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Pénale  
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**International  
Criminal  
Court**



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Date: 8 July 2019

**TRIAL CHAMBER VI**

**Before:** Judge Robert Fremr, Presiding Judge  
Judge Kuniko Ozaki  
Judge Chang-ho Chung

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. BOSCO NTAGANDA***

**Public  
with public Annexes A, B, and C**

**Judgment**

**Judgment to be notified, in accordance with Regulation 31 of the Regulations of the Court, to:**

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## I. BACKGROUND

1. This case is concerned with alleged conduct by Mr Bosco Ntaganda in the events that took place in Ituri in the DRC. Mr Ntaganda is of Tutsi ethnicity,<sup>1</sup> born in Rwanda on 5 November 1973,<sup>2</sup> and raised in Masisi locality, North Kivu, in the DRC.<sup>3</sup>
2. Ituri is a district of Orientale Province in the north east of the DRC, bordering Uganda, with population estimates ranging from 3.5 to 5.5 million people.<sup>4</sup> Bunia is Ituri's capital.<sup>5</sup> Ituri is fertile and rich in resources such as gold, diamonds, oil, timber, and coltan,<sup>6</sup> which many groups, inside and outside the DRC,<sup>7</sup> sought to exploit.
3. The DRC has close to 450 different ethnic groups within its borders.<sup>8</sup> In Ituri alone there are approximately 18 different ethnic groups, including the Lendu and the Ngiti,<sup>9</sup> as well as the Hema (and its sub-group, the Gegere or Hema-North).<sup>10</sup>
4. The term 'Lendu' denotes two ethnic subgroups present in Ituri: the Northern Lendu, who live north of Bunia, primarily in Djugu territory, and the Southern Lendu, who live primarily south of Bunia and who are known as the 'Ngiti'. The Chamber notes that the term 'Lendu' refers either to the Lendu group as a whole – for example, when used to mark a contrast with the 'Hema' ethnic group – or specifically to the Lendu of Djugu territory, as opposed to, for example, the

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<sup>1</sup> Mr Ntaganda (**D-0300**): T-209, page 37, lines 13 to 14. For a discussion of Mr Ntaganda's testimony, *see* section III.D.2.p) Mr Ntaganda, D-0300; and Agreed Fact 73. For this Agreed Fact, and further Agreed Facts relied upon in the Judgment, *see* para. 46 above.

<sup>2</sup> Agreed Fact 71.

<sup>3</sup> **D-0300**: T-209, pages 35 and 41.

<sup>4</sup> Agreed Fact 1.

<sup>5</sup> Agreed Fact 1.

<sup>6</sup> For the background of the conflict, the Chamber notably relies on the evidence provided by Roberto Garretón, a legal expert who was assigned between 1994 and 2001 as Special Rapporteur on the situation of human rights in Zaire/DRC. *See* **P-0931**: DRC-OTP-2083-0622, at 0682.

<sup>7</sup> **P-0931**: DRC-OTP-2083-0583, at 0601.

<sup>8</sup> **P-0931**: DRC-OTP-2083-0583, at 0591.

<sup>9</sup> On the basis of the entirety of the evidence on the record, it is established beyond reasonable doubt that the Lendu and the Ngiti constitute an ethnic group.

<sup>10</sup> DRC-OTP-0152-0286, at 0291, para. 2.

‘Ngiti’. In this Judgment, depending on the context and evidence, the Chamber refers to both meanings of the term.

5. Mr Ntaganda started his military career in Rwanda. He joined the armed wing of the RPF at the age of 17 with the purpose of overthrowing the then president of Rwanda, Juvénal Habyarimana.<sup>11</sup> He indicated that he did so to engage in the fight against the oppression of the Tutsi.<sup>12</sup> Mr Ntaganda was quickly promoted to a senior rank, responsible for the training of recruits.<sup>13</sup> After two years in this position, he was deployed to the RPF’s infantry on a mission to put an end to the genocide.<sup>14</sup>
6. In 1994, after the RPF forces drove out the ‘*génocidaires*’ and took control of Kigali,<sup>15</sup> Mr Ntaganda trained former soldiers from the previous FAR.<sup>16</sup> Several hundred thousand Hutu, including perpetrators of the genocide,<sup>17</sup> fled Rwanda into neighbouring Zaire, gathering in refugee camps near the border, in particular in South Kivu.<sup>18</sup> This caused a number of incidents in the region. Congolese Tutsi of Rwandan origins were attacked by Hutu who had just arrived in Zaire.<sup>19</sup> In North Kivu, there was a ‘witch-hunt’ against the Tutsi<sup>20</sup> and, generally in Zaire, a strong hostility towards the Rwandese among politicians and the most educated segments of the population.<sup>21</sup>
7. Overt support for the Hutu by then Zaire President Mobutu Sese Seko is said to have led to the creation of an alliance against him, the AFDL, which brought together anti-Mobutu forces<sup>22</sup> in Zaire as well as Uganda and Rwanda.<sup>23</sup>

<sup>11</sup> **D-0300**: T-209, pages 47 to 49; and T-211, page 49. *See also* Agreed Fact 74.

<sup>12</sup> **D-0300**: T-209, pages 40 to 41, and 49. *See also* **D-0300**: T-209, page 40.

<sup>13</sup> **D-0300**: T-209, page 53.

<sup>14</sup> **D-0300**: T-211, pages 5 to 6, 8, and 50.

<sup>15</sup> **D-0300**: T-211, pages 7 and 15.

<sup>16</sup> **D-0300**: T-211, pages 15 to 16.

<sup>17</sup> **P-0931**: DRC-OTP-2083-0583, at 0591.

<sup>18</sup> **P-0931**: DRC-OTP-2083-0622, at 0655.

<sup>19</sup> **P-0931**: DRC-OTP-2083-0583, at 0594.

<sup>20</sup> **P-0931**: DRC-OTP-2083-0622, at 0656; and **D-0300**: T-211, page 17.

<sup>21</sup> **P-0931**: DRC-OTP-2083-0622, at 0662.

<sup>22</sup> **D-0300**: T-211, page 17.

Mr Ntaganda returned to the DRC to join the rebellion. He was involved in the training of AFDL soldiers in South Kivu and became chief instructor.<sup>24</sup>

8. In May 1997, and with the support of the AFDL, President Laurent Kabila came to power in Zaire,<sup>25</sup> which was renamed the DRC.<sup>26</sup> This marked the end of what is known as the First Congo War. Subsequently, Mr Ntaganda was promoted to the position of company commander in the former FAZ, a force consisting of Congolese and Rwandan soldiers,<sup>27</sup> and went to fight in eastern DRC.<sup>28</sup> Among the enemy forces were the former '*génocidaires*' from Rwanda.<sup>29</sup>
9. Mr Ntaganda explained that he then chose not to join the Rwandan armed forces constituted by Paul Kagame at the time,<sup>30</sup> and decided to join the Congolese forces, which led to his detention in Kigali and, according to him, made him an enemy of some of the Rwandan military authorities.<sup>31</sup> He eventually fled from detention and returned to the DRC.<sup>32</sup> Others who wanted to leave the Rwandan forces were demobilised in Rwanda and later sent back to the DRC to join the Congolese forces; Mr Ntaganda met them in Goma.<sup>33</sup>
10. Several months after assuming power, Laurent-Désiré Kabila, declared his intention to dismiss Rwandan officers from his army and Rwandans and Ugandans from posts in his administration.<sup>34</sup> Tensions grew in the Kabila government.<sup>35</sup>

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<sup>23</sup> **P-0931**: DRC-OTP-2083-0583, at 0594; and **D-0300**: T-211, page 18.

<sup>24</sup> **D-0300**: T-211, pages 21 to 22; and Agreed Fact 75.

<sup>25</sup> **P-0931**: DRC-OTP-2083-0583, at 0594.

<sup>26</sup> **P-0931**: DRC-OTP-2083-0583, at 0595.

<sup>27</sup> **D-0300**: T-211, page 25.

<sup>28</sup> **D-0300**: T-211, page 26.

<sup>29</sup> **D-0300**: T-211, page 26.

<sup>30</sup> **D-0300**: T-211, page 27.

<sup>31</sup> **D-0300**: T-211, pages 27 to 28.

<sup>32</sup> **D-0300**: T-211, page 28.

<sup>33</sup> **D-0300**: T-211, pages 27 to 30.

<sup>34</sup> **P-0931**: DRC-OTP-2083-0622, at 0662, and 0663.

<sup>35</sup> **P-0931**: DRC-OTP-2083-0583, at 0595.

