

1 International Criminal Court

2 Pre-Trial Chamber II

3 Courtroom I

4 Situation: Democratic Republic of the Congo

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

6 Presiding Judge Ekaterina Trendafilova, Judge Hans-Peter Kaul,

7 Judge Cuno Tarfusser

8 Confirmation of Charges Hearing

9 Tuesday, February 11 2014

10 (The hearing starts in open session at 2.31 p.m.)

11 THE COURT USHER: All rise.

12 JUDGE TRENDAFILOVA: Good afternoon to everyone. Please be
13 seated. We begin our third session for the day or the first afternoon
14 session. Are there some new faces?

15 Mr Desalliers, is the gentleman behind you?

16 MR DESALLIERS: (Interpretation) No, it's the same team. It's the
17 same team, your Honour, as it was this morning.

18 JUDGE TRENDAFILOVA: I'm sorry. And I have to excuse to the
19 member of your team because probably he -- he's behind you and I have not
20 noticed. Sorry.

21 Do we have someone new on the Prosecutor's Office?

22 MS SAMSON: No, Madam President.

23 JUDGE TRENDAFILOVA: No. And on behalf of the Chamber, we have
24 the same members of our team. So without further ado, please, Ms Samson,
25 would you proceed further on with the presentation?

1 MS SAMSON: Yes. Thank you, your Honour.

2 Madam court officer, if you could please display the visual aid.

3 Thank you.

4 The Prosecution will now present its evidence in support of
5 counts 14, 15, and 16, the war crimes of enlisting and conscripting
6 children and using them to participate actively in hostilities. These
7 crimes were committed on a continuous basis between on or about
8 2 July 2002 and 31 December 2003.

9 There are three constituent elements to Article 8(2)(e)(vii).

10 First, that the perpetrator conscripted or enlisted one or more persons
11 into an armed force or group or used one or more persons to participate
12 actively in hostilities.

13 Second, that such person or persons were under the age of 15.

14 And the third element, that the perpetrator knew or should have
15 known that such person or persons were under the age of 15.

16 With respect to the first constituent element, I will present the
17 Prosecution's evidence of conscription and enlistment together. I will
18 then present the evidence of the ways in which children were used in the
19 UPC/FPLC.

20 I will then move to address the second and third elements
21 together with respect to all three offences.

22 Ms Luping has already addressed the Chamber with respect to the
23 contextual elements of these crimes and so I will not address them again
24 during this presentation.

25 Moving on to the first element. Enlistment and conscription are
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1 both forms of recruitment; that is, the incorporation of a boy or girl
2 underage 15 into an armed force or group. Where there is an element of
3 coercion, it is conscription. These crimes are of a continuing nature,
4 beginning the moment a child is enrolled or joins an armed group or force
5 and ending only when the child leaves the group or reaches the age of 15.
6 Enlistment, conscription, and use are three separate offences.

7 Further, the Prosecution notes that a child's consent does not
8 constitute a valid defence for reasons related to lack of capacity and
9 ability to give informed or genuine consent.

10 The Prosecution asserts that the UPC/FPLC undertook a large-scale
11 recruitment campaign that included the recruitment of young people,
12 regardless of age. Fifteen witnesses, including seven military insiders,
13 one child soldier, one political insider, and three witnesses who worked
14 in the field of child protection, along with three additional witnesses
15 who were living in Bunia at the relevant time and had contact with UPC
16 leaders all confirm that the UPC enlisted, conscripted, and used children
17 under the age of 15 during the period relevant to the charges.

18 These children were often referred to as "kadogo," a Swahili term
19 meaning "small." Witness P-0014, a journalist based in Bunia who met
20 frequently with UPC leaders, states that the term "kadogo" was only used
21 to refer to child soldiers to indicate that the soldiers were small or
22 young.

23 The Prosecution will also present material evidence of the
24 recruitment of child soldiers by the FPLC under Bosco Ntaganda's command;
25 namely, an internal UPC document, a photograph of child soldiers,
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1 excerpts and still shots taken from a video showing footage of training
2 at the Rwampara training camp, and several internal UPC purported
3 demobilisation orders.

4 I will start first with the UPC recruitment campaigns.

5 UPC recruitment campaigns reached hundreds of children and were
6 conducted throughout the region of Ituri. According to one of the UPC's
7 commanders, Witness P-0016, at the largest of the UPC's military training
8 camps at Mandro, roughly 35 per cent of the recruits were under the age
9 of 15. The very scale of these crimes establishes that it was planned.

10 Witness P-0055, another former military insider, confirms the
11 scale of the UPC recruitment campaigns. And I quote from his statement:

12 "Recruitment did not happen in one single place. It would happen
13 at different places, different locations throughout Ituri --" excuse me,
14 "different locations throughout the region that the UPC had control over.
15 It's a wide region that was controlled by the UPC and where recruitment
16 was happening."

17 Several other witnesses provide evidence about the organised
18 recruitment campaigns that the UPC undertook in 2002 to increase its
19 troop strength through recruitment without regard to age.

20 Witness P-0031, an NGO worker in the field of the demobilisation of
21 children from armed groups, observed that during the period of the
22 charges, the numbers of child soldiers in the UPC was continually rising.

23 Witness P-0014, the Bunia-based journalist that I referred to
24 earlier, states that in July and August 2002 the UPC was engaged in
25 increasing its troop strength.

1 Military insider Witness P-0768 also confirmed that there was no
2 age criteria with respect to recruitment and that UPC accepted everyone
3 because they needed troops.

4 Former senior military insider P-0055 states that Bosco Ntaganda
5 explained to him that the UPC mobilisation procedure relied on elders and
6 community leaders to mobilise young people to join the ranks of the FPLC
7 and to fundraise for its movement.

8 The UPC used these community leaders to assist with recruitment
9 by exerting pressure on the Hema population to provide such support.
10 Bosco Ntaganda introduced Witness P-0055 to one such community leader.
11 Military insider P-0017 states that Commander Kitembo asked a community
12 elder in Kilo to contribute recruits prior to the assault to Mongbwalu in
13 November 2002. The witness stated that no age limit was set and that
14 children were amongst the recruits that arrived that day, including a
15 12-year-old boy.

16 UPC/FPLC soldiers would visit villages and mobilise support from
17 the population to defend against the Lendu. There was an obligation on
18 Hema families to contribute children to the UPC.

19 Witness P-0031, the NGO worker who worked with children
20 demobilised from armed groups, was told by both parents and former child
21 soldiers that families were made to contribute to the UPC in the form of
22 a child or money or livestock.

23 Witness P-0038, another military insider, states that at a public
24 meeting in January 2003 that he attended with Commander Salumu Mulenda
25 prior to the deployment for the Kobu assault, he heard Commander Mulenda
26

1 say to the village: "Send the children to be trained, send the young
2 people to be trained."

3 Political insider Witness P-0041 stated that if a family did not
4 contribute a child to the UPC/FPLC war effort, the UPC could exact
5 sanctions against the family, including imprisonment. NGO worker
6 Witness P-0031 said if parents did not send their children, "it was at
7 the risk of their own life."

8 Before he joined the UPC, military insider P-0038 remembers
9 Bosco Ntaganda and Chief Kahwa visiting Mabanga and telling the
10 population: "If you do not join the army, you will find that your
11 village will be razed down and that will be your problem."

12 Witness P-0038 says that these meetings were directed toward the
13 whole village, including children, and that when the commanders left they
14 took vehicles loaded with young people destined for the Mandro training
15 camp. These young people, he said, included children under the age
16 of 15.

17 Military insider Witness P-0055 corroborates this type of
18 account. He says that if a village refused to surrender their children
19 to the UPC, that village would be undefended from attack and he used the
20 example of Bogoro. After he joined the UPC, military insider P-0038
21 himself attended these village meetings. He went once with Chief Kahwa
22 to tell parents to send their children to the army or else "the day that
23 war would come to their town, the UPC would not come to rescue them." In
24 the context of an ethnic war, this was a serious threat for any village
25 community. The villagers had no choice but to send their children.
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1 Former child soldier, Witness P-0758, was abducted and
2 conscripted by force into the UPC when she was 13. She recalls that the
3 soldiers would beat anyone trying to resist and threaten to shoot anyone
4 who tried to escape. She was taken to an UPC training camp at Lingo
5 where her training lasted for three months. She recalls how difficult it
6 was to escape from the camp as it was in a valley and there were soldiers
7 positioned in lookout posts. Those who did try to escape were beaten and
8 punished.

9 Military insiders P-0016 and P-0038 confirm that recruits were
10 not allowed to leave training camps and that those who disobeyed orders,
11 including attempting to leave, suffered severe punishment such as beating
12 or whipping, occasionally resulting in death.

13 Military insider P-0038 also confirmed that children were taken
14 by force into the UPC.

15 Witness P-0031, who worked with demobilised child soldiers,
16 states that the UPC was forcibly recruiting children, including from
17 schools. UN child protection advisor Witness P-0046 confirms examples of
18 forced conscription. One child she met with reported being taken at the
19 age of 14 while he was walking to the market with his brother. He was
20 brought to the Mandro training centre.

21 The UPC/FPLC operated several training camps in various areas
22 throughout Ituri, such as Centrale, Mandro, Mahabusu, Rwampara,
23 Mongbwalu, Lingo, Fataki, Sota, Bunia, and Bule. Military insiders
24 P-0016, P-00768, and P-0038 state that the child soldiers who were
25 recruited for military training received the same training as adults.

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1 Witness P-0758, the former child soldier to whom I just made
2 reference, recalls that the training consisted of physical endurance,
3 military drills such as marching, crawling, and shooting, as well as
4 military strategy. She states they learned military songs and were told,
5 "Everyone in the village was an enemy and we must kill them." The
6 witness recounts being forced to take drugs and in particular being given
7 drugs and alcohol prior to battle so that she would not be afraid.

8 Some parents tried to get their children back. Witness P-0017
9 recalled an instance where a mother came to the camp. He said, and I
10 quote:

11 "For days she cried at the camp's entrance. We had to chase her
12 away. She kept saying, 'Give me my son back. He's only age 12.'"

