

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 1
8 Tuesday, 28 August 2018
9 (The hearing starts in open session at 9.00 a.m.)
10 THE COURT USHER: [9:00:38] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:01:19] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:01:24] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:01:40] Thank you, court officer.
20 It has been a while since our last hearing, so first of all allow me to welcome back the
21 parties, the participants and Mr Ntaganda, the accused. I also welcome those who
22 are watching this hearing from the public gallery and also those who are watching us
23 via the internet.
24 Before I explain the purpose of this hearing, please, as usually, state the appearances
25 for the record. Starting with Prosecution, please.

1 MS BENSOUA: [9:02:23] Mr President, the Prosecution is represented today by
2 Ms Nicole Samson, senior trial lawyer; Dianne Luping, trial lawyer; Eric Iverson, trial
3 lawyer; Marion Rabanit, associate trial lawyer; Kristy Sim, assistant trial lawyer;
4 Rens van der Werf, associate trial lawyer; Laura Morris, assistant trial lawyer;
5 Selam Yirgou, case manager; and myself Fatou Bensouda, Prosecutor.

6 PRESIDING JUDGE FREMR: [9:03:04] Thank you, Ms Bensouda.
7 Now, Defence, please.

8 MR BOURGON: [9:03:08] (Interpretation) Good morning, Mr President. Good
9 morning, your Honours. Good morning to all those in the courtroom.
10 On behalf of Bosco Ntaganda this morning here appearing, Annabelle
11 Gagnon-Bischoff, Constance Reyntjes, Sandrine de Sena, Margaux Portier, Marlene
12 Yahya Haage, Christopher Gosnell, Didace Nyirinkwaya, and myself
13 Stéphane Bourgon. Thank you, Mr President.

14 PRESIDING JUDGE FREMR: [9:03:47] Thank you, Mr Bourgon.
15 And now Legal Representative of Victims, please.

16 MS PELLET: [9:03:52](Interpretation) Thank you, Mr President.
17 Former child soldiers are represented by Alejandro Kiss and myself, Sarah Pellet,
18 counsel at the OPCV.

19 MR SUPRUN: [9:04:07] (Interpretation) Good morning, your Honours. Good
20 morning, Mr President. Victims of the attack are represented by Anne Grabowski,
21 associate lawyer; Dimitri Suprun, myself; and Cherine Luzaisu from the OPCV.
22 Thank you.

23 PRESIDING JUDGE FREMR: [9:04:25] Thank you, Ms Pellet. Thank you,
24 Mr Suprun.

25 And for the sake of completeness I have to add that the Trial Chamber is composed of

1 Judge Kuniko Ozaki on my right, Judge Chang-ho Chung on my left and myself,
2 Judge Robert Fremr.

3 We are here today, tomorrow and most likely also on Thursday for the closing
4 statements of the trial in the case of the Prosecutor against Mr Bosco Ntaganda.

5 Let me first briefly recapitulate procedural history of the case. On 2 September 2015
6 the trial proceedings commenced when the charges were read out to the accused and
7 then the parties and participants made their opening statements.

8 Since then, over the course of 248 hearings we heard witnesses called by
9 the Prosecution, the Defence, and on behalf of the victims. 102 in total.

10 As regards victims, 2,123 of them have been authorised to participate in this trial and
11 five of them presented their views and concerns in person.

12 Over the last few months the Chamber received written closing submissions from the
13 parties and the Legal Representatives of Victims, in total more than 1,400 pages.

14 During the coming days, they will present their cases orally and make their final
15 submissions before the Chamber retires to deliberate.

16 Today, we will first hear the closing statement of the Prosecution. This is going to be
17 followed probably tomorrow morning by the closing statements of the Legal
18 Representatives of Victims, and after that the Defence will present its closing
19 statements, which might be followed by an unsworn statement by Mr Ntaganda.

20 The Defence submissions may last until Thursday morning, then, if requested,
21 the Prosecution and the Defence will be given an opportunity to make brief
22 submissions in response or reply to the submissions made by the respective other
23 party.

24 As the last point, the Defence team for Mr Ntaganda or Mr Ntaganda himself will
25 have then the chance to have the last word.

1 I would like to also remind you that we set up some time schedule, but it is not rigid;
2 we will have to remain flexible. The first session should take approximately until 11,
3 11 o'clock.

4 Now are there any questions concerning my introduction? I see it is not the case.

5 So now we can turn to the Prosecution, Ms Bensouda, you have the floor.

6 MS BENSoudA: [09:07:48] Thank you, Mr President. Mr President, your
7 Honours, at the beginning of this trial three years ago, the Office of the Prosecutor
8 submitted that the evidence will prove beyond any reasonable doubt that between
9 6 August 2002 and 31 December 2003, Bosco Ntaganda, a notorious commander
10 known as "the Terminator" is criminally responsible for crimes against civilians and
11 for the systematic recruitment and use of children under the age of 15 as soldiers in
12 his armed group, and for their rape and sexual slavery.
13 Today, we stand before this Chamber to submit that the evidence has proven beyond
14 all reasonable doubt that Bosco Ntaganda is indeed guilty of the crimes charged
15 against him. The evidence tendered during trial proved the truth of Witness P-859's
16 testimony to the Court. "The UPC's sole objective was to target the Balendu.
17 Everybody knew that ... it was the Lendus who were the real targets." This is what
18 P-859 said.

19 The evidence, Mr President, proves the truth of rape victim P-19's testimony which I
20 recall here:

21 "Did you hear the UPC soldiers talking about the rapes?" He said, "Yes, they talked
22 about it." "What did they say?" He answered, "They said that the Lendu were
23 useless wild animals and we can do with them anything we want. They are not
24 humans."

25 Mr President, the evidence proves the truth of Witness P-105's testimony of the UPC's

1 murder of nearly 50 people, mainly Lendu, in Kobu in February of 2003.

2 I quote, "... a lot of people were executed by hand, with machetes. They used
3 strength to execute them. Some of them were disembowelled, even pregnant
4 women as well. They took the foetus out of the women. And you don't use a rifle
5 to do that, you use something else in order to disembowel a woman. All that made
6 me very sad. The civilian population arrived to identify their families. It created
7 great sorrow," the witness said.

8 The evidence supports UPC commander P-768's testimony that the accused explained
9 to UPC troops that the Lendu were the enemy and that, "you had to kill them and
10 eliminate them". The evidence presented at trial exposes the full spectrum of the
11 UPC's targeted and violent crimes committed in two main charged attacks, as well as
12 against children within its own ranks.

13 The crimes, Mr President, were not random. They were neither isolated or
14 spontaneous. They were part of a carefully planned, coordinated and executed
15 campaign of violence, deliberately targeting the Lendu and Ngiti civilian populations
16 and other non-Hema ethnic groups. Deliberately targeting youth, including children
17 under the age of 15, to recruit, use, rape and sexually enslave in its forces.

18 Mr President, your Honours, these proceedings would not have been possible were it
19 not for the courage and commitment of witnesses who have come before you to
20 testify. Those who were raped, enslaved, maimed and pillaged; those whose loved
21 ones were killed by the UPC; those whose children were recruited, used, raped, or
22 sexually enslaved by the UPC, and of those who were members of the perpetrator
23 group and have told you of the crimes that they and their fellow soldiers and
24 commanders committed during the conflict.

25 The pursuit of justice and the establishment of the truth in these proceedings owes

1 such individuals a debt of gratitude for their truthfulness, their willingness to come
2 forward and tell the Court what they know and of their experiences.

3 Mr President, your Honours, Bosco Ntaganda and his co-perpetrators conceived
4 a plan to assume the military and political control of Ituri and expel the non-Hema
5 civilian population. By controlling Ituri, they not only had significant military and
6 political reach, they also gained enormous economic power. Power meant to benefit
7 themselves and the Hema community. The Lendu, Ngiti and non-Hema civilian
8 populations stood in the way of this plan. Bosco Ntaganda and those who joined
9 him drove out the non-Hema civilian population to gain control of the territory
10 aiming to ensure that they would not return.

11 Bosco Ntaganda and his co-perpetrators not only terrorised the civilian population,
12 they terrorised their own troops. They forced the children in their army to kill.
13 They treated them cruelly. They raped and sexually enslaved them. Witness P-758,
14 who was only 13 at the time, poignantly described for the Chamber the pervasive and
15 degrading sexual violence within the UPC. And I quote her testimony: "Was any
16 term used to describe the female soldiers?" She was asked, and she answered, "Yes."
17 "What was the term?" "They called us the guduria." She is questioned, "Why did
18 they call you 'guduria'?" She said, "Because soldiers who wanted to could sleep with
19 us and that's why they called us 'guduria'."

20 She was questioned further: "What is a guduria?" And she answered, "Guduria is a
21 cooking pot in which you prepare soldiers' food." And when she was further
22 questioned about, "How did you feel when you heard people refer to you and other
23 women and girls at the camp as guduria?" She answered, "I didn't feel well. It
24 wasn't a good name to call somebody. It's a very bad name. It means that the food
25 prepared in this cooking pot is eaten by any soldier. And that's how they treated us.

1 Any person who wanted to sleep with us could do so." That was her testimony.

2 Mr President, this is a landmark case in recognising that the rape and sexual slavery
3 of soldiers by members of the same armed group is a war crime for which this court is
4 empowered to prosecute and convict. The evidence presented at trial proves these
5 horrific sexual crimes beyond reasonable doubt and proves Bosco Ntaganda's
6 criminal responsibility for them.

7 On the strength of the Prosecution's evidence in this case, which I submit confidently
8 meets the applicable standard of proof at trial, the accused must be convicted for the
9 crimes charged.

10 Mr President, your Honours, the evidence shows that Bosco Ntaganda was one of the
11 highest and the most experienced military commanders in the UPC. He planned, he
12 coordinated and commanded the two attacks of November 2002 and February of 2003
13 with Floribert Kisembo and other UPC commanders.

14 The evidence supports UPC soldier P-907's testimony that Bosco Ntaganda "planned
15 the war" and "was in charge of all the war operations." The evidence supports the
16 accused's own testimony when asked if he was viewed as the real operational leader
17 of the army, to which he replied, Bosco Ntaganda said, "I was a tactician, I certainly
18 accept that."

19 The evidence proves that Bosco Ntaganda personally committed crimes. He
20 persecuted and attacked civilians, he murdered them, pillaged their goods, destroyed
21 their churches and hospitals. He enlisted and used children under the age of 15 to
22 participate directly in hostilities. He also made other essential contributions to the
23 common plan to assume military and political control of Ituri and drive out the UPC's
24 enemies; enemies that included the Lendu, Nande and other non-Hema civilian
25 population.

1 He recruited, trained and organised the army, distributed weapons and ammunition,
2 deployed troops, ensured compliance with orders, developed the UPC's
3 communication ability, issued orders to attack, pillage, rape, persecute and kill, and
4 induced the commission of crimes.

5 Crimes of this scale and of this nature required Bosco Ntaganda's direct commission
6 and his essential contribution to their planning and organisation. They required
7 Bosco Ntaganda's will to be executed. As a military commander, Bosco Ntaganda
8 failed to prevent or punish the crimes committed by the troops under his effective
9 command and control. His orders were executed automatically. He knew or
10 should have known that his troops were committing or were about to commit the
11 crimes. These were the same troops that had committed crimes in other attacks,
12 using the same brutal tactics. While Bosco Ntaganda conceded that he could
13 discipline his soldiers at any time, he did not discipline any soldier for the charged
14 crimes.

15 Mr President, your Honours, despite the Defence's claims to the contrary during trial,
16 this was an exemplary trial in terms of fairness. The accused chose an experienced
17 legal team to represent him during the proceedings. He had the full and early
18 disclosure of the Prosecution's witness statements and expert, forensic and
19 documentary evidence. He had the opportunity to cross-examine the Prosecution
20 witnesses and he did so.

21 He fully tested the evidence that incriminates him.

22 Mr Ntaganda was also given full opportunity to present his own witnesses, evidence
23 and arguments, and he testified at great length in his own defence.

24 The Chamber took reasonable and necessary measures to address indications of
25 witness interference or disclosure of confidential information by the accused or his

1 associates. The Chamber restricted the accused's telephone contacts and visits
2 during the trial and regularly reviewed the ongoing need for the restrictions.

3 The Chamber's decisions were fair and ensured the integrity of the trial.

4 There is no doubt that this Chamber ensured a fair trial, which is a cornerstone for the
5 authority of the International Criminal Court.

6 To conclude, Mr President, your Honours, the evidence in this case proves beyond
7 a reasonable doubt that Bosco Ntaganda is guilty of the charged crimes and
8 the Prosecution asks your Honour to so find.

9 My colleague, Ms Nicole Samson, the senior trial lawyer of the case, will now present
10 overviews of the evidence adduced at trial and the scope of the charges. She will
11 also summarise the evidence relating to the charged crimes committed during the first
12 attack in November of 2002.

13 Ms Marion Rabanit will then address the Chamber on the evidence relating to the
14 second attack in February of 2003.

15 Ms Kristy Sim will elaborate on the evidence of the crimes against children in the
16 ranks of the UPC.

17 And Ms Dianne Luping will reveal the evidence of the accused's individual criminal
18 responsibility for the charged crimes, for his direct and co-perpetration of them, for
19 his orders and his inducement to commit crimes and for his contributions to the
20 commission of crimes by persons acting with a common purpose under Article 25.

21 Mr Eric Iverson will then present the key evidence and issues relevant to the
22 accused's individual criminal responsibility as a military commander under
23 Article 28.

24 I thank you, Mr President, your Honours.

25 PRESIDING JUDGE FREMR: [9:24:04] Thank you very much, Ms Bensouda.

1 And now floor goes to Ms Samson.

2 MS SAMSON: [9:24:16] Mr President, your Honours, I will now present a more

3 in-depth overview of the Prosecution's case and the evidence heard at trial.

4 Bosco Ntaganda is charged with 18 counts of war crimes and crimes against humanity

5 committed in 2002 and 2003 in Ituri.

6 Thirteen of these charges relate to violence committed during two separate but

7 related attacks: The first in and around Mongbwalu and four neighbouring villages

8 over a two-week period starting in November 2002. The second in and around Lipri,

9 Bambu, Kobu, and roughly 23 neighbouring villages over a two-week period in

10 February 2003.

11 Five of the charges relate to the enlistment and conscription of children under the age

12 of 15 into the armed wing of the UPC, their use to participate actively in hostilities

13 and their rape and sexual slavery between 6 August 2002 and the end of

14 December 2003.

15 The Prosecution relies on all credible evidence of record and on our comprehensive

16 final written submissions. Our oral arguments today will highlight or emphasise

17 our extensive written submissions and address major issues before you. Neither

18 time nor efficiency allows us to restate the written submissions in our final brief and

19 we will not do so.

20 The overwhelming weight of credible evidence in this case leaves no reasonable

21 doubt that Bosco Ntaganda is guilty of counts 1 through 18 with which he is charged.

22 Your Honours heard credible evidence during trial that in the course of conquering

23 territory in 2002 and 2003 Bosco Ntaganda's forces killed countless Lendu, Ngiti and

24 other non-Hema civilians, and forced thousands away from their homes.

25 The goal to take control of Ituri and to drive out the Lendu, Ngiti and other

1 non-Hema civilians was revealed in Bosco Ntaganda's own orders during military
2 operations and by his own words and conduct.

3 His military subordinates, including Witnesses P-768, P-963, P-10, and P-888, testified
4 about what he said, that the Lendu were the enemy and they needed to eliminate
5 them.

6 This goal was also reflected in the attacks, the killings, and the ousting of large
7 numbers of the non-Hema civilian population.

8 Witnesses from within Bosco Ntaganda's militia and many victims consistently
9 describe the UPC's discriminatory policy and practice. For example, you heard
10 military insider P-963 testify that, quote, "it was a tribal war and the purpose was to
11 drive out the Lendu or eliminate them." End quote. He also told your Honours,
12 quote, "if you were a Lendu person, you were dead. Civilian or combatant, there
13 were no good Lendus." End quote.

14 And the evidence bears out what military insider P-768 told the Court about
15 Bosco Ntaganda's order that Lendu and their allies were the enemy and that you had
16 to kill them and eliminate them. He said, quote, "every time he held a meeting, these
17 words were said again and again. He said the same thing every time." End quote.

18 This witness, P-768, continued to say before this Chamber, and I quote him again,
19 "when Bosco Ntaganda mentioned the Lendu, he did not make any distinction
20 between civilian Lendus and combatants of Lendu extraction ... all those who were of
21 Lendu ethnicity were perceived by the troops to be the enemy without any distinction
22 as to whether it was a civilian population or a combatant, so long as they were
23 Lendu." End quote.

24 Bosco Ntaganda was one of the most senior military commanders in the UPC,
25 shaping and implementing their goals, a man whose military expertise distinguished

1 him. By September 2002 he was officially the deputy chief of staff in charge of
2 operations and organisation of the UPC, but with such extensive de facto powers that
3 your Honours heard him and others refer to him as the chief of staff. By the end of
4 2003 he officially was the chief of staff, as evidenced by the official UPC decree to this
5 effect.

6 The evidence proves that Bosco Ntaganda was a central figure in the command and
7 organisation of the army for all its activities. The evidence bears out what UPC
8 military insider P-907 told you in this court, that you couldn't go to war without
9 Bosco Ntaganda's approval. "He was the person who was responsible, nobody else."

10 And the evidence bears out what senior military insider P-55 told your Honours,
11 quote, "most of the decisions were taken by Mr Ntaganda. Why do I say that? It
12 was Ntaganda who had more experience when it came to managing an army ... That
13 is why most of the operations were conducted by Ntaganda." End quote.

14 And Bosco Ntaganda was feared amongst his troops and within the population.

15 Witness P-190 told your Honours, quote, "Bosco Ntaganda was not accountable to
16 anyone whatsoever. He was a small lord or god, and when he said A, it was A, and
17 when he said B, it was B, final ... everyone feared Mr Bosco, even children feared him.
18 When they heard that Bosco was in a neighbour, they would go into hiding."

19 During the course of this trial your Honours heard evidence about the men with
20 whom Bosco Ntaganda shared the objective to take control of Ituri and drive out the
21 Lendu and non-Hema civilian populations. As early as the summer of 2000 some of
22 them had mutinied from the armed wing of the rebel group controlling Ituri. They
23 resolved to form their own armed group to protect the interests of the Hema
24 community. They united their skills and resources to execute the common plan.

25 Although Bosco Ntaganda was not Hema, an alliance between Hema and Tutsi was

1 not unusual and the group needed his superior military experience to succeed.

2 On your screen is an admitted photograph of some of the main co-perpetrators taken
3 in 2000. Bosco Ntaganda is in the centre.

4 The alliance at this time in 2000 also included Thomas Lubanga, a Hema. He became
5 the spokesperson for the officers who mutinied from the armed wing of the rebel
6 group in power in Ituri in 2000. He was president of the UPC from its creation on
7 15 September 2000. By September 2002 he added commander in chief of the FPLC to
8 his title. He was convicted for war crimes by another Chamber of this Court.

9 Floribert Kisembo, also Hema and one of the mutineers, he later became the UPC
10 chief of staff from early September 2002 to December 2003. Prior to that time, he was
11 Bosco Ntaganda's deputy. In December 2003 he formed his own armed group.

12 Aimable Musanganya Saba, known as Rafiki, a Congolese Tutsi trader who supplied
13 the mutineers with food and other logistics in 2000. In 2002 he became the UPC chief
14 of security.

15 Commander Kasangaki, a Hema and one of the mutineers. In 2002 and 2003 he was
16 an intelligence officer and operations officer in Commander Salumu Mulenda's
17 brigade.

18 In addition to those individuals, the alliance in 2000 also included Commander
19 Tchaligonza, a Hema and a mutineer. In 2002, he was second-in-command of the
20 UPC's southeast sector.

21 And Commander Bagonza, a Hema, a mutineer who became a senior UPC military
22 commander.

23 In the summer of 2000 Bosco Ntaganda had also formed an alliance with Chief Kahwa,
24 an important Hema customary chief of Mandro. Chief Kahwa did not have
25 a military background, but he was instrumental in obtaining weapons for the UPC in

1 the summer of 2002 and providing land for a UPC military training camp in Mandro,
2 which was to become the UPC's largest military camp and weapons depot. In
3 September 2002, he was appointed the UPC deputy national secretary for defence,
4 a position he held for only a short time. Thomas Lubanga officially expelled
5 Chief Kahwa from the UPC in early December 2002. In early 2003, Chief Kahwa
6 formed the armed group PUSIC.

7 The co-perpetrators' initial military alliance in 2000 evolved into the political-military
8 organisation the UPC/FPLC.

9 These mutineers adopted a political agenda when Thomas Lubanga became their
10 spokesperson. They created the UPC on 15 September 2000.

11 The co-perpetrators sought to solidify their political and military alliances, recruit
12 youth for their army and train them. These recruits even in 2000 included children
13 under the age of 15 years. The co-perpetrators viewed the group controlling Ituri at
14 that time, known as the RCD-K/ML, as a group that favoured the Lendu and
15 non-originares, such as the Nande, over the Hema.

16 By April 2002, the co-perpetrators organised a second revolt from the governing rebel
17 group in Ituri. They set up their base in Mandro and took control of part of Bunia
18 town with the other part still under the control of the RCD-K/ML forces.

19 Between May and August 2002, Bosco Ntaganda and his men carried out large-scale
20 recruitment and training, including of children under the age of 15.

21 Between 6 and 9 August 2002, the UPC with Ugandan forces attacked Bunia and
22 drove out the RCD-K/ML. During the takeover of Bunia, as the evidence has shown,
23 the UPC launched targeted attacks against the non-Hema civilian population,
24 perceived to support the RCD-K/ML.

