 December 2007) witness was between over 18 years of age.

³⁸² Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 22,23.

were stopping young girls and boys. By then it was too late. A group of armed UPC/FPLC soldiers blocked her path and forced her and another girl of the same age, to come with them. The soldiers pointed their rifles at the two children. DRC-OTP-WWWW-0010, fearing being killed, did not dare to disobey.³⁸³

143. Before leaving the area, DRC-OTP-WWWW-0010 was assembled with many boys and girls between 10 and 18 years of age who had also been captured under the same circumstances.³⁸⁴ They numbered up to 150.³⁸⁵ The prisoners were forced to walk to the UPC/FPLC military camp in [REDACTED]³⁸⁶, led by Commander PEPE³⁸⁷. Upon arrival, DRC-OTP-WWWW-0010 saw that other groups of prisoners had been brought to the camp as well.³⁸⁸
144. The next day, DRC-OTP-WWWW-0010 and the other recruits were divided into three groups of approximately 45 persons each. DRC-OTP-WWWW-0010's group was composed of boys and girls, all more or less her age and all abducted in a similar way.³⁸⁹
145. That same day, the heads of the children were shaved, and military training commenced.³⁹⁰ First the training was mainly of practical nature, and included a wide variety of physical exercises. Later on, the training was expanded to also cover the use of firearms.³⁹¹
146. During the training, the camp was visited once by Thomas LUBANGA, and twice by Bosco NTAGANDA. Both addressed the recruits to encourage them. In addition BOSCO threatened to kill the recruits if they would escape from the camp.³⁹² While she was at the camp she saw new recruits arriving in four trucks, some of the boys aged 11 and some of the girls from 12 to 15 years old.³⁹³
147. The military training lasted almost two months. In about October 2002, after the completion of training, Bosco NTAGANDA returned to the camp with three trucks and distributed a uniform and a rifle to each of the recruits.³⁹⁴ NTAGANDA then ordered the recruits to get into the

³⁸³ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 22 and 23.

³⁸⁴ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 22 and 23.

³⁸⁵ Transcript of DRC-OTP-WWWW-0010 DRC-OTP-0188-0204 at 0214.

³⁸⁶ DPKO/UN Table on training camps, DRC-OTP-0172-0266, at 0268); Video, DRC-OTP-0120-0293), minutes 00.08.50 and further.

³⁸⁷ Kristine PEDUTO, ICC-01-04-1-6-T-37-EN [15Nov2006Edited], at pages 60 to 66; DPKO/UN 'Table on Training Camps', DRC-OTP-0172-0266, at 0266-0270.

³⁸⁸ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 24.

³⁸⁹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 24.

³⁹⁰ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 25.

³⁹¹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 26 and 31.

³⁹² Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 34. Video, DRC-OTP-0120-0293, minute 00.00.00 to minute 00.38.05.

³⁹³ Transcript of DRC-OTP-WWWW-0010 DRC-OTP-0188-0204 at 0220.

³⁹⁴ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 33 and 41.

lorries. The recruits were driven to the village of Libi, where they would participate in their first attack.³⁹⁵

148. Prior to the attack, the recruits were ordered by Bosco NTAGANDA to kill all Lendu. Following this order, DRC-OTP-WWWW-0010 killed at least one person, and emptied two magazines of ammunition.³⁹⁶ During the attack, ten young FPLC recruits were killed: four girls and six boys.³⁹⁷
149. After the attack on Libi, DRC-OTP-WWWW-0010 was ordered by Bosco NTAGANDA to participate in the FPLC attack on Mbau in about October 2002. Prior to this attack, Bosco NTAGANDA repeated the same order to kill all Lendu.³⁹⁸ In the course of the attack many UPC/FPLC soldiers of the age of DRC-OTP-WWWW-0010 were killed. DRC-OTP-WWWW-0010 herself sustained an injury in her leg.³⁹⁹
150. Once she recovered, DRC-OTP-WWWW-0010, together with two other girls of her age and six adult soldiers, was made the bodyguard of [REDACTED].⁴⁰⁰ In this capacity, DRC-OTP-WWWW-0010 accompanied [REDACTED] during his daily activities.⁴⁰¹ In addition, DRC-OTP-WWWW-0010 was ordered by [REDACTED] to participate in several attacks including attacks in which other commanders also participated.
151. As such, DRC-OTP-WWWW-0010 was ordered to participate in the UPC/FPLC attacks on Bunia in May 2003 together with Commander CLAUDE⁴⁰², as well as in the UPC/FPLC attacks on Djugu and Mongbwalu in June 2003 together with Floribert KISEMBO and SALUMU MULENDA.⁴⁰³
152. After the Artemis force had pushed the FPLC out of Bunia, [REDACTED] allowed DRC-OTP-WWWW-0010 to leave the FPLC.⁴⁰⁴ Since her abduction, DRC-OTP-WWWW-0010 has not seen her mother or other family again.⁴⁰⁵ After DRC-OTP-WWWW-0010 for the first time killed a person, she had nightmares for several months.⁴⁰⁶