11. In August 1998, a rebel movement, the RCD,<sup>36</sup> was formed, led by Ernest Wamba Dia Wamba,<sup>37</sup> its first president, backed by the Ugandan and Rwandan armies.<sup>38</sup> In mid-1998, the RCD moved into eastern Congo, sparking an armed rebellion against Laurent-Désiré Kabila<sup>39</sup> that marked the start of the Second Congo War.<sup>40</sup> Mr Ntaganda was part of the foundation of the RCD.<sup>41</sup>
12. The RCD rapidly assumed control of a large part of eastern DRC,<sup>42</sup> and in particular the Ituri district. Both Uganda and Rwanda deployed their national armies in the region, including in Ituri.<sup>43</sup> Specifically, by November 1998, the Ugandan armed forces (UPDF)<sup>44</sup> had established a base in Bunia. At the same time, another armed group formed by Jean-Pierre Bemba Gombo, supporting President Mobutu<sup>45</sup> – the MLC<sup>46</sup> – became active.<sup>47</sup> The MLC took a significant part of the northern part of the DRC and entered in conflict with the RCD.<sup>48</sup>
13. From 1999 onwards, a series of opposing rebel factions struggled for political power in Ituri. Competition for natural resources, political vacuum and foreign involvement were factors in the conflict.<sup>49</sup>
14. In 1999, the RCD, split into two factions, the RCD-Kisangani, subsequently called the RCD-K/ML,<sup>50</sup> headed by Ernest Wamba Dia Wamba and supported by Uganda, and the RCD-Goma, supported by Rwanda.<sup>51</sup> Mbusa Nyamwisi was the

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<sup>36</sup> **P-0931**: DRC-OTP-2083-0583, at 0599.

<sup>37</sup> **P-0931**: DRC-OTP-2083-0583, at 0615.

<sup>38</sup> **P-0931**: DRC-OTP-2083-0583, at 0595; and **D-0300**: T-211, page 32.

<sup>39</sup> **D-0300**: T-211, page 33.

<sup>40</sup> **P-0931**: DRC-OTP-2083-0622, at 0663.

<sup>41</sup> **D-0300**: T-211, pages 31 to 32.

<sup>42</sup> **P-0931**: DRC-OTP-2083-0583, at 0599.

<sup>43</sup> DRC-OTP 0074-0797, from 0809 to 0810; DRC-OTP 2083-0583, at 0599.

<sup>44</sup> Agreed Fact 68.

<sup>45</sup> **P-0931**: DRC-OTP-2083-0622, at 0665.

<sup>46</sup> Agreed Fact 52.

<sup>47</sup> **P-0931**: DRC-OTP-2083-0583, at 0595, and at 0619.

<sup>48</sup> **P-0931**: DRC-OTP-2083-0622, at 0665.

<sup>49</sup> **P-0931**: DRC-OTP-2083-0622, at 0666.

<sup>50</sup> Agreed Fact 47. The Chamber will generally use the term RCD-K/ML to refer to this faction.

<sup>51</sup> **P-0931**: DRC-OTP-2083-0583, at 0599; and **D-0300**: T-211, page 35.

secretary general of the RCD-Kisangani.<sup>52</sup> In the north, with the support of Uganda, the MLC and its leader Jean-Pierre Bemba Gombo formed an alliance with the RCD/Kisangani.<sup>53</sup> Mr Ntaganda participated in the creation of the RCD-K/ML.<sup>54</sup> Mr Ntaganda was given command over the PPU, responsible for protecting the leaders of the movement.<sup>55</sup>

15. In an apparent attempt to solve the crisis and violence in eastern DRC and in particular in Ituri, a number of steps were undertaken from 1999 onwards, involving a variety of actors. In July 1999, the first accords attempting to end the violence were signed in Lusaka by six states, as well as the MLC and RCD.<sup>56</sup> The UN later deployed a mission (MONUC) to monitor the arrangements agreed to in the accords.<sup>57</sup>
16. Nevertheless, the RCD-K/ML and the RCD-Goma, bolstered by the national armies that backed them from Rwanda and Uganda, fought each other,<sup>58</sup> notably in a battle in Kisangani in August 1999.<sup>59</sup> The Rwandan armed forces and the UPDF deployed heavy weaponry in the fight for control of Orientale Province. The battle ended with the Rwandan faction defeating the RCD-K/ML of Ernest Wamba Dia Wamba, who left Kisangani and returned to Bunia.<sup>60</sup>
17. During the battle, Mr Ntaganda was wounded while protecting Ernest Wamba Dia Wamba<sup>61</sup> and was sent to South Africa, via Uganda, for treatment.<sup>62</sup> During Mr Ntaganda's absence, the movement relocated to Ituri.<sup>63</sup>

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<sup>52</sup> **D-0300**: T-211, page 35.

<sup>53</sup> **P-0931**: DRC-OTP-2083-0583, at 0599.

<sup>54</sup> **D-0300**: T-211, page 36.

<sup>55</sup> **D-0300**: T-211, pages 43 to 44. *See also* **P-0901**: T-30, page 61.

<sup>56</sup> Agreed Fact 56; DRC-OTP-0074-0797, at 0808; and DRC-OTP-0074-0422, at 0472. *See also* DRC-OTP-0074-0628, at 0649; and **P-0931**: DRC-OTP-2083-0583, at 0616, and 0618.

<sup>57</sup> DRC-OTP-0074-0797, at 0808; and DRC-OTP-0074-0422, at 0474.

<sup>58</sup> **D-0300**: T-211, pages 42, and 43.

<sup>59</sup> **P-0931**: DRC-OTP-2083-0583, at 0599.

<sup>60</sup> **P-0931**: DRC-OTP-2083-0583, at 0599.

<sup>61</sup> **D-0300**: T-211, page 45. *See also* **P-0901**: T-27, pages 31 to 32, and 36 to 37; and T-30, page 61.

<sup>62</sup> **D-0300**: T-211, pages 45 and 47; and T-225, pages 11 to 12.

<sup>63</sup> **D-0300**: T-211, page 47; and T-225, page 12.

18. Following a period of convalescence, in July 2000, Mr Ntaganda returned to the DRC but was denied access to Ernest Wamba Dia Wamba.<sup>64</sup> Instead, he was given an ultimatum to leave Bunia.<sup>65</sup> Mr Ntaganda explained that, as a result, RCD-K/ML forces attempted to arrest him, which led to a battle resulting in the death of the PPU battalion commander who had replaced him to protect Ernest Wamba Dia Wamba, called César.<sup>66</sup> According to Mr Ntaganda, the local population celebrated the death of César while Ernest Wamba Dia Wamba planned to kill him in retaliation.<sup>67</sup>
19. The RCD-Goma, backed by Rwanda, was based in Goma, North Kivu. The RCD-K/ML, which was headquartered in Bunia,<sup>68</sup> took control of Ituri, supported by Uganda<sup>69</sup> and strengthened by its rear base in Beni. It set up its own army, the APC.<sup>70</sup>
20. Soon after, in October 1999, the UPDF created a new province called ‘Kibali-Ituri’ and appointed a Hema named Adèle Lotsove Mugisa as the provisional governor of the new province.<sup>71</sup>
21. At that time, tensions between communities escalated in Ituri.<sup>72</sup> While the tensions initially focussed on land disputes, they were perceived by many to have an ethnic or ‘tribal’ dimension, essentially between the Hema and Lendu.<sup>73</sup> On

<sup>64</sup> **D-0300**: T-211, pages 66 to 68. *See* **D-0300**: T-211, pages 69 to 71.

<sup>65</sup> **D-0300**: T-212, pages 5 to 6.

<sup>66</sup> **D-0300**: T-212, pages 8 to 12. *See also* **P-0901**: T-30, pages 60 to 61. *See also* **P-0901**: T-30, pages 63 to 64.

<sup>67</sup> **D-0300**: T-212, page 20, and pages 24 to 25. *See also* **D-0300**: T-212, pages 27 to 28.

<sup>68</sup> **P-0931**: DRC-OTP-2083-0583, at 0616.

<sup>69</sup> **D-0300**: T-211, page 42.

<sup>70</sup> Agreed Fact 49; and **D-0300**: T-211, page 36.

<sup>71</sup> **P-0014**: DRC-OTP-2054-0429, at 0449, 0450.