25 On 11 August 2002, just two days after the takeover of Bunia, Thomas Lubanga issued

1 a declaration asserting political, economic and military control of Ituri. This decree,
2 admitted in evidence, was referred to as a foundational document in all subsequent
3 UPC decrees.

4 Your Honours heard evidence that from at least mid-2002 to the end of 2003 the UPC
5 was an organised armed group. It had an established military structure, a large
6 complement of trained soldiers, means of communication and transport, weapons,
7 ammunition and financing. It engaged in fighting with other organised armed
8 groups capable of engaging in protracted armed violence.

9 Your Honours, as the evidence proves, the crimes charged occurred within the
10 context of a non-international armed conflict that ravaged Ituri for over one year.

11 The crimes were also part of a widespread or systematic attack against a civilian
12 population covering a large territory and harming a large number of victims.

13 The Prosecution presented 80 witnesses during this trial. Nineteen were former
14 members of Bosco Ntaganda's militia, the UPC/FPLC. Some of them were foot
15 soldiers and others were commanders. Some had a close working relationship with
16 the accused, others did not. Five of these witnesses testified that they were under
17 the age of 15 when they were recruited by the UPC, trained to be fighters, brought to
18 battle, or used as bodyguards and messengers, stationed at roadblocks and on patrols
19 and raped and sexually enslaved.

20 Two witnesses were members of the UPC's political wing. Another four members
21 were associated with the UPC or other political groups in Ituri at the relevant time.

22 Three witnesses were parents of UPC child soldiers. Seven witnesses were members
23 of local and international NGOs and the United Nations. These were neutral
24 external observers of the crimes committed by the accused. In most cases they
25 recorded what they saw at the time of the events. These contemporaneous records

1 and comprehensive reports were introduced during the trial to corroborate their
2 testimony.

3 Eleven Prosecution witnesses were experts, including on destruction identifiable in
4 satellite imagery, on forensic anthropology, pathology, crime scene investigation and
5 DNA testing related to exhumation evidence. It also included experts on trauma,
6 sexual violence and on medical assessments on victims and witnesses.

7 Thirty-one witnesses called by the Prosecution were direct eyewitnesses or victims of
8 the crimes during the two charged attacks. Several other witnesses testified from
9 various vantage points, having been in Ituri at the relevant time.

10 Prosecution witnesses came from diverse ethnic groups from within and outside of
11 Ituri.

12 The trial record also includes contemporaneous records from the UPC itself, including:
13 Bosco Ntaganda's own radio communications logbooks; official UPC letters, orders,
14 reports, decrees and statutes; videos of training camps where children under the age
15 of 15 were being trained; videos of other UPC rallies and events; and videos taken
16 shortly before and after UPC attacks.

17 These documents reveal the group's structure, orders, communications and its
18 common plan to take control of Ituri by all means, including by the commission of the
19 charged crimes.

20 I will pause briefly on two critical pieces of evidence: Bosco Ntaganda's two radio
21 communications logbooks.

22 One of his logbooks contains over 450 messages transmitted daily between November
23 2002 and February 2003, as well as 76 verbal situation reports from the field.

24 A second logbook is comprised of supplementary pages which contain close to 30
25 additional messages and situation reports between October 2002 and June 2003.

1 The logbooks prove what military insiders told this Chamber, that Bosco Ntaganda
2 issued orders to troops, informed subordinate commanders about promotions,
3 implemented changes to the UPC military structure, allocated ammunition and
4 weapons and ordered or was informed of disciplinary measures and troop
5 deployment. The logbooks also show that he communicated directly to the chief of
6 staff, Kisembo, and with President Lubanga. The logbooks show compliance with
7 Bosco Ntaganda's orders from his troops. It gives a picture of the daily operational
8 military activities of the UPC. And importantly, the logbooks reveal the extent of
9 Bosco Ntaganda's command of the first and second attacks.

10 The Prosecution's case against Bosco Ntaganda is not based on one single piece of
11 evidence. Rather, your Honours, it is based on the totality of the evidence of the fact
12 and expert witnesses who testified and of the documentary, photographic and video
13 evidence presented. These items of evidence create a seamless web of corroborated
14 evidence and established Bosco Ntaganda's criminal responsibility for the charged
15 crimes.

16 The Defence would have your Honours believe that most Prosecution witnesses in
17 their various roles and from their different vantage points have fabricated their
18 incriminating evidence against the accused.

19 It argues that those who directly participated in these assaults and committed crimes
20 or saw them being committed, those who were direct victims, those who reported on
21 the aftermath of the assaults or who worked closely with demobilised UPC child
22 soldiers are deceiving the Court or are entirely mistaken.

23 Your Honours, it is simply not credible that a majority, if not all, of these fact
24 witnesses would come to lie, come to falsely incriminate the accused. Many of these
25 witnesses are unknown to each other. Nor has the Defence supported its assertions

1 of bias or fabrication with any credible evidence or provided any explanation or
2 theory for what would amount to a large-scale and complex scheme to deceive the
3 Court.

4 Not only does the Defence fail to explain why military insiders from different ranks
5 and territories, local international NGO and United Nations staff, UPC political staff
6 and persons associated with the UPC, a broad spectrum of victims over two separate
7 attacks in two different areas, families of former UPC child soldiers and
8 representatives of other governments, the judiciary and political groups would all
9 deliberately collude to incriminate the accused. But also the Defence fails to identify
10 or explain how this plan was conceived, coordinated or achieved. These baseless
11 assertions must be rejected.

12 The evidence of the 19 insider witnesses alone should be sufficient to satisfy
13 your Honours that there is no reasonable doubt that UPC forces committed
14 horrendous crimes against the non-Hema civilian population of Ituri, recruited and
15 used children under the age of 15, raped and sexually enslaved them, and their
16 evidence proves that Bosco Ntaganda bears responsibility for those crimes.

17 These high, mid, and low-level insiders provide detailed descriptions of the UPC's
18 structure, communications, the planning and execution of military assaults, the
19 intentional targeting of civilians, the crimes committed by the troops, the lack of
20 punishment for those crimes and, critically, Bosco Ntaganda's central role within the
21 organisation and in the establishment and pursuit of its policies.

22 Bosco Ntaganda claims that he and the other co-perpetrators could not have had
23 a plan to occupy Ituri, expel the non-Hema civilian population and take over their
24 territory. He says the UPC was a movement working only to establish peace in the
25 region, embracing all ethnic groups in Ituri and sought to protect them from harm.

1 As the evidence on the record shows, the truth was very different.

2 The public remarks of UPC military leaders does not undermine the critical evidence
3 of their very own troops as presented meticulously by the Prosecution. Numerous
4 insiders confirm that the UPC was targeting civilians, as the targeted civilians
5 themselves also confirmed for your Honours. The UPC practice and policy was very
6 different from its public discourse. At the same time as they spoke of establishing
7 peace, UPC leaders were building an army, securing weapons and ammunition,
8 waging assaults in various villages throughout Ituri and planning, ordering, inducing
9 and tolerating the commission of crimes.

10 The evidence proves beyond a reasonable doubt that through his continuing
11 participation in the common plan the accused is individually criminally responsible
12 for these crimes which he intended or knew would result in the ordinary course of
13 events.

14 In addition to his liability for his participation in the common plan, the evidence
15 clearly proves that this accused ordered, induced and contributed to the commission
16 of crimes by persons acting with a common purpose. He intended the crimes and
17 knew their commission would be assisted by his actions.

18 The evidence also proves to the requisite degree of certainty that the accused is
19 responsible for the charged crimes because he failed to prevent or punish the crimes
20 which were committed by his subordinates over whom he had effective control,
21 crimes the commission of which he knew or had reason to know were about to be
22 committed or had been committed. Instead of preventing or punishing these crimes,
23 Bosco Ntaganda, in fact, rewarded the perpetrators by promoting and praising them.

24 The Prosecution's evidence in this case is consistent and corroborated, including by
25 Defence evidence, as noted throughout the Prosecution's final closing briefs.

1 The Prosecution's evidence is also credible because it withstood rigorous scrutiny. It
2 was fully tested on cross-examination and the Defence and the accused had the full
3 benefit of disclosure of prior witness statements and associated documents in order to
4 test the accuracy of the witness's testimony.

5 The accused testified himself at great length during this trial. His evidence is the
6 principal evidence, and on many issues the sole evidence upon which the Defence
7 relies. His testimony must be considered very carefully, and we suggest that when
8 this Chamber does so, your Honours will determine that it should be given very little
9 weight in relation to the accused's self-serving denials of his command and authority
10 in the UPC; the commission of the charged crimes; his personal commission of crimes;
11 the ethnic dimension to the conflict in 2002 and 2003, and the recruitment and use of
12 children under the age of 15 by the UPC and their rape and sexual slavery; where the
13 accused's testimony is implausible because it is contradicted by credible evidence,
14 and the Chamber should reject it; where his testimony reveals internal contradictions
15 and shifting positions or recent fabrications, your Honours must also reject it.

16 First, the accused's evidence on key points is inherently incredible and internally
17 inconsistent. For example, Mr Ntaganda told your Honours that he, within the UPC
18 leadership -- was working with the UPC leadership, was working towards peace in
19 Ituri and fully engaged in the peace process in 2003. As such, it would be reasonable
20 to conclude that it would be vitally important for him to know of all activities from
21 his own troops that would undermine this so-called peace process.

22 Yet, amazingly, Mr Ntaganda would have you believe that he was unaware of
23 a complex, coordinated attack on over 20 Lendu villages in and around Lipri, Kobu
24 and Bambu in February 2003. He knew nothing about that. He, the deputy chief of
25 staff in charge of operations and organisation. That is incredible.

1 He knew about these events, of course, because he was intimately involved in
2 planning the operation. An operation that resulted in a massacre of Lendu civilians
3 in and around Kobu, Lipri and Bambu, their rape and sexual slavery, the pillage of
4 their goods, the destruction of their property and of their churches and hospitals.

5 Mr Ntaganda's evidence was also incredible on straightforward questions about the
6 level of planning, coordination and authorisation needed to launch a UPC attack on
7 different locations in February 2003.

8 The accused, an experienced military tactician was asked during his testimony in
9 chief whether he agreed that military operations require careful planning. At that
10 point in his testimony he answered, and I quote, "That's obvious. You have to have
11 preparation within the army. Before starting an operation, there are numerous
12 preparations to be made, not only weapons and ammunition ..."

13 He further explained in his direct examination the level of coordination required
14 during attacks, and I'll quote his evidence again: "To be able to overcome the enemy,
15 one has to give proper orders to the soldiers and also to monitor the unfolding of the
16 fighting so that one is able to know where to deploy more forces. ... as the fighting
17 unfolds --"

18 PRESIDING JUDGE FREMR: [9:56:53] Ms Samson, could you kindly slow down
19 a bit, thank you.

20 MS SAMSON: [9:56:56] Certainly. "... as the fighting unfolds, you then decide ...
21 how the fighting or the combat has to be guided or directed."

22 Yet, in cross-examination, Mr Ntaganda was asked, and I quote, "You would agree
23 that an attack on a location, in fact, on several locations from different areas would
24 require careful planning and coordination in your experience?"

25 Answer: "No."

1 Even more implausibly, he claimed that commanders in the field could carry out
2 attacks in February 2003 without notifying him or the UPC military hierarchy.
3 Again, this is inconsistent with his earlier testimony that, quote, "I was really aware of
4 everything that was going on at all times." And it is inconsistent with his claim that
5 he arrested a subordinate commander on another occasion because he had launched
6 an unauthorised attack.

7 And it is inconsistent with his purported devotion to ensuring lasting peace in Ituri.
8 Plainly, giving your troops the unfettered ability to launch unauthorised attacks on
9 Lendu villages would undermine the peace process entirely. The truth is that
10 Bosco Ntaganda did not engage in any sincere peace initiatives and he knew exactly
11 what his troops were doing at all times because he planned, coordinated and ordered
12 these attacks.

13 As a second example, Bosco Ntaganda told this Court that there was no ethnic
14 dimension to the conflict in Ituri after the UPC formally took control of Bunia
15 in September 2002, and that the UPC never once attacked Lendu or any other
16 civilians.

17 These assertions are wholly contradicted by consistent and credible evidence from
18 both Prosecution and, in some cases, Defence witnesses, in documents and in videos,
19 and in contemporaneous written reports that ethnic fighting continued in 2002 and
20 2003 in the territories under UPC control. And that the UPC launched violent
21 attacks against non-Hema civilians, particularly the Lendu.

22 The evidence your Honours heard bears out what Lendu victim P-805 told the Court;
23 that the UPC was made up of people from the Hema tribe and that he, P-805, fled his
24 area fearing that the UPC would kill him, quote, "because there was a tribal war
25 underway between the UPC and the Lendu tribe. It was a tribal war."

1 Other parts of the accused's testimony are recent fabrications and must be rejected.

2 For example, before trial, the Defence accepted as fact that Rwanda provided
3 weapons and ammunition to the UPC beginning in July 2002. Before the start of trial,
4 based on this agreement between the parties, the Chamber found that no further
5 evidence needed to be adduced to prove this fact. However, during his testimony,
6 Mr Ntaganda resiled from this factual agreement. He denied that weapons came
7 from Rwanda, which is contradicted by evidence from his own military insiders.
8 Tellingly, the Defence did not challenge Prosecution witnesses who testified that
9 weapons came from Rwanda, nor did it suggest to witnesses that the weapons came
10 from anywhere else. The first time this new position came to light was during the
11 accused's testimony, from which the Chamber can find that this was a recent
12 fabrication.

13 Second, just prior to the start of the Defence case in 2017, the accused disclosed an
14 alibi defence. For the first time, the accused disclosed that he was in another country
15 during a period related to the second attack. Yet, he did not once challenge
16 Prosecution witnesses who said he was in Ituri during those days, and he did not
17 suggest to those same Prosecution witnesses that he was actually in another country.
18 Rule 79 imposes an obligation on the accused to notify the Prosecution of a potential
19 alibi defence, with names of witnesses or other evidence upon which the accused
20 intends to rely. The very late disclosure of this potential alibi after the Prosecution
21 case ended is a basis for your Honours to infer that it is also a recent fabrication and
22 to dismiss it.

23 Lastly, your Honours, on 27 June 2017, during his testimony, when asked if recruits
24 arriving at the Mandro military training camp were ever asked how old they were,
25 the accused replied, "no, we didn't put major importance on that."

1 Several months later, however, on 7 September 2015, the accused was asked, "Was the
2 question 'what is your age' part of the process of recruitment?" to which he replied, "It
3 was obligatory. We had to ask them." Which part of that evidence will
4 your Honours believe, if any?

5 Other Defence witnesses. We suggest that your Honours should also consider
6 Defence witness testimony with caution, where these witnesses adopted the same
7 incredible positions as the accused on facts upon which the charges are based, and
8 where the sheer volume of credible evidence contradicts them, such as the absence of
9 children under the age of 15 in the UPC.

10 We suggest that many Defence witnesses came here with a bias and that their
11 evidence needs to be reviewed with caution because of their close personal or
12 professional relationship to the accused or their ethnic or political allegiances. We
13 submit, your Honours, that the Defence evidence does not cast reasonable doubt over
14 the evidence proving the commission of the crimes and Bosco Ntaganda's criminal
15 liability as alleged.

16 Mr President, I will now turn to a review of the scope of the charges in this case.

17 The charges in this case are specifically pleaded and the accused has been sufficiently
18 informed of the charges against him. In addition to the confirmation decision,
19 the Prosecution clearly indicated the material facts and circumstances underlying the
20 charges in the 65-page updated charging document by reference to precise locations
21 and reasonable time frames, consistent with the nature of the alleged criminality.

22 Further notice of individual underlying criminal acts and evidence of the charges was
23 properly provided to the accused by way of the Prosecution's disclosed evidence
24 before trial, its in-depth analysis chart and its pretrial brief.

25 As the Bemba majority appeals judgment expressly acknowledged in paragraph 115,

1 its decision is limited to the specific charges in that case. The majority found that
2 these charges -- pardon me, those charges in the Bemba case were too broadly defined,
3 both temporally and geographically, referring to crimes throughout the Central
4 African Republic over a period of four and a half months. The Prosecution
5 underscores that the Central African Republic is approximately 10 times the size of
6 Ituri.

7 As a result, the Bemba majority limited its judgment to those individual underlying
8 criminal acts that were identified in the pre-confirmation Amended Document
9 Containing the Charges and mentioned with approval in the confirmation decision.
10 The Bemba majority appeals judgment does not propose to introduce a requirement
11 that all underlying individual acts must be specifically listed in the charges. Rather,
12 the majority expressly acknowledged that adding specific underlying acts after
13 confirmation may be permissible without an amendment to the charges, in other cases
14 such as this one where the charges have been pleaded with a sufficient degree of
15 specificity.

16 The charges in this case differ significantly from those in Bemba. The confined
17 temporal and geographic scope of the charges here, combined with the detailed
18 description of the material facts and circumstances underlying the charges is not
19 overly broad and provides a meaningful description of the charges against this
20 accused.

21 The confirmation decision and the Updated Document Containing the Charges
22 precisely define the charges in the two main attacks. Each attack is limited to
23 a discrete 16-day period with specific details as to the circumstances in which the
24 attacks took place on a near daily basis, and on the commission of the crimes,
25 including the nature of the accused's alleged criminal acts and those of his

1 co-perpetrators and subordinates.

2 The Prosecution gave notice in these documents of which crimes it alleges occurred in
3 or around which specifically named town or village. The locations of each charge
4 are clearly defined in the updated document containing the charges for each of the
5 alleged crimes during the two attacks. And for each attack the crimes occurred in
6 villages within a limited 15-kilometre radius.

7 The Defence's attempt to combine these distances or to make them larger or less
8 defined must fail when considered against the specifics in the confirmation decision
9 and the Updated Document Containing the Charges.

10 The Pre-Trial Chamber's finding with respect to the specific criminal incidents were
11 illustrative of the crimes and were not intended to exhaustively list them.

12 By way of example, although the Pre-Trial Chamber found that three nuns were
13 raped in Mongbwalu in the confirmation decision at paragraph 49, the charges of rape
14 in this location were not limited to this incident. Rather, the Pre-Trial Chamber
15 confirmed that acts of rapes were committed generally against civilian women in
16 Mongbwalu in the two-week period of the first attack and cited as examples only four
17 specific instances of rape.

18 This Chamber has also held that the Pre-Trial Chamber made a non-exhaustive
19 finding regarding relevant acts of violence for the purpose of the crime of attacks
20 against the civilian population.

21 In addition, this Chamber held - and I'm referring to decision 450 - that the use of the
22 qualifier in or around the identified villages was appropriate and could be retained in
23 the Updated Document Containing the Charges. The Chamber found that this
24 accorded with the Pre-Trial Chamber's decision to include crimes committed in the
25 surroundings of the villages mentioned in paragraph 36 of the confirmation decision,

1 since the precise limits of these villages may not be clearly ascertainable. This
2 included the geographical areas between villages such as the Pre-Trial Chamber's
3 confirmation of "rape alleged to have occurred on the road from Buli to Kobu" or, in
4 certain cases, immediately neighbouring villages within that geographical area.

5 This is consistent with the Lubanga appeal judgment which found in paragraph 124
6 that "further detail about the charges as confirmed by the Pre-Trial Chamber may,
7 depending on the circumstances, also be contained in other auxiliary documents such
8 as the Updated Document Containing the Charges or list of evidence."

9 In fact, the Defence concedes at paragraph 12 of its reply brief that post-charge
10 auxiliary documents may provide further details such as the precise name of a victim
11 or perpetrator about an existing charge.

12 As to the charges related to the recruitment of children under the age of 15, their use
13 to participate actively in hostilities and their rape and sexual slavery, these charges
14 are framed more broadly. This is consistent with the nature of the specific crimes,
15 the pattern of criminality, their large scale, the prolonged and continuous nature of
16 these crimes over a 16-month period and over a larger geographical territory, where
17 perpetrators and victims were often on the move.

18 The Pre-Trial Chamber ruled that the formulation of these charges was acceptable
19 given that recruitment and use did not occur at one single place or one given time but
20 throughout the territory and time period and because of the continuous nature of
21 these crimes, coupled with the fact that the UPC was continually on the move
22 between various locations in Ituri.

23 And a broader formulation for these particular charges has been accepted by the
24 Appeals Chamber of this Court in the Lubanga proceedings. The Lubanga
25 Appeals Chamber confirmed that under certain circumstances framing the material

1 facts as a pattern of offences such as a pattern of enlistment, conscription and use of
2 individuals under 15 years in hostilities is permissible, is consistent with Regulation
3 52(b) and is an adequate basis for a conviction.

4 The majority of the Appeals Chamber in Bemba did not depart from these findings in
5 Lubanga. Indeed, the Bemba case did not deal with these types of continuous crimes
6 and in fact acknowledged the possibility of adding specific underlining acts after
7 confirmation, depending on the case.

8 A broader formulation for the charges of recruitment and use of child soldiers has
9 also been accepted in cases before the Special Court for Sierra Leone for the same
10 reasons.

11 And the charges do provide significant detail in its description of the material facts
12 and circumstances underlying these crimes, including the UPC's recruitment
13 campaigns in villages where Hema lived, the training of children in at least 13
14 training camps mentioned by name, and the use of children during attacks in at least
15 16 specified villages. The Updated Document Containing the Charges refers to rape
16 and sexual slavery of child soldiers during military training and after battles and in
17 the residence of UPC commander throughout Ituri in places where the UPC fought or
18 was based.

19 The confirmation decision refers to a non-exhaustive list of victims of recruitment, use,
20 rape and sexual slavery by witness code with factual details of these crimes.