13 Several witnesses including insiders P-0768 and P-0041 state that
14 Bosco Ntaganda was responsible for recruitment and military training.
15 Witness P-0768 further confirms that he and Bosco Ntaganda visited the
16 Mandro training camp where Bosco Ntaganda observed the level of training,
17 chose who to select for reinforcement, and congratulated and encouraged
18 the recruits.

19 I would now like to play an excerpt from a video that shows
20 Thomas Lubanga addressing recruits at the Rwampara training camp on
21 12 February 2003.

22 THE COURT OFFICER: Ms Samson, is it a public video?

23 MS SAMSON: Yes, it is.

24 THE COURT OFFICER: Thank you.

25 MS SAMSON: The video is largely in Swahili. The Prosecution has

1 distributed the translation of the video. We've also disclosed a version
2 of the video with subtitles, which is the version that I would like to
3 play now. The excerpt runs for approximately nine minutes and the
4 subtitling is in French. I will spend a moment explaining or
5 contextualising the video before we watch it. Your Honours will see
6 Bosco Ntaganda in the video dressed in purple. Thomas Lubanga is there
7 as well with other senior UPC commanders and soldiers. Thomas Lubanga
8 addresses the recruits and introduces Bosco Ntaganda. He confirms that
9 Bosco Ntaganda does and indeed must visit the training camps. Your
10 Honours will see soldiers in the video in uniform and with weapons, some
11 of whom manifestly appear to be under the age of 15. You will also see
12 numerous recruits singing, some holding sticks. Military insider P-0010
13 commented on this video and states that the recruits in uniform with
14 sticks and not guns are still undergoing their training along with the
15 recruits that you will see in civilian clothes.

16 I will now play the video.

17 (Video-clip played)

18 MS SAMSON: Madam President, I would ask your permission to move
19 into private session for one very brief submission.

20 JUDGE TRENDABILOVA: Of course. This is our duty, pursuant to
21 68(1). So, court officer, would you make arrangements so that the public
22 gallery is disconnected.

23 (Private session at 3.04 p.m.)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Open session at 3.07 p.m.)

14 THE COURT OFFICER: We are in open session, Madam President.

15 MS SAMSON: I would now like to pull up a still frame taken from

16 an excerpt of the video that was just shown which depicts, in the

17 Prosecution's submission, a child manifestly under the age of 15.

18 Apologies, your Honour.

19 JUDGE TRENDABILOVA: Sorry, we don't have on our screens.

20 Nothing, the three of us.

21 Please proceed, Ms Samson.

22 Is everything fine with everyone in the courtroom? Okay.

23 MS SAMSON: The Prosecution submits that the child soldier in the

24 forefront to the left of the screen holding an armed weapon is manifestly

25 under the age of 15.

1 I would also like to show another portion of the video, this time
2 with the speed reduced so that the Chamber can also see images of
3 children that the Prosecution asserts are manifestly under the age of 15.

4 JUDGE TRENDABILOVA: Could we observe this in open session?

5 MS SAMSON: Indeed, your Honour. Yes.

6 JUDGE TRENDABILOVA: Okay.

7 (Video-clip played)

8 MS SAMSON: In that brief portion of the video, your Honours, the
9 Prosecution submits that the child who is throwing his weapon into the
10 back of the truck is manifestly under the age of 15. Your Honours can
11 see that Bosco Ntaganda is visible in the background.

12 In addition to this video of Bosco Ntaganda at the Rwampara camp,
13 the Prosecution relies on a photograph that was authenticated by a
14 military insider, Witness P-0768. The witness states that the photograph
15 was taken at least at the end of 2003 during a demobilisation ordered by
16 Jerome Kawkwavu, a commander who had defected from the UPC.
17 Witness P-0768 states that these children, whom he says are aged 10 to
18 12, attended at the Mandro training camp and were sent to fight in the
19 Mongbwalu operation in November 2002. The paragraph can be shown
20 publicly.

21 I will come back to the photo in a moment, your Honours. We're
22 having a technical issue on that photograph, but I will come back to it.

23 Former child soldier Witness P-0758 states that during her
24 training Bosco Ntaganda came to the Lingo camp. He introduced himself
25 and asked if they had seen him before. Bosco Ntaganda on that occasion
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1 stated, and I quote Witness P-0758: "He was happy to have new children
2 join the UPC and that we should not fear as we would take the whole of
3 the Congo." He congratulated the recruits on finishing training and he
4 brought them a cow to eat. He advised the new recruits that they would
5 receive uniforms as they had finished their training, and they did
6 receive them.

7 Former FPLC soldier Witness P-0010 also states that at the end of
8 her training, Bosco Ntaganda personally gave the recruits a uniform and a
9 weapon.

10 Witness P-0290 is another military insider who was based with the
11 UPC in Bunia in late 2002. He states that Bosco Ntaganda showed him
12 where he would, in Bosco Ntaganda's words, "train the children." The
13 training took place in Bosco Ntaganda's residence. In P-0290's first
14 class of trainees there were five students, two of whom were under 15
15 years of age. He estimated their age on the basis of their physical
16 appearance and their reasoning and behaviour. In his second class, he
17 states there were also two children under the age of 15.

18 Witness P-0290 states that he had to modify and simplify the
19 training as those attending were too young to understand or grasp
20 everything. Once the training had finished, P-0290 states, and I quote
21 from his account:

22 "Ntaganda asked me to deploy the trained youngsters because he
23 was in charge of operations. He told me to deploy his soldiers,
24 including those who were under the age of 15. There was no attempt to
25 exclude the youngest soldiers, including those under 15, from the
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1 operation orders. Everyone in the unit, without exception, went to the
2 front and participated in operations, and there was no order stating that
3 the youngest had to stay behind."

4 Following training recruits would be then deployed to a post.
5 Military insider Witnesses P-0055 and P-0290 state that there were no
6 distinction made between adults and children when it came to deployment.
7 Why did Bosco Ntaganda and other senior leaders want to use children?
8 Because they could exploit their youth and inexperience. They could make
9 use of the fact that children are daring because they cannot fully grasp
10 the consequences of their actions. In essence, they could manipulate and
11 control them.

12 Witness P-0041, a political insider, had children under 15 years
13 of age in his own escort. He explained that everyone had body-guards.
14 Most of the soldiers serving in the UPC, he said, were about 10 or 13 to
15 22. He said, and I quote: "We preferred to use young persons as
16 body-guards."

17 Witnesses P-0038 and P-0017, two military insiders, explained
18 that children were easily used by the UPC because they are fearless, they
19 strictly obey orders, they don't ask much of the commanders. A child
20 only needs to wash and eat. It was therefore easier and more convenient
21 to use them.

22 Madam President, I will now turn to the Prosecution's evidence in
23 relation to: Use to participate actively in hostilities.

24 The prohibition against using children under the age of 15 to
25 participate in hostilities does not require that these individuals were
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1 previously enlisted or conscripted. Both the Rome Statute and the
2 Elements of Crimes separate the crimes. It's enlistment, conscription,
3 or use.

4 "Active participation" in hostilities means not only direct
5 participation in combat but covers active participation in military or
6 combat-related activities. It can include military duties such as
7 scouting, spying, sabotaging, using children at check-points as couriers,
8 and decoys. Guarding military objectives such as military quarters and
9 military commanders as body-guards is also active participation.

10 In the AFRC case at the Special Court for Sierra Leone, the
11 Trial Chamber held that the use of children to participate directly in
12 hostilities is not restricted to children directly involved in combat.
13 It noted, and I quote:

14 "An armed force requires logistical support to maintain its
15 operations. Any labour or support that gives effect to or helps maintain
16 operations in conflict constitutes active participation; hence, carrying
17 loads for the fighting faction, finding and/or acquiring food,
18 ammunition, or equipment, acting as decoys, carrying messages, making
19 trails or finding routes, manning check-points, or acting as human
20 shields are some examples of active participation as much as actual
21 fighting in combat."

22 In the Lubanga case, Trial Chamber I held that children who
23 participate on the front line in battle participate directly in
24 hostilities. As to whether an indirect role is to be treated as active
25 participation in hostilities, the Chamber held that the decisive factor

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1 is, and I quote: "Whether the support provided by the child to the
2 combatants exposed him or her to real danger as a potential target."

3 The Prosecution points to a number of ways in which
4 Bosco Ntaganda and his troops used children actively in hostilities.
5 First, as military guards on patrols and at roadblocks. Former child
6 soldier witness P-0758 was used as a military guard following her
7 abduction by the UPC. She states:

8 "While I was there, I took part in patrol at night. We would
9 raid houses and take the men away and then their families would come and
10 pay money to get them out."

11 She also states:

12 "I worked on a roadblock at Kosovo where we would take money from
13 the civilians who were passing through. If girls went by, we would stop
14 them. And sometimes the boys would rape them when they felt like it.
15 They raped them in the little hut near the roadblock. I saw this myself
16 as it was soldiers who did this. At times we would stop people and take
17 them to work in the camp. If the leaders like the women, they would keep
18 them there. At the roadblock we worked in shifts in a group of three for
19 three or four days at a time. When we were on shift, we would sleep at
20 the small hut that was there. When we were not working at the roadblock,
21 we slept at the camp."

22 UPC child soldiers were also used to perform reconnaissance and
23 to provide information. Witness P-0014, who often visited the UPC
24 headquarters, observed child informants ranging in age from 7 to 13
25 entering UPC headquarters to give information to the leaders there. This
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1 evidence is corroborated by military insider P-0055 and former child
2 soldier P-0758 who both state that kadogo were used to do reconnaissance.

3 The UPC also had an entire unit of children as guards at the main
4 staff headquarters of the UPC. The unit was called the Kadogo Unit and
5 it was instituted by Kisembo, according to Witness P-0071, a military
6 insider. The soldiers in this unit were less than 15 years old, the
7 youngest, he said, around 12.

8 Witness P-0017 testified that the unit was nearly the size of a
9 whole platoon, around 45 persons. He also testified that the kadogo were
10 often dispatched to pillage food from local villages. UPC child soldiers
11 also participated directly in combat.

12 Witness P-0768 states that children aged 12 and even 10 were
13 "working just as any other soldier."

14 Witness P-0016, military insider, explained that there were no
15 differences as to how they were treated. He said: "Once you leave the
16 centre, you're no longer a recruit. You're a soldier. They had become
17 soldiers regardless of their age and they were deployed the same way as
18 everyone else. There was no difference and no particular advantages."