<sup>72</sup> **P-0005**: T-185, page 5; **P-0012**: T-164, pages 70 to 71; **P-0105**: T-133, pages 42 to 43; **P-0365**: T-147, page 10; **P-0907**: T-91, page 19; and **V-3**: T-203, pages 7, 9 to 13, and 53. *See also* **P-0022**: DRC-OTP-0104-0026, at 0029, para. 17; **P-0877**: DRC-OTP-2069-2086-R03, at 2087, para. 8; **P-0894**: DRC-OTP-2076-0194-R02, at 0197, para. 16; and **P-0931**: DRC-OTP-2083-0583, at 0603.

<sup>73</sup> **P-0014**: T-137, pages 31 to 34; **P-0017**: T-58, page 44; and T-59, pages 6 to 9, and 62 to 63; **P-0041**: DRC-OTP-2054-5030-R02, from 5106 to 5107; and DRC-OTP-2054-5199, from 5278 to 5279; **P-0976**: DRC-OTP-2054-2599, at 2666, and 2668; T-152, pages 14 to 15; and DRC-OTP-2054-2801, from 2829 to 2930; **P-0894**: DRC-OTP-2076-0194-R02, at 0207, para. 59; **P-0365**: T-147, pages 12 to 13; **P-0769**: T-120, page 16; **P-0113**: T-118, page 11; **D-0057**: T-246, pages 10 to 11, and 30; **P-0805**: T-25, page 30; and T-25bis, page

both sides, this perception was based on the idea that the other ethnicity (*i.e.* the Hema or the Lendu) was the enemy; other ethnicities that were believed to be linked to, or affected by the activities of either the Lendu or the Hema, were similarly seen as opponents.<sup>74</sup>

22. In the summer and fall of 2000, there was a mutiny of Hema officers and soldiers within the APC<sup>75</sup> against Ernest Wamba Dia Wamba.<sup>76</sup> Members of this mutiny included commanders Nduru Tchaligonza, Thomas Kasangaki, Bagonza, Floribert Kisembo, and Chief Kahwa.<sup>77</sup> Mr Ntaganda was involved in the setting up of this mutiny called the 'Chui Mobile Force'. His role in the Chui Mobile Force is set out further below.<sup>78</sup>

23. In November 2000, Ernest Wamba Dia Wamba was overthrown by Mbusa Nyamwisi, who was of Nande ethnicity<sup>79</sup> and was supported by the Hema leader Jean Tibasima.<sup>80</sup>

24. In January 2001, a new alliance known as the FLC was formed by the RCD-K/ML and the MLC.

25. In January 2001, the then president of the DRC, Laurent-Désiré Kabila, was assassinated, and succeeded by his son, Joseph Kabila.<sup>81</sup> By this time, there were at least ten conflicts within the country involving nine national armies and nineteen irregular armed forces.<sup>82</sup> Six of these conflicts took place either in Orientale Province or specifically in Ituri.<sup>83</sup> The FLC alliance disintegrated and the

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11; **P-0898**: T-153, page 30; **P-0868**: T-177, page 54; and **P-0245**: T-141, page 29. *See also* Defence Closing Brief, para. 40.

<sup>74</sup> **P-0014**: T-138, pages 99 to 100; DRC-OTP-2054-0612, at 0639, and from 0643 to 0656; and T-136, pages 21, and 61 to 63; **P-0017**: T-58, page 44; and T-59, pages 6 to 9, and 62 to 63; **P-0043**: DRC-OTP-0126-0086, at 0092, para. 34; and **P-0245**: T-141, page 30.

<sup>75</sup> **D-0300**: T-212, page 41.

<sup>76</sup> **D-0300**: T-212, pages 39, and 40.

<sup>77</sup> **P-0901**: T-27, page 20; **D-0300**: T-212, page 39.

<sup>78</sup> For the origins of the Chui Mobile Force, *see* paras 309 to 312 below.

<sup>79</sup> Agreed Fact 40.

<sup>80</sup> **P-0931**: DRC-OTP-2083-0583, at 0618.

<sup>81</sup> **P-0931**: DRC-OTP-2083-0583, at 0596.

<sup>82</sup> **P-0931**: DRC-OTP-2083-0583, at 0597.

<sup>83</sup> **P-0931**: DRC-OTP-2083-0583, at 0597.



RCD-K/ML regained control of Ituri: Mbusa Nyamwisi took over power in the RCD-K/ML in November 2001.<sup>84</sup>

26. A lengthy dispute ensued between leaders of the RCD-K/ML,<sup>85</sup> which developed into a situation of confrontation between the newly-created Hema forces<sup>86</sup> and the RCD-K/ML/APC.<sup>87</sup> At the time, Thomas Lubanga occupied the position of Minister of Defence in the RCD-K/ML.<sup>88</sup>
27. Following a peace meeting in Bunia in 2001,<sup>89</sup> at the initiative of the government of the DRC,<sup>90</sup> the Sun City accords were signed in April 2002 by two of the three major rebel movements.<sup>91</sup> During the Sun City peace negotiations,<sup>92</sup> Mr Mbusa Nyamwisi, as President of the RCD-K/ML, shifted his allegiance to the Kinshasa government and decided to create an integrated Hema-Lendu army for the RCD-K/ML.<sup>93</sup>
28. Thereafter, certain individuals decided to abandon the RCD-K/ML and a number of new militias were organised. The creation of the UPC/FPLC is further analysed below in this context.<sup>94</sup>
29. In June 2002, a number of skirmishes between ethnic groups took place in Bunia.<sup>95</sup> In July 2002, the Pretoria Accord was signed by the governments of Rwanda and

<sup>84</sup> **P-0014**: DRC-OTP-2054-0429, at 0452, and 0453.

<sup>85</sup> **D-0300**: T-212, page 5.

<sup>86</sup> For the Chamber's findings related to these Hema mutineers, *see* paras 309 to 312 below.

<sup>87</sup> **P-0005**: T-187, pages 14, and 15.

<sup>88</sup> **P-0014**: DRC-OTP-2054-0429, at 0453.

<sup>89</sup> DRC-OTP-0074-0422, at 0475; and **P-0931**: DRC-OTP-2084-0408, at 0414, para. 16, and 0422, para. 53.

<sup>90</sup> **P-0057**: DRC-OTP-0150-0354, from 0357 to 0358, paras 23 to 24.

<sup>91</sup> Agreed Fact 57. A split had started to form within the RCD-K/ML and Thomas Lubanga. DRC-OTP-0074-0797, at 0808; DRC-OTP-0074-0422, at 0477; **P-0057**: DRC-OTP-0150-0354, from 0358 to 0359, para. 27; and **P-0014**: DRC-OTP-2054-0429, at 0446; and T-137, page 20. *See also* **P-0245**: T-141, pages 41 to 43; and **D-0300**: T-213, page 32; and T-219, pages 64 to 65, and 78.

<sup>92</sup> Agreed Fact 57.

<sup>93</sup> DRC-OTP 0074-0797, at 0808, and 0811; **P-0012**: T-165, page 58, lines 14 to 24; **D-0300**: T-213, page 32; T-219, pages 64 to 65, and pages 78 to 79.

<sup>94</sup> *See* section IV.A.2.a) Origins of the FPLC.

<sup>95</sup> **P-0005**: T-189, page 25; **P-0105**: T-134, page 63; **P-0365**: T-147, page 16; and **P-0907**: T-91, page 37.

the DRC.<sup>96</sup> At the same time, the DRC government set up a further peace initiative in Ituri.<sup>97</sup>

30. At the beginning of August 2002, Bunia was geographically divided along ethnic lines, with the Hema population inhabiting the northern part of the city, and the Lendu population and other groups inhabiting the south.<sup>98</sup>

31. The UPDF maintained an armed presence in Bunia.<sup>99</sup> Jean-Pierre Molondo Lompondo was the Governor of Bunia at the time.<sup>100</sup>

32. It is in this context that the UPC/FPLC implemented its military strategy. The acts and conduct of Mr Ntaganda, who held the position of Deputy Chief of Staff in charge of Operations and Organisation in the UPC/FPLC between 2 or 3 September 2002 and December 2003,<sup>101</sup> are analysed in the present Judgment, in the context of the events that took place between on or about 6 August 2002 and on or about 31 December 2003.

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<sup>96</sup> Agreed Fact 58. *See also*, DRC-OTP-0074-0422, at 0478.

<sup>97</sup> **P-0057**: DRC-OTP-0150-0354, at 0362, para. 41, at 0363, paras 43 to 44, and at 0364, paras 48 to 49; and **P-0041**: DRC-OTP-2054-5030-R02, from 5213 to 5214.

<sup>98</sup> **P-0105**: T-134, page 61; **P-0365**: T-147, page 14; **P-0901**: T-31, page 33; and **P-0907**: T-91, page 34.