DRC-OTP-WWWW-0297

³⁹⁵ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 41 and 43.

³⁹⁶ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 43 and 44.

³⁹⁷ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 45.

³⁹⁸ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 47.

³⁹⁹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 48.

⁴⁰⁰ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 52.

⁴⁰¹ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at paras. 54 and further.

⁴⁰² Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 63.

⁴⁰³ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 68.

⁴⁰⁴ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 71.

⁴⁰⁵ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 23.

⁴⁰⁶ Statement of DRC-OTP-WWWW-0010, DRC-OTP-0126-0122 at para. 45.

153. This former child soldier was not older than twelve years at the time of his recruitment into the UPC/FPLC.⁴⁰⁷ He was abducted by soldiers who came to the quarters where he was living, and threatened with death unless he boarded the truck with the others.⁴⁰⁸ He was told by the soldiers that he and the others were being taken on the trucks so that they could fight against the Lendu.⁴⁰⁹
154. DRC-OTP-WWWW-0297 was forcibly taken to [REDACTED]⁴¹⁰, to a training camp in [REDACTED]⁴¹¹ and immediately as the witness describes, put into military service⁴¹². Upon arrival he was surrounded by soldiers, along with their leader Bosco NTAGANDA.⁴¹³ DRC-OTP-WWWW-0297 was put into training for three weeks before his first battle and forced to take part in military drills, assembling and disassembling weapons.⁴¹⁴ New recruits were coming to the camp daily and there was no system of registration or verification of age of the new recruits.⁴¹⁵ Co-perpetrator Floribert KISEMBO oversaw the training of the recruits.⁴¹⁶ There was no possibility for escape from [REDACTED] as people who attempted were caught and beaten, upon the instructions of KISEMBO.⁴¹⁷
155. Upon completion of his training, DRC-OTP-WWWW-0297 was given a weapon and uniform – green and a dark, mixed camouflage⁴¹⁸ by KISEMBO⁴¹⁹. He was subsequently taken to participate in battle at Mandro to fight against the Lendu.⁴²⁰ The weapons the Lendu were using included G2⁴²¹, SMG's and RPGs⁴²². He was in a group that was advancing and following KISEMBO⁴²³. DRC-OTP-WWWW-0297 shot at four people during the battle.⁴²⁴ During the battle some eleven persons were wounded on the UPC side; some of the soldiers

⁴⁰⁷ Statement of DRC-OTP-WWWW-0297, DRC-OTP-0180-0128, preamble at para. 8. See also conclusions of Expert Report DRC-OTP-0182-0432, page 4. Also, Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196, at 0308 where he says he was eleven years at the time when we was in the FPLC/UPC.

⁴⁰⁸ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196, at 0213. Witness says that if they refused to board the truck they would "kill them".

⁴⁰⁹ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196, at 0208.

⁴¹⁰ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196, at 0213.

⁴¹¹ Statement of DRC-OTP-WWWW-0089, DRC-OTP-0174-1121, pages 27 and 28.

⁴¹² Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196, at 0214.

⁴¹³ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196, at 0218.

⁴¹⁴ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196, at 0221.

⁴¹⁵ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0228, at 0235 and 0236.

⁴¹⁶ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196, at 0221.

⁴¹⁷ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0196, at 0224.

⁴¹⁸ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0228, at 0237.

⁴¹⁹ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0228, at 0238.

⁴²⁰ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0228 at 0243 and 0244.

⁴²¹ G2 has a chain: Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0228, at 0250.

⁴²² Rocket Propelled Grenades.

⁴²³ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0228, at 0248.