19 Witness P-0055, military insider, described it this way:

20 "If a kadogo finishes his training, he's deployed, he joins a
21 brigade, he's given a weapon, and obviously he's going to go and fight."

22 The same witness further said:

23 "What's the job of a soldier? The job of a soldier means waging
24 war. If there is a battle, he has to go and fight."

25 Former child soldier Witness P-0758 stated that she fought at the
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1 front line in several battles with the FPLC against the Lendu including
2 in Bunia, Mabanga, and Lonyo. In advance of battles they were given
3 magazines and ammunition. She states that she was not -- and I quote:

4 "I was not afraid because we drank alcohol, they brought us
5 drugs, and under the influence of these we were not afraid of anything."

6 Insider military Witnesses P-00768, P-0038, and P-0290 confirmed
7 that children directly participated in hostilities in the -- in Mongbwalu
8 during the Banyali-Kilo operation.

9 Senior military officer Witness P-0768 confirmed that the child
10 soldiers participated in hostilities also in the unit of Bosco Ntaganda.

11 Military insider Witness P-0038 participated in the assault on
12 Kobu and confirmed that child soldiers under the age of 15 participated
13 in combat during that assault.

14 Children within the UPC were also used as body-guards and
15 escorts. Bosco Ntaganda himself used children under the age of 15 as
16 body-guards. Witness P-0290 states that he accompanied Bosco Ntaganda to
17 Mongbwalu prior to the November 2002 assault to visit with commanders and
18 the troops stationed there. On this trip, Witness P-0290 confirms that
19 Bosco Ntaganda had child soldiers with him as body-guards. They were
20 carrying weapons and ammunition for themselves and Bosco Ntaganda.

21 Witness P-0290 also saw children in the residence of
22 Bosco Ntaganda either as body-guards or residential guards. Insider
23 Witness P-0038 also confirms that Bosco Ntaganda had child soldiers at
24 his residence.

25 Military Witnesses P-0768 and P-0017 further confirm the presence
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1 of children in Bosco's escort or his units. Witness P-0768 confirms that
2 there were four to seven children aged 10 to 13 in Bosco Ntaganda's
3 body-guard. P-0017 states that Bosco Ntaganda had child soldiers in his
4 body-guard during the March 2003 assault on Bunia. Military insider
5 P-0055 corroborates these witnesses, that Bosco Ntaganda had many escorts
6 including kadogo.

7 Witness P-0014 saw body-guards in Bosco Ntaganda's escort ranging
8 between ages 10 to 13, and he said there was one that was 8. In his
9 words, he said that Bosco Ntaganda would have the young ones walk ahead
10 of him for security reasons. The same witness also saw Bosco Ntaganda
11 with child soldiers as body-guards at the UPC headquarters.

12 Similarly, many other UPC soldiers and political insiders had
13 escorts in their body-guard. Witness P-0041 confirmed that everyone had
14 escorts, including child soldiers.

15 I will now turn to the second and third elements of this crime.
16 Element 2, that the individuals were under the age of 15 years; and
17 element 3, that the perpetrator knew or should have known that such
18 person or persons were under the age of 15. I will treat them together.

19 The Prosecution's evidence establishes substantial grounds to
20 believe that children recruited and used by Bosco Ntaganda and his troops
21 were under the age of 15 and that Bosco Ntaganda knew or should have
22 known their age.

23 First, the UPC's own documents refer to the presence of child
24 soldiers in its ranks.

25 May I ask your indulgence for one moment, your Honour.
26

1 JUDGE TRENDAFILOVA: Ms Samson, if you need some technical
2 support or assistance, we can ask the Registry to arrange this for you.

3 MS SAMSON: Thank you very much, your Honour, for the kind offer,
4 but indeed I think it's resolved.

5 JUDGE TRENDAFILOVA: Okay. So shall we now follow the video or
6 your presentation?

7 MS SAMSON: We are going to move to one document that I would
8 like to broadcast on the screen --

9 JUDGE TRENDAFILOVA: Um-hm.

10 MS SAMSON: -- publicly. The document is not entirely visible on
11 the screen, so the Prosecution has inserted the verbatim words in bolder
12 text to enhance the visibility of the relevance portions that we wish to
13 draw your Honours' attention to.

14 This letter on UPC letterhead coming from the secretariat for
15 education and youth is dated 12 February 2003, the same date as the
16 Rwampara video incidentally. It's sent to the G5 within the UPC/FPLC
17 military structure. And it -- and the object of the letter refers to the
18 selection of 13 officers from the army who were to be trained in a DDRRR
19 demobilisation programme run by Save the Children.

20 The first line of the letter clearly states that the programme is
21 aimed at child soldiers aged 10 to 15 or 16 years of age who voluntarily
22 accept to return to civilian life for a reorientation for their future.
23 The context, in our submission, makes it clear that this refers to child
24 soldiers in the UPC/FPLC.

25 The Prosecution also refers to three UPC purported demobilisation
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1 orders which date from October 2002, January 2003, and June 2003. All
2 are signed by Thomas Lubanga. The orders are evidence that there were
3 children within the ranks of the UPC and that the leaders of the UPC,
4 including Bosco Ntaganda, were aware of their presence.

5 Witness P-0055, a senior military insider, stated that he was not
6 aware of any child soldier demobilisation programme within the UPC
7 despite the existence of these letters, and he never attended any
8 meetings where the subject of demobilisation of kadogos was discussed.
9 He also never had any discussions about the subject of the demobilisation
10 of child soldiers with Bosco Ntaganda or other senior UPC leaders such as
11 Thomas Lubanga, Floribert Kisembo, or Rafiki.

12 Witness P-0024, an individual who worked with an NGO in Bunia on
13 demobilisation and reintegration of child soldiers, commented on a -- the
14 recruitment -- the re-recruitment of soldiers by the UPC, and he said,
15 and I quote:

16 "When the UPC took Bunia in 2002, there were radio and TV
17 broadcasts in which the UPC pretended to demobilise certain children, but
18 what was happening was that on a daily basis we found that those children
19 were still present; for instance, as body-guards, driving around in their
20 pickups. That's how we saw them."

21 And he further states that these radio broadcast were:

22 "A sham, nothing happening, nothing changed, notwithstanding this
23 appearance of demobilisation. We continued to see them in the town, in
24 the cities. They were threatening everybody."

25 Further, Witness P-0046, an UN child prospect advisor who was
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1 based in the Ituri region, referred to the -- not based in the Ituri
2 region but, rather, went to the Ituri region on assessment missions,
3 referred to the UPC demobilisation orders as "a masquerade," and "a
4 publicly relations operation which was absolutely not sincere."

5 She states, and I quote:

6 "Recruitment was going on in parts of Ituri by UPC troops. There
7 was an official statement. Some children were instructed to approach the
8 NGOs specialising in child protection, but at the same time recruitment
9 continued."

10 Witness P-0031, an NGO worker who dealt with the demobilisation
11 of child soldiers, generally from armed groups, also confirmed that the
12 UPC did not demobilise the children.

13 Insider witnesses and witnesses who worked closely with the UPC
14 give specific evidence of the age of the children in the UPC. They
15 worked with these children, they trained them, and in some cases they
16 used them in hostilities. Former Commander Witness 0017 said: "You can
17 easily see if they are under 15." He described being at the headquarters
18 the day a foreign journalist was given special permission by the chief of
19 staff to interview one of the child soldiers from the Kadogo Unit holding
20 his weapon. The child, he said, was at the most 13. Witness 0016
21 explained precisely how he could tell that child soldiers in the UPC were
22 children, and I quote:

23 "As a parent and as a man of experience, I told you that you can,
24 from physical appearance and from the behaviour of a person, you can
25 determine that person's age."

1 He said, and I quote again:

2 "You could always see that they were children because after
3 training they would create groups and everything they did resembled what
4 children do. They were always on the ground and playing little games."

5 The children he saw at the training camps made toys for
6 themselves. He said: "They would put their weapons down, they'd play
7 marbles, and then they would return to look for their weapons, and that
8 demonstrated that they were not yet mature." Among these children was a
9 recruit that P-0016 knew who was 13.

10 Political insider P-0041 knew that one of his body-guards was
11 14 years old because he knew this child's parents and knew when the child
12 had stopped his schooling.

13 Military insider P-0038 stated that you could assess the age of
14 the child soldiers by their appearance including their height. He
15 related it to the size of their weapons, stating that some had weapons
16 that were heavier than they were and that they could not carry their
17 AK-47s for longer periods of time because they were too small. He also
18 referred to them having uniforms that were ill-fitted because of their
19 size.

20 The Prosecution is also presenting evidence from neutral
21 observers who were assisting in the demobilisation of child soldiers at
22 the relevant period in Ituri. Witness P-0046, P-0024, and P-0031
23 interviewed these children, recorded their information, and observed them
24 over time. They had direct contact with the child soldiers for weeks and
25 sometimes months. Their very job was to monitor the presence of child
26

1 soldiers in military service. This meant that as they walked through the
2 streets or visited the UPC they were always looking out for child
3 soldiers. These witnesses confirmed that children under the age of 15
4 were in large numbers in the UPC troops.

5 Take as an example Witness P-0024. He worked for a Congolese
6 organisation active in child protection. He described being detained in
7 the UPC premises in October 2002, placed in a pit, and guarded by two
8 child soldiers aged 10, 11, or 12. He saw other child soldiers aged 10
9 to 12 around the UPC premises. At the time, the witness was 21 years old
10 himself. He said that in the same period, October/November 2002, he saw
11 UPC child soldiers aged 9 to 18 throughout the town of Bunia threatening
12 everybody. He taught students aged 12 to 18 and he also worked directly
13 with child soldiers in the same age range. The Prosecution submits that
14 these witnesses are well-placed to give guidance to the Chamber and
15 determine the age of the children of whom they had contact.

16 Witness P-0046, a child protection advisor, stated that a
17 conservative estimate was that 40 per cent of the FPLC troops were under
18 the age of 18 with a significant minority below the age of 15.