21 Although the Prosecution's position is that the charges have been sufficiently and
22 specifically pleaded, we note that even if your Honours were to find that the material
23 facts are not pleaded with sufficient degree of specificity before the start of trial,
24 the Chamber must still assess whether the accused has been afforded a fair trial.

25 In particular, your Honours must assess whether any prejudice has been cured

1 through further information that Mr Ntaganda received before or in the course of the
2 trial. And I refer your Honours to the Lubanga appeals judgment paragraphs 129
3 and 130.

4 We submit that he has. Mr Ntaganda had timely, clear, and consistent information
5 from the Prosecution throughout these proceedings. Mr Ntaganda was informed in
6 sufficient detail of the case against him by reference not only to the confirmation
7 decision and the updated document containing the charges, but also to the list of
8 evidence and disclosed witness statements, to the pretrial brief and to the in-depth
9 analysis chart provided by the Prosecution.

10 The Defence argues that 11 specific criminal acts have no counterpart in the Updated
11 Document Containing the Charges. This is an incorrect understanding of the
12 charges as framed and omits from its review the confirmation decision itself. Each of
13 those 11 underlying criminal acts fall under the material facts and circumstances
14 described within the narrow, confined and precise parameters of each charge.

15 The Defence had notice of 9 of the 11 incidents mentioned before the start of trial,
16 since they were identified and listed in the confirmation decision or pretrial brief, or
17 both.

18 For instance, the Defence cannot claim in relation to the charge of destruction of
19 property in Sayo that no destruction other than with heavy weapons is charged.

20 When the confirmation decision clearly states at paragraph 72 that, and I quote,
21 "UPC/FPLC troops systematically shelled Sayo ... using heavy weapons. UPC/FPLC
22 soldiers also used incendiary grenades and burned houses while people were inside."
23 End quote.

24 Notice of 2 of the 11 incidents was given in Court during trial. They fall within the
25 parameters of the charges and there is no unfairness to Mr Ntaganda.

1 The tenth item concerns evidence from P-768 about the deaths of civilians who
2 stepped on anti-personnel mines planted by the UPC in Mongbwalu. While this
3 evidence emerged for the first time during the witness's preparation session and was
4 therefore not specifically referred to earlier, it squarely falls within the murder
5 charges brought by the Prosecution and confirmed by the Pre-Trial Chamber.

6 The eleventh item that the Defence challenges relates to the evidence of
7 a participating victim in this case. The Defence had sufficient time to prepare the
8 cross-examination of the relevant witness on the topic and any potential prejudice
9 was addressed.

10 Critically, in relation to the application for this victim to give evidence before
11 the Chamber, the Defence did not object to the evidence because it fell outside the
12 scope of the charges; rather, the Defence merely argued in filing 1773 at paragraphs 27
13 to 29 that the victim's evidence repeats other Prosecution evidence of rape in or
14 around Mongbwalu.

15 The manner in which the accused conducted his defence, his examination of
16 Prosecution witnesses, the fact that he listed 116 witnesses whom he originally
17 intended to bring in his defence, his own testimony over several months, as well as
18 his closing submissions show clearly that he has been well aware of the charges
19 against him since the start of trial.

20 Your Honours, I will now move to the third and final part of my presentation before
21 this Chamber. I will now address the evidence we say proves that Mr Ntaganda's
22 UPC troops committed crimes during their multi-day assault on the Banyali-Kilo
23 collectivity during the first attack.

24 I will start by giving you an overview of the crimes committed during this attack,
25 after which I will address three specific Defence claims.

1 The evidence presented at trial establishes that Mr Ntaganda and the troops under his
2 direct command intentionally attacked civilians in Pluto, Mongbwalu, Sayo, Nzebi
3 and Kilo, displaced or forcibly transferred the local population and killed scores of
4 innocent people; they raped them, pillaged their property, destroyed their homes and
5 persecuted them.

6 Bosco Ntaganda and the UPC coveted Mongbwalu for its gold and its strategic
7 location. In order to capture it, Bosco Ntaganda planned a massive attack on the
8 Mongbwalu area, mobilising an overwhelming force of heavily armed soldiers and
9 Hema civilian supporters from several directions. This force was to attack and kill
10 everyone they would find in the area, regardless of status, age, or gender. The aim
11 was to take over Mongbwalu and the collectivity, expel all non-Hema civilians and
12 dispossess them of their property.

13 The execution of the plan began by 19 November 2002 when Bosco Ntaganda's troops
14 were in position to attack Mongbwalu and its surroundings and when
15 Bosco Ntaganda ordered them to advance. By 24 November 2002 they had taken
16 Pluto, Mongbwalu, Sayo, and Nzebi. On or about 6 December they also took Kilo,
17 completing the takeover of the Banyali-Kilo collectivity.

18 The UPC's brutal assault achieved its goal and left countless victims in its wake.

19 The crimes committed during the first attack were neither isolated incidents nor the
20 collateral damage of an otherwise lawful military operation. The evidence shows
21 their large scale, systematic and intentional commission resulting from deliberate and
22 meticulous planning by Bosco Ntaganda and his co-perpetrators.

23 Men, women, and children were shot or hacked to death with machetes as the troops
24 advanced. One witness alone, P-886, found almost 50 bodies left by the UPC in
25 various places in the streets of Mongbwalu and Sayo.

1 Other victims were captured during search operations and either killed on the spot or
2 taken as prisoners. The UPC took captives to its camps where it interrogated,
3 tortured and summarily executed them. One UPC soldier who testified in this case,
4 P-17, said that for a Lendu taken prisoner, quote, "there was a 99 per cent chance he
5 would be killed." End quote.

6 Several witnesses described the mass graves they uncovered and the human remains
7 they found when the UPC left the area. In Kilo, one witness found a mass grave next
8 to the UPC camp. It was filled with bodies thrown, piled on top of each other. In
9 Sayo the UPC detained people in an underground pit located at their camp near the
10 Catholic church. Following the UPC's departure, the local population found my
11 decomposing human remains behind the camp. In Mongbwalu the body of Abbé
12 Bwanalonga was exhumed at the Appartements camps where Bosco Ntaganda had
13 resided during the UPC's occupation of the town.

14 Your Honours, the civilians who did manage to escape and save their lives had to
15 walk long distances through dense forests to safer areas. But were they safe? They
16 had no food or clean water, nor shelter. They faced permanent danger. If the UPC
17 found them, they would be killed.

18 These civilians lost everything. Back in Mongbwalu and Sayo the UPC engaged in
19 systematic looting. UPC commanders, soldiers and Hema civilian supporters took
20 everything they could find: Vehicles, food, televisions, radios, furniture, medical
21 equipment, everything.

22 Civilians who fled could not return to Mongbwalu or they would be killed or raped.

23 UPC soldiers in Banyali-Kilo raped at will. Some women and girls, including

24 Witness P-912, were abducted by UPC soldiers to civilian houses where they were

25 gang-raped. Others were taken to UPC camps to "sexually satisfy the soldiers" in the

1 words of military insider P-907, who stayed at one of these camps. In Kilo rape
2 occurred on such a large scale that antibiotics were distributed to treat the many
3 soldiers who were suffering from sexually transmitted diseases.

4 Your Honours, during trial you have heard Bosco Ntaganda deny that these crimes
5 occurred. You have heard him try to evade his responsibility for them.

6 His defence can be summed up in three general claims:

7 First, the witnesses who attested to the UPC's crimes all lied.

8 Second, Bosco Ntaganda's army was perfectly disciplined and was simply incapable
9 of committing the charged crimes.

10 And third, there wasn't a single civilian left in Mongbwalu when the UPC attacked
11 and the UPC had an exclusively military objective.

12 During my brief submissions on the first attack I will address these three incredible
13 claims in that order.

14 According to Bosco Ntaganda the Prosecution witnesses who testified about UPC
15 crimes all lack credibility or lied in their incriminating evidence and the evidence he
16 claims is devoid of weight. In other words, the alleged crimes that they described or
17 said they committed never took place, there were no victims, no perpetrators.

18 The truth, however, as shown at trial, is that in making this sweeping claim

19 Bosco Ntaganda stands entirely alone. From different vantage points, over 20
20 witnesses gave consistent evidence of the crimes Bosco Ntaganda and his troops
21 committed in Mongbwalu.

22 Let's look at the different groups of witnesses you heard to illustrate just how alone
23 Bosco Ntaganda is in his denial.

24 First, he stands alone against no less than seven of his own subordinates, simple foot
25 soldiers and senior staff officers alike, who participated in the assault and testified not

1 only to the crimes that they witnessed, but also to their participation in their
2 commission.

3 You have heard the account of P-963, a soldier who attacked Mongbwalu with the
4 UPC forces. He testified, quote, "we fired at everyone and then we would come
5 across bodies." End quote. The bodies that P-963 saw included women, children
6 and elderly people.

7 Your Honours heard P-17, another soldier, describe seeing a woman's dead body
8 lying outside a health centre as he moved through Sayo with UPC troops. He
9 testified he heard a baby crying inside the health centre and that he found the baby's
10 dead body in a pool of blood when he returned there. The baby had been thrown
11 against a wall.

12 The same soldier described to you some of the nightly murders of prisoners taken by
13 the UPC. On one such night Bosco Ntaganda ordered him to take two prisoners
14 away and tie them up. The two prisoners were then beaten up before a UPC soldier
15 murdered them using his bayonet, all in Bosco Ntaganda's presence.

16 Several of Bosco Ntaganda's soldiers also admitted to looting. P-907, for instance,
17 said, and I quote, "We looted all types of goods. I for one looted some chairs, some
18 beds, some mattresses, radio sets, television sets, boxes of clothing, and, you see, if
19 you took a motorbike or any item of value, the commanders will take them away
20 from you. The troops at the market looted various shops and they took whatever
21 they wanted to, anything they found interesting. As for me, I took household items
22 because I wanted to furnish my house." End quote.

23 Another witness, P-10, said, quote "all of the UPC elements looted ... as for me
24 personally, I took a bed, clothes, shoes, drinks, cigarettes." End quote.

25 Second, Bosco Ntaganda stands alone in his denial against over 15 civilians who

1 suffered or witnessed the UPC's crimes during the first attack.

2 Many of them testified that they were expelled from their homes and lost everything

3 as a result of the UPC's assault. For example, one of these civilians, P-859, fled

4 Mongbwalu with a relative when his house was shelled by the UPC. When he

5 returned to Mongbwalu, he found that all his possessions had been taken. He told

6 your Honours, and I quote, "the house was empty and we didn't know who to ask.

7 The village was full of UPC soldiers. We couldn't ask anybody anything. If you

8 ask a UPC soldier a question, he might kill you, so we spent the night on the floor."

9 This witness later saw Hema civilians in town wearing his own clothes.

10 In another example, Witness P-886, a civilian who fled Sayo after the UPC's attack and

11 sought safety in the bush near a river for three days, described the hard conditions in

12 which he and countless men, women and children were left. He said, and I quote,

13 "We had nothing to eat, there was no water to drink, we didn't have any fire and ... it

14 was raining ... -- we had no shelter. We were under the trees. That's all we had for

15 shelter."

16 Your Honours have also heard from men and women whose family members were

17 murdered or who barely escaped death themselves.

18 For example, Witness P-22, a Lendu woman who was captured by the UPC in Kilo

19 and put in an underground hole with other prisoners. For their own amusement, UPC

20 child soldiers ordered another detainee to penetrate P-22's vagina with his hand,

21 while the soldiers were laughing. The next day, P-22 saw a UPC soldier kill

22 a pregnant Lendu woman with a knife before he cut P-22's own neck, leaving her for

23 dead. P-22 killed herself before she could testify. Her statement has been admitted

24 in evidence under Rule 68.

25 You have heard from witnesses who were brutally gang-raped by UPC soldiers after

1 their capture. Among them was Witness P-912, only a young girl when the UPC
2 came for her. She was abducted from her home by three UPC soldiers and taken to
3 a house occupied by a UPC commander. There, the commander raped her while she
4 was held down by two soldiers. When he was done, another soldier took his turn
5 and raped her too.

6 Another woman, V-2, testified that she was part of a group stopped by the UPC as
7 they fled the attack. After separating the men from the women, the soldiers told her
8 to hand over her child to them and lie down on the ground. When she refused,
9 a soldier hit her in the face with the butt of his rifle.

10 Two UPC soldiers then raped her in the bush, one after the other. While a third
11 soldier stood aside with her children. The other women in her group were also
12 raped.

13 Your Honours, the evidence of over 20 of the victims and direct perpetrators of this
14 attack paints a consistent picture of a brutal assault that is very different from the
15 version of the events described in the accused's testimony.

16 These witnesses are corroborated by the findings of an independent international
17 observer who interviewed dozens of victims and eyewitnesses of the UPC's crimes in
18 Mongbwalu and Kilo and who concluded that, and I quote, "during the six-day
19 military operation, UPC forces slaughtered civilians on an ethnic basis, chasing down
20 those who fled to the forest and catching and killing others at roadblocks." End
21 quote.

22 Further corroboration is provided by the skeletal remains exhumed by
23 the Prosecution from two separate shallow graves in Sayo, which contained the
24 remains of six people, including young children and elderly men. Forensic
25 pathologist P-937 determined that four of these six bodies suffered damage consistent

1 with gunshot wounds. Forensic scientist, P-945, concluded that one of the bodies
2 showed a familial DNA match with one witness who testified in this case about the
3 loss of his relatives in Sayo.

4 Bosco Ntaganda claims that all of these witnesses lack credibility or are outright liars.
5 Why? Because he claims they expected to gain something from their interaction
6 with the Court or they held a grudge against him or because of some other far-fetched
7 theories based on his distortion of the evidence.

8 Now, how likely is it really that over 20 civilian victims and UPC perpetrators would
9 testify independently of each other in this case and lie about an attack that they didn't
10 witness and invent crimes that did not occur?

11 Bosco Ntaganda's blanket rejection of all incriminating evidence, all the witnesses of
12 his crimes, is simply untenable. The truth, your Honours, is that there is only one
13 witness in this case who had a clear, tangible interest to provide false evidence: the
14 accused himself.

15 Bosco Ntaganda's second incredible claim, your Honours, is that his army was simply
16 incapable of committing the crimes charged because his troops had been properly
17 trained and taught about discipline. This claim should also be rejected. It is
18 entirely based on Bosco Ntaganda's self-serving testimony.

19 For instance, his evidence that Chef Kahwa's video-recorded speech in Mandro took
20 place just before the first attack is baseless. In fact, this event took place well before
21 the first attack and, as explained at paragraphs 913 to 916 of the Prosecution's closing
22 brief, this speech was made purely for propaganda purposes.

23 Why else would a journalist be present recording the words spoken clearly for public
24 dissemination? Words that, if they were really military instructions on the eve of
25 a major battle, would be the equivalent of military secrets. The reality, in contrast to

1 Bosco Ntaganda's self-serving theory, has been consistently described by his own
2 subordinates at trial.

3 For instance, you have heard about the instructions Bosco Ntaganda and his
4 commanders gave the soldiers before the Mongbwalu attack. His subordinates
5 explain that the instructions were crystal clear.

6 Witness P-963 testified, quote, "the purpose was to drive out the Lendu or eliminate
7 all of them, loot their possessions ... occupy their houses." End quote.

8 Witness P-907 testified that, and I quote, "it was clear right from the beginning that
9 the Lendu was a sworn enemy and that if one saw a Lendu they should be killed."
10 End quote.

11 And Witness P-768 explained that Bosco Ntaganda, quote, "didn't make a difference
12 between ... Lendu civilians and the militia. He spoke about Lendus, only Lendus
13 and everybody had to assess that in their own way." End quote.

14 Before the assault, UPC soldiers were also told to kupiga na kuchaji, a military term
15 all UPC soldiers understood to mean to loot or pillage. You heard Bosco Ntaganda
16 claim that this was a purely military expression which means to attack and charge the
17 enemy. Here again, the accused stands alone against nine of his subordinates,
18 including a witness called by the Defence, all of whom testified that the expression
19 was an instruction to pillage or loot.

20 The order to kupiga na kuchaji announced a promise to the soldiers that they would
21 be able to take advantage of the situation, as one of Bosco Ntaganda's soldiers, P-907,
22 described it. One UPC commander, Mulenda, told the troops that they would, quote
23 "receive money ... sleep on mattresses, ... have food, ... have women and ... forget all
24 the suffering that they endured." End quote.

25 Should there be any doubt about the meaning of these instructions, your Honours

1 need only look at the evidence of their implementation. The soldiers acting on the
2 order of, quote, "Kupiga na kuchaji", end quote, raped and killed civilians, burned
3 their homes and took war booty that included women.

4 P-17 testified it was a way of motivating the troops. P-963 confirmed, "if you are
5 a soldier, the army is a place of happiness and joy for you. You will have women for
6 free, houses for free and everything is free when you are a soldier." He added, "in
7 general, it was to do whatever you wanted, do as you will."

8 P-907 described the mop-up or cleaning-up operations he participated in along with
9 other UPC and Hema civilian supporters. He said, "Given that the inhabitants of
10 Mongbwalu had fled and that Mongbwalu was occupied, we broke into houses, we
11 searched the houses. And if we found people within the house, we would kill some,
12 some would be taken hostage and taken back to the camp. ... Civilians were
13 involved in the pillaging, they would break into houses and loot various items.
14 Houses were looted, shops were looted, depots were looted. Everybody took
15 whatever they wanted to. ... Every soldier looted. And this lasted about a week.
16 And if a hostage was a Lendu, that hostage would be killed if they resisted." End
17 quote.

18 Your Honours, this, as opposed to Bosco Ntaganda's theory, is an accurate reflection
19 of the conduct of the UPC's attack.

20 Lastly, you have repeatedly heard from Bosco Ntaganda's soldiers that none of the
21 crimes they committed were ever punished. For example, P-963 told your Honours,
22 quote, "we were in the context of a tribal war, so there were no sanctions." End
23 quote. Witness P-907 said, "I never heard that an FPLC soldier had been arrested for
24 having killed a Mulendu. I never heard mention of any such thing."

25 P-768 testified, "I never saw a soldier or an officer being sanctioned for having killed

1 a Lendu."

2 Bosco Ntaganda's description of a perfectly disciplined army is far from the reality
3 described by his soldiers during trial. Bosco Ntaganda and his forces were neither
4 disinterested freedom fighters nor the disciplined and restrained army he described
5 them to be. In fact, the only discipline Bosco Ntaganda insisted upon is that his
6 troops obey his orders, even when they were criminal.

7 The third of Bosco Ntaganda's incredible claims, your Honours, is his suggestion that
8 the civilian population fled Mongbwalu and Sayo when the first shots were fired and
9 not a single civilian was left in the area. According to Bosco Ntaganda, the UPC
10 could not have attacked, murdered or raped civilians because they were all gone and
11 the objective of the UPC's attack was purely military.

12 This claim is entirely implausible too and should also be rejected. A civilian
13 population of over 25,000 people -- men, women, children, elderly people -- does not
14 instantaneously vanish at the sound of a single gunshot. The reality, again, was
15 described by Bosco Ntaganda's own subordinates as well as the victims of his crimes.
16 Witness P-17 saw UPC soldiers shoot and kill an unarmed man and a young girl in
17 Mongbwalu. Later, Bosco Ntaganda ordered P-17 to shot at a group of fleeing
18 civilians.

19 Witness P-800 was with injured civilians when the UPC shot at them using grenade
20 launchers. He was able to flee, but he left behind the injured, including a mother
21 with her two-year-old child. Months after the attack, the witness found the mother
22 and child's skeletal remains in the health centre. Witness P-892 saw the murder of
23 a Lendu civilian who had been hiding in Mongbwalu after the attack. When this
24 civilian left his hiding place because he was hungry, a Hema civilian supporter struck
25 him on the head with a machete and killed him.

1 Your Honours, equally implausible is Bosco Ntaganda's testimony that before leaving
2 Mongbwalu, the Lendu combatants took with them everything that was left in the
3 town and, as a result, the UPC only found empty houses and nothing left to pillage.
4 Bosco Ntaganda's testimony on this point is contradicted by seven of his own
5 subordinates who, as I have already rehearsed, testified that they pillaged or saw
6 other UPC soldiers and commanders do so in Mongbwalu and Sayo.

7 It is contradicted by 10 civilians from Mongbwalu whose belongings were taken or
8 who personally saw the UPC troops pillage and it is contradicted by four senior
9 military UPC officers who saw the UPC soldiers and commanders, including
10 Bosco Ntaganda himself, in the possession of the goods looted in Mongbwalu and
11 Sayo.

12 Insider Witness P-907, who participated in looting in the centre of Mongbwalu,
13 captured it in this way, and I quote, "We were supposed to loot systematically, take
14 everything that we found. Each time we attacked a particular place we were
15 supposed to loot. And the civilians that went along with us were supposed to go
16 and help the soldiers carry the looted goods; vehicles, mattresses, televisions, radios,
17 furniture, everything. As soon as we entered a house we really couldn't pick and
18 choose, we were supposed to take everything."

19 Your Honour, this concludes my overview of the evidence related to the first attack.

20 In view of the time, perhaps your Honours wish to break at this moment and resume
21 several minutes earlier so that we can continue with the Prosecution's presentations.

22 PRESIDING JUDGE FREMR: [10:53:50] Thank you very much, Ms Samson.

23 Exactly, you are right. So at this moment it is five to 11; so we will take our regular
24 break for 30 minutes, which means that we will resume at 11.25.

25 THE COURT USHER: [10:54:10] All rise.

1 (Recess taken at 10.54 a.m.)

2 (Upon resuming in open session at 11.26 a.m.)