⁴²⁴ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0228, at 0248.

were younger than fifteen years of age.⁴²⁵ DRC-OTP-WWWW-0297 participated in another battle at Lonio.⁴²⁶ KISEMBO was commanding the fighters at Lonio and DRC-OTP-WWWW-0297 was in his group.⁴²⁷ In this battle DRC-OTP-WWWW-0297 shot at Lendu soldiers and civilians.⁴²⁸ KISEMBO lead DRC-OTP-WWWW-0297 and others into another battle at Lopa where they surprised the Lendu killing civilians and soldiers that started to fight them.⁴²⁹ During all this time DRC-OTP-WWWW-0297 was used as the personal bodyguard to co-perpetrator Floribert KISEMBO.⁴³⁰

156. On one particular occasion DRC-OTP-WWWW-0297 saw Thomas LUBANGA at Largu when he and his fellow soldiers went to guard his house.⁴³¹ Outside Thomas LUBANGA's house there were soldiers and bodyguards, some were younger than DRC-OTP-WWWW-0297 and some were older or the same age.⁴³² At his house Thomas LUBANGA was convening a meeting where KISEMBO was present along with other high commanders.⁴³³
157. DRC-OTP-WWWW-0297 participated in further combat at MARABU⁴³⁴ where he shot at the Lendus and Ngitis⁴³⁵ after reinforcement arrived for the battle.⁴³⁶ These reinforcements were brought by the Operations Commander Bosco NTAGANDA and they included child soldiers.⁴³⁷ His last main battle was in CHAI, where again he was with KISEMBO.⁴³⁸
158. While a soldier with the UPC/FPLC, DRC-OTP-WWWW-0297 saw or knew of UPC/FPLC soldiers who abducted "young people".⁴³⁹ Some of the children were ten years old, younger than him.⁴⁴⁰ DRC-OTP-WWWW-0297 himself arrested child soldiers; most of the soldiers he arrested were ten years old⁴⁴¹ and some were girls.⁴⁴² These arrests were also carried out by his fellow soldiers and took place daily.⁴⁴³

⁴²⁵ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0228, at 0249.

⁴²⁶ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0260.

⁴²⁷ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0263.

⁴²⁸ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0264.

⁴²⁹ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0271, 0272.

⁴³⁰ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0283.

⁴³¹ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0282, 0283.

⁴³² Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0281.

⁴³³ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0283.

⁴³⁴ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0285.

⁴³⁵ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0292, at 0293.

⁴³⁶ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0288.

⁴³⁷ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0258, at 0290.

⁴³⁸ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0292, at 0295.

⁴³⁹ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0292, at 0308.

⁴⁴⁰ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0292, at 0309.

⁴⁴¹ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0292, at 0310, 0311.

⁴⁴² Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0292, at 0315.

⁴⁴³ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0292, at 0316.

159. Eventually, DRC-OTP-WWWW-0297 had to make up a story to the commander [REDACTED] to be able to escape the camp and UPC/FPLC.⁴⁴⁴ He wanted to leave in particular because he learned that his mother had been killed.⁴⁴⁵

DRC-OTP-WWWW-0298

160. DRC-OTP-WWWW-0298⁴⁴⁶ was born on [REDACTED]. Just before Christmas of 2002, as he was walking home from school with his friends, UPC/FPLC soldiers with a commander called [REDACTED] who was the head of training at [REDACTED], physically beat him and abducted DRC-OTP-WWWW-0298 into the army.⁴⁴⁷
161. He was taken to the training camp at [REDACTED] where he was placed into one of the six groups that contained some 47 people, including many young boys and three girls.⁴⁴⁸ He was placed into military training where he had to learn, *inter alia*, how to salute, march, carry and assemble weapons, military tactics and how to instantaneously kill people.⁴⁴⁹ He recalls that Bosco NTAGANDA visited the camp with bodyguards, some of them children.⁴⁵⁰
162. Discipline was tight at the camp and soldiers were regularly beaten by the commanders. DRC-OTP-WWWW-0298 was himself beaten. He thought about escaping but was afraid as he witnessed the beating of those who tried to escape, including the beating to death of some children.⁴⁵¹
163. After DRC-OTP-WWWW-0298 completed the training, he was given a uniform and weapons and put on security detail at the perimeter of the camp.⁴⁵² From December 2002 through to September 2003, DRC-OTP-WWWW-0298 participated in hostilities, fighting against the Lendu in several places. He fought battles at Lenga, Fataki and Bule. In all places he shot and fired his weapons at the Lendu upon the orders of UPC commanders, notably Commander Alpha and Christian.⁴⁵³

⁴⁴⁴ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0292, at 0301.

⁴⁴⁵ Transcript of DRC-OTP-WWWW-0297, DRC-OTP-0192-0292, at 0302.