<sup>99</sup> **P-0901**: T-31, page 31; **P-0907**: T-91, pages 37 to 38; **P-0365**: T-14, pages 13 to 14; and **P-0918**: T-155, pages 78 to 79.

<sup>100</sup> **P-0907**: T-91, page 34; **D-0038**: T-249, pages 41 and 51; and **D-0243**: T-257, page 25.

<sup>101</sup> Agreed Fact 79.

## II. SCOPE OF THE CHARGES

33. This case relates to events alleged to have occurred from on or about 6 August 2002 to on or about 31 December 2003, in Ituri, in the DRC. In addition to conduct in relation to children under the age of 15, which is alleged to have occurred throughout the entire temporal scope of the charges, the charges concern two specific time periods in relation to two *collectivités*. The Chamber observes that the Prosecution, when bringing its charges, initially referred to an ‘attack in the Banyali-Kilo *collectivité* between on or around 20 November 2002 and on or about 6 December 2002’ and an ‘attack in the Walendu-Djatsi *collectivité* between on or about 12 February 2003 and on or about 27 February 2003’.<sup>102</sup> In the Confirmation Decision, the Pre-Trial Chamber introduced short forms for attacks on ‘a number of villages’ by the UPC/FPLC in the aforementioned two *collectivités*: ‘First Attack’ and ‘Second Attack’, respectively.<sup>103</sup> Following confirmation, the Prosecution used the same short forms in its filings.<sup>104</sup> Given the various meanings of the word ‘attack’, and the multiple references to different types of ‘attack’ in the present Judgment, the Chamber has adopted a different terminology. The UPC/FPLC activities between 20 November 2002 and 6 December 2002 in relation to the Banyali-Kilo *collectivité* is referred to as the ‘First Operation’, while its activities in relation to the Walendu-Djatsi *collectivité* is referred to as the ‘Second Operation’.

34. The Chamber notes that, in its closing brief,<sup>105</sup> the Defence raised the issue of the scope of the charges. Further submissions were presented by the Prosecution, the

<sup>102</sup> Document Containing the Charges, para. 5.

<sup>103</sup> Confirmation Decision, para. 29.

<sup>104</sup> See, *inter alia*, UDCC, para. 5.

<sup>105</sup> Defence Closing Brief, paras 22 to 23 and 1541 to 1543.

Legal Representative for Former Child Soldiers, and, finally by the Defence, in their respective closing briefs and statements.<sup>106</sup>

35. In light of the arguments presented, the Chamber finds it appropriate to set out in the present section its understanding of the scope of the charges, focussing in particular on the extent to which charges are or must be framed as individual criminal acts.
36. As a preliminary observation, the Chamber notes that before the commencement of the trial, it addressed issues related to the charges in the context of the consideration of whether, and in which form, an updated document containing the charges should be filed.<sup>107</sup> At the time, the Defence did not seek leave to appeal the Decision on the updated document containing the charges.
37. In this section, the Chamber has considered the challenges to the charges on the basis of the prescription in Article 74(2) of the Statute that the '[Chamber's] decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges'. The purpose of Article 74 is indeed to require the Chamber to stay within the bounds of the confirmed charges. The confirmation decision defines the parameters of the charges at trial. However, this does not necessarily exclude that further details about the charges, as confirmed by the Pre-Trial Chamber, may, depending on the circumstances, be contained in other auxiliary documents.<sup>108</sup>
38. Regulation 52(b) of the Regulations of the Court stipulates that the document containing the charges must set out a '[a] statement of the facts, including the time and place of the alleged crimes, which provides a sufficient legal and factual basis to bring the person or persons to trial'. The determination whether the

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<sup>106</sup> Prosecution Response Brief, paras 8 to 14; CLR1 Closing Brief, paras 12 to 32; and Defence Reply Brief, paras 8 to 15. *See also* Closing Statements, T-262, pages 24 to 30; T-263, pages 9, and 100 to 104; and T-264, pages 2 and 51 to 58.

<sup>107</sup> ICC-01/04-02/06-450.

<sup>108</sup> ICC-01/04-02/06-450, para. 17. *See also* Lubanga Appeal Judgment, ICC-01/04-01/06-3121-Red, para. 124.

parameters are sufficiently specific to frame a charge in compliance with Regulation 52(b) of the Regulations shall be made on a case-by-case basis, taking into account, *inter alia*, the nature of the crime charged and the circumstances of the case.

39. Certain charges can be properly framed only at the level of individual criminal acts. These specifically listed acts form part of the facts and circumstances described in the charges.<sup>109</sup> In these cases, the scope of the relevant charges is limited to individual criminal acts confirmed. Correspondingly, individual acts not confirmed would be necessarily beyond the scope of that particular charge.
40. Some charges may be properly framed more broadly (*e.g.* deportation of ‘civilians’ across a range of times and places), and need not necessarily be framed as a specific incident or an aggregate of acts (*e.g.* deportation of identified persons at a particular time and place). If in such a case a pre-trial chamber nonetheless refers to one or more specific incidents, which by themselves may amount to individual criminal acts, then these only serve as examples of the conduct falling within the parameters. In other words, the acts or the references to any individual victims become evidential details for proving that crimes within these parameters occurred.<sup>110</sup> In these cases, the individual criminal acts do not delimit the charge, and other acts that were not explicitly mentioned in the confirmation decision but are proven beyond reasonable doubt can be equally used to prove this charge, as long as they fall within the specific parameters of the charge as confirmed by the pre-trial chamber.

<sup>109</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled “Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court”, 8 December 2009, ICC-01/04-01/06-2205, footnote 163.

<sup>110</sup> See Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, Transcript of Hearing, 19 May 2015, ICC-02/04-01/15-T-6-ENG, page 21; Chambers Practice Manual, May 2017 (3d ed.), page 12.

41. Further, the Chamber may consider whether a specific type of criminal act (*e.g.* murder as a crime against humanity) is committed in narrowly confined temporal and geographical space and/or other parameters. These charges can be framed by these parameters and need not be framed at the level of individual criminal acts, as long as they fall within the specific parameters of the charge as confirmed by the pre-trial chamber.
42. The Chamber may also consider whether the crimes charged are of a continuous nature. As such, the conduct does not take place at one specific moment in time and the elements of the relevant crimes may therefore be fulfilled during a certain period, which can potentially occur over a prolonged period of time. Continuing crimes are, when the requisite elements are fulfilled, unlawful and remain unlawful over the entire period during which the elements continue to be met.<sup>111</sup> Past cases from this Court and elsewhere have discussed sexual slavery and enlisting and conscripting children under the age of 15 as examples of potentially continuing crimes.<sup>112</sup>
43. With these general considerations in mind, the Chamber assessed the Defence's specific arguments as to the scope of the charges in the factual and legal findings sections of this Judgment. The Chamber has considered whether the incidents challenged by the Defence fall within the geographical and temporal scope and parameters for each charge, on the basis of the Confirmation Decision and, where appropriate, the UDCC.

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<sup>111</sup> Trial Chamber I considered that 'the offences of conscripting and enlisting are committed at the moment a child under the age of 15 is enrolled into or joins an armed force or group, with or without compulsion. [...] These offences are continuous in nature. They end only when the child reaches 15 years of age or leaves the force or group.' (*Lubanga* Trial Judgment, para. 618).

<sup>112</sup> SCSL, Trial Chamber II, *Prosecutor v Alex Tamba Brima et al.*, Judgment, 20 June 2007, SCSL-04-16-T, paras 39 to 41; SCSL, Trial Chamber II, *Prosecutor v Charles Ghankay Taylor*, Judgment, 18 May 2012, SCSL-03-01-T, paras 118 to 19; and Pre-Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06-803-tEN (translation notified 14 May 2007), para. 248. According to this Chamber, these crimes are considered continuous for purposes of the application of international criminal law not for purposes of the application of international humanitarian law.

### III. EVIDENTIARY CONSIDERATIONS

#### A. BURDEN OF PROOF

44. Pursuant to Article 66 of the Statute, the accused shall be presumed innocent until proven guilty and the onus is on the Prosecution to demonstrate the guilt of the accused.<sup>113</sup> For a conviction, each element of the particular offence charged must be established ‘beyond reasonable doubt’.<sup>114</sup> In this regard, the Appeals Chamber clarified that this standard is to be applied not to ‘each and every fact in the Trial Judgment’, but ‘only to the facts constituting the elements of the crime and mode of liability of the accused as charged’.<sup>115</sup> In line with these principles, all factual findings, to the extent that they are underlying the Chamber’s legal findings, are established beyond reasonable doubt.<sup>116</sup> In setting out the reasoning underlying its findings, the Chamber has focussed on the most important aspects forming its analysis. In this regard, a significant part of the Chamber’s line of reasoning is set out in the footnotes of the present Judgment, which is part of, and should be read in conjunction with, the Chamber’s analysis as whole.