3 THE COURT USHER: [11:26:03] All rise.

4 Please be seated.

5 PRESIDING JUDGE FREMR: [11:26:34] So I see Mr Bourgon on his feet.

6 Mr Bourgon, you have the floor.

7 MR BOURGON: [11:26:40] Thank you, Mr President. I would just like to note for

8 the record the presence of two additional team members on the Defence side,

9 Mademoiselle Daria Mascetti and Mademoiselle Yasmine Sentissi.

10 Thank you, Mr President.

11 PRESIDING JUDGE FREMR: [11:26:52] Thank you, Mr Bourgon.

12 I also see some changes on the Prosecution part. Ms Samson.

13 MS SAMSON: [11:26:55] Yes, Mr President. I would like to note for the Chamber

14 that Ms Bensouda is no longer in the courtroom.

15 PRESIDING JUDGE FREMR: [11:27:02] Thank you. Well noted.

16 During the first session we have heard two initial part of the Prosecution closing

17 statements, presented by Ms Bensouda and Ms Samson. Now I have on my list

18 Ms Rabanit.

19 Ms Rabanit, you have the floor.

20 MS RABANIT: [11:27:27] Thank you, your Honours, and good morning.

21 Mr President, your Honours, I will be addressing the crimes committed by UPC

22 troops during the second attack.

23 I will start with an overview of the unfolding of the crimes perpetrated by

24 Bosco Ntaganda's troops during this attack in the Walendu-Djatsi collectivité in

25 February 2003.

1 I will then focus on the charges of rape and sexual slavery and respond to

2 the Chamber's question on this topic.

3 I will address the Defence arguments regarding the reliability of the Prosecution's

4 witnesses relevant to the second attack; and conclude with the evidence adduced to

5 prove that UPC troops perpetrated the mass murders in Kobu.

6 Shika na mukono, meaning in Swahili "catch them with bare hands". This is what

7 the UPC soldiers shouted as they caught fleeing civilians. The words left such

8 a vivid impression that the population still refers to the second attack as the "shika na

9 mukono" attack. Military insider P-963 testified that the order to catch with bare

10 hands was issued during the second attack and many crime base witnesses testified

11 that this is what they heard as they were pursued by the UPC troops in the forest.

12 Bosco Ntaganda himself testified that this cry was intended to frighten the enemy

13 and capture people without using bullets. This also reveals that the UPC soldiers

14 were targeting unarmed civilians. Because, your Honours, one does not catch armed

15 combatants with bare hands.

16 The Prosecutor brought 13 charges of war crimes and crimes against humanity for

17 this attack. This extensive range of criminality is demonstrated by a solid body of

18 evidence which proves beyond reasonable doubt that the UPC committed the crimes

19 as charged and that Bosco Ntaganda is liable for them.

20 The accused may not have been physically present among the troops that attacked

21 Walendu-Djatsi. He is, nevertheless, responsible for the crimes because they

22 occurred in application of the UPC plan to oust the Lendu, because they were

23 committed by his troops during an attack he planned, because he issued operational

24 orders, because he sent and he received situational reports, because he knew of the

25 crimes.

1 My colleagues Ms Luping and Mr Iverson will say more on the modes of liability in
2 a moment.

3 Twenty-one crime base witnesses and six former UPC soldiers provided evidence
4 about the crimes committed by the UPC troops during this attack.

5 Three psychotherapists and medical experts, P-938, sorry, P-939 and P-975 examined
6 five of the witnesses who suffered grave physical and psychological harm. They
7 fully corroborated their accounts where it was possible to reach a conclusion.

8 In addition, forensic evidence from exhumation relevant to the charge of murder was
9 presented by five expert witnesses. Expert P-810 testified about the destruction of
10 property visible on satellite images of various locations of the Walendu-Djatsi
11 collectivité.

12 Your Honours, the Prosecution's evidence of the second attack is diverse and paints
13 a consistent picture: A large-scale campaign of crimes directed by the UPC, against
14 the civilian population, to gain control of this predominantly Lendu area.

15 On your screens you should be able to see a map.

16 So this map represents the most important villages of the Walendu-Djatsi collectivité
17 which were attacked by UPC troops. On the top left is Mongbwalu and on the
18 bottom right you can see Bunia. In yellow are the two roads relating the two towns,
19 two towns which were by this time in February 2003 under the control of the UPC.

20 With this attack, the UPC sought to control the most direct route and the one in better
21 condition which was the going from Bunia to Mongbwalu through Kobu. However,
22 the UPC attack also aimed at driving out the civilians, as confirmed by military
23 insiders present on the ground, P-17 and P-963.

24 The pattern that emerges from the assault on Walendu-Djatsi proves that crimes were
25 an integral part of the attack and that civilians were its constant target. The UPC

1 committed these crimes continuously and repeatedly in villages as the attack
2 unfolded.

3 For the second attack the UPC leadership deployed the same troops that had
4 committed crimes during the first attack. The order to charge and plunder issued by
5 Bosco Ntaganda in Mabanga was reiterated by Commander Mulenda for the second
6 attack. As a result, the UPC's criminal modus operandi repeated itself in
7 Walendu-Djatsi as it has been seen in the first attack.

8 A UPC military insider, P-963, explained, I quote, "It was the same operation
9 pigana kuchaji. And we were fighting the Lendu. The orders were clear: Shoot
10 at everyone." You have heard UPC military insiders explain how their commanders
11 ordered them to displace the Lendu, to shoot at fleeing civilians, and to burn down
12 entire villages.

13 First the UPC troops attacked Lipri, Kobu and Bambu on or about 18 February 2003.

14 These assaults generated massive displacements of the population. The population
15 had no choice but to flee or to be killed. P-790 told the Court how he saw his

16 children shot dead before his eyes by the assaulting UPC troops. You have heard

17 P-863's account of his desperate escape through the bush with his pregnant wife and
18 infant children. He later described how displaced people around them died in the
19 bush due to the terrible living conditions, sick, deprived of shelter and of food.

20 UN agencies estimate that 60,000 individuals were displaced during the second attack.

21 The evidence shows that attacks against civilians occurred in or around 20 villages in
22 Walendu-Djatsi.

23 Once the UPC troops settled in the main villages, they continued to assault civilians.

24 They extensively looted. They set civilian homes on fire and attacked buildings

25 protected under international humanitarian law. You have heard witnesses describe

1 how the UPC troops attacked and pillaged the Bambu hospital. UPC soldiers even
2 massacred the patients who could not flee the assault in the hospital.

3 The UPC put together entire systems to loot the captured civilians just for this
4 purpose. They used P-18, P-113, P-19 and P-39 as porters of their pillaged goods.

5 Some were forced to bring back loot to Bunia when the troops retreated there.

6 You have heard senior military insider P-55 testify that such crimes were intended to
7 prevent the resettlement of the non-Hema inhabitants of the area. When P-790 was
8 able to return to his home, he testified that, and I quote, "they left nothing behind that
9 would enable us to inhabit the house again." End quote.

10 By looting mattresses, roofs, crops, or medical equipment, by torching houses and
11 destroying hospitals, but also schools and orphanages, the UPC was effectively
12 depriving the population of all social support structures and means of survival.

13 When senior UN officer P-317 described the area she investigated in Walendu-Djatsi
14 after the UPC assault, she said, and I quote, "That was one of the worst situations that
15 I saw during all these years in the Congo." End quote.

16 UPC troops chased and encircled the population displaced in the forest. They
17 hunted them down.

18 P-300 described the movement of UPC troops towards the civilians displaced in the
19 centre of the triangle between Lipri, Bambu and Kobu. He says, and I quote, that the
20 troops were "closing the circle," end quote, on the, and I quote again "asphyxiated"
21 population.

22 UPC troops either killed these civilians -- sorry, UPC troops either killed these
23 displaced individuals on the spot or caught them to use them as porters of their war
24 booty. Military insider P-963 confirmed that during ratissage operation, which is the
25 French for mop-up operation, I quote him, "the persons who were found were either

1 killed or captured." End quote.

2 The soldiers also sexually enslaved some of their abductees, beating them, raping
3 them at will, and further exploiting them for chores under armed guard.

4 You have heard Witness P-18 describe how she was forced out of her village by the
5 UPC attack, how she was displaced through the bush, running away with her baby on
6 her back. UPC soldiers captured her and forced her to carry looted goods for them.
7 At her place of detention, she witnessed UPC soldiers gang-rape other women under
8 severe beatings and eventually execute some of them. A soldier grabbed her and he
9 raped her, then he shot her at close range when she resisted. Her baby was still there
10 next to her.

11 Your Honours, the victims of this assault who testified for the Prosecution, each
12 suffered or witnessed multiple UPC crimes. This shows the intention of persecution
13 towards non-Hema civilians. P-18 and P-19, for example, were both direct victims of
14 attacks on civilians, of persecution, of displacement of the population, of rape, of
15 sexual slavery, and of attempted murder. P-100 suffered from and provided
16 evidence on attack against civilians, destruction of property, murder, displacement of
17 population and pillaging.

18 P-863 testified about murders, attack against protected object, displacement of
19 population, attack against civilians, persecution and pillaging. And, your Honours, I
20 could go on. This reveals the systematicity of the crimes and the civilian nature of
21 the attack.

22 I am now moving on to the charges of rape and sexual slavery.

23 First I will address a question we received from your Honours. I will read it out
24 loud for the record. I quote: "The Prosecution closing brief contains a section that
25 addresses both rape and sexual slavery, allegedly having occurred during the

1 Walendu-Djatsi assault/second attack (paragraphs 568-586). This section refers to
2 the testimony of several witnesses and mentions multiple locations, persons and acts.
3 What are the specific instances or persons that the Prosecution submits were
4 subjected to sexual slavery?" This is the end of the question.

5 In answer to your question, the Prosecution submits that P-18, P-19, and P-113 are
6 direct victims of sexual slavery perpetrated by the UPC troops as described in
7 paragraph 574, 576 and 578 of the closing brief. The UPC armed soldiers deprived
8 them of their liberty during a military attack, they captured them, they detained them,
9 they prevented them from leaving, they shot at two of them who tried to escape and
10 who tried to resist their rape. The UPC used force and threat referring to the victims
11 as, I quote "not human", end quote, and I quote, "useless wild animals" end quote, as
12 P-19 testified. The perpetrators were in total control of their victims, transferring
13 them to various locations, using them for chores, cooking, using them as porters,
14 using them as sexual slaves.

15 In addition, the following incidents constitute sexual slavery:

16 First, the incidents described by P-19 of women and men raped by multiple UPC
17 soldiers, some using wooden sticks to penetrate them, while detained in a house in
18 Kobu, where the women were forced to cook for the soldiers. This is at paragraph
19 574 of the Prosecution closing brief and this is in transcript 115 at pages 36 to 46 of
20 this witness's evidence.

21 Second, the incident described by P-18 of captured women who had been separated
22 from male detainees and who were gang-raped by UPC soldiers, some of them shot
23 after having been raped. This is at paragraph 576 of the closing brief, and at
24 transcript 111, pages 10 to 20 of this witness's evidence.

25 Third, the 11-year-old Lendu girl captured by UPC Commander Simba during

1 ratissage operation near Kobu, whom he raped and kept during the offensive before
2 bringing her back to Bunia. This is at paragraph 582 of the closing brief and this is at
3 transcript 60, pages 28 and 29 of this witness's evidence.

4 Fourth, the three women who told P-790 that UPC soldiers abducted them, raped
5 them and used them as slaves. One of the women was forced to carry the soldiers'
6 belongs and was then abandoned in Centrale. This is at paragraph 581 of the closing
7 brief and this is at transcript T-54, pages 32 to 34 of this witness's evidence.

8 The Prosecution submits that the factual description elicited in testimony for these
9 incidents satisfy the required elements of sexual slavery.

10 Your Honours, I would now like to address whether coercion is part of the second
11 element of the crime of sexual slavery. We submit that it is not.

12 On your screen is a slide of the two first elements of sexual slavery. I quote the
13 second element: "The perpetrator caused such person or persons to engage in one or
14 more acts of a sexual nature." End quote.

15 The English and Spanish version of the elements of the crime reflect an absence of
16 coercion requirements by providing that the perpetrator, I quote, "caused", end quote,
17 such person or persons to engage or one or more acts of a sexual nature.

18 In the *Habré* case before the Extraordinary African Chambers the trial chamber
19 analysed the crime of sexual slavery referring to the French formulation of the ICC
20 elements of crimes in which the perpetrator, and I quote in French, (Interpretation)
21 "Forced", unquote, such person to engage in a sexual act. The judges examined this,
22 in French, "a contrainte" as indicia of the exercise of the powers of ownership under the
23 first element, not under the second element. The judges considered the sexual act as
24 part of any other indicia of the enslavement, such as capture and detention in
25 reaching the conclusion that sexual slavery had occurred. I refer your Honours to

1 paragraphs 1502, 1505, and 1536 of the judgments of the trial chamber in the Habré
2 case. We ask that the Chamber proceeds in the same manner in this case.

3 For the crime of sexual slavery, the sexual act caused by the perpetrator is a required
4 indicia of the exercise of the powers of ownership by the perpetrator. Other
5 non-required indicia can be fieldwork, housework, detention. The second element of
6 this crime highlights the sexual nature of the enslavement. The sexual act is not an
7 additional stand-alone crime within the crime of enslavement; rather, it is a specific
8 manifestation of this particular type of enslavement.

9 Therefore, once it is established that a sexual act took place in the context of the
10 perpetrator's exercise of the powers of ownership over the victim, there is no further
11 requirement or additional inquiry into coercion in relation to the sexual act.

12 Otherwise, it would lead to circular and redundant findings; that the perpetrator held
13 the victim under their complete control and then, again, that the perpetrator coerced
14 the victim because he or she exercised complete control over them.

15 Because perpetrators who exercise the power of ownership over victims exercise this
16 total control over them, courts do not assess whether a victim was coerced to do each
17 and every act of the enslavement, such as performing chores or carrying looted goods
18 in order to show that they were enslaved.

19 The Prosecution submits that the Katanga Trial Chamber's view regarding sexual
20 slavery, according to which, and I quote, "the second element concerns the victim's
21 ability to decide the conditions in which he or she engages in sexual activity," is
22 misplaced. No such ability exists once a person is enslaved. But moreover, such
23 analysis wrongly shifts the focus from the acts of the perpetrator to the state of mind
24 of the victim. This shift is unsupported by the elements of the crime.

25 Now turning to the Defence's arguments, your Honours. Bosco Ntaganda, the UPC

1 deputy chief of staff in charge of operations, implausibly denied knowing anything
2 about this complex, coordinated attack on the Walendu-Djatsi collectivity. Even
3 more incredible, despite claiming not to know anything about the attack, he denies
4 that his troops committed crimes and claims the Prosecution witnesses are fabricating
5 their evidence.

6 The Defence contends that the delayed reporting of rape casts doubt on the credibility
7 of witnesses P-18, P-19 and P-113.

8 However, expert P-938 explained that delay in reporting this type of crime is common.

9 She testified that victims universally fear shame, stigmatisation, relationship
10 breakdown and ostracisation if they report their rape.

11 All three witnesses explain to your Honours in detail why they had not come forward
12 earlier due to shame and fear. P-938 also concluded, based on her expert experience,
13 that the psychological consequences exhibited by those witnesses are wholly
14 consistent with their account.

15 When addressing the Defence's challenges to any so-called inconsistencies or to the
16 witness's lack of memory, we ask the Chamber to consider the obvious impact of
17 trauma. All three witnesses were diagnosed with post-traumatic stress disorder.

18 The Defence attempt to paint some of the Prosecution witnesses as coached,
19 contaminated, or having colluded, is devoid of any basis. Nothing in the witnesses'
20 testimony, in their answers to cross-examination questions or in the documents relied
21 upon by the Defence even suggests any attempt to influence their accounts. It is
22 simply Defence speculation.

23 I refer your Honours to the detailed submissions on this topic developed in
24 the Prosecution closing brief and in the Prosecution's response to the Defence's
25 closing brief, but I will say this, the evidence speaks for itself. We invite

1 your Honours to look carefully at how unique and specific each account is. These
2 witnesses testified from very different perspectives. Some are notables from Lipri,
3 others crop growers from Kobu. They resided in different villages when the UPC
4 attacked. They were displaced through various routes and locations. They
5 witnessed different criminal acts by UPC soldiers at different times. They have
6 described in distress how the UPC crimes impacted their lives when their physical
7 integrity was violated or when the UPC killed their husband or their children. For
8 some of them, your Honours could see for yourselves the physical scars and
9 psychological wounds that they still carry with them. Your Honours are able to
10 analyse just how comprehensive, specific, detailed and credible each testimony is.
11 Moreover, those witnesses' testimonies are corroborated by other items of evidence.
12 Witnesses contacted when the investigation resumed in 2013, such as P-805, P-863,
13 P-868 and P-790. They are also corroborated by expert witnesses and forensic
14 evidence. But most of all, their testimony is supported by Bosco Ntaganda's own
15 soldiers who participated in this attack and who fully corroborate that the UPC
16 committed each and every type of crime charged for the locations each of those
17 soldiers attacked. Just as these witnesses say they did.

18 Your Honours, I will finish this presentation with what is perhaps the most notorious
19 criminal event of the second attack, the massacre by UPC troops of unarmed, mostly
20 Lendu children, women and men, which occurred on or about 26 February 2003 in
21 Kobu.

22 During that night, UPC soldiers executed one by one some 50 captured individuals,
23 including over 20 family members of witnesses who testified before this Court. The
24 body of evidence put forward by the Prosecution is comprehensive, detailed,
25 internally consistent and corroborative.

1 First, the Prosecution presented audio evidence which five witnesses confirm is
2 a recording of radio communications between UPC soldiers during the second attack.
3 The audio recording establishes that UPC troops captured unarmed individuals to
4 bring them back to locations controlled by the UPC and reported this to brigade
5 commander, Mulenda. A former UPC soldier confirmed in court that those
6 prisoners were brought to Kobu and then later executed.
7 P-19, P-113, and P-39 were among those Lendu captured by the UPC in the forest.
8 P-963 and P-17, former UPC soldiers, saw the prisoners later being escorted on the
9 path to the banana field where they were going to be murdered. A witness was in
10 line to be executed. She described how terrified and paralysed she was as UPC
11 soldiers massacred men and women before her eyes.
12 You have heard a military insider describe the bloodied murder weapons he saw the
13 next morning while openly discussing the killings with soldiers who had perpetrated
14 the massacre.
15 Once UPC soldiers left Kobu, the population came out of the forest and discovered
16 the murder scene. You have heard witnesses describe how they walked around the
17 bodies that day to find their wife, their children and their loved ones massacred.
18 Several witnesses describe the scene.
19 I quote P-790: "I saw the bodies of children, women, the bodies of young people. ...
20 some people had been beaten to death, some of the women had been disembowelled.
21 One pregnant woman, they had cut the foetus out of her."
22 P-121 observed that some of the sex organs of the victims had been perforated by
23 sticks; others had their sexual organs cut off.
24 P-805 testified that for some of the corpses, and I quote, "their arms were tied, and
25 some were wearing underwear only. And the heads of those bodies had been

1 crushed with the mortars that were there."

2 These descriptions correspond to the eight individual photographs of the bodies
3 massacred in Kobu, admitted into the case record. Nine witnesses testified that
4 these photos depict the scene of the massacre in the banana field. I would like to
5 show you some of these photos.

6 THE COURT OFFICER: [12:03:57] Could you please confirm that these photographs
7 are public?

8 MS RABANIT: [12:04:01] Yes.

9 Your Honours can see the dead bodies piled up on the banana leaves and the
10 population discovering the bodies. When we zoom in the photo, we can see that the
11 arms have been tied, and also that this person behind, his or her throat has been slit.
12 On the second photo, you can see a woman, it is the second body in the background,
13 her throat has been slit and her womb cut open.

14 A third photo, you can see on the bottom right, the body of a man who has visible
15 injuries to his torso and he is wearing blue pants with a white waistband. These
16 trousers match those found on skeletal remains exhumed in Kobu.

17 This is the grave. The pants with the white waistband.

18 This is the pants once they were washed. And this is the body of the man with the
19 same pants.

20 Your Honours, when conducting exhumations of some of the graves in Kobu, forensic
21 anthropologist P-420 concluded that they differed from local customary burials.

22 Under local customs, the burials are narrow and deep, single bodies are placed in
23 coffins and buried in individual graves. Contrary to these customs, these bodies
24 were exhumed from latrines and multiple bodies were exhumed from single graves.

25 The bodies were all similarly oriented. The graves were unmarked and they were

1 close to one another, strongly suggesting that they were dug at or around the same
2 time. And the bodies buried consistently showed blunt force trauma to the head.

3 Following the exhumations, expert pathologist P-937 examined the skeletal remains of
4 six bodies buried in Kobu. He testified that three died from blunt force trauma to
5 the head, that two others may have died from blunt force trauma, and that one
6 received a gunshot wound to the neck.

7 Another expert pathologist, P-935, examined eight other skeletal remains buried in
8 Kobu. He found that seven of the corpses he examined showed signs of blunt force
9 trauma to the head and the last one showed a burn possibly related to a projectile
10 injury, meaning gunshot. He testified that the likely manner of death of these eight
11 corpses he examined was homicide.

12 This evidence is consistent with the evidence of military insiders from the UPC who
13 participated in the attack and of the victim who narrowly escaped this death, who lost
14 loved ones and who found the bodies the following morning.

15 Former UPC soldier, Witness P-963, testified that the civilians in Kobu had been
16 executed simply because, and I quote, "they were Lendu." No one was ever
17 punished for these crimes in the UPC.