⁴⁴⁶ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, para. 8 and see expert report DRC-OTP-0182-0447 where it is concluded that at the time of examination, 11 January 2008, he was between fifteen and a half and sixteen years old.

⁴⁴⁷ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, paras. 14 to 21.

⁴⁴⁸ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, paras. 22, 30 and 31.

⁴⁴⁹ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, paras. 36 to 40.

⁴⁵⁰ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, para. 44.

⁴⁵¹ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, paras. 46-48.

⁴⁵² Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, para. 51.

⁴⁵³ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, pages 9 to 11.

164. DRC-OTP-WWWW-0298 was initially rescued from [REDACTED] military camp, where he had been moved to,⁴⁵⁴ [REDACTED], who was also a member of the UPC⁴⁵⁵, however he was again abducted by the UPC and as punishment placed in [REDACTED] for two days after being beaten.⁴⁵⁶ He was eventually demobilised some three months after his arrival in Bunia by Save the Children.⁴⁵⁷

DRC-OTP-WWWW-0294

165. DRC-OTP-WWWW-0294 was born on [REDACTED].⁴⁵⁸ He joined the military in June 2000, when he was about 10 years old.⁴⁵⁹ During the war between the APC and the Ugandan soldiers⁴⁶⁰ in Nyakunde, DRC-OTP-WWWW-0294 went to the military camp of the [REDACTED]⁴⁶¹ to look for protection⁴⁶². The military camp was then placed under the authority of second-in-command, [REDACTED]⁴⁶³ with whom DRC-OTP-WWWW-0294 was already in contact⁴⁶⁴. DRC-OTP-WWWW-0294 fled with the [REDACTED] soldiers to Sota⁴⁶⁵ where [REDACTED] provided him with a weapon⁴⁶⁶.
166. He decided to leave Sota for Bunia to join [REDACTED]⁴⁶⁷. He stayed in Bunia with two soldiers placed under the authority of Commandant [REDACTED]⁴⁶⁸. He followed them to [REDACTED], where Commandant [REDACTED] requested families to give one of their children to the army⁴⁶⁹. Children under the age of 15 were recruited⁴⁷⁰ and DRC-OTP-WWWW-0294 was responsible for teaching the children how to utilise the weapons⁴⁷¹ as he was already considered a soldier⁴⁷². He was still forced to undergo training at the [REDACTED] military camp where he was forced to sing aggressive military songs against the

⁴⁵⁴ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, para. 76.

⁴⁵⁵ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, para. 20. [REDACTED] is witness DRC-OTP-WWWW-0299.

⁴⁵⁶ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, paras. 88-93.

⁴⁵⁷ Statement of DRC-OTP-WWWW-0298, DRC-OTP-0184-0011, para. 102.

⁴⁵⁸ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, preamble; See also Expert Report, DRC-OTP-0180-0876 at 0879 which concludes that at the time of examination (3 December 2007) witness was between 18 and 19 years of age.

⁴⁵⁹ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 16.

⁴⁶⁰ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 21.

⁴⁶¹ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 17.

⁴⁶² Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 21.

⁴⁶³ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 18.

⁴⁶⁴ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 19.

⁴⁶⁵ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 25.

⁴⁶⁶ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 28.

⁴⁶⁷ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 32.

⁴⁶⁸ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 37.

⁴⁶⁹ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 40.

⁴⁷⁰ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 40.

⁴⁷¹ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 40.

⁴⁷² Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 46.

Lendus. He was forced by the trainers to smoke hemp in order not to fear war⁴⁷³. He was also beaten when he was tired⁴⁷⁴.

167. DRC-OTP-WWWW-0294 took part in the Sangolo and Zumbe battles⁴⁷⁵ and in the Battle of Bunia⁴⁷⁶. During this combat, he fled to Kasenyi and joined the PUSIC⁴⁷⁷. He fought in the Kasenyi battle and got injured⁴⁷⁸. Once again, DRC-OTP-WWWW-0294 escaped during the war and went to Bunia where he was re-mobilised in Floribert KISEMBO's militia⁴⁷⁹. He took part in the fight against the Artemis forces and the Congolese police officers of the Police d'Intervention Rapide near the village of Centrale⁴⁸⁰. During this war, DRC-OTP-WWWW-0294 escaped and returned to Bunia.
168. DRC-OTP-WWWW-0294 went directly to the MONUC⁴⁸¹ and was sent to a Caritas Center⁴⁸². He went to [REDACTED] to start his secondary studies⁴⁸³. He returned to live with his mother in [REDACTED] in July 2007 after passing his exams⁴⁸⁴.