45. When determining whether the applicable evidentiary threshold has been met, the Chamber has borne in mind that it ‘is required to carry out a holistic evaluation and weighing of *all the evidence taken together* in relation to the fact at issue’.<sup>117</sup>

<sup>113</sup> Article 66(1) and (2) of the Statute.

<sup>114</sup> Article 66(3) of the Statute; *Bemba et al.* Trial Judgment, para. 185; *Bemba* Trial Judgment, para. 215; *Katanga* Judgment, para. 68; *Ngudjolo* Trial Judgment, para. 34; and *Lubanga* Trial Judgment, para. 92.

<sup>115</sup> *Lubanga* Appeal Judgment, para. 22 (emphasis added), quoting ICTY, *Milošević* Appeal Judgment, para. 20; and *Bemba et al.* Appeal Judgment, paras 96, 868. *See also Bemba et al.* Trial Judgment, para. 186; *Bemba* Trial Judgment, para. 215; *Katanga* Judgment, para. 69; and *Ngudjolo* Trial Judgment, para. 35.

<sup>116</sup> The Chamber notes that, although it has not always reiterated the phrase ‘beyond reasonable doubt’ in its findings, this standard of proof has been applied, where relevant, throughout the Judgment.

<sup>117</sup> *Lubanga* Appeal Judgment, para. 22 (emphasis in original). *See also Bemba et al.* Trial Judgment para. 188; *Bemba* Trial Judgment, para. 218; *Katanga* Judgment, para. 79; and *Lubanga* Trial Judgment, para. 94.

## B. FACTS REQUIRING NO EVIDENCE

46. The Chamber may consider alleged facts as being proven if the parties agree that these facts are not contested.<sup>118</sup> The parties in this case agreed only on a limited number of facts.<sup>119</sup> The Chamber considered it to be in the interests of justice, in accordance with Rule 69 of the Rules, to find such agreed facts to be proven.

47. Under Article 69(6) of the Statute, the Chamber shall not require proof of facts of common knowledge but may take judicial notice of them.

## C. EVALUATION OF THE EVIDENCE

48. In accordance with Article 74(2) of the Statute, the Judgment is based on the Chamber's 'evaluation of the evidence and the entire proceedings'. In this respect, the Appeals Chamber has found that evidence is properly before a trial chamber when it has been 'submitted' in accordance with the procedure adopted by the trial chamber and discussed at trial, unless it is ruled as irrelevant or inadmissible.<sup>120</sup>

49. The approach taken by the Chamber in the present case has been to rule on the admission of each individual item upon submission by the parties or the participants, considering its relevance, probative value, and any prejudice that admission may cause to a fair trial or to the evaluation of the testimony of a witness.<sup>121</sup> Such assessment of relevance and probative value was conducted on a *prima facie* basis and the Chamber recalls that, from the outset, it made clear that

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<sup>118</sup> Rule 69 of the Rules.

<sup>119</sup> See Annex A, para. 22.

<sup>120</sup> *Bemba et al.* Appeal Judgment, para. 59.

<sup>121</sup> Decision 619, para. 36; ICC-01/04-02/06-1181, paras 6 to 7. See also *Bemba* Trial Judgment, para. 223; *Katanga* Judgment, para. 76; *Ngudjolo* Trial Judgment, para. 42; and *Lubanga* Trial Judgment, para. 100.



its decisions on admissibility were to be distinct from the evidentiary weight to be ultimately attached to an admitted item.<sup>122</sup>

50. The Chamber assessed the credibility and the reliability of the evidence it considered to be relevant in light of all the other relevant evidence on the trial record. On the basis of this analysis, the Chamber decided whether incriminatory evidence should be accorded any weight and whether it established any of the alleged facts and circumstances beyond reasonable doubt, having considered the exculpatory evidence submitted.<sup>123</sup>

51. The Chamber has not restricted its assessment to the evidence that the parties and the participants explicitly referred to in their closing briefs and submissions. Rather, it considered, on a case-by-case basis, whether it could rely on the evidence on the trial record in order to establish a factual allegation, taking into account the requirements of Articles 64(2) and 74(2) of the Statute. Further, the Chamber ensured that the Defence had been afforded the opportunity to make submissions as to the evidence in question.<sup>124</sup>

52. The Chamber does not address all the arguments raised by the parties and the participants and does not refer to the testimony of every witness or every item in the trial record.<sup>125</sup> When it does not refer to certain evidence, even if such evidence is contradictory to its finding, the Chamber assessed and weighed the evidence, but concluded that it did not prevent it from arriving at the finding

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<sup>122</sup> ICC-01/04-02/06-1181, para. 7. This approach has been endorsed by the Appeals Chamber as one of the two possible approaches to be taken by a trial chamber upon the submission of an item of evidence, *see Bemba et al.* Appeal Judgment, para. 598.

<sup>123</sup> *See also Lubanga* Trial Judgment, para. 94; *Ngudjolo* Trial Judgment, paras 45 to 46; *Bemba* Trial Judgment, para. 225; and *Katanga* Judgment, paras 79 to 80.

<sup>124</sup> *See also Ngudjolo* Trial Judgment, para. 47; *Bemba et al.* Trial Judgment, para. 200; *Bemba* Trial Judgment, para. 226; and *Katanga* Judgment, para. 81.

<sup>125</sup> *See, similarly, Bemba* Trial Judgment, para. 227, quoting ICTY, *Kvočka et al.* Appeal Judgment, para. 23. This approach has been upheld by the Appeals Chamber, ‘provided that [the Chamber] indicates with sufficient clarity the basis for its decision’, *see Bemba et al.* Appeal Judgment, paras 105 to 106, also referring to *Lubanga* OA5 Judgment, para. 20 and *Bemba et al.* OA4 Judgment, para. 116.

made.<sup>126</sup> This said, it is emphasised that the Chamber has discussed the evidence on the trial record to the extent that it considers it necessary to provide a full and reasoned statement of its findings and conclusions, as required by Article 74(5) of the Statute.<sup>127</sup> In this regard, the Chamber notes that, in certain cases, it has explicitly set out its considerations underlying its assessment of the evidence. In other cases, despite having carefully scrutinized the evidence to ascertain that it is credible and reliable to form the basis of a specific finding, it has not explained every detail of its assessment.

### 1. *Viva voce* testimony

53. In evaluating the weight to be given to the oral testimony of a witness, the Chamber assessed the credibility of the witness and the reliability of his or her testimony, in line with the approach set out in further detail below. Credibility relates to whether a witness is testifying truthfully, while the reliability of the facts testified to by the witness may be confirmed or put in doubt by other evidence or the surrounding circumstances. Therefore, although a witness may be credible, the evidence he or she gives may nonetheless be unreliable.<sup>128</sup>

54. In relation to the specific category of evidence given by expert witnesses, the Chamber considered factors such as the established competence of the particular witness in his or her field of expertise, the methodologies used, the extent to which the expert's findings were consistent with other evidence on the trial record, and the general reliability of the expert's evidence.<sup>129</sup>

<sup>126</sup> See, similarly, *Bemba et al.* Trial Judgment, para. 196; *Bemba* Trial Judgment, para. 227; ICTY, *Kvočka et al.* Appeal Judgment, paras 23, 483 to 484, 487, and 582 to 583; and ICTR, *Simba* Appeal Judgment, paras 143, 152, and 155. In this respect, the Appeals Chamber found that it is to be presumed that a trial chamber evaluated all the evidence before it, 'as long as there is no indication that [it] completely disregarded any particular piece of evidence', see *Bemba et al.* Appeal Judgment, para. 105, referring to *Halilović* Appeal Judgment, paras 121 and 188.

<sup>127</sup> On the need to provide a reasoned statement, see also *Bemba et al.* Appeal Judgment, paras 102 to 104.

<sup>128</sup> *Lubanga* Appeal Judgment, para. 239.

<sup>129</sup> *Lubanga* Trial Judgment, para. 112; *Bemba* Trial Judgment, para. 233; *Katanga* Judgment, para. 94; and *Ngudjolo* Trial Judgment, para. 60.