18 When asked about the killing of civilians in Kobu by Salumu Mulenda's troops,
19 a senior military insider testified that Bosco Ntaganda said, I quote, "Salumu was
20 a man, a real man." End quote.

21 This concludes this presentation, your Honour. I thank you.

22 PRESIDING JUDGE FREMR: [12:09:11] Thank you very much, Ms Rabanit.

23 I would like to make a slight correction of the English version of transcript of your
24 presentation, and please follow me whether I am correct, because you mentioned, it is
25 English version page 64, line 23, you mentioned the case before the Extraordinary

1 African Chambers, it's the case of Hissène Habré, but the name is misspelt. So I
2 believe that the right spelling is H-A-B-R-É. Am I correct, Ms Rabanit?

3 MS RABANIT: [12:09:42] It is correct. I may just add that there is an accent on the
4 E, but the way you spell it I think is enough for the transcript.

5 PRESIDING JUDGE FREMR: [12:09:58] Thank you very much, Ms Rabanit.

6 And now the next speaker on my list respecting Prosecution is Ms Sim.

7 Ms Sim, please take the floor.

8 MS SIM: [12:10:21] Mr President, your Honours, I will now address the crimes of
9 conscripting or enlisting children under the age of 15 or using them to participate
10 actively in the hostilities, as well as the rape and sexual slavery of these children by
11 UPC soldiers. I will highlight the Prosecution's evidence of each of these crimes,
12 starting with recruitment, then the crimes of sexual violence, and finally, the ways in
13 which child soldiers were used.

14 In so doing, I will provide an overview of the types of evidence the Prosecution relied
15 upon, including witness testimony, documentary evidence, as well as video evidence
16 that shows the presence of children under the age of 15 in the UPC. I will conclude
17 by showing a few examples of this video evidence.

18 Bosco Ntaganda and his co-perpetrators' plan to take control of Ituri required an
19 army and a steady supply of soldiers. The UPC recruited these soldiers throughout
20 Ituri in a widespread and coordinated manner. The UPC sought to recruit as many
21 people as possible, regardless of their age.

22 Indeed, 11 former UPC members testified that there was no age limit on recruitment
23 in the UPC.

24 Even Defence Witness D-13 testified that "no one ascertained the ages of these people"
25 and that, "no one actually verified that."

1 In the course of this trial, you heard consistent, credible evidence from numerous
2 Prosecution witnesses about the obvious presence of children in the UPC. They
3 were often referred to as kadogo, a Swahili word meaning "small" or "young one".
4 You heard about the presence of these children from political and military insiders,
5 including individuals who not only saw child soldiers but personally used them.
6 You heard from former UPC child soldiers and their family members. You heard
7 from victims of UPC crimes, as well as from individuals based in the regions whose
8 very job it was to identify and assist child soldiers.
9 These witnesses also testified about how they were able to assess the ages of children
10 that they encountered or interacted with.
11 For instance, several witnesses testified about the size of the children, how their
12 uniforms were ill-fitting or oversized so that they had to roll up the sleeves or the
13 trouser legs, and about how they had difficulty carrying their weapons. Others
14 testified about the facial features or physical development, as well as how their
15 behaviour or mannerisms showed that they were children. Still others explained
16 that they could assess the age of the children they saw based on their experience as
17 parents or teachers.
18 Corroborating this witness testimony is reliable documentary evidence attesting to
19 child soldiers in the UPC, such as MONUC reports from the period of the charges as
20 well as internal UPC documents that refer to the presence of children within the
21 ranks.
22 The Prosecution also relied on the entry and exit logs from a demobilisation centre
23 and from notebooks and certificates of former children who went through this centre,
24 tendered through Witness P-31. The vast majority of these children had been
25 soldiers with the UPC, which both illustrates the scale and the volume of the UPC's

1 recruitment of children under 15.

2 Armed UPC soldiers abducted children from villages on their way to school or to
3 collect water. This is exactly what happened to former child soldiers Witnesses
4 P-758, P-883, and P-888.

5 Children were pressured to join the UPC as a result of recruitment drives at the
6 village level where parents and community leaders were coerced or persuaded into
7 providing their children, fearing that their villages would be left undefended from
8 attack if they did not.

9 Witness P-963 was present at one such gathering, following which he saw young
10 Hema, including children under 15, taken from the village to a UPC training camp.

11 You also heard from Witness P-898 who joined the UPC at the age of 13 out of a desire
12 to protect his community and to avenge the death of family members.

13 It does not matter whether children under 15 joined voluntarily or were forcibly
14 recruited, both are a crime and consent is not a defence.

15 There were no genuine policies to ensure children under 15 were not recruited by the
16 UPC as the Defence contends.

17 In fact, an internal UPC letter appearing on your screen, dated 12 February 2003,
18 written by the UPC national secretary to the G5 commander of the FPLC and copied
19 to the UPC president and the état major, the military general staff in Bunia, refers to
20 a DDRRR programme, that stands for demobilisation, disarmament, reeducation,
21 resettlement and reintegration.

22 And I quote in French, "en faveur des Enfants-Soldats" aged 10 to 15 or 16 years.

23 You will also note in this document that participation in this programme was
24 voluntary, not mandatory. It was for those children aged 10 to 15 or 16 who
25 willingly accepted to return to civilian life.

1 Now, this attempt to demobilise children within the UPC never happened.

2 Bosco Ntaganda testified that he was not familiar with the document and did not
3 receive it. However, this document does provide clear evidence that children under
4 the age of 15 were in the UPC and that senior officials knew.

5 The evidence shows that following their recruitment children were often taken to
6 training camps across Ituri.

7 You heard from former child soldiers who were taken far away from their families,
8 from their friends, their villages. You also heard from their parents who lost their
9 children. They had no idea where their children were taken, if they were safe, if they
10 were hurt or if they would ever see them again.

11 Conditions in UPC training camps were brutal and harsh and the child recruits
12 endured tremendous suffering. Several witnesses provided consistent harrowing
13 details about daily life.

14 For instance, Witnesses P-898, P-883, and P-888 all testified that they were only fed
15 one meal a day when they would have hot food spooned directly into their bare
16 hands or into their shirts. If it burned and they dropped the food, they would go
17 hungry that day.

18 Witness P-907, a military insider, testified that recruits at Mandro camp were served
19 food with ashes mixed in, rotten beans, insect-infected maize, in his words, quote,
20 "food that could not even be eaten by anybody" end quote. He also testified that
21 their clothes were full of lice.

22 Witnesses P-10, P-769 and P-907 described how children were subjected to
23 demanding physical exercise and severely punished if they were unable to keep up
24 with the adults.

25 Children were unable to leave the UPC camps, afraid of being considered deserters

1 and beaten or shot. Witness P-898 testified that on Bosco Ntaganda's orders UPC
2 soldiers searched schools for deserters, and anyone found was flogged and brought
3 back to the camp.

4 It was a hostile, violent environment where children were indoctrinated through
5 aggressive speeches and songs, taught to fire a weapon and kill the enemy, the
6 Lendu.

7 Bosco Ntaganda testified that there were no derogatory songs pertaining to any ethnic
8 group sung in the UPC and he denied that any derogatory songs against women were
9 sung while he was in charge of military training.

10 However, Prosecution witnesses remembered the lyrics of such songs in detail and
11 they sang them for you in the courtroom. One song goes, "I'm crying. I'm crying.
12 Give me a girl. Give me a Lendu girl so that I can fuck her all night and then she'll
13 complain about having backache because I screwed her."

14 Another song went, "Micheline, give me a knife with a basin so that I can slit the
15 throat of a Lendu."

16 Your Honours, these songs were independently recalled by two different witnesses
17 from memory. Their lyrics are violent, derogatory against women and against the
18 Lendu ethnic group, emboldening criminal behaviour. These are not songs learned
19 by former APC soldiers. These are songs taught to UPC soldiers, sung by UPC
20 soldiers training to fight under Bosco Ntaganda's command.

21 Several Prosecution witnesses credibly testified that children were in fact sought after,
22 they were seen as obedient, fearless, naïve, and easy to exploit.

23 You also heard that girls in the UPC were sexually exploited as well. These girls
24 were sometimes referred to as PMF, short for personnel militaire féminine.

25 UPC soldiers and commanders used the highly coercive environment of the military

1 camps to their advantage. They were armed, they exercised their physical power
2 and their authority over these girls. Rape was widespread and systematic.
3 Witness P-10 referred to the raping of girls as a habit for the commanders, testifying
4 that, I quote, "when we went to bed and there were a few girls missing, we knew only
5 too well that the commander had taken them." End quote.

6 P-758 testified that "we were all raped".

7 You heard the detailed accounts of Witnesses P-758 and P-883, both former child
8 soldiers who were repeatedly and violently raped by UPC soldiers and commanders
9 throughout their time in the UPC. They also testified about the sexual exploitation
10 of other girls who were with them in the camps, as did Witness P-10.

11 P-758 was chosen by a commander to be in his escort. This commander only chose
12 girls. They all lived with him and they were regularly raped by him. She was
13 raped by other soldiers and commanders as well.

14 P-883 testified that she was not even able to count the number of times she was raped,
15 quote, "you see, whether you were sitting down or sleeping, anyone who wanted to
16 do so could rape you." End quote. She testified that at one point a commander said
17 no one else should touch her, as, quote, "he wanted to be the only one to rape me."
18 End quote.

19 Several UPC insiders similarly testified about the sexual violence against girls in the
20 UPC that they saw or that they knew about. It was acknowledged that the girls had
21 no choice.

22 Witness P-10 testified that nobody had sex with their commander, quote, "of their
23 own volition, but it was an order on the part of the commander. And an order is an
24 order after all and you are obliged to execute the order." End quote.

25 Girls in the UPC were extremely vulnerable. UPC soldiers and commanders were

1 able to sexually exploit them at will, depriving them of their liberty and exercising
2 power of ownership over them.

3 Some girls were taken as so-called wives and forced to live with commanders, to do
4 household chores and to bear their children.

5 Others were treated like the guduria, after the communal cooking pot, as you heard
6 about earlier from Madam Prosecutor, meaning that they were forced to have sex
7 with whichever soldier demanded it.

8 These rapes led girls in the UPC to suffer terrible physical injury such as fistulas.

9 You heard of a nine-year-old girl who was repeatedly raped at a UPC training camp
10 and died of her injuries.

11 Girls were infected with venereal disease, many got pregnant. While some received
12 medical treatment or hospitalisation, others were simply sent out of the UPC because
13 they were of no use anymore.

14 Bosco Ntaganda had several female escorts living in his residence in Bunia. One
15 witness testified to having been raped by him. She testified that he raped her fellow
16 escorts as well.

17 Bosco Ntaganda is not charged as a direct perpetrator of rape or sexual slavery;
18 however, your Honours, this evidence is relevant to your determination of his intent
19 and knowledge of crimes, the modes of liability charged and the pattern evidence for
20 contextual purposes.

21 Bosco Ntaganda's flat denial that girls within the UPC were raped or that they got
22 pregnant must be rejected in the face of extensive, credible evidence to the contrary.

23 Your Honours, this Chamber has held that rape and sexual enslavement by members
24 of the same armed force constitutes war crimes, a conclusion that was affirmed by the
25 Appeals Chamber. The evidence proves beyond reasonable doubt that children in

1 the UPC were raped and sexually enslaved and that these crimes took place in the
2 context of and were associated with an armed conflict.

3 I will now move on to a discussion of using children to participate actively in
4 hostilities as articulated in paragraphs 651 and 652 of the --

5 PRESIDING JUDGE FREMR: [12:27:53] Sorry to interrupt you, Ms Sim. I just got
6 request if you can kindly a little bit slow down. Thank you.

7 MS SIM: [12:27:59] Paragraphs 651 and 652 of the Prosecution closing brief, the
8 crime of using children to participate actively in hostilities covers a broad spectrum of
9 activities, roles and tasks, including, but not limited to, direct combat. Indeed, the
10 very purpose of this prohibition is to protect children under 15 from the risks to their
11 lives and their well-being resulting from certain activities where those activities are
12 linked to the armed conflict.

13 The UPC deployed children under the age of 15 just like any other soldiers. There
14 was no distinction on the basis of age.

15 The Prosecution called extensive evidence showing how the UPC used children in
16 a variety of combat-related activities and roles.

17 You heard evidence about how UPC children under 15 were used to conduct armed
18 patrols during which they would harass and arrest citizens, to control roadblocks
19 where soldiers would extort money from civilians and rape women attempting to
20 pass. You heard that children were used to guard civilian prisoners. To perform
21 reconnaissance or act as spies or scouts, including in and around enemy installations
22 as they were less likely to arouse suspicion. You also heard about IS girls, girl
23 soldiers who were given civilian clothing and ordered to seduce and have sex with
24 enemy soldiers in order to gather intelligence about the number of troops and the
25 types of weapons they had, work that was both demeaning and dangerous.

1 Several witnesses testified about an entire platoon of child soldiers in the UPC which
2 was referred to as the kadogo unit that was part of the general staff. You also heard
3 about children being used to fight in combat operations where they could be injured
4 or killed and where they were forced to injure and kill.

5 During his testimony, Witness P-907 described the particular difficulty the kadogos
6 he fought alongside had when they tried to run while wearing oversized uniforms
7 and carrying heavy weapons.

8 Witness P-41 described the children who were deployed into combat as being almost
9 the same size as their Kalashnikov guns.

10 In paragraphs 660 to 662 of the Prosecution closing brief, the Prosecution presented
11 evidence of child soldiers who fought in battles in many locations, including Bunia,
12 Komanda, Songolo, Irumu, Nyankunde, Mabanga, Lonyo, Largu and Bule, as well as
13 during the first and the second attack.

14 Your Honours, six military insiders testified about personally fighting alongside
15 children. Witnesses P-963, P-17, P-768, P-10, P-907, and P-901.

16 UPC commanders also used children as bodyguards. Many witnesses testified about
17 seeing children being used as bodyguards by UPC commanders. In addition, five
18 military and political insiders testified to personally using children as bodyguards
19 while they were in the UPC during the period of the charges: P-55, P-768, P-41,
20 P-907, and P-911.

21 Moreover, 13 witnesses testified about seeing Bosco Ntaganda using children as
22 bodyguards or fighting with him in his unit. Two former child soldiers testified
23 about having fought in Bosco Ntaganda's unit. Numerous other Prosecution
24 witnesses testified about being recruited alongside children, about seeing children
25 under 15 at UPC training camps or about training children themselves or about seeing

1 children fighting on the front lines.

2 Five individuals testified to being under the age of 15 when they were recruited,
3 trained, deployed, and used by the UPC. The Prosecution articulates this evidence
4 at paragraphs 695 to 750 of its brief.

5 These children all lived through traumatic, deeply unsettling circumstances.

6 Witness P-758 testified, and I quote, "... I was thinking a lot about the people I had
7 killed. I was reliving the time that had I spent there, and at my age I think of all the
8 wrongs that had been caused. I wonder what sort of animal I'm like. I felt that
9 I was no longer a human being. I thought about everything I had done, and I was
10 still so young. At my age one couldn't envisage all these acts that I had committed
11 so I felt I was worthless." She was 13 when she was abducted by the UPC.

12 These events occurred 15 years ago when these witnesses were all children. Each of
13 them provided detailed coherent accounts. They named other children recruited
14 with them. They named commanders, UPC camps, places where they fought.

15 Their accounts were internally coherent and consistent with each other in many ways.

16 Documents such as school records, birth certificates, and identity cards corroborated
17 their dates of birth and the timing of their recruitment. Photographs of physical
18 scars that some suffered corroborated the types of injuries they sustained.

19 Family members of child soldiers also testified, corroborating the age of their child at
20 the time of their recruitment by the UPC and the terrible psychological and physical
21 harm that their children suffered as a result of being in the UPC.

22 Witness 769 also testified about the types of psychological trouble that children he
23 worked with experienced, including insomnia, wetting their beds at night, having
24 several types of phobias and fears, and being, quote, "always on the guard, on the
25 lookout, as if they expected a bullet or a shell or a bomb to drop on them at any time."

1 Finally, your Honours also heard evidence from former employees of local and
2 international organisations based in the area who monitored the human rights
3 situation and the demobilisation of child soldiers. They not only observed children
4 in the UPC, but also interacted with and interviewed them.

5 These witnesses provided credible evidence about their interactions and about the
6 methods they used to prepare reports and contemporaneously document the children
7 they encountered.

8 Many of these documents and reports were presented to the Court.

9 Bosco Ntaganda's testimony that there were no troops under the age of 18 in the UPC
10 should be rejected as implausible.

11 For this to be the case, it would require that all of the Prosecution's witnesses who
12 testified about using children, training children, interviewing children or otherwise
13 seeing children in the UPC were either intentionally deceiving the Court or wholly
14 mistaken about the ages of these children.

15 It would also mean that the former child soldiers who testified before you in detail
16 about their recruitment, about being taken to different UPC training camps, about the
17 nature of that training, the songs they sung, being selected as escorts for commanders
18 and fighting in different battles were also all not true. And that their parents who
19 testified were similarly deceiving you or mistaken. Your Honours, this is neither
20 reasonable nor plausible given the consistency of the evidence they provided
21 independently of each other.

22 I will now move on to a discussion of documentary evidence. In addition to
23 consistent, credible witness testimony about the recruitment and use of child soldiers,
24 the Prosecution tendered numerous documents, including internal UPC documents
25 that attest to the presence of children in the ranks of the UPC. Among these

1 documents were three purported UPC demobilisation orders. The evidence shows
2 that nothing changed as a result of these orders. Children continued to be recruited
3 and used.

4 While these orders do not indicate a genuine intention by the UPC to demobilise child
5 soldiers, they do show that child soldiers were present in the UPC and that
6 Bosco Ntaganda and his co-perpetrators knew it.

7 The first order from Thomas Lubanga appearing on your screen, dated
8 21 October 2002, refers to a practice of enrolling minors that has developed and then
9 formally bans this practice in the UPC. The second order, dated 27 January 2003,
10 refers to this previous order and reiterates the ban on recruiting children under the
11 age of 18.

12 Indeed, you will recall in a 16 February 2003 report, signed by Bosco Ntaganda's
13 secretary under his instruction, in which he refers to Thomas Lubanga's two orders to
14 demobilise child soldiers. And then, on 1 June 2003, Thomas Lubanga issued
15 a decree demobilising all children under the age of 18 in the FPLC.

16 All of the witnesses who were involved in demobilisation efforts in Ituri at this time
17 were unaware of any genuine attempt at demobilisation by the UPC. Witness P-976
18 referred to public efforts by the UPC to demobilise children as a sham; a reaction to
19 international pressure. Children remained in the ranks of the UPC long after these
20 orders were issued.

21 UPC political and military insiders unanimously testified that these orders were
22 never circulated or discussed. According to Witness P-901, quote, "Well, you know,
23 the demobilisation of children just didn't take place ..." End quote.

24 When shown these three orders during his testimony, Bosco Ntaganda maintained
25 that there were no children in the UPC and that these were a reminder from the

1 president not to recruit children. But this characterisation flies in the face of the
2 plain wording in these documents. Far from a reminder, these documents
3 acknowledge that there was an existing practice of recruiting children into the ranks
4 of the UPC. The evidence proves that over the period of the charges, the UPC did
5 not cease its recruitment of children or effect their demobilisation from the army.

6 Your Honours, I will now conclude my presentation by referring to the photographic
7 and video evidence which the Prosecution relied on to show children clearly under
8 the age of 15 in the UPC. This is set out in detail in paragraphs 678 to 684 of
9 the Prosecution's brief.

10 As articulated in both the brief and the Prosecution response to the Defence closing
11 brief, this Chamber is fully competent to assess the age of individuals appearing in
12 these images, taking into account factors such as their size, their height, their physical
13 development, as well as their behaviour and movements. The Appeals Chamber of
14 this Court has affirmed that assessing the age of a child does not require external
15 expertise or other corroboration. These images are a vivid, graphic depiction of the
16 testimony of numerous witnesses who themselves saw UPC child soldiers. These
17 images corroborate the wealth of other evidence about the presence of children under
18 the age of 15 in the UPC.

19 I will now take this opportunity to show your Honours a few excerpts from the
20 various items of video evidence. In these videos, which were created by the UPC,
21 you will see young soldiers -- sorry, you will see young children, armed and
22 uniformed, openly being used.

23 The first excerpt is from a meeting in Ngongo between the UPC and the Lendu on
24 14 January 2003, which high-level UPC members attended. It depicts several
25 soldiers approaching a truck. One witness confirmed that this group in fact returned

1 to Thomas Lubanga's residence following this meeting in order to report back to him.
2 There is one particular individual in this video who is in uniform and who will be
3 indicated with a highlighting in the excerpt played. And I would ask you to
4 compare his height and his size with his weapon and with the people around him, as
5 well as with the truck he is standing beside.

6 I will play it now.

7 (Viewing of the video excerpt)

8 MS SIM: [12:46:02] The child is on the left of the screen and now is crossing to the
9 right.

10 I will play this short excerpt for you a second time.

11 (Viewing of the video excerpt)

12 MS SIM: [12:46:28] Your Honours, the second excerpt I will show you is from
13 a video recorded on 23 January 2003, at a meeting between the UPC and the UPDF in
14 Bunia. In it, you will see a dark truck with several armed, uniformed UPC soldiers
15 in the back.

16 This excerpt will first be played at regular speed and then it will be played slowed
17 down. I would ask you to focus on two individuals wearing floppy hats, sitting on
18 the back door of the truck. You are clearly able to compare them to the size of the
19 soldiers sitting on either side. And as they are all with their legs over the side of the
20 truck, it is obvious that they are all seated at the same level.