19 Witness P-0031 stated that 80 per cent of the children going through his
20 centre had been soldiers with the UPC.

21 Madam President, your Honours, all of the evidence presented on
22 the constituent elements of the crimes of enlistment, conscription, and
23 use to participate actively in hostilities also demonstrate that these
24 crimes were planned and deliberate. Bosco Ntaganda either intended their
25 commission or he knew they would be committed in the ordinary course of
26

1 events in implementing the common plan.

2 More specifically, the Prosecution refers to Bosco Ntaganda's
3 presence at training camps, participation in recruitment, in military
4 operations, all in places where children under the age of 15 were
5 present. And the fact that he himself used body-guard within his escort
6 and his own unit shows, on substantial grounds to believe, that he knew
7 or should have known that the children were under the age of 15.

8 That concludes, Madam President and your Honours, the
9 Prosecution's presentation on those three war crimes. I will now move on
10 to the war crimes of rape and sexual slavery of child soldiers. These
11 are represented in the document containing the charges under charges 6
12 and 9. Both of these crimes were committed on a continuous basis between
13 on or about 2 July 2002 and 31 December 2003.

14 I will begin with the evidence in support of the charge of rape
15 of child soldiers.

16 The Prosecution relies on the evidence of seven witnesses: Four
17 military insiders; an UN protection officer who conducted numerous
18 interviews with former child soldiers and who is a Prosecution witness;
19 and a former child soldier who herself was the victim of rape and
20 witnessed the rape of other child soldiers; the seventh witness, your
21 Honours, is a former body-guard of Bosco Ntaganda.

22 Again, your Honours, as the contextual elements have already been
23 addressed I will focus again specifically on the constituent elements of
24 this crime. To prove these elements I will focus on the -- first on the
25 witness account of P-0758.

1 Abducted at the age of 13 and taken to Lingo camp, she was raped
2 repeatedly by various members of the FPLC. She tells us of the rape of
3 other girl child soldiers within the army's ranks. Here is an excerpt
4 from her statement, and I quote:

5 "... one of the soldiers told his two friends to go and he
6 remained with me. He stripped me and told me not to fear. He would help
7 to heal my wound. I told him that I had not washed since yesterday.
8 Despite this, he removed my top and continued to touch me. I struggled
9 and tried to resist him but he had more strength because he was a man.
10 He kicked me and succeeded to subdue me. He then threw me on the bed and
11 spread my legs apart. He then penetrated my vagina with his penis. My
12 vagina hurt where I had been injured the day before. After he finished
13 raping me, he said, 'It is true you have been injured. You have a
14 wound.' After being raped, I returned to my group. I do not know the
15 name of the soldier who raped me, but I know he was high-ranking because
16 the others saluted him when he passed or met him in the camp. He also
17 had two body-guards. Other girls were also raped in the Lingo camp. I
18 know this because I saw them being raped or they said so when I rejoined
19 the group. It was something that was happening all the time. All women
20 were raped, even the young and ugly ones. They raped us in the huts,
21 fields, anywhere they could. The rapes continued throughout our
22 training. Sometimes the soldiers who raped us came in groups of three or
23 four. The top leaders also picked girls to rape from among us. We did
24 not report the rapes because the leaders also raped us and they knew
25 rapes were being committed so there was no one to report to. Some of the
26

1 girls got pregnant after being raped. We heard this in the camp. But
2 then they would be removed and when they came back they were no longer
3 pregnant. I heard there were abortions, but I do not know where they
4 took place. As far as I know, rapes of women and girls from the UPC did
5 not take place when we were going to battle. We were not raped because
6 they said anyone who had sex before war was going to die. Rape took
7 place mainly after the battles, rarely when we were at war."

8 The account of Witness P-0758 demonstrates the frequency and
9 brutality of the sexual violence perpetrated against girl soldiers within
10 the ranks of the FPLC. It also shows the utter disregard shown to the
11 age of these recruits. In addition to her own rape at the age of 13 and
12 the acknowledgment by one of her rapists that she was "still a child,"
13 Witness P-0758 also refers to a 9-year-old girl child soldier at Lingo
14 camp who died as a result of the injuries she sustained from being raped.
15 The evidence of Witness P-0758 also illustrates the systemic nature of
16 the rape of child soldiers in the ranks of the UPC.

17 The Prosecution also relies on four military insiders who all
18 state that girl child soldiers were sexually exploited by members of the
19 group, including commanders. A member of the UPC heavy weapons unit,
20 Witness P-0038, stated that girl child soldiers were sexually exploited
21 by commanders during their military training and then afterwards when
22 they were selected to be a commander's body-guard.

23 Witness P-0038, military insider, stated that young girls were
24 sought after by commanders as body-guards as they could also be used to
25 prepare food and for sexual services for commanders. He said the
26

1 commanders used these girls as if they were their women, their wives. He
2 was able to hear the cries of the girls at night emanating from the row
3 of the commanders' houses and even heard girls saying, "I don't want to."

4 Member of the FPLC heavy weapons unit, Witness P-0017, states
5 that Commander Abelanga had two girl child soldiers aged 13 or 14 years
6 of age who lived with him at the camp at Lalu, and that everyone in the
7 battalion knew that he was raping these girls.

8 UPC military insider Witness P-0016 confirms that trainers and
9 commanders at Mandro camp took advantage of their situation and would
10 rape the recruits. He said, I quote: "I clearly said that there was
11 rape; that is, carrying out sexual intercourse with someone who is not
12 willing or doing so by force. That is what I qualify as rape." He also
13 stated that they would use girl child soldiers as domestic servants. In
14 fact, he said that these girls were used for everything. He clarified
15 that meant cooking and love services.

16 Witness P-0016 further stated that these were only little girls
17 at Mandro whose manner of playing showed that they were very young. Yet
18 another commander from the UPC confirms acts of rape against girl child
19 soldiers. Witness P-0768 says that girl child soldiers under the age of
20 15 were frequently raped by commanders in the UPC. He provides the
21 example of a 12- or 13-year-old girl raped by the chief of the
22 Bosco Ntaganda's security whose name was Museveni. He says everyone
23 talked about her rape as Museveni had damaged the young girl's genitals.
24 He also states that Bosco Ntaganda knew this girl was raped as she was
25 one of Bosco Ntaganda's own body-guards and stayed at his residence.

26

1 Witness P-0046, UN child protection advisor, conducted numerous
2 interviews with former child soldiers. The information she collected
3 formed the basis of several reports. She said that most of the girls she
4 met within the ranks of the UPC were used for sexual purposes as well as
5 in combat or logistical activities and that virtually all of the female
6 child soldiers she interviewed had been subjected to sexual violence
7 frequently by their commanders.

8 Based on her accounts -- based on the accounts that she received
9 from the child soldiers she interviewed, Witness P-0046 described the
10 sexual exploitation as systemic. She, Witness P-0046, interviewed girls
11 under the age of 15 raped by commanders including a girl who was raped in
12 October 2002. She had to be hospitalised following the rape by a
13 commander.

14 Another girl was captured by the UPC and raped by several
15 commanders over a period of time and later became pregnant in June 2003.
16 Another girl child soldier met by P-0046 was gang raped by three soldiers
17 in her unit and became pregnant. P-0046 relates that that girl said, "As
18 I did not know who the father was, I was forced to abort it."

19 Witness P-0010 also stated that she suffered rapes within the UPC
20 and that girls younger than her were raped by their commanders, including
21 Commanders Pepe and Abelanga. She said that the commanders raped girls
22 whenever they wanted and that the girls could not resist, that it was
23 "impossible. We didn't have the power to say no." She further confirmed
24 that Bosco Ntaganda took some of these soldiers as wives.

25 Three more insiders confirm that the prevalence of sexual
26

1 violence was so great that the commanders, including Bosco Ntaganda, had
2 to know that it was occurring. P-0768 again refers to the incident in
3 which Bosco Ntaganda's body-guard Museveni had raped Bosco Ntaganda's
4 other body-guard who was 12 or 13 years old. There was no disciplinary
5 action, and, in fact, P-0768 states that Bosco Ntaganda protected his
6 chief escort from censure.

7 Witness P-0038, another military insider, says that
8 Bosco Ntaganda himself had girl child soldiers in his residence and
9 sexually exploited them. He expressed with certainty that commanders at
10 the heads of the camps, such as Bosco Ntaganda, knew about the sexual
11 violence being perpetrated against girl child soldiers within the ranks
12 of the UPC. Witness P-0016 says that rape was taking place at the Mandro
13 training camp and he believes it was highly improbable that the
14 commanders and other senior UPC officers were not aware it was taking
15 place.

16 As chief of operations, Bosco Ntaganda was in charge of
17 recruitment and training and frequently visited the camps.

18 Your Honours, that concludes the Prosecution's presentation on
19 rape. And subject to your decision, I could move to the sexual slavery
20 after the break.

21 JUDGE TRENDABILOVA: Yes, because we have just half a minute
22 left.

23 Now let us take a break and we shall resume our last session for
24 today at 4.30.

25 (Recess taken at 3.58 p.m.)
26

1 (Upon resuming in open session at 4.32 p.m.)

2 THE COURT USHER: All rise.

3 JUDGE TRENDAFILOVA: Please be seated. We resume our final
4 session for today.

5 Just I would like to consult my colleagues on some issues related
6 to the days to follow.

7 (The Trial Chamber confers)

8 JUDGE TRENDAFILOVA: After consultations with Judges Kaul and
9 Tarfusser, we would like to share with the parties and the legal
10 representatives an idea for tomorrow and the day after tomorrow.

11 The afternoon session, of course I am going to ask the
12 interpreters whether they will be fine, to have instead of one hour and a
13 half in the afternoon session to have one session of two hours. So we
14 shall have a short break, lunch break, just one hour from 1.00 to 2.00.
15 This is in the schedule. But instead of starting as of 2.00 to
16 3.30 p.m., just to extend it to 4.00.

17 So how do the parties feel about this in order to advance?
18 Because there is something else. You know that on Friday when the
19 closing statements will be, maybe the Defence will need some additional
20 sessions on Friday. We are going to be in courtroom II where the seats
21 are very limited, so that's why we would like a little bit to advance.

22 How does the Prosecutor's Office feel about having instead of one
23 hour and a half two hours in the afternoon first session?