55. As the witnesses in this case gave evidence in a number of different languages, simultaneous and, in one instance, consecutive, interpretation was used throughout the trial. Issues with respect to the accuracy of some parts of the interpretation were brought to the Chamber's attention on several occasions.<sup>130</sup> When relying on the witnesses' oral testimony, and in assessing their credibility, the Chamber was mindful that simultaneous and consecutive interpretation cannot always ensure a perfect and precise rendition of what was said in court.

## **2. Evidence not presented *viva voce***

### **a) General principles**

56. With evidence other than *viva voce* testimony, the Chamber made allowance for the difficulties encountered when the individuals who originally supplied the information were not examined. The degree of relevance, potential prejudice, and the weight to be attached to such evidence depend on the nature and circumstances of the particular piece of evidence.

57. The Chamber assessed the contents of each item of documentary evidence, its provenance, source or author, as well as the author's role in the relevant events, and took into account the reported chain of custody from the time of the item's creation until its submission to the Chamber, and any other relevant information. These indicia of reliability were duly assessed, the Chamber bearing in mind that a document, although authentic, may be unreliable.<sup>131</sup> For the admitted items of documentary evidence whose authenticity and/or reliability has been

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<sup>130</sup> Absent any specific, substantiated challenges to the accuracy of the interpretation and the transcription in the closing briefs and submissions, and having established a procedure for the correction of transcripts throughout the proceedings, the Chamber relied on the transcripts, in their corrected form, as appropriate. The Chamber refers to the English transcripts, unless otherwise provided. In this regard, the Chamber notes that, on certain specific and identified occasions, it found it appropriate to also rely on the corresponding French transcript as reflecting more accurately the witness's evidence.

<sup>131</sup> See also *Lubanga* Trial Judgment, para. 109; *Bemba et al.* Trial Judgment, para. 208; *Bemba* Trial Judgment, para. 237; *Katanga* Judgment, para. 91; and *Ngudjolo* Trial Judgment, para. 57.

challenged,<sup>132</sup> the Chamber considered in its final assessment of the evidence and on a case-by-case basis all the relevant submissions and any testimonial evidence related to the authenticity of the items concerned.<sup>133</sup>

**b) Specific categories of non *viva-voce* evidence**

**(1) Rule 68 testimony**

58. A first specific category of non *viva voce* evidence includes prior recorded testimony admitted pursuant to Rule 68. If a witness's prior recorded testimony was introduced under Rule 68(3) of the Rules, the Chamber assessed that prior recorded testimony together with and in light of the testimony given during the present proceedings.<sup>134</sup> Concerning prior recorded testimony introduced under Rule 68(2)(b) in relation to a person that is not present before the Chamber, the Chamber recalls that it had satisfied itself, in addition to the formal requirements, and bearing in mind, *inter alia*, the factors listed in Rule 68(2)(b)(i), that the testimony goes to proof of 'a matter other than the acts and conduct of the accused', and is not prejudicial to or inconsistent with the rights of the accused. In analysing such evidence, the Chamber examined, on a case-by-case basis, its relevance for specific points underlying its factual findings, as well as the weight to be attached thereto. Lastly, when analysing prior recorded testimony of a

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<sup>132</sup> In this regard, the Chamber notes, in particular, that the Defence generally challenges the reliability of reports, notes, and databases from various UN and NGO sources (Defence Closing Brief, paras 27 to 29, and 450 to 454). While the reliability and probative value of these documents is to be assessed on a case-by-case basis, the Chamber considers that, in most cases, the probative value of these documents is often too low to serve as the only basis for a factual finding. Accordingly, these documents have served mainly as corroboration for other credible and reliable evidence. Specifically, concerning the individual case stories compiled in a document introduced through Kristine Peduto, a MONUC Child protection advisor who conducted some of the interviews with the alleged child soldiers (DRC-OTP-0208-0284), the Chamber notes her testimony concerning the circumstances of the preparation of the various stories, including the fact that she was not personally involved in all interviews, and the limitations in terms of verifications of accuracy and plausibility (*see P-0046*: T-100, pages 82 to 88; T-101, pages 98 to 99; and T-103, pages 5 to 20). In these circumstances, the Chamber does not consider that an individual case story is sufficient on its own to form the basis of a factual finding. That notwithstanding, as indicated above, the Chamber is of the view that in certain cases, the information contained in DRC-OTP-0208-0284 may serve as corroboration for other reliable and credible evidence.

<sup>133</sup> *See also Bemba* Trial Judgment, para. 237, quoting ICC-01/05-01/08-3019, para. 50.

<sup>134</sup> *Bemba et al.* Trial Judgment, para. 205.

person who has died, must be presumed dead, or is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally, and admitted pursuant to Rule 68(2)(c), the Chamber has weighed its probative value and reliability, considering the nature of the evidence provided, particularly if it is direct or hearsay evidence, whether it goes to the acts and conduct of the accused, and whether the evidence contained therein is corroborated by any other evidence admitted into the record.<sup>135</sup>

## (2) Logbooks

59. The Chamber has further admitted into evidence two sets of written records of radio communications within the UPC/FPLC, referred to as the 'logbooks'.<sup>136</sup> These written records relate to UPC/FPLC communications over the '*radiophonie*' radio network. They were kept systematically by specialised UPC/FPLC soldiers. The logbooks admitted as evidence contain records dated between 10 October 2002 and 2 June 2003.

60. Witnesses have authenticated the logbooks, and described the process of transmitting and transcribing messages. In particular, P-0290 described how and where a specific logbook was produced and recognised document DRC-OTP-0017-0033 as the relevant logbook.<sup>137</sup>

61. The Prosecution submits that the logbooks are 'key pieces' of evidence.<sup>138</sup> It argues that they record Mr Ntaganda's 'own words at the time of the relevant events: his orders to obey and respect the chain of command, on discipline, on promotions and demotions, on troops deployments, on operational strategy, on

<sup>135</sup> ICC-01/04-02/06-1029, para. 27, referring to ICC-01/09-01/11-1938, paras 60, 81, 111 and 128. In line with this approach, and as explained in further detail in the Factual Findings, the Chamber has found, for example, that a number of aspects of the prior recorded testimony of D-0080 cannot be relied upon.

<sup>136</sup> DRC-OTP-0017-0003 (French translation DRC-OTP-2102-3828); and DRC-OTP-0017-0033 (French translation DRC-OTP-2102-3854). Where citing to the logbooks in this Judgment, the Chamber generally only cites the French translations although it considered also the original versions.

<sup>137</sup> **P-0290**: T-65, pages 70 to 71, and 74.

<sup>138</sup> Prosecution Closing Brief, para. 55.

weapons/ammunition distribution, and on coordination of troops before and during attacks’,<sup>139</sup> and show Mr Ntaganda’s ‘complete knowledge of all daily UPC military activities’.<sup>140</sup> Further, the Prosecution submits that ‘[w]hen Ntaganda’s two logbooks contain no messages on a given day, particularly in the days just before and during an attack, the Chamber can infer that this is because Ntaganda was close enough to his troops to use the Motorola or speak in person’.<sup>141</sup>

62. The Defence ‘concurs with the Prosecution’s submission that the two FPLC logbooks are key pieces of evidence, which contain contemporaneous information on the FPLC activities on a near daily basis’.<sup>142</sup> As concerns item DRC-OTP-0017-0003, the Defence points out that the pages were ‘recorded in evidence in a non-chronological order’ and that Mr Ntaganda testified as to the correct sequence of pages. According to the Defence, document DRC-D18-0001-5748, admitted as evidence, represents the same information in the correct chronological order.<sup>143</sup>

63. The Prosecution responds, in relation to item DRC-OTP-0017-0003, that Mr Ntaganda ‘adapted his account using the Logbook and rearranged the loose Logbook pages to fit the sequence of events he wished to portray’ and that ‘[t]he Defence presented no evidence that the loose Logbook pages constitute one *ensemble*’.<sup>144</sup> The Defence, replies on this specific point that Mr Ntaganda rearranged the pages ‘on the basis of objective criteria’.<sup>145</sup>

64. In light of all the relevant evidence on the record, the Chamber considers the logbooks to be authentic and reliable as concerns the recorded communications

<sup>139</sup> Prosecution Closing Brief, para. 56.

<sup>140</sup> Prosecution Closing Brief, para. 56.

<sup>141</sup> Prosecution Closing Brief, para. 58. *See also* Prosecution Response Brief, para. 106.

<sup>142</sup> Defence Closing Brief, para. 465.

<sup>143</sup> Defence Closing Brief, paras 467 to 468. The French translation of DRC-D18-0001-5748 is DRC-D18-0001-5778.

<sup>144</sup> Prosecution Response Brief, para. 103.