21 I will play this video now.

22 (Viewing of the video excerpt)

23 MS SIM: [12:47:34] So this first is at full speed, as I said.

24 (Viewing of the video excerpt)

25 MS SIM: [12:47:53] The video will now play a second time, slowed down, and the

1 two individuals will be in highlighting.

2 (Viewing of the video excerpt)

3 MS SIM: [12:48:25] These two individuals are dwarfed by the adult men sitting
4 beside them. They are clearly very young children under the age of 15.

5 As your Honours will recall, the Prosecution also tendered a video recording that
6 shows Bosco Ntaganda, as well as other senior members of the UPC, including
7 Thomas Lubanga, Jean Tinanzabo, Aimable Rafiki visiting Rwampara training camp
8 on 12 February 2003 and addressing the recruits there.

9 Among the soldiers and recruits present are children who are clearly under the age of
10 15. This visit occurred after Thomas Lubanga was said to have issued two
11 demobilisation orders, on 21 October 2002 and 27 January 2003.

12 12 February 2003 is also the very same day that the UPC national secretary sent
13 a letter to the G5, which we saw earlier in my presentation and which is up on your
14 screen again. This letter was copied to Thomas Lubanga, and the état major in Bunia
15 and it is about the demobilisation programme aimed at 10 to 15 or 16-year-olds.

16 The fact that senior UPC members visited a military training camp where there are
17 children clearly under the age of 15 is evidence of Bosco Ntaganda and his
18 co-perpetrators' knowledge of children being in the UPC and the lack of any genuine
19 intention to demobilise them.

20 I will play three brief excerpts from the Rwampara video without sound as it has also
21 been slowed down slightly. Once again, I would ask your Honours to observe the
22 height, the size, the mannerisms of the individuals who are highlighted in this video,
23 individuals who, we say, are clearly children.

24 In the first excerpt, you will see Thomas Lubanga in uniform with a wide-brimmed
25 camouflage hat, as well as several armed UPC soldiers.

1 (Viewing of the video excerpt)

2 MS SIM: [12:51:18] You will also see a very small recruit in a white shirt standing in
3 the front row, singing and clapping.

4 The next excerpt I will show has several individuals in the crowd who are clearly
5 under the age of 15.

6 Once again, they will be depicted with highlighting.

7 (Viewing of the video excerpt)

8 MS SIM: [12:52:42] And finally, your Honours, I will play an excerpt that's
9 essentially a freeze frame, so that you can more clearly compare the individual to the
10 people around him.

11 (Viewing of the video excerpt)

12 MS SIM: [12:53:06] And once again, the individual in highlighting is the one we are
13 speaking of.

14 Your Honours, Bosco Ntaganda conceded that some of the individuals shown in the
15 Rwampara video did not meet his criteria. He testified that they were sent home.

16 He also testified that he did not return to Rwampara following this 12 February 2003
17 visit.

18 This explanation is implausible. Your Honour, all of the individuals in this video are
19 UPC recruits, including those children under the age of 15. As is clear from the
20 manner in which they are addressed and the circumstances surrounding their being
21 there.

22 As you will recall in this video, Thomas Lubanga first addresses the recruits around
23 him, saying, and I quote, "... soldiers. Even those who have weapons. Even those
24 who have pieces of wood, even those with empty hands. Soldiers."

25 He goes on to introduce himself, "I am Thomas Lubanga, the president of our party,

1 the UPC."

2 Then, he introduces Bosco Ntaganda as follows, "You are used to ... to meeting our
3 commanders ... who are ... helping with this ... work ... of training ... who are building
4 the army every day. I am with them all the time but there is a lot of work. ...

5 A lot. ... And ... sometimes my work means that I have to go out because I have
6 meetings all the time. ... So it is difficult for me to meet with all of you all the time.

7 ... the chief of staff, Commander Bosco, has come to see you. Does he come here?

8 Does he come? If he does not come, you tell me. Does he come? ... I would

9 consider him like an enemy but I think he cannot ... do that. He needs the army, he
10 is the army leader. So ... we came to see you ... and to encourage you. Why

11 encourage you? ... Because ... this work that we are doing together with you ... this

12 work that, you know, of going into the army ... of getting trained ... of taking up

13 arms ... this work that is blessed." End quote.

14 The crime of enlistment occurs at the moment a child enrolls or joins an armed group
15 and it is continuous until that child leaves the armed group or reaches the age of 15.

16 Furthermore, there is no requirement that the recruited child is then trained to use
17 weapons or even eventually used in conflict, in combat.

18 The video recording shows children, some clearly under the age of 15, present at

19 a UPC training camp. They are far removed from the civilian population where

20 civilians are not permitted. They are being addressed as soldiers and as recruits by

21 the president of the UPC. They are surrounded by armed soldiers and told to have

22 courage during their training and that their work is blessed.

23 It is implausible to suggest that these children are simply being allowed to stand

24 around, as the Defence contends. They are UPC recruits. Your Honours, nothing

25 the Defence presented raised reasonable doubt that all of the individuals seen in this

1 video recording have been recruited by the UPC.

2 I will play one last excerpt from the Rwampara video. This video will be shown
3 twice, first at full speed, and then in slow motion.

4 In it, Bosco Ntaganda is visible wearing his purple robe. You will see him enter the
5 white truck at the very end. You will also see Jean Tinanzabo saluting, as well as
6 Thomas Lubanga again. Also visible is a UPC soldier. He is in uniform and he is
7 carrying a weapon. Your Honours heard evidence that this individual was, quote,
8 "a real kadogo", end quote, and one of Bosco Ntaganda's bodyguards.

9 (Viewing of the video excerpt)

10 MS SIM: [12:58:59] This individual is clearly visible, his height and size can be
11 objectively compared to the adults around him, as well as the truck in which he
12 deposits his weapon.

13 This child is a UPC child soldier. It is simply not possible that a military commander
14 genuinely committed to ensuring that no children were recruited could stand before
15 these recruits. Bosco Ntaganda and his co-perpetrators intended for those under the
16 age of 15, plainly present before them, to be provided with military training and sent
17 into combat just like any other soldier.

18 Your Honours, when you consider the amount of detailed evidence provided by
19 Prosecution witnesses in its totality, from military and political insiders, former UPC
20 child soldiers, relatives of those child soldiers, individuals whose job it was to identify
21 and assist child soldiers and the consistency of this evidence, including information
22 contained in the UPC's own videos and documents, it demonstrates beyond
23 reasonable doubt that children under 15 were recruited and used by the UPC and by
24 Bosco Ntaganda personally.

25 This concludes my presentation, and I thank you.

1 PRESIDING JUDGE FREMR: [13:00:35] Thank you very much, Ms Sim. If you
2 allow, I would like to make one, again, small but maybe important correction of the
3 transcript; we go together with you. It is English version page 79, line 2. You spoke
4 about children or child soldiers, and at the moment we have in the transcript that they
5 were "knave", K-N-A-V-E. But if I heard correctly, I heard "naïve".

6 MS SIM: [13:01:17] That's correct.

7 PRESIDING JUDGE FREMR: [13:01:20] Okay, so it should be corrected as "naïve".

8 MS SIM: [13:01:22] Thank you.

9 PRESIDING JUDGE FREMR: [13:01:23] N-A-I-V-E. Thank you very much.

10 Now we will take our lunch break, which will take 90 minutes, which means that we
11 will resume at half past two.

12 THE COURT USHER: [13:01:34] All rise.

13 (Recess taken at 1.01 p.m.)

14 (Upon resuming in open session at 2.29 p.m.)

15 THE COURT USHER: [14:29:48] All rise.

16 Please be seated.

17 PRESIDING JUDGE FREMR: [14:30:12] Good afternoon, everybody. So now we
18 are going to listen to the last two representatives of the Office of the Prosecutor.

19 I see Ms Luping ready so, Ms Luping, you have the floor.

20 MS LUPING: [14:30:40] Thank you, Mr President. And good afternoon, your
21 Honours.

22 Mr President, your Honours, Bosco Ntaganda acknowledged that in any army, and I
23 quote, "each person will take care of, or will meet, his obligations following the
24 example set by the superior". End quote.

25 And Bosco Ntaganda led by negative example. As multiple witnesses testified,

1 Bosco Ntaganda was not nicknamed "The Terminator" for being a peacemaker, but for
2 being a notorious violent killer.

3 Indeed, the accused set the UPC's criminal pattern of behaviour and commission of
4 crimes: He directly and indirectly perpetrated crimes; he contributed to crimes
5 committed by others; he gave criminal orders to his troops or he induced them to
6 commit crimes, and; he failed to punish or take all necessary and reasonable measures
7 to prevent crimes.

8 Your Honours, it has been proven beyond reasonable doubt that Bosco Ntaganda is
9 individually criminally responsible under Article 25 for all of the crimes as charged
10 and that he acted with the necessary intent and knowledge.

11 I will address the different ways in which Mr Ntaganda is criminally responsible
12 under Article 25:

13 First, as a direct perpetrator under Article 25(3)(a); and second, as he indirectly
14 participated in the crimes committed or attempted - as an indirect or direct
15 co-perpetrator, by ordering or inducing crimes of his troops, and by contributing to
16 the crimes of his group, the UPC, who acted with a common purpose - under Article
17 25(3)(a), (b), (d) and (f).

18 Finally, I will address how Mr Ntaganda acted with the necessary intent and
19 knowledge under Articles 25 and 30.

20 Mr Iverson will address the evidence showing Mr Ntaganda's failure to punish or
21 take all necessary and reasonable measures to prevent crimes.

22 But starting first with the accused's direct perpetration of crimes.

23 Bosco Ntaganda directly perpetrated the crimes of attacks on civilians, murder,
24 attacks on protected objects, pillaging, persecution and he enlisted and used child
25 soldiers.

1 The evidence of these crimes is not only significant for his own criminal responsibility,
2 but also for his responsibility for his subordinates' crimes. As a commander, he set
3 the standard for his troops and he influenced their behaviour through his commission
4 of serious crimes. His behaviour signalled to his troops what was expected of them.
5 Bosco Ntaganda directly perpetrated the crimes of attacks against, murder and
6 persecution of civilians:

7 The accused's criminal orders to kill Lendu civilians is not only relevant to his
8 responsibility under Article 25(3)(b) but it also shows how he personally persecuted
9 and directed attacks against civilians.

10 You heard testimony from UPC insiders P-768, P-963, P-10, P-888, and P-190 who all
11 consistently described Bosco Ntaganda's repeated orders that he regularly gave
12 during military training and pre-attack briefings to eliminate or drive out the Lendu
13 without distinction between combatants and civilians. The accused constantly
14 identified as the enemy the Lendu and the predominantly Nande APC group.

15 The accused's order to kill Lendu without distinction was effectively a standing order.

16 First, the accused gave these criminal orders to direct attacks against and persecute
17 civilians during the military training. Insiders P-10, P-16, P-888, P-758 and P-190
18 heard Bosco Ntaganda and other instructors teach recruits including child soldiers
19 that the Lendu were the enemy, not distinguishing between combatants or civilians.

20 Military insiders P-963 and P-16 also confirmed that Bosco Ntaganda failed to train
21 his troops to obey humanitarian or criminal law, or to be disciplined with civilians.

22 Turning to the first attack, military insiders P-768, P-963 and P-10, who all themselves
23 participated in the first attack, heard the accused give these orders to target Lendu
24 before the attack.

25 Bosco Ntaganda matched his words with action by fully participating in the crimes in

1 or around Mongbwalu and Sayo.

2 Military insiders P-17, P-963 and P-768 saw the accused personally direct the attack
3 on Sayo village. The accused's troops implemented his criminal orders, firing
4 systematically and indiscriminately, with civilians killed as a result.

5 PRESIDING JUDGE FREMR: [14:37:19] Ms Luping, sorry to interrupt you. Could
6 you kindly, in order to have precise transcript, could you kindly slow down, because
7 I see some problems on the side of the transcribers.

8 MS LUPING: [14:37:31] Certainly, Mr President. And my apologies to the
9 interpreters.

10 P-17 testified that Bosco Ntaganda ordered him to fire at fleeing civilians.

11 Near Sayo church, P-894 saw the accused attack and kill four non-Hema civilians,
12 including two children.

13 He also saw the accused shoot dead the retired Colonel Lusala after interrogating him
14 and accusing him of supporting Lendu.

15 The evidence shows that Bosco Ntaganda also directed attacks against civilians in or
16 around Mongbwalu.

17 Insiders P-963, P-907, P-888 and crime base Witness P-894 described how the accused
18 gave his troops orders to hunt for Lendu, which were implemented in the usual
19 mop-up operations after the military operation. Those deemed unimportant were
20 killed straight away, but those who might have valuable information were first
21 interrogated before they were killed.

22 Indeed, as an example, you heard a senior military insider testify that

23 Bosco Ntaganda attacked and murdered the Abbé Bwanalonga, a Lendu-Ngiti priest.

24 The accused interrogated and he beat the priest, before executing him in cold blood at
25 close range.

1 Insiders P-768, P-963 and P-17 also heard the accused give orders to his troops to
2 shoot or execute captured persons, and they saw or learnt of detainees executed at the
3 accused's residence.

4 A senior military commander heard Bosco Ntaganda order his bodyguards to kill
5 three Lendu nuns, who were first raped by his guards.

6 That same senior military commander saw Bosco Ntaganda order his escorts to
7 execute two Lendu civilians found in nearby Nzebi who were then murdered.

8 The accused gave specific orders at other times to direct an attack against and
9 persecute Lendu. Another senior military insider heard the accused order his
10 bodyguards to kill Lendu civilian women whom the UPDF had brought into their
11 camps, the accused stating, "they are all considered to be our enemy".

12 During the first attack, the accused also systematically pillaged, personally and
13 through his subordinates. The Defence claims that the UPC did not steal any items
14 for personal use, but Bosco Ntaganda stole goods that were clearly for his own
15 personal use, including gold, televisions, radios, freezers, clothes, beer, and vehicles.

16 Senior military insiders, including P-16, P-901, and insider P-963, saw the accused's
17 stolen goods that were taken back to his Bunia personal residence. You have also
18 heard how Bosco Ntaganda attacked protected objects by pillaging from Mongbwalu
19 hospital and churches.

20 You've also heard how Bosco Ntaganda personally enlisted children below 15.

21 UPC insiders, including P-963, P-768, P-901, P-10, P-769, P-41 and P-190 all heard
22 Mr Ntaganda giving speeches encouraging the Hema community to give up children
23 as soldiers to the UPC or for young people to join them.

24 You heard numerous witnesses testify that Bosco Ntaganda used children under 15 as
25 soldiers, some as his own escorts. He used children to actively participate in

1 hostilities, and some of whom were killed.

2 I will now address Bosco Ntaganda's responsibility as a co-perpetrator.

3 And, your Honours, in the screen before you now I have the key elements of

4 co-perpetration, as a reminder of what needs to be proven, both for direct and indirect

5 co-perpetration.

6 First, the two objective elements common to both indirect and direct co-perpetration;

7 a common plan or agreement between two or more persons, including the accused;

8 the accused's essential contributions to that common plan. And then the two

9 additional objective elements to be proven for indirect co-perpetration; his use of

10 another person or of an organised and hierarchical organisation, and that

11 organisation being composed of replaceable individuals.

12 And the final element being the co-perpetrators' joint control over the organisation to

13 secure joint control over the crimes.

14 Starting with the first element, and that's the common plan. The Prosecution recalls,

15 as confirmed in the Lubanga trial judgment, that it does not need to prove that the

16 plan itself was specifically directed at committing a crime, only that the plan included

17 a critical element of criminality so that its implementation will in the ordinary course

18 of events lead to the commission of a crime.

19 The existence of the plan can be inferred from circumstantial evidence such as a

20 subsequent actions of the co-perpetrators. It doesn't need to be explicit or written.

21 And turning now to the evidence of the common plan in this case. As you have

22 heard, Bosco Ntaganda, as a co-perpetrator, committed crimes with others who

23 agreed on a common plan to take over Ituri's military and political control by force,

24 and to occupy the non-Hema dominated areas and drive out the non-Hema civilians,

25 especially the Lendu and the Nande. And they used criminal means to implement

1 that plan, namely, all of the crimes as charged. Bosco Ntaganda and his
2 co-perpetrator needed to use force to implement this plan to control Ituri, which is
3 why they had to recruit children and others to build up their army.
4 It has been proven beyond reasonable doubt that Bosco Ntaganda, Lubanga, Kisembo,
5 with others, were co-perpetrators to the common plan, which lasted from at least
6 6 August 2002 until 31 December 2003.

7 And, your Honours, what is the evidence of the common plan in this case? The
8 existence of the plan is shown by the ethnic and the political context of the conflict in
9 which the UPC was created; by the statements and the conduct of the co-perpetrators
10 and the UPC, including in contemporaneous UPC documents; and by the way in
11 which all of the UPC attacks were carried out, including the first and the second
12 attacks.

13 You'll recall that the accused conceded key elements of the common plan as he
14 admitted that the UPC's ideology was to kick out once and for all the evil and that
15 their goal was to have power in Congo.

16 UPC documents confirm that this evil to be ousted from Ituri was defined as
17 including the Lendu and their allies, especially the predominantly Nande UPC forces.
18 UPC documents also confirm the common plan of territorial control to take over Ituri
19 and to use the FPLC as a national army. For instance, the UPC's founding document,
20 the UPC statutes from 2000 refers to the plan to form a national army. Another UPC
21 document, the 11 August 2002 declaration signed by Thomas Lubanga in the name of
22 the UPC's precursor the FRP acknowledges the content of the common plan as it
23 speaks of them taking charge of Ituri following the ousting, by force, of the
24 RCD-K/ML and its allies.

25 On 22 October 2002 the UPC adopted the actions of the FRP of 9 August 2002 as being

1 their own in a document, and I refer to DRC-OTP-0037-0271. This irrefutably
2 undermines Bosco Ntaganda's testimony that the FRP was not the same as the UPC
3 and his claim that the UPC did not take over Bunia. As this document shows that it
4 was indeed the very same forces that took over Bunia.

5 Bosco Ntaganda also conceded that he and his forces knew and they adopted the
6 UPC's political ideology.

7 Now moving to the second element of co-perpetration that the Prosecution must
8 prove:

9 The Prosecution must prove that the accused made individual, essential contributions
10 to the common plan or agreement.

11 Under Article 25(3)(a) it is not necessary to prove that the accused made an
12 intentional contribution to each individual crime or criminal incident that was
13 committed on the basis of the common plan. Simply by the accused making an
14 intentional essential contribution to the common plan, the accused co-perpetrator is
15 then liable for all of the crimes that occur within the framework of that common plan.
16 And, your Honours, I refer in particular to the recent appeals judgment of the Bemba
17 Article 70 case, paragraphs 812, 821, 1029 and 1307.

18 So what does an essential contribution mean? The Prosecution recalls that as the
19 majority found in the Lubanga trial judgment, for co-perpetration under Article
20 25(3)(a), quote: "None of the participants exercises, individually, control over the
21 crime as a whole - but instead the control over the crime falls in the hands of a
22 collective as such." End quote.

23 As a result the term "essential" contribution does not mean that the individual
24 accused's contribution taken alone caused the crime. What it requires is an
25 assessment of whether the accused's contribution within the framework of the

1 common plan was such that without it, and I quote, "the crime would not have been
2 committed or would have been committed in a significantly different way." End of
3 quote. And I again refer to the Bemba Article 70 appeals judgment.

4 So when assessing whether a contribution is essential or not, the Chamber must look
5 at all the relevant contributions as a whole, and it mustn't artificially dissect or assess
6 the isolated individual acts. The contribution can take many forms and it doesn't
7 need to be criminal in nature. The contribution can be the planning and the
8 preparation stage. It doesn't need to be at the execution stage of the crime. In fact,
9 it can even be at the time when the common plan itself is conceived.

10 Now turning to the evidence of the essential contributions in this case, numerous
11 witnesses confirmed that between April and August 2002 Bosco Ntaganda and his
12 co-perpetrators made different coordinated contributions to implementing the
13 common plan.

14 What were Bosco Ntaganda's essential contributions to the plan? As the most senior
15 military leader in charge of operations and organisation, and as a hands-on leader,
16 Bosco Ntaganda was a strong controlling hand behind the common plan. His
17 essential contributions to the common plan took many forms. I will address in detail
18 five of these key contributions.

19 And those five essential contributions being his key role in military operations; his
20 role in directing and facilitating UPC crimes; his role in establishing training camps,
21 recruiting, training and using children and other soldiers to build their army; his role
22 in organising logistics, including weapons and ammunition, and finally; his
23 coordination role in ensuring liaison with UPC leaders and subordinates alike.

24 Even from 2000 when the UPC was first created and the common plan first conceived,
25 Bosco Ntaganda made essential contributions as the key military leader of the FPLC's

1 precursor the Chui mobile force. For instance, he helped to establish its structure,
2 assisted in recruitment, military training, and he planned and coordinated their
3 military operations.

4 Looking at the period 2002 to 2003 and turning to the accused's first essential
5 contribution, the accused directly planned, commanded, directed, controlled,
6 coordinated and facilitated UPC attacks, and he personally participated in them.

7 The accused, together with his co-perpetrators, led operations to ensure that the UPC
8 gained control over Ituri, and that they maintained that control.

9 Indeed, the accused concedes that he was the UPC's deputy chief of staff in charge of
10 operations and organisation, and that he was viewed as being very successful in his
11 operations.

12 You heard witnesses testify that the accused organised some of the operations entirely
13 on his own initiative and, conversely, that no operations could occur without his
14 involvement. This was confirmed, for example, by UPC insiders P-901, 55, 16, 907,
15 and 190, and witnesses P-14 and 315.