24 MS SAMSON: No objection, your Honour.

25 JUDGE TRENDAFILOVA: Mr Desalliers.

1 MR DESALLIERS: (Interpretation) That would pose no problems for
2 the Defence. Thank you.

3 JUDGE TRENDAFILOVA: Finally, of course, because the interpreters
4 have the decisive saying at the end, but let me in a way see how the
5 parties and the legal representatives feel.

6 What about the legal representatives of the victims?

7 MS PELLET: (Interpretation) That would not be a problem for us
8 either. Thank you.

9 JUDGE TRENDAFILOVA: And the interpreters have the decisive word.

10 THE INTERPRETER: The interpreters would be pleased to
11 accommodate your request.

12 JUDGE TRENDAFILOVA: Thank you so much.

13 So tomorrow we start in the afternoon at 2.00 and we shall
14 proceed until 4.00. Really, thank you very much. Very much obliged on
15 behalf of the Bench.

16 Now, Ms Samson -- and I thank the parties and the legal
17 representatives as well for their readiness.

18 Ms Samson, you have the floor.

19 MS SAMSON: Thank you, Madam President.

20 The Prosecution will now turn to its presentation, which will be
21 brief, on the crime of sexual slavery of UPC child soldiers. The
22 presentation will address the evidence in support of the constituent
23 elements of the war crime of sexual slavery of which there are two.

24 May I ask the court officer please to permit the viewing of our
25 visual aid.

1 First, your Honours, it is clear from the evidence that the UPC
2 soldiers and commanders exercised powers attached to the right of
3 ownership by depriving the victims of their liberty in accordance with
4 element 1.

5 The evidence of the witnesses that your Honour and the Chamber
6 has already heard in the Prosecution's presentation on the constituent
7 elements of rape of child soldiers demonstrates that Bosco Ntaganda's
8 troops used the child soldiers as personal property. The perpetrators
9 reduced them, the child soldier victims, to a servile status and
10 exploited them. They brutally raped them and otherwise sexually
11 exploited them over a long period of time.

12 They were -- the perpetrators were themselves in complete
13 physical control of the victims, who were in a position of vulnerability
14 and had no possibility or choice to make any decisions. The Chamber has
15 heard already extensively from the account of child soldier P-0758. Her
16 account demonstrates both a deprivation of her liberty through fear and
17 having nowhere else to go, including the inability to leave or face
18 punishment and physical assault. Her statement and account also proves
19 her treatment as an object. She provided sexual services and domestic
20 labour and she was exploited at will.

21 In her statement she explains, and I quote: "I did not flee
22 because they shot at people who tried to flee." And later in her
23 statement she recounts, and I quote again: "One night I failed to arrest
24 a man while we were raiding the houses and my superior reported me. The
25 leader was angry with me and took my uniform and weapon away and made me

1 work, cleaning for the authorities at the camp. It was a lot of work,
2 fetching water, washing dishes, and washing clothes. While I was doing
3 this work, I did not have my own hut. I slept in the hut of any of the
4 men who was having sex with me that night as they were all raping me."

5 This evidence demonstrates the complete lack of autonomy
6 experience by girl child soldiers in the ranks of the UPC army. The
7 evidence also shows that this witness, P-0758, was subjected to
8 exploitation with regard to domestic and sexual servitude. Her account
9 continues to describe this objectification, and I quote:

10 "The soldiers at the camp called the females in the camp a
11 guduria. A guduria is a large cooking pot used to cook food for
12 recruits. They called us this because a guduria cooked all kinds of
13 food, thus they compared us to this because any soldier could sleep with
14 us whenever they wanted."

15 She then recounts a particular episode in her experience, which
16 is illustrative of this attitude within the UPC army, and I quote:

17 "I asked the leader why they were mistreating me as I washed,
18 cooked, and fetched water for all of them. The leader said they were not
19 mistreating me, that he would give me a day off, and he would tell his
20 subordinates not to mistreat me. I was very happy to hear this and
21 planned to sleep the whole day because I was tired. The next day the
22 leader, whose name I do not remember, called me and told me: 'Because
23 you want to rest, I am going to sleep with you.' I refused to sleep with
24 him, so he called 15 filthy boys, and he told me, 'You see those boys?
25 They will sleep with you.' I asked him to forgive me, as I considered
26

1 him like my father. He said, 'Your father is dead,' adding that he had
2 killed him during the war. He was lying, but at that point I believed
3 him.

4 Further accounts by Witness P-0046, UN child protection officer,
5 describes other examples of sexual slavery at the hands of the UPC army.
6 A 15-year-old girl reported by P-0046 was abducted in April 2002 by the
7 UPC and handed over to a commander as his wife as soon as she arrived at
8 the Bule training camp. P-0046 received information that on 30 November
9 two girls, aged 14 and 15, were reportedly taken from their homes by a
10 military of the same unit and used as sex slaves.

11 The girl soldiers that P-0046 met with said they had been used as
12 foot soldiers, domestics, and for the purposes of sexual slavery. They
13 were war wives.

14 Madam President, based also on the evidence that the Prosecution
15 has presented to establish the count of rape, the Prosecution submits
16 that the evidence proves a substantial ground to believe that the UPC
17 army committed sexual slavery against girl child soldiers.

18 I will deal very briefly with the second element, which is that
19 the perpetrators caused those witnesses and other victims detained with
20 them to engage in an act of sexual nature. One or more UPC perpetrators
21 penetrated the victims by force. They were raped under circumstances of
22 extreme coercion. They could not leave. In our submission,
23 Madam President, your Honours, this element too has been established.

24 Prior -- your Honour, that concludes the presentation of the
25 evidence on those two crimes combined.
26

1 Prior to moving on, I ask your indulgence and permission to show
2 the photograph that earlier I wasn't able to show of child soldiers.

3 JUDGE TRENDABILOVA: Of course, Ms Samson. There was just a
4 technical issue.

5 MS SAMSON: Yes.

6 JUDGE TRENDABILOVA: But if it is resolved, you have all the
7 reasons to show it to the Chamber.

8 MS SAMSON: Thank you.

9 I would ask the court officer, please, to pull up
10 EVD-PT-OTP-06344.

11 THE COURT OFFICER: Ms Samson, is the document public, please?

12 MS SAMSON: Yes, it is public.

13 THE COURT OFFICER: Thank you.

14 MS SAMSON: Madam President, your Honours, the photograph that is
15 on the screen was provided by Witness P-0768 who, in his account, asserts
16 that these children were sent from Bunia by Bosco Ntaganda to participate
17 in the assault in Banyali-Kilo, including Mongbwalu, in
18 November/December 2002. Witness P-0768 confirms that these children
19 participated in the conflict in this particular assault in the troops of
20 P-0768. The photograph, according to P-0768, depicts a moment when they
21 were being demobilised albeit from a contingent of the UPC that after
22 March 2003 defected from the UPC. The information from P-0768 is that
23 these children, predominantly Hema, came from Bunia, and that they were
24 to be repatriated to Bunia at this ceremony at the instigation of an NGO.

25 The Prosecution submits that this photograph shows on substantial
26

1 grounds to believe that children under the age of 15 participated in
2 hostilities on behalf and by the UPC.

3 I will now turn, your Honour, to the first presentation on the
4 modes of liability which my colleague Ms Luping will present, and she
5 will be presenting Articles 25(3)(a) and 25(3)(d).

6 JUDGE TRENDAFILOVA: Thank you, Ms Samson, very much. And
7 welcome again to the courtroom and to the stand, Ms Luping.

8 MS LUPING: Thank you, Madam President, your Honours. If we
9 could just have a few moments to set up the visual aids.

10 JUDGE TRENDAFILOVA: Of course. You have all the time necessary.

11 MS LUPING: Madam President, your Honours, if the court officer
12 could please ensure that we have access so that we could show our visual
13 presentation. Thank you.

14 The Prosecution submits that there are substantial grounds to
15 believe that Bosco Ntaganda bears individual criminal responsibility for
16 the crimes as charged which he committed, ordered, induced, and/or
17 attempted pursuant to Article 25(3)(a), as a direct perpetrator, a direct
18 co-perpetrated and/or an indirect co-perpetrated, under Articles 25(3)(b)
19 and 25(3)(f), or to which he contributed pursuant to Article 25(3)(d), or
20 as a military commander pursuant to Article 28(a).

21 I will be dealing with the key evidence demonstrating on
22 substantial grounds to believe that Bosco Ntaganda bears individual
23 criminal responsibility for crimes charged that, pursuant to
24 Article 25(3)(a), he committed as a direct perpetrator, direct
25 co-perpetrated and/or an indirect co-perpetrated, as well as pursuant to
26

1 Article 25(3)(d) for in any other way that he contributed to the
2 commission or attempted commission of these crimes by a group of persons
3 acting with a common purpose.

4 My colleague Ms Solano will be dealing with the key evidence
5 demonstrating on substantial grounds to believe that Bosco Ntaganda bears
6 individual criminal responsibility for the crimes charged pursuant to
7 Articles 25(3)(b) and/or Article 20(a).

8 Starting with Article 25(3)(a) and Bosco Ntaganda's individual
9 criminal responsibility as a direct perpetrator.

10 The Prosecution submits that there are substantial grounds to
11 believe that Bosco Ntaganda is individually criminally responsible under
12 Article 25(3)(a) as a direct perpetrator because he fulfills both the
13 objective and subjective elements of the offences as charged.

14 You have heard my colleagues, Ms Rabanit and Mr van der Werf,
15 describe key evidence demonstrating on substantial grounds to believe
16 that Bosco Ntaganda himself also committed many of the crimes as charged
17 as a direct perpetrator. And I simply refer to some of the examples.

18 First, murder, the example as described of the killing of the
19 Abbe in Mongbwalu, as illustrated by Witnesses P-0038, P-0768, and
20 P-0315.

21 Pillaging and property destruction.

22 My colleague, Mr van der Werf, described how Bosco Ntaganda was
23 also directly involved in pillaging in Mongbwalu and Sayo as described by
24 UPC military insiders P-0017; P-0038; P-0768; P-0016; and international
25 NGO researcher, P-0315.

1 His involvement in the assaults on a protected object, just one
2 example, the church in Sayo, as described by UPC former military insiders
3 P-0768 and P-0017.