<sup>145</sup> Defence Reply Brief, para. 159.

within the UPC/FPLC. While there are certain specific issues, for example the recording of an identical message in both the incoming and outgoing sections of the logbook,<sup>146</sup> these issues are addressed in their specific context to the extent required for the present Judgment, and do not affect the general reliability of the logbooks.

65. With regard to the sequence of pages, the Chamber notes that this issue was not put to P-0290, who would have had a good basis of knowledge to comment on the order of the pages. While P-0290 does not appear to have noticed that the order of the document he was shown was incorrect, the Chamber observes that he was also not specifically questioned on this point.<sup>147</sup> However, the Chamber considers that it is not necessary for the purpose of the Judgment to resolve the question of the correct sequence of messages registered as item DRC-OTP-0017-0003. Instead, the Chamber has considered the item carefully in relation to each question of fact for which it is relevant, and has borne in mind the submissions of the parties and Mr Ntaganda's testimony, notably regarding the sequencing issue.

66. Finally, it is opportune to note that the Chamber considers that there are limitations to conclusions that can be drawn from the logbooks. The Chamber does not accept the Prosecution's proposed inference that the absence of messages on a given day means that 'Mr Ntaganda was close enough to his troops to use the Motorola or to speak in person'.<sup>148</sup> Neither can any inference be drawn from the proportion of outgoing messages recorded as sent by Mr Ntaganda, given that the logbooks were prepared by a signaller personally assigned to Mr Ntaganda.<sup>149</sup> Further, the Chamber considers that it must be kept in mind that in addition to

<sup>146</sup> For the relevant discussion, which relates to logbook entry of 19 February 2003 (DRC-OTP-2102-3854, at 3998; and DRC-OTP-2102-3854, at 3993), *see* footnote 1725 below.

<sup>147</sup> P-0290 was not cross-examined by the Defence, and his testimony took place prior to Mr Ntaganda having stated that the sequence of the pages was not in the correct order. For this procedure, *see* footnote 340 below.

<sup>148</sup> Prosecution Closing Brief, para. 58.

<sup>149</sup> *See* Prosecution Closing Brief, para. 62; Defence Closing Brief, para. 466; and Defence Reply Brief, para. 163.

formalised, coded, and recorded communications, which is recorded in the logbooks, the *radiophonie* could also be used for uncoded, informal, and direct voice communication, and was not the only technical means of communication available to the UPC/FPLC.<sup>150</sup>

### 3. Hearsay evidence

67. As noted by the Appeals Chamber, there is no procedural bar to the introduction or reliance on hearsay evidence in the Court's legal framework.<sup>151</sup> Furthermore, the fact that evidence is hearsay does not necessarily deprive it of probative value. While the weight or probative value afforded to it may be lower, this ultimately 'depend[s] upon the infinitely variable circumstances which surround hearsay evidence'.<sup>152</sup>

68. With regard to evidence originating from anonymous hearsay, the Chamber took a cautious approach. Such evidence was not ruled out from the start, but in assessing the weight to be accorded to it, the Chamber has taken into account the context and conditions in which such evidence was obtained, with due consideration of the impossibility of questioning the information source in court.<sup>153</sup>

### 4. Circumstantial evidence

69. Nothing in the statutory framework prevents the Chamber from relying on circumstantial evidence, nor does the beyond reasonable doubt standard of proof or the principle of *in dubio pro reo* require that such evidence be excluded.<sup>154</sup> Further, in relation to the mental elements of crimes, the Chamber notes that, pursuant to paragraph 3 of the General introduction to the Elements of Crimes,

<sup>150</sup> See further section IV.A.2.g) Communication system.

<sup>151</sup> *Bemba et al.* Appeal Judgment, para. 874.

<sup>152</sup> *Ngudjolo* Appeal Judgment, para. 226; ICTY, referring to *Aleksovski* Appeal on Admissibility of Evidence, para. 15; *Bemba et al.* Appeal Judgment, para. 874.

<sup>153</sup> See also *Ngudjolo* Trial Judgment, para. 56; *Bemba* Trial Judgment, para. 238; *Katanga* Judgment, para. 90.

<sup>154</sup> *Bemba et al.* Appeal Judgment, para. 1386.



‘[e]xistence of intent and knowledge can be inferred from relevant facts and circumstances’.

70. When, based on circumstantial evidence, only one reasonable conclusion can be drawn from particular facts, the Chamber may reach a conclusion beyond reasonable doubt.<sup>155</sup> Furthermore, when drawing an inference, the Chamber is not required to articulate every step of its reasoning, as long as it indicates the basis for its inference. However, when an inference is made to reach an essential finding, for example, in relation to the elements of charged crimes and modes of liability, the trial chamber has to explain in more detail how it reached the factual conclusion in question.<sup>156</sup>

## **5. Identification evidence**

71. The Chamber considers that identification evidence does not need to be of any particular type,<sup>157</sup> but caution is required in assessing it due to ‘the vagaries of human perception and recollection’, in particular, where identification is made in ‘turbulent and traumatising circumstances’.<sup>158</sup>

72. When assessing identification evidence, the Chamber considered, as relevant and among other considerations, the circumstances in which a witness observed a person, the length of the observation, the distance between the identified person and the witness, any obstruction of the observation, any interactions between the witness and the identified person, and the manner in which the witness described a person, for example, whether there were any inconsistencies, misidentification followed by later identification, or delayed assertion of memory coupled with the

<sup>155</sup> *Bemba et al.* Appeal Judgment, paras 868, 1166.

<sup>156</sup> *Bemba et al.* Appeal Judgment, para. 870.

<sup>157</sup> *Bemba* Trial Judgment, para. 241, referring to ICTR, *Kamuhanda* Appeal Judgment, para. 298; and ICTY, *Lukić and Lukić* Appeal Judgment, para. 140.

<sup>158</sup> *Bemba* Trial Judgment, para. 241, quoting ICTY, *Kunarac et al.* Trial Judgment, para. 561; and referring to ICTY, *Kupreškić et al.* Appeal Judgment, paras 34, 39, and 134 to 135. The Chamber notes in this regard that there is ‘no recognised rule of evidence that traumatic circumstances necessarily render a witness’s evidence unreliable’. See ICTY, *Kunarac et al.* Appeal Judgment, para. 324

clear possibility that the witness had been influenced by the suggestion of others.<sup>159</sup>

73. Chambers of the Court have considered various criteria in identifying accused persons and their subordinates, including the position and role of the accused at the time of the charges, the presence in and control of an area by the alleged perpetrators and commanders, the composition of the troops, a person's uniform – including insignia, accessories and headwear – his or her language, and a person's specific behaviour.<sup>160</sup> In addition, chambers at the *ad hoc* tribunals have considered other factors, including the timing and location of an identification, self-identification by a person, and a person's vehicle.<sup>161</sup>

74. The Chamber further notes that in case a single identifying factor or piece of evidence was not sufficient to satisfy it beyond reasonable doubt as to the identification of an individual, the Chamber could still be satisfied based on the cumulative effect of the relevant evidence as a whole.<sup>162</sup>

<sup>159</sup> See also *Bemba* Trial Judgment, para. 242, referring to *Lubanga* Appeal Judgment, paras 235 to 236, 241, 345 to 351, and 356 to 360; *Ngudjolo* Appeal Judgment, paras 111 to 117, 204, and 226; ICTY, *Lukić and Lukić* Appeal Judgment, paras 119, and 133 to 143; ICTY, *Haradinaj et al.* Appeal Judgment, para. 156; ICTY, *Limaj et al.* Appeal Judgment, para. 30; ICTY, *Kupreškić et al.* Appeal Judgment, para. 40; ICTY, *Popović et al.* Trial Judgment, para. 55; SCSL, *Sesay et al.* Trial Judgment, paras 492 and 494; ICTY, *Haradinaj et al.* Trial Judgment, para. 29; ICTY, *Limaj et al.* Trial Judgment, para. 17; ICTY, *Kordić and Čerkez* Trial Judgment, paras 721, 724, and 725; and ICTY, *Krstić* Trial Judgment, para. 153.