16 So turning to the accused's role in the first attack.

17 Before the first attack, senior military insiders 768 and 55, and UPC insiders P-907 and
18 190 testified that Bosco Ntaganda participated in planning meetings to organise the
19 attack.

20 You also heard insiders 768, 55, 901 and 17 testify that the accused arranged transport
21 of weapons and personally distributed them.

22 P-768, P-963, and P-55 confirmed that the accused liaised with his subordinates and
23 briefed them on the battle plan.

24 I've already described how the accused directly participated in that fighting during
25 the first attack. He directly commanded the UPC soldiers participating. P-768 and

1 P-17 testified about the operational instructions he gave to UPC soldiers.

2 P-768, 10, 17 and 963 also confirmed that the accused liaised with his subordinates

3 and others during the attack and he received reports.

4 Turning to the accused's contributions during the second attack: Your Honours,

5 Bosco Ntaganda would have you believe that he had no role to play in the second

6 attack, he knew nothing about it as it was unfolding and he learnt only of crimes

7 perpetrated during it in 2004. However, your Honours, his implausible claims fly in

8 the face of the consistent evidence that instead he played a leading role in the second

9 attack. He planned, he coordinated it.

10 Your Honours, just as an example, a reminder of the critical logbook message of

11 19 February 2003 now in front of you in the screens. And in this message

12 Bosco Ntaganda informs Kisembo and Lubanga that the troops had arrived in each

13 zone in Lipri, Kobu, and Bambu and that they would be kept informed of what

14 happened.

15 So contrary to the accused's claims it was him, not Kisembo, who was in a position to

16 report on its progress and who had effective command and control over this

17 operation. He clearly did know all about the second attack.

18 His implausible and self-serving claims that he did not send the message should be

19 rejected, in light of the unambiguous text of the message itself, and the clear

20 confirmation from a reliable military insider that it was Bosco Ntaganda who sent it.

21 The Defence never challenged his testimony on this point. This message also

22 appears in a logical subsequential order, and the accused never claimed that the

23 immediately preceding or subsequent messages were not sent by him.

24 His claims are also contradicted by what his subordinates said. You heard UPC

25 insiders P-55, P-17 and P-190 confirm that it was Bosco Ntaganda who commanded

1 the second attack, and he reported to Kisembo and Lubanga.

2 Senior military insider P-55 credibly described how Bosco Ntaganda participated in
3 preplanning meetings, giving a sober description of the accused's role at that phase
4 without embellishment. The Defence alleges that P-55 lied, but cannot explain why
5 P-55 would not try to inflate the accused's role even further if these truly were lies
6 meant to incriminate the accused.

7 You also heard P-55 confirm that before the second attack Bosco Ntaganda provided
8 weapons and ammunition and he decided on deployments.

9 Logbook messages of 17 to 18 February 2003 show the accused giving orders for
10 deployments before the second attack.

11 And we should recall two key logbook messages of 18 February 2003, now before you
12 on your screens, that show the reality that it was the accused who had overall control
13 over the troops for this attack.

14 In the first message on 18 February 2003, brigade commander Mulenda who led the
15 second attack in the field records to sector commander Salongo copying the accused,
16 not Kisembo, about his battalion commander's refusal to advance to Lipri.

17 And in the second message also from the same day, it's the accused and not Kisembo
18 who responds, saying the battalion commander could not refuse to advance to Lipri.

19 P-768 and P-46 confirmed that UPC soldiers amongst Mulenda's troops at Kobu
20 considered that it was the accused who had command authority over them for this
21 battle. Indeed, P-17, P-963, P-901 and P-290 testified that the accused issued
22 operational orders to FPLC soldiers for this attack.

23 As for the accused's claim that he knew nothing about the conduct of the second
24 attack or any of the crimes committed during it, P-55, P-901, and P-907 confirmed that
25 to the contrary he maintained regular contact with UPC soldiers in the field

1 throughout the second attack, including by radio, by Manpack and by Thuraya.

2 They confirmed that he was receiving updates and reports on the situation from the
3 field, including daily reports from sector commander Salongo. So in truth he knew
4 what was happening at all times.

5 His claim that he knew nothing about the second attack is also highly implausible for
6 a commander whose knowledge of everything that happened what so extreme,
7 whose controls of the military so all-pervasive, that it even extended, for example, to
8 the precise amount of bullets being used by his soldiers and the comings and goings
9 of simple soldiers.

10 His claim that there were no communications with him during the second attack must
11 fail. He admitted that throughout the period of the charges there was no problem or
12 obstacle to him exercising his role. He conceded that in that time he had various
13 means of communicating with the UPC as far away as Aru and Mahagi, including by
14 Motorola, Thuraya, written communications, in person, in addition to the Manpack.
15 He concedes that before the Mongbwalu operation he could communicate with
16 Kisémbó not only by Manpack but also by Thuraya. Even if the Chamber believes
17 his unbelievable claims that he was in Rwanda during the second attack, he admitted
18 he had his Thuraya with him, that you could communicate between continents by
19 Thuraya and, indeed, that Thomas Lubanga in Bunia was able to communicate with
20 him by Thuraya.

21 Moving back to his essential contributions to the second contribution, the accused
22 directed, controlled and facilitated the commission of UPC crimes by UPC soldiers
23 and Hema civilian supporters and he personally engaged in the commission of
24 crimes.

25 You've already heard how during the first attack he personally murdered Lendu and

1 other civilians. The accused during the first attack also brought women back to his
2 residence who were visibly intimidated. You heard how he also used, raped and
3 sexually enslaved UPC soldiers, which sent the signal that it was legitimate to use,
4 rape and sexually enslave them.

5 I described a multitude of instructions or orders that triggered the commission of
6 crimes, including his standing order to kill and drive out Lendu. Bosco Ntaganda
7 gave another standard order to soldiers to, and I quote, "do their work", end of quote,
8 which his troops understood to mean to kill them or do everything that you want to
9 do, including to rape and then kill.

10 You've also heard how Bosco Ntaganda gave the criminal order to "kupiga na
11 kuchaji" before the first attack, which was understood by UPC soldiers to mean they
12 should attack anybody they found and they could take whatever they wanted. It
13 was implemented by attacks on civilians that included rape and killing, and women
14 being treated like war booty.

15 His criminal orders to kill and drive out Lendu, and to kupiga na kuchaji, were
16 repeated by his subordinate Mulenda for the second attack.

17 He also showed that the crimes were condoned and encouraged as he took no action
18 to punish any UPC perpetrators for crimes that was committed against Lendu or
19 non-originaires.

20 The accused's third essential contribution to the plan was in helping to establish
21 training camps by his recruitment, training and use of children and other soldiers in
22 the UPC.

23 The accused concedes that he was involved in the training of FPLC recruits. And
24 numerous witnesses, including 768, 17, 55, 883 and P-14 confirm that the accused
25 trained recruits and was responsible for the UPC's training and training camps.

1 He also helped conscript child soldiers. And you heard how he abducted boys and
2 girls from Mudzipela in 2002, including those aged 10 to 13.

3 He decided on the troops deployment, including children under 15. You heard
4 P-901 and P-290 testify that Bosco Ntaganda gave orders for children below 15 to be
5 deployed after their training. And you've also heard how he personally used child
6 soldiers.

7 Bosco Ntaganda also made an essential contribution by organising logistics. The
8 accused concedes that he had a role in distributing weapons. And you heard
9 witnesses testify that he obtained and he distributed weapons and ammunition for
10 UPC attacks and UPC crimes. You heard, for instance, from the military insiders 55,
11 768, 16, 901, 17, and 190.

12 And moving to the fifth and final essential contribution that I am focussing on, he
13 coordinated and liaised between the co-perpetrator and with others.

14 They regularly discussed the common plan. They briefed and they instructed the
15 troops on operational matters. And this, your Honours, is demonstrated by the
16 frequent meetings and contacts with his co-perpetrators, including Lubanga and
17 Kisembo, and his tight controls over strategic and day-to-day issues with UPC
18 subordinates.

19 Now returning, your Honours, to the final two elements to be proven for indirect
20 co-perpetration. The first is that the Prosecution must prove that the accused
21 committed crimes through another person or an organised hierarchical apparatus of
22 power. And the Prosecution must establish that there was a way of ensuring
23 compliance, which can be proven for instance by showing:

24 That the organisation had a large enough number of subordinates so if there was any
25 subordinate who refused to comply they could be easily replaced by somebody else

1 who would.

2 Or it can be proven by showing there was an intensive, strict, and violent training
3 regime.

4 Moving to the evidence in this case, Bosco Ntaganda used UPC soldiers and Hema
5 civilians within the organised hierarchical UPC structure to commit crimes.

6 The accused acknowledged that the UPC was an organised and hierarchical structure
7 of power and that no subordinate officer in the FPLC could refuse to carry out an
8 order of his hierarchical superior. The evidence also showed that there were large
9 numbers within the UPC, so that if a fighter refused an order, he or she could be
10 readily replaced.

11 Finally, the Prosecution needs to prove that Bosco Ntaganda with his other
12 co-perpetrators had joint control over the crimes by controlling the organisation
13 which they could steer towards implementing the common plan.

14 The Prosecution does not need to prove that each co-perpetrator, including the
15 accused, was individually in a position to control the organisation, but that the
16 control was exercised by the co-perpetrators jointly.

17 On the facts of this case, your Honours, this means that it is not necessary to prove
18 that Bosco Ntaganda was the most senior military leader or more senior or more
19 powerful than Floribert Kisembo. It's enough to show that he and his
20 co-perpetrators shared joint control over the organisation and could get their
21 subordinates to commit crimes by following their orders. And this has been proven,
22 your Honours. There were enough soldiers in the UPC to follow the orders and
23 there was a strict training to ensure they complied.

24 The accused concedes that Kisembo and Lubanga had controls over the UPC. He
25 denies he had any shared control. However, the evidence proves that the accused

1 was a senior UPC commander with tight control and influence over the troops.

2 He concedes he was a high level UPC commander and the UPC's deputy chief of staff
3 in charge of operations and organisation. He concedes he had considerable
4 influence over the FPLC and commanded a very disciplined army. He admits he
5 could punish his subordinates.

6 Indeed witnesses and the logbook confirm that Bosco Ntaganda and his
7 co-perpetrators harshly disciplined his troops, just not for crimes against Lendu, and
8 that he insisted on obedience consistent with his position within the hierarchy, and
9 that he demanded compliance with his orders.

10 In fact, even though the Prosecution does not need to prove this, the evidence shows
11 that his powers went much further than that. Multiple witnesses testified that from
12 the UPC's inception, the accused wielded far greater power than his formal role
13 suggests. He was effectively the real army chief of the FPLC and Lubanga's number
14 2. His authority on military and operational matters was left unchallenged.

15 It was no slip of the tongue when, in a video dated November 2002, he describes
16 himself as the FPLC's chief of staff. Nor was it a mistake when UPC's President
17 Lubanga also describes him in a video dated February 2003 as le chef d'état-major,
18 Commandant Bosco.

19 The accused's elevated role within the UPC was logical. Bear in mind he had greater
20 military leadership experience and skills; he was the founder and leader of the
21 UPC's precursor, the Chui mobile force, in which Kisembo was his deputy.

22 Nothing changed in 2002 and 2003. He remained the UPC's top military leader,
23 tactician, instructor and motivator.

24 Kisembo was de facto chosen as chief of staff because he was a Hema, but Lubanga
25 had more confidence in Bosco Ntaganda.

1 Senior military commander, 768, confirmed that Bosco Ntaganda was responsible for
2 everything. From the UPC's training and deployments, to weapons and operations
3 and that he was more present and influential than his own hierarchical superior.

4 Similarly, P-907 testified that the accused planned the war, was in charge of all the
5 war operations. "You couldn't go to war without his approval." He was the boss; he
6 was the one who received all the reports; he was the person who was responsible.

7 Nobody else.

8 The accused had other powers over the organisation to appoint, replace, remove and
9 promote UPC officers and soldiers. And Mr Iverson will detail further the accused's
10 powers of effective command and control.

11 As for the accused's criminal responsibility under the other modes of liability under
12 Article 25, the Prosecution relies on its submissions in its closing brief as to how it has
13 been proven beyond reasonable doubt that the accused is also responsible under
14 Articles 25(3)(b), (d) and (f).

15 Your Honours, I'll now address the accused's intent and knowledge and in this
16 section I'll first address the evidence that proves the accused's intent and knowledge
17 and then I will be addressing two legal issues that the Defence raised in their Defence
18 reply brief.

19 It has been proven beyond reasonable doubt that the accused committed or attempted
20 the crimes or made contributions to the common plan or common purpose or ordered
21 or induced the crimes with the requisite intent and knowledge.

22 The accused knew that the common plan and common purpose involved an element
23 of criminality and that he and his co-perpetrators could jointly exercise functional
24 control over the crimes. He knew of the key features of the UPC organisation. He
25 knew of the coordinated contributions of his co-perpetrators and the joint control that

1 they exercised.

2 And because of his knowledge of the criminal methods that he previously used, he
3 must have intended the commission of each of the crimes resulting from the common
4 plan or common purpose or, at the very least, he knew that the crimes will occur in
5 the ordinary course of implementing the common plan.

6 He made intentional contributions either with the aim of furthering the criminal
7 purpose of the group or he knew that the group intended to commit crimes. This is
8 shown, for instance, by his position and authority within the UPC; his command of
9 the troops; his role in the planning and his participation in attacks, and his
10 communication with subordinates and other members of the group. When he
11 ordered and he induced his troops, he was, at the very least, aware that the crime will
12 be committed in the ordinary course of events as a consequence of realisation of the
13 execution or implementation of his order.

14 In fact, your Honours, the evidence shows that Bosco Ntaganda clearly intended for
15 all the crimes to occur. His participation was not inadvertent or uninformed. His
16 words, his deeds, his knowledge of the FPLC's methods, including his own
17 perpetration of crimes, and his criminal orders to kill and oust Lendu and kupiga na
18 kuchaji, all demonstrate his intent to commit crimes and his knowledge of crimes.
19 His failure to punish his troops also proves his intent. You've heard how after the
20 second attack, the accused not only failed to punish Mulenda for the crimes
21 committed in Kobu, but called him a real man for his killings of civilians there. This
22 callous attitude was consistent with his standing order but also with his intent to kill
23 Lendu.

24 Now, what of the accused's specific intent to persecute Lendu? Bosco Ntaganda
25 would have you believe that he did not have the specific intent to persecute Lendu.

1 He has given examples of where he cooperated with them. But, your Honours, those
2 few times Bosco Ntaganda may have tried to cooperate with Lendu was always for
3 self-serving reasons. For instance, to get Lendu to return to Mongbwalu to work the
4 gold mines for them.

5 The Defence has also tried to rely on UPC videos and statements to suggest that the
6 UPC didn't intend to target the Lendu. But the UPC and the accused routinely used
7 propaganda to hide the reality that the Lendu and the Nande were viewed as their
8 enemy and were targeted, and that the UPC was a predominantly Hema organisation
9 representing Hema as well as Tutsi interests. And I refer to the detailed arguments
10 in the Prosecution's closing brief at paragraphs 895 to 929.

11 Bosco Ntaganda would also have you believe that he saw it as his job to protect
12 civilians, Lendu included. Your Honours, I would just recall one more example of
13 the accused's real attitude towards Lendu civilians and it was that moment when he
14 came across civilians sheltering in the Sayo church. As P-17 vividly described, the
15 accused swore at them in Kinyarwanda to, and I quote, "Go fuck your mother" end of
16 quote, before his bodyguard shot one of them and the rest were executed with
17 bladed weapons.

18 This is not the behaviour of a military commander intent on caring for and protecting
19 all civilians, Lendu included.

20 The Defence has tried to argue that Chef Kahwa's alleged protection of some Lendu
21 civilians, who were amongst largely Hema displaced persons sheltering in Mandro,
22 proves that the UPC did not target or discriminate against Lendu.

23 The Prosecution does not need to prove that the co-perpetrators shared the accused's
24 persecutory intent. And Chef Kahwa was expelled by the UPC, including for
25 alleged treasonous behaviour towards the UPC movement. And D-54's evidence did

1 not show that it was the accused who gave shelter to Lendu civilians at Mandro.
2 And what of the accused's intent and knowledge regarding child soldiers? He knew
3 and he intended that children under 15 were recruited and used by the UPC as
4 soldiers, even when he was leading the Chui mobile forces in 2000, he knew that
5 children under 15 were amongst his forces. His continuing knowledge and intent
6 that children under 15 be recruited and used as soldiers in 2002 as well as 2003 is
7 amply shown by his own conduct. Not only was it his job to know what was going
8 on with regard to UPC training and recruitment, but he actively kept himself directly
9 involved. He abducted recruits. He was responsible for all training. He regularly
10 visited their camps and he even purchased their small-sized boots.
11 He personally used children as his escorts and he sent them into battle. He deployed
12 the child recruits. He was present where other commanders were using them. And
13 he met with groups calling for their demobilisation. The accused also admitted to
14 UN officials and to a researcher, P-315, that he knew that there were children amongst
15 the UPC.
16 Bosco Ntaganda also knew and intended that UPC soldiers be raped and sexually
17 enslaved. It was common knowledge that senior UPC commanders raped UPC
18 soldiers, including their female escorts and the accused raped them himself.
19 Your Honours, as I have stated, at the very least Bosco Ntaganda knew that the
20 crimes will occur in the ordinary course of implementing the common plan.
21 The first and the second attacks were not his first UPC attacks. He knew the means
22 and methods to be used from his prior, recent command experience in the attacks in
23 Bunia, Songolo, Zumbe, and Mambasa, Komanda and Eringeti. He planned and he
24 took a leading role in all of these prior UPC attacks. In these attacks, the same
25 crimes were consistently perpetrated: Murder and attempted murder, rape, sexual

1 slavery, attacks on civilians and on protected objects, pillaging and property

2 destruction, persecution and forced displacement and transfer.

3 And in these attacks, even after the fighting was over, the UPC would routinely hunt
4 for non-Hema civilians in mop-up operations when they would rape, kill, steal and
5 destroy their property.

6 Individuals in these attacks were the victims of multiple UPC crimes, not just one.

7 Bosco Ntaganda also knew that rape of civilians was an ordinary part of warfare
8 amongst UPC soldiers.

9 None of these crimes were random. None of them were isolated acts. The crimes
10 were a strategic and consistent means of achieving the common plan or purpose.

11 The accused also knew what was happening because he was an active commander.

12 He conceded he was an active commander who kept himself apprised of the situation
13 while the UPC conducted operations. He testified, quote, "The troops realised that
14 I was aware of what was happening, that I was monitoring them and that showed the
15 commanders that I was up to speed with all the offences being committed in our
16 forces -- that I was really aware of everything that was going on at all times." End
17 quote.

18 He was either on the ground with the fighting forces or he was controlling operations
19 from a distance and he knew what was happening during the operations. He had to
20 maintain operational awareness for him to be able to effectively command his troops,
21 maintain control over them and ensure compliance with his orders and proper troop
22 functioning. He had an effective and well-established communications and
23 reporting system. He made regular trips to see his soldiers in the field. He also
24 admitted that he did receive reports from G2 intelligence staff. His personal conduct
25 and intent must be interpreted in the context of his abundant knowledge of the

1 activities of the UPC and its soldiers.

2 Your Honours, I now turn to focus on two legal issues as raised by the Defence in
3 their Defence reply brief. Both relate to the correct interpretation of the test for mens
4 rea under Articles 25 and 30.

5 Starting first with Article 30. The Prosecution is mindful that the Lubanga appeal
6 judgment interpreted Article 30(2)(b) and 30(3) requiring that the accused is aware
7 that a consequence will occur in the ordinary course of events to mean that the
8 accused was aware of a virtual certainty.

9 However, the Prosecution respectfully urges the Trial Chamber when interpreting
10 intent and knowledge under Article 30 to adopt a common sense and plain language
11 interpretation of the text, whether or not a prohibited consequence "will occur in the
12 ordinary course of events". Although the Lubanga Appeals Chamber held that for
13 both Article 30(2)(b) and 30(3) alike, that the standard for foreseeability of events is
14 virtual certainty, it recognised that, and I quote, "absolute certainty about a future
15 occurrence can never exist." End quote.

16 In Bemba, the Prosecution noted its concern that the Lubanga Appeals Chamber's
17 interpretation of Article 30, from which it derived the "virtual certainty" standard,
18 appeared to give insufficient consideration to what "ordinary course of events" really
19 means in practical terms. But this question was not addressed in the Bemba appeals
20 judgment. This Chamber should ensure that any interpretation of Article 30 is in
21 keeping with the Statute, including the aim to end impunity, and, accordingly, reject
22 the Defence's arguments that it must apply an artificially high threshold test.

23 Notwithstanding the "virtual certainty" language, the broader context of the Lubanga
24 judgment evinces no intention to repudiate the statutory requirement that liability
25 attaches when the accused is aware that the consequence will occur "in the ordinary

1 course of events" and nor could it do so. And it is for this Trial Chamber now to
2 apply this test meaningfully in practice.

3 Now, to be clear, the Prosecution is not suggesting that the Trial Chamber apply a
4 *dolus eventualis* standard. Indeed, the Prosecution reiterates its position that the
5 drafters deliberately excluded reference to this standard and to concepts such as
6 *dolus directus* because they are abstract concepts that can have different meanings in
7 different national systems. And in this respect, the Defence is incorrect in the
8 Defence reply brief to imply that the *ad hoc* tribunals only allowed a *mens rea* less
9 than *dolus directus* for joint criminal enterprise III. To the contrary, the liability at
10 these tribunals for planning, instigating and ordering in customary international law
11 was also established on the basis of the *mens rea* that the accused acts with, and I
12 quote, "aware[ness] of the substantial likelihood that a crime will be committed".
13 End quote. The Prosecution refers, for example, to *Prosecutor v Karadzic* at
14 paragraphs 571 to 573 in its trial judgment. And would also refer to the other ICTY
15 and ICTR authorities cited in that judgment.