4 My colleagues have also referred to evidence indicating
5 Mr Ntaganda's own direct involvement in the forcible displacement and
6 persecution of the non-Hema civilian population including, for example,
7 by his role in planning key assaults including in Banyali-Kilo and in
8 Walendu-Djatsi collectivités, aimed at ousting the non-Hema civilian
9 population, as well as examples given of orders and statements made by
10 Bosco Ntaganda encouraging the UPC forces to ensure that Lendu be
11 exterminated or chased from their areas so these areas could be occupied
12 by UPC. And by way of example, I refer to Witness P-0768. And I recall
13 and I quote, as he stated:

14 "The Lendu were our enemies, "Bosco Ntaganda would tell the
15 forces, "and that we needed to exterminate them, to make them disappear,
16 and chase them away from those territories that we were occupying. That
17 didn't happen only on one occasion. He was repeating that all the time
18 and I was present multiple times when he said such instructions."

19 Other witnesses describing Bosco Ntaganda's role in the hunting
20 down and elimination of those viewed as enemies of the UPC include
21 Witness P-0016 and P-0046.

22 Finally, my colleague, Ms Samson, has described how
23 Bosco Ntaganda was also involved in the conscription, enlistment, as well
24 as use of child soldiers. And I refer, by way of example, to the
25 evidence as articulated from Witnesses P-0016, P-0046, P-0758, and
26

1 P-0010.

2 Madam President, your Honours, turning now to Article 25(3)(a)
3 and Bosco Ntaganda's responsibility as a direct co-perpetrator and/or
4 indirect co-perpetrator.

5 The Prosecution submits that there are substantial grounds to
6 believe that Bosco Ntaganda bears individual criminal responsibility for
7 crimes charged that he committed as a direct co-perpetrator and/or
8 indirect co-perpetrator. Before analysing the key evidence in relation
9 to this mode of liability, the Prosecution recalls that there are the
10 following elements to be proven in relation to this mode of liability.

11 First, in terms of the objective elements, both direct and
12 indirect co-perpetration require proof of the following common objective
13 elements. First, the existence of a common plan or agreement. The
14 Prosecution must establish the existence of a common plan or agreement
15 between two or more persons, including the suspect. The Prosecution is
16 not required to prove that the plan was specifically directed at
17 committing a crime. It is sufficient to establish that the common plan
18 included a critical element of criminality; namely, that its
19 implementation would, in the ordinary course of events, lead to the
20 commission of a crime.

21 Secondly, both forms of direct and indirect co-perpetration
22 require proof of Bosco Ntaganda's individual contributions. The
23 Prosecution recalls that as the majority found in the case against
24 Mr Thomas Lubanga, for the purposes of co-perpetration under
25 Article 25(3)(a), and I quote: "None of the participants exercises,
26

1 individually, control over the crime as a whole but, instead, the control
2 over the crime falls in the hands of a collective as such."

3 As a result, your Honours, in our submission the term
4 "essential," which the same Trial Chamber used to qualify the suspect's
5 contribution, does not mean that the individual suspect must have had the
6 power to stop the crime or frustrate its commission. Instead, as the
7 majority in the case against Thomas Lubanga emphasised, and I quote:
8 "The co-perpetrator's role is to be assessed on a case-by-case basis,"
9 and this assessment, "involves a flexible approach undertaken in the
10 context of a broad inquiry into the overall circumstances of a case."

11 The Prosecution further recalls that the mode of liability in
12 relation to indirect co-perpetration requires the following additional
13 proof of these objective elements. First, use of another person or an
14 organised apparatus of power. If, as in this case, the Prosecution
15 alleges that the suspect committed crimes by acting through an organised
16 and hierarchal apparatus of power, the Prosecution must further establish
17 the existence of an organisation that is based on hierarchical
18 relationships between superiors and subordinates.

19 The second requirement in the context of indirect co-perpetration
20 is the requirement to prove the suspect's ability to cause the
21 organisation to contribute to the crime. Pre-Trial Chamber I in its
22 Confirmation Decision in the case of Prosecutor and Katanga-Ngudjolo
23 articulated this concept as requiring a showing that the suspect, and I
24 quote, "mobilised his authority and power within the organisation to
25 secure compliance with his orders." Accordingly, in our submission,
26

1 there is a requirement to show that in the context of the suspect's
2 specific position of authority or role within the organisation that he
3 had the ability to cause the organisation to contribute to the crime.

4 Whilst compliance with orders is one possible manner to establish
5 this element, in our submission it is not the only one.

6 Finally, in terms of objective elements, in relation to indirect
7 co-perpetration, another element to be proven is that the organisation is
8 composed of fungible individuals capable of replacement by others. Now
9 in our submission this element overlaps to some extent with the previous
10 element. It requires that the implementation of the will of the indirect
11 co-perpetrators cannot be compromised by a particular subordinate's
12 failure to comply because the individual subordinates within the
13 organisation are fungible.

14 Turning now to the subjective elements for both direct and
15 indirect co-perpetration.

16 The Prosecution recalls that according to Article 30, the suspect
17 must have acted with both intent and knowledge. First dealing with the
18 element of intent.

19 The Prosecution refers to Article 30(2) and the fact that in the
20 context of this case the concept of *dolus directus* of the second degree
21 requires that the Prosecution establish that the suspect was aware that
22 implementing the common plan would, in the ordinary course of events,
23 result in the commission of crimes charged.

24 In terms of the suspect's requisite knowledge, the Prosecution
25 refers to the language of Article 30(3) and emphasises that in the
26

1 context of this case against Bosco Ntaganda, the suspect must also be
2 aware first that the common plan or agreement involved an element of
3 criminality; and secondly, of the factual circumstances that enabled him,
4 together with other co-perpetrators, to jointly exercise functional
5 control over the crime.

6 In terms of subjective elements, in addition for indirect
7 co-perpetration through an organised and hierarchal apparatus of power,
8 the Prosecution must further establish that the suspect was aware of the
9 fundamental features of the organisation. In addition, the Prosecution
10 must establish the suspect's knowledge in relation to circumstances
11 relevant to the chapeau elements of war crimes and crimes against
12 humanity as dealt with extensively in my submissions yesterday.

13 Madam President, your Honours, now turning to the evidence - the
14 key evidence - in this case, and I will first address the common
15 objective elements required for both direct co-perpetration and indirect
16 co-perpetration. And first, the question of the existence of a common
17 plan or agreement between Bosco Ntaganda and his co-perpetrators.

18 The Prosecution submits that there are substantial grounds to
19 believe that there was a plan and to which Bosco Ntaganda contributed
20 that the UPC forces should assume the military and political control of
21 Ituri, occupy the non-Hema dominated areas in Ituri, as well as expel the
22 non-Hema civilian population by various means which included the
23 commission of the following crimes: Murder or attempted murder, attacks
24 against a civilian population, rape, sexual slavery, persecution,
25 pillaging, forcible transfer of the population, enlistment and
26

1 conscription of children under the age of 15 and their use to participate
2 actively in hostilities, in addition to attacks against protected objects
3 and the destruction of property.

4 This, your Honours, is what we define to be the common plan.

5 Now much of the key evidence relating to the plan to take over
6 Ituri and to oust the non-Hema civilian population has already been
7 canvassed in my presentation on the organisational policy of the UPC/FPLC
8 as an organisation. However, I will be dealing with some examples of key
9 evidence that establishes this element to be proven.

10 There are substantial grounds to believe that Bosco Ntaganda
11 committed each of the charged crimes in concert with others either
12 personally or through his contribution to the common plan by means which
13 included his personal commission of crimes.

14 There are substantial grounds to believe that Bosco Ntaganda,
15 Thomas Lubanga, Floribert Kisembo - at least until early December 2003 -
16 as well as others were co-perpetrators to this common plan which lasted
17 from about 2 July 2002 to approximately 31 December 2003.

18 As described by my colleague Ms Samson, these co-perpetrators
19 were associated since 2000. In 2002, Thomas Lubanga was the minister of
20 defence in the RCD-K/ML as well as the president of the UPC. According
21 to UPC military insiders, Witnesses P-0055 as well as P-0016,
22 Bosco Ntaganda at this time was a member of the APC; namely, the armed
23 wing of the RCD-K/ML.

24 A former PUSIC political insider, Witness P-0012, describes how a
25 rivalry and a rift had developed between Thomas Lubanga who was supported
26

1 by Bosco Ntaganda and Kisembo against President Nyamwisi of the RCD-K/ML.

2 Witness P-0012 and former UPC military insider P-0768 also
3 describe how in March to April 2002 Bosco Ntaganda and his
4 co-perpetrators within the APC who were loyal to Thomas Lubanga revolted
5 against President Nyamwisi.

6 According to Witnesses P-0012 and P-0016, these very same
7 individuals who had orchestrated the first mutiny within the APC in 2000;
8 namely, Bosco Ntaganda, Kisembo, Tchaligonza, Kasangaki and Bagonza acted
9 together again with Thomas Lubanga to organise this second revolt against
10 President Nyamwisi and the RCD-K/ML in 2002.

11 The accounts of Witnesses P-0012 and P-0016 are supported by
12 contemporaneous documentary evidence; for example, a letter written by
13 the then-governor, Molondo Lopondo, in May 2002 and a letter from
14 John Tenanzabo, the former UPC secretary general, dated June 2004
15 describing the second mutiny within the RCD-K/ML.

16 A number of witnesses including former UPC military insiders
17 P-0016; P-0038; former UPC political insider, P-0041; UN investigator
18 P-0046; NGO worker, P-0031; and UPC political insider -- P-0041, sorry;
19 and NGO worker, P-0031; and finally journalist, P-0014, all provide
20 evidence confirming that between April and August 2002 Bosco Ntaganda and
21 his other co-perpetrators contributed to the implementation of this
22 common plan by establishing training camps, by recruiting of young
23 persons including children under 15, by securing weapons and uniforms for
24 the recruits, as well as by leading operations to oust the RCD-K/ML and
25 take control of Bunia on behalf of the UPC/FPLC.

26

1 Former UPC commander P-0016 and journalist P-0014 were present in
2 Bunia in the summer of 2002 and they saw recruits being trained at UPC
3 headquarters, including children under the age of 15. As journalist
4 P-0014 and former UPC child soldier P-0758 confirm, they saw and they
5 heard that these children were trained to take control of Bunia and Ituri
6 by means which included the commission of crimes against the non-Hema
7 civilian population including the Lendu.