DRC-OTP-WWWW-0213

169. DRC-OTP-WWWW-0213 was born in [REDACTED].⁴⁸⁵ He was adducted by UPC/FPLC soldiers in [REDACTED] who had come to take people to carry weapons and ammunition. Their chief was KASANGAKI.⁴⁸⁶ He was forcibly abducted by UPC/FPLC soldiers.⁴⁸⁷ He was taken to a training camp near [REDACTED]⁴⁸⁸. When he arrived at the camp he saw numerous children training.⁴⁸⁹ There he stayed a week, unable to leave until he was able to eventually escape when the opportunity arose and returned to his family.⁴⁹⁰

⁴⁷³ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 145 to 150.

⁴⁷⁴ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 51.

⁴⁷⁵ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 95 to 102, 104.

⁴⁷⁶ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, paras. 111 to 116, 120.

⁴⁷⁷ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, paras. 121, 122.

⁴⁷⁸ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 124.

⁴⁷⁹ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 127.

⁴⁸⁰ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 129.

⁴⁸¹ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 133.

⁴⁸² Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 134.

⁴⁸³ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 135.

⁴⁸⁴ Statement of DRC-OTP-WWWW-0294, DRC-OTP-0179-0032, para. 138.

⁴⁸⁵ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, para. 8; See also Expert Report, DRC-OTP-0180-0870 at 0873 which concludes that at the time of examination (3 December 2007) witness was younger or the age of 15 years of age

⁴⁸⁶ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, para. 21

⁴⁸⁷ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, para. 17.

⁴⁸⁸ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, para. 26.

⁴⁸⁹ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, para. 27.

⁴⁹⁰ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, page 7.

170. This respite did not last long, as soon thereafter he was abducted a second time into the UPC/FPLC while he was [REDACTED]. The UPC/FPLC soldier arrived in a truck and forcibly took them to the training camp in [REDACTED]. He could not resist as the UPC soldiers were all armed.⁴⁹¹ Upon arrival at [REDACTED], DRC-OTP-WWWW-0213 received military training for two weeks. There were three groups of recruits all of which included children. At the end of the training, the chief of the camp, Maki, gave the recruits weapons and cartridges and a uniform.⁴⁹²
171. DRC-OTP-WWWW-0213 became the bodyguard of commander [REDACTED]. He was one of 15 who protected the commander, most of them children.⁴⁹³ [REDACTED]'s superior was Bosco NTAGANDA. Both Bosco NTAGANDA and Thomas LUBANGA came to Bule training centre; the day Thomas LUBANGA came he was wearing military uniform.⁴⁹⁴
172. DRC-OTP-WWWW-0213 actively participated in hostilities. He was in battle at Bunia, where he was wounded in the leg⁴⁹⁵, and at Katoto, where he fought against the Lendus⁴⁹⁶. He also was used as a bodyguard at the house of Thomas LUBANGA.⁴⁹⁷ After his wound he convalesced at home; during this time the UPC/FPLC attempted to abduct him again but he was able to avoid them⁴⁹⁸.

⁴⁹¹ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, paras. 34,35,36.

⁴⁹² Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, paras. 40 to 51.

⁴⁹³ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, para. 52.

⁴⁹⁴ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, paras. 52, 55, 68, 69.

⁴⁹⁵ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, paras. 114 to 117.

⁴⁹⁶ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, paras. 118.

⁴⁹⁷ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, para. 99.

⁴⁹⁸ Statement of DRC-OTP-WWWW-0213, DRC-OTP-0180-0090, para. 120.

VI. Conclusion

173. This summary of evidence that the Prosecution intends to present at trial reveals that Thomas LUBANGA is individually responsible as a co-perpetrator for the conscription, enlistment and use of children under age 15 to participate in hostilities, as manifested through his participation in a common plan – among himself, Chief Kahwa PANGA MANDRO (UPC Deputy National Secretary for Defence), Rafiki SABA (UPC Chief of Security), Floribert KISEMBO (FPLC Chief of Staff), Bosco NTAGANDA (FPLC Deputy Chief of Staff for Military Operations), and other senior FPLC commanders – to further the UPC/RP and FPLC war effort.

A handwritten signature in black ink, appearing to read 'Luis', is written over a horizontal line. The signature is stylized with a large loop at the end.

Luis Moreno-Ocampo, Prosecutor

Dated this 30th Day of May 2008

At The Hague, The Netherlands