16 At this Court, these modes of liability have consistently been recognised as analogous
17 to those in Article 25(3)(b) of the Statute. And I refer, for example, to the
18 *Mudacumura* arrest warrant decision at paragraph 63 in which the Chamber said,
19 and I quote, "taking note of the way ordering liability is analysed at the *ad hoc*
20 tribunals", end of quote, and citing *ad hoc* jurisprudence in construing Article 25(3)(b),
21 which was then followed in subsequent cases.

22 The Prosecution submits that the approach that this Trial Chamber takes to the
23 interpretation of "will occur in the ordinary course of events" should apply to all
24 modes of liability under Article 25 which rely for their *mens rea* standard on the test
25 in Article 30(2)(b) and 30(3), that is, that this Chamber should adopt a common sense

1 plain language interpretation of the test whether a prohibited consequence "will occur
2 in the ordinary course of events". In this case, the evidence meets the mens rea
3 standard in Article 30(2)(b) and 30(3) beyond reasonable doubt.

4 Secondly, the Defence in its reply brief has raised an issue as to the scope of mens rea
5 for Article 25 and whether it's necessary or not to establish "actual knowledge" of
6 crimes. Your Honours, it's simply an effect of Article 30(2)(b) that there is no need to
7 prove the accused's actual knowledge of crimes if it's established that "he was aware
8 that he contributed to the plan in which crime will occur in the ordinary course of
9 events". The Prosecution agrees that the mens rea of the accused relates to both the
10 fact of his contribution to the common plan and the nature of the plan as leading to
11 crimes in the ordinary course of events.

12 In conclusion, your Honours, the Prosecution asks that the Chamber make a finding
13 in relation to each of the modes of liability of the accused under Article 25(3)(a), (b), (d)
14 and (f) and Article 28, all of which have been proven beyond reasonable doubt.

15 This concludes my submissions.

16 PRESIDING JUDGE FREMR: [15:37:37] Thank you very much, Ms Luping.

17 Now it's turn for Mr Iverson.

18 MS SAMSON: [15:37:57] Mr President, if I may while Mr Iverson is getting ready, I
19 note two transcript corrections in Ms Luping's submissions.

20 PRESIDING JUDGE FREMR: [15:38:05] Please go ahead.

21 MS SAMSON: [15:38:06] Page 125, line 5, the reference should be to paragraphs
22 571 to 573. And on page 119, line 13, the reference should be "now what of the
23 accused's specific intent". Thank you.

24 PRESIDING JUDGE FREMR: [15:38:28] Thank you.

25 And now, Mr Iverson, according my counting the OTP not only, but the OTP is

1 expected to complete its closing statement, I'm not saying strictly, but around quarter
2 past 4. Is my expectation realistic?

3 MR IVERSON: [15:38:50] That is definitely realistic, Mr President. I plan on
4 finishing before that time, yes. Probably just a few minutes after 4 p.m.

5 PRESIDING JUDGE FREMR: [15:39:00] Thank you, Mr Iverson. Please go ahead.

6 MR IVERSON: [15:39:04] So it is my privilege to address your Honours on the last
7 topic of the day, and that topic is the responsibility of commanders under Article 28 of
8 the Rome Statute.

9 Command responsibility is a mode of criminal liability essential to the efficacy and
10 functioning of international humanitarian law, IHL, which regulates the conduct of
11 hostilities during times of armed conflict. Military commanders have immense
12 destructive forces under their control and they hold the power to ensure that their
13 forces understand their legal obligations and observe them during the conduct of
14 hostilities.

15 If commanders do not ensure that their forces obey the law, if they do not carefully
16 supervise their subordinates, IHL cannot be effective. The role of a commander in
17 maintaining discipline, disseminating the law and punishing those responsible for
18 violations of the law is of paramount importance to respect for IHL, the protection of
19 the civilian population, and to prevent the serious crimes that fall under this Court's
20 jurisdiction. The failure of a military commander to meet his or her duty to prevent
21 subordinates from committing crimes, or punishing those responsible for crimes,
22 requires that the failing commander be held accountable. And in this case we say
23 that is Mr Ntaganda.

24 Article 28(a) has four legal elements: The Chamber must be convinced beyond
25 reasonable doubt that:

1 One, Mr Ntaganda was a military commander;

2 Two, that the forces that committed the charged crimes were under Mr Ntaganda's
3 effective command and control;

4 Three, that Mr Ntaganda either knew or, owing to circumstances at the time, should
5 have known that his forces were committing or about to commit such crimes;

6 And four, that Mr Ntaganda failed to take all necessary and reasonable measures
7 within his power to prevent or repress the commission of crimes or to submit the
8 matter to the competent authorities for investigation and Prosecution.

9 I will discuss first the issue of effective control, and then Mr Ntaganda's knowledge,
10 measures, and I'll end talking about, briefly about causation within Article 28.

11 The element of effective control is commonly -- of effective command and control is
12 commonly referred to as "effective control" and I will refer to it as such.

13 Effective control is understood as a commander's material ability to prevent
14 subordinates from committing crimes, repress the commission of crimes, or submit
15 the matter of crimes to the competent authorities for investigation and prosecution.

16 The exercise of effective control depends on the existence of a superior-subordinate
17 relationship between the commander and the perpetrator of crimes.

18 In order to determine whether the legal element of effective control has been proven,
19 courts have looked to a number of relevant factors or indicia of the commander's
20 material ability to prevent or punish the crimes. These factors include, among others:

21 The power to issue orders; the ability to ensure that orders are carried out; the
22 position of the commander within the structure of the group, and his or her tasks; the
23 ability to order those under his or her command to engage in hostilities and to
24 withdraw them from where hostilities are taking place; the power to --

25 PRESIDING JUDGE FREMR: [15:43:19] Mr Iverson, sorry, please slow down

1 slightly, because there are many complex terms and in order to keep our transcript
2 precise. We are not under time pressure, so no problem if you will need to have
3 some more time, so please slow down a bit.

4 MR IVERSON: [15:43:37] Duly noted. I'll slow it down, Mr President.

5 Also the power to promote, replace or remove subordinates; and the capacity to
6 discipline subordinates, including initiating punishment or investigations, and
7 making reports to competent authorities.

8 The accused had all of these powers. In particular, Mr Ntaganda acknowledged that
9 he retained the material ability to prevent and punish crimes in his testimony by
10 confirming that he could detain sector commanders, quote, "without hesitation",
11 unquote, and going on to state that, quote, "all my subordinates, I could punish them",
12 unquote.

13 In recognising his powers he highlighted his control over his subordinates and
14 showed that he understood his place in the UPC/FPLC hierarchy.

15 The Defence invites you to believe that Mr Ntaganda's role was one of a staff officer
16 and that he was not a commander at all, though its only source for this claim is
17 Mr Ntaganda himself. The Defence primarily rely on Mr Ntaganda's official title,
18 deputy chief of staff in charge of operations and organisation, to argue this point.

19 However, job titles are not the decisive factor in establishing control. What is
20 important is the evidence of Mr Ntaganda's actual powers, his function and his
21 capacity to control his subordinates' actions through his orders and through his
22 disciplinary ability. Prosecution witnesses independently confirm that Mr Ntaganda
23 had the powers to control his subordinates' actions. For instance, Prosecution
24 witness 901 stated quote, "Within the FPLC no one was respected more than Afande
25 Bosco. He was the most respected person and the orders that he gave were followed

1 and enforced by everyone." Unquote.

2 The Defence also argued that Mr Ntaganda only acted as a commander for short
3 periods of time when command was formally passed to him. Now, first of all,
4 Mr Ntaganda's claim of handing over responsibility is unsupported, implausible and
5 impractical in a military sense. Secondly, and more importantly, the issue to be
6 resolved by the Chamber is not whether the superior was formally placed in
7 command at any given moment, but rather whether he had the material ability to
8 prevent and punish the perpetrators of crimes.

9 The Defence --

10 PRESIDING JUDGE FREMR: [15:46:43] Sorry to interrupt you, I would just like to,
11 at transcript page 131, third line, the missing word is "responsibility". Am I correct?
12 Handing over responsibility is unsupported. Please proceed.

13 MR IVERSON: [15:47:02] I believe that's correct, Mr President, thank you. Yes, it
14 is. The Defence also claims that two commanders cannot be in command at the same
15 time, concluding therefore that Mr Ntaganda and Kisembo could not hold command
16 simultaneously. On the face of things, this may make a certain kind of sense, but
17 this was not the practice in the UPC/FPLC or, for that matter, in any functioning
18 military organisation. It is routine that commanders on various levels
19 simultaneously exercise effective command and control over the same subordinates.
20 So, for instance, a platoon or section will be led by a platoon or section leader and a
21 company by a company commander who will also have authority over the platoons.
22 And a battalion will be led by a battalion commander having authority over battalion,
23 company and platoon. And this applies equally to all levels of command up to the
24 highest headquarters of any military organisation. All these commanders are legally
25 responsible for their respective units.

1 Mr Ntaganda was in charge of all UPC/FPLC military operations. So when I say
2 highest headquarters, that's what I mean.

3 The evidence is clear on this point. Prosecution witness 963 stated that Ntaganda
4 was, quote, "the one who commanded the operations," unquote.

5 Witness 190 said, quote, "Not a single operation could have been undertaken without
6 Ntaganda's involvement in his capacity as person in charge of operations." Unquote.

7 And 55 stated that Ntaganda was in charge of operations. And yet again,

8 Prosecution witness 14 said, quote, "In operational terms, the army was basically run
9 by Bosco Ntaganda." Unquote.

10 I'll now turn to Mr Ntaganda's knowledge of the charged crimes.

11 The evidence on the record -- in the record of the case establishes that

12 Bosco Ntaganda knew or owing to the circumstances at the time, should have known
13 that his subordinates were committing or were going to commit one of the several or
14 several of the charged crimes.

15 As explained by Ms Luping, some of the most compelling evidence of Mr Ntaganda's
16 knowledge of the charged crimes comes from his own personal and direct
17 participation and perpetration of some of the charged crimes. And similarly, from
18 his presence during his troops' commission of crimes and in the training camps where
19 he could see and interact with child soldiers.

20 The Defence claims that Mr Ntaganda had only limited knowledge of some of the
21 offences committed by his troops, but that he had no knowledge of the very crimes
22 that we have charged in this case. Mr Ntaganda's professed ignorance stands in
23 stark contrast to Prosecution witnesses who testified about, for example, the crimes
24 committed in the first charged attack. Seven of Ntaganda's subordinates testified
25 under oath and all categorically admitted their participation in and knowledge of

1 Ntaganda's forces having committed numerous crimes during the first attack; 768, 907,
2 963, 17, 10, 898, 888. And four senior FPLC officers, who were not even present
3 during the first attack, all testified that they heard reports of crimes during that attack;
4 901, 55, 16, 190. Mr Ntaganda stands alone in his denial.

5 Mr Ntaganda also professed his ignorance of the existence of the second charged
6 attack. This, despite his own radio logbook communication orders during that
7 attack, which you've seen many times during the course of the trial and most recently
8 in Ms Luping's submissions. Those messages clearly establish his orders and
9 reporting information about that attack. And though Mr Ntaganda was informed of
10 the crimes committed by, for example, Mulenda in Kobu, he failed to take any
11 measures to punish Mulenda for his actions. In fact, none of the soldiers who
12 participated in the UPC attacks in Kobu, Lipri and Bambu were ever punished.
13 Instead, within two weeks of the massacre in Kobu, witness 55 heard Mr Ntaganda
14 praise Mulenda for being a real man in relation to that attack.

15 Mr Ntaganda also professes ignorance of the presence of children under the age of 15
16 within the ranks of the UPC/FPLC; though he could plainly see them even better than
17 you can see them in the videos in evidence. And Mr Ntaganda professes ignorance
18 of the crimes of rape and sexual slavery. In his testimony, Mr Ntaganda
19 acknowledged that girls were separated at night in the camps for their protection, but
20 yet he also knew that this separation did not apply in all circumstances.

21 For instance, when he decided to order his female escorts, girls, into his quarters and,
22 as P-10 explained to you, raped them himself. Given those coercive circumstances
23 that he encouraged by his own actions, he was fully aware that other commanders
24 were doing the same thing.

25 Mr Ntaganda's knowledge of the charged crimes is established through multiple

1 sources of evidence and witness testimony, including Mr Ntaganda's own admissions
2 during his testimony. I won't highlight all of the evidence that is already included in
3 the Prosecution's written submissions, but I do wish to comment on Mr Ntaganda's
4 own testimony concerning what he knew about his own troops' activities.

5 During his testimony, the accused admitted that he was, quote, "up to speed with all
6 the offences being committed in our forces," unquote, and that, quote, "I was really
7 aware of everything that was going on at all times." Unquote.

8 He also conceded that there were no obstacles to his exercise of authority.

9 Now, these are important admissions from the accused. They establish that he

10 wasn't waiting for information to come to him; he was actively seeking out

11 information. And he didn't encounter any obstacles in doing so. It is plain he was

12 aware of what his troops were doing: Committing terrible crimes. And he knew it.

13 Why, you might ask, should Mr Ntaganda be believed on these points about his

14 knowledge of the events and not on other points? Well, these admissions are

15 credible because -- one, the evidence is consistent with other credible Prosecution

16 witness testimony on this point; and two, these are incriminatory admissions against

17 his own self-interest.

18 The Defence stated that the Prosecution misunderstood the meaning of

19 Mr Ntaganda's admissions about his knowledge of his own troops' behaviour. We

20 ask your Honours to carefully scrutinise that claim which attempts to walk back the

21 accused's testimony. Scrutinise it being mindful of Mr Ntaganda's obvious careful

22 preparation of his testimony, his level of intelligence, and his full knowledge of the

23 Prosecution's allegations and evidence in this case. I would submit that the Defence

24 argument does not withstand scrutiny. Mr Ntaganda, by his own testimony, knew

25 of the crimes committed by the FPLC.

1 In both the Defence closing brief and its response brief, the Defence make the claim
2 that the "should have known" standard found in Article 28 of the Rome Statute
3 should be interpreted as "had reason to know", the same standard found in the ad hoc
4 tribunal statutes.

5 The drafters of the Rome Statute were clearly aware of the "had reason to know"
6 standard, but decided to use the language "should have known" instead. The
7 standard encompasses a limited form of criminal negligence and it was plainly and
8 deliberately introduced in the Statute, which is the controlling source of law under
9 Article 21. It cannot be interpreted away.

10 Indeed, the careful distinction between Article 28(a)(i) and Article 28(b)(i) illustrates
11 the drafters' explicit intention to impose an active criminal law duty upon military
12 commanders to remain informed of their subordinates' activities, consistent with
13 military practice and IHL. Having said that, this issue is not likely to arise because
14 the evidence in this case establishes either standard.

15 I'll now move to Mr Ntaganda's failure to take necessary and reasonable measures.

16 The evidence proves beyond reasonable doubt that despite his material ability to act,
17 Mr Ntaganda failed to take all necessary and reasonable measures within his power
18 to prevent the crimes, repress the crimes or submit matters to competent authorities
19 for investigation and Prosecution.

20 According to the Defence, Mr Ntaganda took multiple, preventative and repressive
21 measures to ensure discipline in the FPLC. The Prosecution agrees that in instances
22 that were not charged in this case, Mr Ntaganda did punish his troops for disobeying
23 orders, for desertion, for the loss of weapons and for other offences that Mr Ntaganda
24 saw as being important to his assertion of authority over his subordinates.

25 The evidence plainly establishes that Mr Ntaganda failed to take all necessary and

1 reasonable measures within his power to prevent and punish the charged crimes.

2 The general, ambiguous and limited measures that Ntaganda claims he and the FPLC
3 took were inadequate and unreasonable in light of his extensive material ability and
4 the extent and categories of crimes committed.

5 Additionally and importantly, Mr Ntaganda's position as we understand it is that the
6 crimes we have charged and which are proven by the evidence in this case did not
7 take place at all. He categorically denies the commission of the crimes. Logically
8 therefore, he does not claim that he took any measures to address the charged crimes.

9 Additionally, his failure to take necessary and reasonable measures was established
10 by several Prosecution witnesses. For instance, Prosecution Witness 963, quote, "It
11 was in the context of tribal war so there were no sanctions. It was normal to kill an
12 ordinary Lendu", unquote. Prosecution Witnesses 907 and 768 never heard or saw
13 any sanctions for killing Lendu. And Prosecution Witness 10 never witnessed
14 anyone being disciplined for raping girls.

15 So the extent that Mr Ntaganda had control over his forces and knowledge of their
16 crimes, he is culpable under Article 28(a). The evidence establishes a high degree of
17 both control and knowledge and therefore a high degree of culpability. He could
18 have ordered or initiated genuine and adequate investigations into the allegations of
19 the commission of crimes by his forces, but he did not. He could have reported the
20 crimes by his forces to appropriate authorities, but he did not. He could have
21 disciplined, dismissed, demoted members of his forces who were involved in the
22 crimes, but he did not. He could have provided adequate training in IHL, but he did
23 not.

24 In short, the evidence in the record is compelling and establishes beyond reasonable
25 doubt that Mr Ntaganda failed to take necessary and reasonable measures within his

1 power to repress the crimes.

2 Lastly, I will briefly address the issue of causation in Article 28.

3 PRESIDING JUDGE FREMR: [16:01:40] Mr Iverson, sorry to interrupt you, just one
4 brief question. You said that Mr Ntaganda could report it to competent authorities.
5 What concrete authorities you had in mind in Ituri or during the time period of
6 between 2002 and 2003?

7 MR IVERSON: [16:02:04] Well, certainly within his hierarchy he could have
8 reported crimes to Mr Lubanga and there could have been a discussion about an
9 investigation and prosecution. They could have -- having the means to wage war
10 automatically implies having the means to do several other things, for example,
11 launch an investigation into what actions actually happened, establish facts and hold
12 those responsible accountable.

13 PRESIDING JUDGE FREMR: [16:02:38] Thank you. And please proceed.

14 MR IVERSON: [16:02:40] So, your Honours, with regard to the issue of causation,
15 the Defence asserts without argument or authority in its response brief that, quote,
16 "the Prosecution must prove a causation element between the crimes committed and
17 the failure of the commander to exercise proper control".

18 It is the Prosecution's position that no such requirement exists and that references to
19 causation rests on a misinterpretation of Article 28. And it has to do with the fact
20 that command responsibility does not amount to accessorial participation in
21 subordinates' crimes. Rather, command responsibility is a unique non-participatory
22 mode of liability which by its focus on the commander's breach of duty gives effect to
23 the requirements of IHL while remaining linked to the scope of the subordinates'
24 crimes.

25 Applying the correct interpretive principles to Article 28 does not require causation.

1 This follows from an analysis of the plain terms of Article 28, its context, the object
2 and purpose of the Statute, which includes to give effect to IHL, and is further
3 informed by the drafting history, which shows no consensus among States for a
4 causal contribution requirement in Article 28, which would have markedly departed
5 from customary international law.

6 This Chamber is thus entitled and urged to find that Article 28 does not impose any
7 causal contribution requirement at all. Indeed the recent Bemba appeal judgment
8 features no majority consensus on the correct interpretation of the Statute on this
9 point.

10 And this underlines the misconceptions and compromises that exist in attempting to
11 reconcile causation with command responsibility. In any event, though not legally
12 required, the evidence proves beyond reasonable doubt that the accused causally
13 contributed to his subordinates' crimes by increasing the risk that crimes would be
14 committed.

15 Mr Ntaganda increased the risk that his forces would commit crimes by failing to take
16 measures to ensure compliance with IHL, by sending forces that had previously been
17 accused of committing similar crimes, and by failing to punish forces who committed
18 crimes during the initial stages of the armed conflict to create an atmosphere of
19 general deterrence within his ranks.

20 Your Honours, this is the last opportunity I'll have to address this Chamber. I just
21 want to thank you for your attentiveness, your engagement and your patience
22 especially with me at times during the course of the trial. I am confident that you
23 will do justice in this case. Thank you.

24 PRESIDING JUDGE FREMR: [16:06:11] Thank you, Mr Iverson. I have
25 personally said I really see no need for apology in your case. Thank you very much.

1 And, Ms Samson, please.

2 MS SAMSON: [16:06:20] Yes, Mr President, I would just like to formally note that
3 this concludes the presentation of the Prosecution's evidence and that the case is
4 before your Honours for your objective, impartial assessment of the evidence and the
5 reasonable conclusions and inferences that may be drawn from that evidence. We
6 ask that you find Bosco Ntaganda guilty of the crimes as charged. Thank you.

7 PRESIDING JUDGE FREMR: [16:06:52] Duly noted.

8 All right, so we completed programme for today. Tomorrow we are going to start
9 our session from 9 o'clock, which should take two hours and should be devoted to
10 submissions presented by Legal Representatives of Victims.

11 I have one question to Ms Pellet and Mr Suprun, have you agreed on some order as
12 regards your submissions or not? Or ladies first?

13 MS PELLET: [16:07:24] (Interpretation) Thank you, Mr President. I am always
14 the first so I will begin tomorrow. Thank you.

15 PRESIDING JUDGE FREMR: [16:07:34] All right. So agreed.

16 So we will start tomorrow 9 o'clock. At the moment the Court is adjourned.

17 THE COURT USHER: [16:07:44] All rise.

18 (The hearing ends in open session at 4.07 p.m.)