8 As previous described yesterday in the presentation on contextual
9 elements, Bosco Ntaganda was a commander who took part in the UPC assault
10 on Bunia in early August 2002 in which the UPDF provided support. And in
11 that assault, the UPC forces took control of Bunia resulting in the
12 displacement of thousands of civilians, murder of some hundred civilians,
13 rape, large-scale pillaging, and property destruction. And it was
14 following this assault on Bunia in August that the UPC officially emerged
15 as the movement and power.

16 On 11 August 2002, Thomas Lubanga and others holding positions
17 within the UPC signed a declaration declaring that they were in charge of
18 the political, economic, and military management of Ituri.

19 Witnesses, including UPC military insider P-0016, confirm that on
20 the 2nd and the 3rd of September, 2002, President Lubanga formally
21 established and named the UPC's military wing the FPLC, thereby
22 formalising the pre-existing military structure of the UPC.

23 Witnesses, including UPC military insiders P-0016, P-0768, and
24 P-0055, confirm that Lubanga appointed Kisembo and Bosco Ntaganda as
25 chief of staff and deputy chief of staff respectively. UPC military
26

1 insiders P-0055 and P-0038 confirm that Lubanga appointed Kahwa as
2 minister of defence and placed Rafiki in charge of security and head of
3 the AGS.

4 Witnesses, including PUSIC political insider P-0012, further
5 confirm that Tchaligonza, Bagonza, and Kasangaki were senior military
6 commanders within the structure. Lubanga also appointed his full
7 political executive.

8 These co-perpetrators met frequently to discuss strategy and the
9 implementation of the common plan. As an example, former UPC political
10 insider P-0041 and former UPC military commander P-0016 described how the
11 military leaders, including Bosco Ntaganda, Lubanga, and Kisembo
12 conducted regular meetings with one another to strategise and to plan.

13 Turning now, your Honours, to Bosco Ntaganda's individual
14 contributions to the plan.

15 In our submission there are five factors -- key factors
16 indicating Bosco Ntaganda's contribution to the crimes as charged.

17 First, in terms of recruitment, training, and using young persons
18 including those under the age of 15, to participate actively in
19 hostilities.

20 Secondly, planning attacks, ordering, and encouraging UPC forces
21 as well as the Hema civilian supporters to commit crimes by securing and
22 distributing weapons and ammunition in advance of and during various
23 assaults by deploying troops, by commanding operations, and by
24 communicating with superiors and subordinates on military matters.

25 Thirdly, Bosco Ntaganda's contributions can be seen by the
26

1 meetings and the maintenance of regular contact with his co-perpetrators
2 to discuss the implementation of the common plan as well as his briefing
3 and his instructing of troops on operational matters.

4 Fourthly, his contributions can be seen by his failure, when
5 under a duty stemming from his position, to take adequate steps to ensure
6 that the UPC forces and Hema civilian supporters would act to protect the
7 non-Hema civilian population residing in areas under their control.

8 And finally, a fifth factor in which his contributions can be
9 seen is in the way he facilitated or encouraged the commission of crimes
10 by the UPC forces and supporting Hema civilians through his own criminal
11 actions and by failing, when under a duty stemming from his position, to
12 take adequate steps to prevent, repress, or punish the perpetrators of
13 such crimes.

14 Now dealing with the key evidence relating to these five factors
15 in turn. First in terms of the recruitment, training, and use of young
16 persons.

17 Your Honours, you've heard my colleague, Ms Samson, speaking of
18 Bosco Ntaganda's role in the recruitment, training, and use of young
19 persons. I would simply recall that the witnesses, including UN child
20 protection officer and investigator P-0046, UPC military insider P-0768,
21 and UPC political insider P-0041 confirm that Bosco Ntaganda personally
22 recruited soldiers including children under the age of 15.

23 Witnesses P-0014, P-0016, P-0055, and P-0768, all former UPC
24 military insiders, in addition to the journalist P-0014, state that
25 Bosco Ntaganda himself regularly inspected the training camps.
26

1 UPC military insiders P-0758 and P-0768 as well as UPC political
2 insiders P-0041 further confirm that when Bosco Ntaganda visited the
3 training camps, he saw children being trained and he encouraged them.
4 According to Witness P-0055, Bosco Ntaganda also personally attended
5 various passing out ceremonies when the child recruits had finished their
6 training and they were ready for deployment and use.

7 In a video at Rwampara depicting Bosco Ntaganda as well as
8 Thomas Lubanga and Tinanzabo, we see Bosco Ntaganda at one visit to the
9 Rwampara training camp on the 12th of February, 2003. During this visit,
10 as depicted in this video, Thomas Lubanga gave a speech to the recruits
11 in which he stated that Bosco Ntaganda must visit the recruits in the
12 training camp because he needed troops. Lubanga further explained that
13 he, Bosco Ntaganda, and other senior leaders of the UPC/FPLC had come to
14 encourage the recruits in their training.

15 Turning to the second factor relating to Bosco Ntaganda's
16 contributions; namely, his contributions to the assaults. My colleague,
17 Mr van der Werf, described how Bosco Ntaganda contributed to the specific
18 UPC assaults that were conducted in the Banyali-Kilo as well as
19 Walendu-Djatsi collectivités. I would simply recall that witnesses
20 P-0016, P-0017, as well as P-0038, all UPC military insiders, confirm
21 that Bosco Ntaganda acquired and distributed weapons as well as
22 ammunition within the UPC/FPLC.

23 P-0017 describes how he saw that Bosco Ntaganda's own residence
24 was the site of a weapons depot.

25 Senior UPC military insider P-0055 explained how weapons would
26

1 come from Rwanda and it was Bosco Ntaganda who would collect and then
2 distribute them.

3 These witnesses also described how Bosco Ntaganda personally
4 transported weapons and ammunition by aircraft to troops stationed in Aru
5 in preparation for the attack on Mongbwalu. Similarly, this senior
6 military insider, P-0055, stated that Bosco Ntaganda, as the chief of
7 staff in charge of operations, would distribute ammunition to the troops
8 once they had arrived.

9 Witnesses, including UPC military insiders P-0016, P-0055, and
10 P-0038, further confirm that as the deputy chief of staff in charge of
11 operations, Bosco Ntaganda conceived of and planned military operations.
12 Other witnesses, including UPC military insiders P-0290 and P-0055, also
13 described how Bosco Ntaganda's role, as the operations commander,
14 included his creation of sectors, deployment of troops to the field, and
15 his role as a key commander of military operations.

16 Turning to the third factor showing Bosco Ntaganda's
17 contributions; namely, the communications that took place amongst the
18 co-perpetrators as well as Bosco Ntaganda with other UPC forces.
19 Witnesses, including UPC military insiders P-0016, P-0290, and P-0017
20 confirm that Bosco Ntaganda was in constant communication not only with
21 his co-perpetrators but also with his subordinates, whether he was at his
22 headquarters or whether he was in the field. He was regularly
23 communicating with his soldiers using Motorola, the standard method of
24 communication within the UPC/FPLC.

25 But in addition to that, Bosco Ntaganda was also communicating
26

1 via satellite phone and long-distance radio. He had a call-sign. His
2 call-sign was Tango-Romeo. The evidence relating to these communications
3 that were taking place is not only described by witnesses who saw and
4 heard Bosco Ntaganda communicating with his co-perpetrators and his
5 subordinates. There is also documentary evidence, contemporaneous
6 evidence. For example, the UPC/FPLC log-book as authenticated by
7 Witness P-0290. The log-book contains numerous examples of
8 communications between Bosco Ntaganda, his co-perpetrators, as well as
9 Bosco Ntaganda with his subordinates. In addition, there is the evidence
10 of written orders signed by Bosco Ntaganda to his subordinates such as
11 the Songolo, as I described in the presentation on contextual elements.

12 Moving to the fourth factor showing Bosco Ntaganda's
13 contributions; namely, evidence showing that he facilitated or he
14 encouraged crimes and that he failed to take steps to protect the
15 non-Hema civilian population. My colleague, Ms Solano, will detail key
16 evidence when she deals with Bosco Ntaganda's mode of liability under
17 Article 28 in terms of his failure to take steps to protect the civilian
18 population.

19 In terms of his encouragement of crimes, by way of example I
20 recall witnesses such as UPC military insiders P-0038 and P-0017 as well
21 as the international NGO researcher P-0315 who met with survivors and
22 eye-witnesses. All of these witnesses confirmed that during the
23 Mongbwalu attack of November 2002, Bosco Ntaganda deployed his troops, he
24 briefed them in advance of the assault on Mongbwalu, and he gave specific
25 instructions to carry out criminal activities.

26

1 Witness P-0055, the senior UPC military insider, further
2 describes how Bosco Ntaganda participated in pre-planning meetings for
3 the assault on the Walendu-Djatsi collectivité, including the villages of
4 Lipri, Kobu, and Bambu, and how Bosco Ntaganda played a key role in
5 commanding the attack from Bunia, stating that Bosco Ntaganda's role was,
6 and I quote, "to control the fighting as it was happening."

7 Bosco Ntaganda's failure to punish any of the direct perpetrators
8 of the crimes being committed during the two assaults on Banyali-Kilo, on
9 Walendu-Djatsi collectivités, confirm how he approved and encouraged the
10 crimes.

11 Madam President, your Honours, I now turn to the additional
12 objective elements to be proven for indirect co-perpetration.

13 One moment, your Honours.

14 There are three additional objective elements relating to the
15 mode of liability of indirect co-perpetration that requires to be proven.
16 The first relates to the use of another person or the use of an organised
17 apparatus of power.

18 The implementation of the common plan was effected by an
19 organised hierarchy comprised of Thomas Lubanga as the president and
20 commander-in-chief; Floribert Kisembo as chief of staff; and
21 Bosco Ntaganda as deputy chief of staff as well as operational commander.

22 From its creation on the 15th of September, 2000, the UPC quickly
23 developed into a sophisticated and structured political organisation.
24 The UPC's administration of Ituri resembled very much that of a
25 government running a country, with national secretaries working directly
26

1 with President Lubanga.

2 The UPC's military wing, the FPLC, was formally established in
3 September 2002 through the appointment of commanders and soldiers already
4 closely associated with the UPC political organisation. Staff officers
5 in charge of personnel, intelligence, logistics, administration, civilian
6 and military operations reported to the chief of staff as well as
7 Bosco Ntaganda as deputy chief of staff in charge of operations and
8 organisation.

9 The FPLC was a fully functioning army with its main staff
10 headquarters located in Bunia. It was comprised of sectors, brigades,
11 battalions, companies, platoons, and sections situated throughout Ituri
12 and with each brigade containing between approximately 1.000 to 1.500
13 soldiers. It operated according to a chain of command where reports and
14 orders were relayed down from headquarters to the field as well as up the
15 chain of command. It mirrored the conventional structure of a
16 traditional army within which Bosco Ntaganda discharged significant
17 military functions.

18 The UPC/FPLC forces also received military training including in
19 weapons, drills, tactics, as well as respect for the hierarchy. The
20 UPC/FPLC had an effective communications system that used satellite
21 communications as well as Motorola radio-phonies or man-packs, as they
22 are also known, with most officers or commanders using individual
23 military call signs during their communication. There were structured
24 and efficient reporting mechanisms which enabled the FPLC hierarchy,
25 including Bosco Ntaganda, to be informed of all critical developments.
26

1 Key UPC military insiders including Witnesses P-0016, P-0055,
2 P-0768, as well as UPC military insiders P-0290, P-0017, and P-0038
3 describe in detail this organisation, the hierarchy, the mechanisms for
4 reporting, and all of the system as I've described.

5 Turning to the second additional requirement in the context of
6 indirect co-perpetration; namely, that the organisation is composed of
7 fungible individuals capable of replacement by others.

8 My colleague, Ms Samson, described evidence in relation to the
9 recruitment drives that were being conducted within the UPC/FPLC for
10 child soldiers as well as soldiers. I would simply recall that witnesses
11 such as journalist P-0014 and the UPC military insiders P-0016 and P-0038
12 described the pressure that was placed on communities as well as
13 individuals to join the UPC. This active recruitment and use of large
14 numbers of recruits ensured that the UPC/FPLC organisation had fungible
15 individuals capable of replacement by others.

16 I now turn to the next element required for indirect
17 co-perpetration; namely, the suspect's ability to cause the organisation
18 to contribute to the crime including by compliance with orders.

19 There are substantial grounds to believe that Bosco Ntaganda, by
20 virtue of his own position and authority within the UPC/FPLC, namely, as
21 deputy chief of staff and operational commander, was able to cause the
22 organisation to contribute to the crimes. First, Bosco Ntaganda's
23 position and his level of authority within the organisation is evidenced
24 by the following:

25 The evidence of UPC military insider witnesses, such as P-0016,
26

1 P-0055, P-0768, P-0017, and P-0290, who all confirm that he was deputy
2 chief of staff and operational commander.

3 The Rwampara video of 2002 in which Thomas Lubanga publicly
4 referred to Bosco Ntaganda as the "chief of staff." Sorry to correct
5 there, that was the video in 2003.

6 Further, the Mongbwalu video of 2002 during which Bosco Ntaganda
7 stated, and I quote: "I'm not a sector commander. I'm chief of staff,
8 operations commander."

9 His position and authority as deputy chief of staff and
10 operational commander are further evidenced by many log-book messages in
11 which he's described as "chef d'état major adjoint for operations and
12 organisation." And I will provide some examples from the log-book of
13 this.

14 THE COURT OFFICER: Ms Luping, are these extracts public?

15 MS LUPING: Yes, they are.

16 The first example before you, Madam President, your Honours, is
17 of a log-book message from the FPLC log-book. It's dated the
18 13th of February, 2003. It's from Bosco Ntaganda. And in this message,
19 and I quote, he states:

20 "(Interpretation) You are informed hereby that you should tell
21 the commander what the chain of command is. I don't want any further
22 case of a commander sending me a message. I am not a military or person.
23 I am the deputy chief of staff responsible for operations and
24 organisation."

25 (In English) In his own words, your Honours, "chef d'état major
26

1 adjoint opération et organisation." In our submission, your Honours,
2 this very same message also demonstrates Bosco Ntaganda's view of his
3 role within the hierarchy within the chain of command and that fact that
4 he didn't want mere commanders communicating directly to him. It needed
5 to be done through the chain of command.

6 The second factor demonstrating Bosco Ntaganda's ability to cause
7 the organisation to contribute to the crime is in that in terms of his
8 position of authority, as previously described, he played a dominant role
9 in the military and in the planning and in the preparation phases of the
10 assaults. He distributed weapons, he decided on deployments, he created
11 military sectors, he issued orders, and he expected that they would be
12 complied with. And I would just present another example from the
13 log-book, your Honours.

14 This is a message dated the 18th of February, 2003. Again, an
15 example of Bosco Ntaganda's expectation that orders would be complied
16 with and his high rank in the chain of command. And I quote:

17 "(Interpretation) There was no commander who has the ability to
18 refuse an order coming from a superior."

19 (In English) Turning to a third example from the log-book,
20 your Honours.

21 In our submission this is an example of how Bosco Ntaganda would
22 decide on deployments and assaults in the field. And this is a message
23 dated the 24th of November in which he states, and I quote:

24 "(Interpretation) You are informed that you have to conduct
25 operations regularly in your zones so that there is no enemy near you."

1 (In English) I turn now to examples coming from the FPLC/UPC
2 log-book demonstrating Bosco Ntaganda's power to punish and to ensure
3 that his orders would be complied with. The first is an example of a
4 message dated the 7th of December, 2002, in which Bosco Ntaganda stated,
5 and I quote:

6 "(Interpretation) I am telling you hereby that I don't want to
7 hear of any more cases of desertion. Anyone caught should be used as an
8 example for the others and should be executed."

9 (In English) A final example, your Honours. In this message
10 dated the 15th of December, 2002, we see an example of how Bosco Ntaganda
11 also had the power to exercise authority over the commander
12 Salumu Mulenda, the same commander who led forces in the later
13 Walendu-Djatsi assault of February to March 2003. In this message we see
14 that Bosco Ntaganda was stating, and I quote:

15 "(Interpretation) Following the strike by
16 Commander Salumu Mulenda, you -- you have to put him in the punishment
17 cell. I know what needs to be done urgently."

18 (In English) Madam President, your Honours, in our submission the
19 very size and structure of the UPC/FPLC also ensured that the
20 subordinates of both Bosco Ntaganda and other senior FPLC officers,
21 including subordinate direct perpetrators of the crimes would comply with
22 their instructions. This is corroborated by the fact that first the
23 perpetrators did not act alone but attacked in groups often composed of
24 dozens of persons. Secondly, the fact that perpetrators were well armed,
25 including with heavy military weapons. And finally, that perpetrators
26

1 received military training including on obedience to hierarchy.

2 Madam President, your Honours, turning now to the subjective
3 elements of direct co-perpetration and indirect co-perpetration.

4 As stated, your Honours, there are two key elements to be proven:
5 Both intent and knowledge. The Prosecution submits that there are
6 substantial grounds to believe that Bosco Ntaganda was aware that the
7 crimes would occur in the ordinary course of events in implementing the
8 common plan and that he knew that his conduct was part of a widespread or
9 systemic attack directed against the non-Hema civilian population
10 pursuant to or in furtherance of the organisational policy and was aware
11 of the factual circumstances that established the existence of an armed
12 conflict.

13 As one of the central figures within the common plan and due to
14 his command and control over the FPLC/UPC forces, Bosco Ntaganda had full
15 knowledge that his contribution to the common plan would bring about the
16 objective elements of the crimes charged and he intended that it be so.

17 The acts perpetrated against the civilian population both prior
18 to as well as after the eight assaults as I described in relation to the
19 contextual elements, these other acts taking place before and after are
20 also relevant to Bosco Ntaganda's intent as well as his knowledge of the
21 crimes as charged.

22 In addition, Bosco Ntaganda, by his participation in or
23 commanding of assaults prior to the two assaults on Banyali-Kilo and
24 Walendu-Djatsi indicate a continuous pattern of conduct. The prior
25 assaults were so widespread or systemic or even notorious that
26

1 Bosco Ntaganda had to have known, at the very minimum, that the same type
2 of prohibited acts perpetrated during those assaults, those prior
3 assaults, would occur in the ordinary course of events during the two
4 assaults on Banyali-Kilo and Walendu-Djatsi collectivités.

5 This is especially so given that as we know from evidence of a
6 number of our UPC military insiders, the direct perpetrators who were
7 deployed in the two assaults on Banyali-Kilo and Walendu-Djatsi had
8 previously been deployed in a number of the prior assaults. The
9 Prosecution submits that Bosco Ntaganda's involvement subsequently after
10 his role within the UPC/FPLC within organisations including the CNDP, for
11 which he was chief of staff of its armed wing, and the M23 in subsequent
12 attacks against civilians and during which similar crimes were being
13 committed also constitute further evidence from which it's possible to
14 infer a continuing pattern of conduct.

15 Madam President, your Honours, I'm conscious of the time, and to
16 avoid breaking up my presentation unduly, if I could suggest that we
17 conclude at this juncture and that I will be continuing tomorrow morning
18 to conclude my presentation in relation to these two modes of liability,
19 with your leave.

20 JUDGE TRENDABILOVA: Well, I think that it is quite a reasonable
21 proposal on your part. The Defence does not object, I hope. The legal
22 representatives not at all. My colleagues do not. Because these are
23 just six minutes and we appreciate this proposal because it's much better
24 for everyone following the presentation that it is not interrupted when
25 not necessary.

1 So I would like to thank everyone, in particular the
2 Office of the Prosecutor because you are now the active actor in the
3 hearings yesterday and today. I would like also to thank the Defence,
4 Mr Ntaganda, for behaving in very respectful way, the legal
5 representatives, our legal support staff, and my thankfulness goes --
6 very special thankfulness to the interpreters, thank you very much for
7 your generosity throughout these two days and for tomorrow as well. Have
8 a very nice evening and tomorrow we resume at 9.30. No, I did to my
9 colleagues and to our legal officers. Of course, I would like to thank
10 the stenographers, the court officers, the security officers, and if I
11 have omitted to mention someone, my thankfulness are extended to those in
12 asking to be excused. Have a nice evening.
13 (The hearing ends in open session at 5.54 p.m.)