<sup>160</sup> *Bemba* Trial Judgment, para. 243, referring to *Ngudjolo* Appeal Judgment, para. 88; *Katanga* Judgment, paras 215, 618, 693 to 694, 732 734 to 736, 745 to 748, 755, 842 to 848, and 933 to 939, 1334, 1342, 1347, 1350, 1353, and 1358 to 1365; *Ngudjolo* Trial Judgment, paras 323, 328 and 337; SCSL, *Taylor* Trial Judgment, paras 1271 to 1272; SCSL, *Sesay et al.* Trial Judgment, paras 1512 to 1514; ICTY, *Boškoski and Tarčulovski* Trial Judgment, paras 47, 48, 49, 59 and 60; SCSL, *Brima et al.* Trial Judgment, paras 547, and 933 to 938; ICTY, *Šainović et al.* Appeal Judgment, paras 488 and 491; and SCSL, *Fofana and Kondewa* Appeal Judgment, para. 214, and ICTY, *Đorđević* Appeal Judgment, footnote 2671; ICTR, *Nyiramasuhuko et al.* Trial Judgment, paras 410 and 1295. and ECCC, *Nuon and Khieu* Trial Judgment, paras 464 and 472, and footnotes 1371 and 1397.

<sup>161</sup> *Bemba* Trial Judgment, para. 243, referring to ICTY, *Đorđević* Appeal Judgment, footnote 2671; ICTR, *Nyiramasuhuko et al.* Trial Judgment, paras 410 and 1295; and ICTY, *Boškoski and Tarčulovski* Trial Judgment, paras 47 and 59.

<sup>162</sup> See also *Bemba* Trial Judgment, para. 244, referring to ICTY, *Limaj et al.* Appeal Judgment, paras 153 to 154 and 285.

## 6. Corroboration

75. Rule 63(4) of the Rules prohibits the Chamber from ‘impos[ing] a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence’. The extent to which a piece of evidence, standing alone, is sufficient to prove a fact at issue is entirely dependent on the issue in question and the strength of the evidence under consideration.<sup>163</sup> The Appeals Chamber found that ‘[d]epending on the circumstances, a single piece of evidence [...] may suffice to establish a specific fact. However, [...] this does not mean that *any* piece of evidence provides a sufficient evidentiary basis for a factual finding’.<sup>164</sup> The Appeals Chamber also found that ‘while corroboration is “an element that a reasonable trier of fact may consider in assessing the evidence”, the question of whether or not to consider it forms part of the Trial Chamber’s discretion’.<sup>165</sup>

76. Accordingly, there were situations where the Chamber considered that a single piece of evidence was sufficient to prove a fact beyond reasonable doubt. In other situations, the Chamber considered the applicable standard to be reached on the basis of a sum of several pieces of evidence. The Chamber has adopted a case-by-case approach in this regard, its findings depending on the circumstances of the facts to be proven and the evidence presented.<sup>166</sup> In the footnotes, the Chamber generally first listed the relevant evidence which it found bore the most weight and had the highest probative value and, on occasion, referred to additional material as a ‘*see also*’.<sup>167</sup>

<sup>163</sup> *Lubanga* Trial Judgment, para. 110; *Bemba* Trial Judgment, para. 245; *Katanga* Judgment, para. 110; and *Ngudjolo* Trial Judgment, para. 72.

<sup>164</sup> *Lubanga* Appeal Judgment, para. 218 (emphasis in original).

<sup>165</sup> *Ngudjolo* Appeal Judgment, para. 148 (internal citations omitted), quoting ICTY, *Mrkšić and Šljivančanić* Appeal Judgment, para. 264 and referring to ICTY, *Limaj* Appeal Judgment, para. 203.

<sup>166</sup> See, similarly, *Bemba* Trial Judgment, para. 246; *Lubanga* Trial Judgment, para. 110; *Katanga* Judgment, para. 110; and *Ngudjolo* Trial Judgment, para. 72.

<sup>167</sup> Beside this distinction, the Chamber most of the time referred to witnesses in ascending numerical order.

## D. SPECIFIC ISSUES OF WITNESS CREDIBILITY

### 1. Introduction

77. In assessing a witness's credibility, the Chamber considered the individual circumstances of each witness, including his or her relationship to the accused, age, any involvement in the events under consideration, any possible bias towards or against the accused, and/or any motives for telling the truth or providing false testimony.<sup>168</sup> Where required, the Chamber has relied on the evidence of witnesses in relation to whose credibility the Chamber had some reservations to the extent that it was corroborated by other reliable evidence.<sup>169</sup> However, the credibility of certain witnesses was so impugned that they could not be relied upon, even if parts of their testimony were corroborated by other evidence.<sup>170</sup>

78. In determining the reliability of the witnesses' testimony and the weight to be accorded thereto, the Chamber considered the entirety of the witnesses' testimony, having regard, in particular, to the capacity and quality of their recollection. In this respect, the Chamber took into account, *inter alia*, the consistency and precision of the accounts, whether the information provided was plausible, and, if applicable, whether the evidence conflicted with prior statements of the witness. Finally, whenever relevant, the Chamber considered the witnesses' conduct during their testimony, including their readiness and willingness to respond to questions put to them by the parties, the participants, and the Chamber, as well as the manner of answering.<sup>171</sup>

<sup>168</sup> *Lubanga* Trial Judgment, para. 106; *Bemba et al.* Trial Judgment, para. 202; *Bemba* Trial Judgment, para. 229; *Katanga* Judgment, para. 85, *Ngudjolo* Trial Judgment, para. 51.

<sup>169</sup> *See also* *Ngudjolo* Appeal Judgment, para. 168.

<sup>170</sup> *See also* *Ngudjolo* Appeal Judgment, para. 168.

<sup>171</sup> *See, similarly,* *Ngudjolo* Trial Judgment, para. 53; *Bemba et al.* Trial Judgment, para. 203; *Bemba* Trial Judgment, para. 230; *Katanga* Judgment, para. 87, *Lubanga* Trial Judgment, para. 102.

79. Bearing in mind the overall context of the case and the specific circumstances of the individual witnesses, the Chamber has also taken into account that the charges relate to events that occurred several years ago, in 2002 and 2003. Some witnesses were very young at the time of the events and/or suffered trauma and therefore may have had particular difficulties in providing a coherent, complete, and logical account. If these or other potential reasons existed that may have affected a witness's evidence, the Chamber has taken this into account in its overall evaluation of the evidence in question.<sup>172</sup>

80. Inconsistencies, contradictions, and inaccuracies do not automatically render a witness's account unreliable in its entirety, as witnesses, depending on their personal circumstances, may experience, and therefore remember, past events in different ways. Witnesses tend to attach significant importance to details which were meaningful to them at the time of the relevant events, while their testimony on matters to which they attached minor significance at the time of the events may often contain inconsistencies, contradictions, and inaccuracies.<sup>173</sup> It is possible for a witness to be accurate and truthful, or provide reliable evidence, on some issues, and inaccurate and/or untruthful, or provide unreliable evidence, on others. Consequently, the Chamber, in certain instances, decided to rely only on part of a witness's account. Nonetheless, when the Chamber rejected part of a witness's testimony, it invariably considered the impact of that rejection on the reliability of the remainder of the testimony.<sup>174</sup>

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<sup>172</sup> See, similarly, *Lubanga* Trial Judgment, para. 103; *Bemba et al.* Trial Judgment, para. 203; *Bemba* Trial Judgment, para. 230; *Katanga* Judgment, para. 83; *Ngudjolo* Trial Judgment, para. 49. In this regard, the Chamber has also considered the evidence of the Forensic Psychology Expert Professor John Yuille, and in particular his expertise on the impact of trauma on memory. See **P-0933**: T-84; T-87 and T-88.

<sup>173</sup> See also *Bemba et al.* Trial Judgment, para. 204. As such, the Chamber has not always set out in every detail its evaluation of every discrepancy raised (see, similarly, ICTY, *Popović et al.* Appeal Judgment, para. 137).

<sup>174</sup> *Lubanga* Trial Judgment, para. 104; *Bemba et al.* Trial Judgment, paras 202 and 204; *Bemba* Trial Judgment, para. 231; *Katanga* Judgment, para. 84; *Ngudjolo* Trial Judgment, para. 50. See also *Ngudjolo* Appeal Judgment, para. 168.

81. The Chamber further identified, based on the parties and participants' submissions, or its own observations, a number of issues requiring the credibility of certain witnesses to be discussed on an individual basis.

82. In doing so, the Chamber has duly considered the arguments of the parties and participants, which are, to a large extent, explicitly addressed in this section. Certain challenges have been found to be more appropriately addressed within the narrative set out by the Chamber in its Factual Findings.

83. Before entering into its individual assessments, the Chamber finds it appropriate to make the following remarks on issues which may bear on the credibility of certain categories of witnesses.

84. *Protective measures, Rule 74 assurances, and witness familiarisation and preparation:*

The Chamber first notes that, in the present case, most witnesses testified with in-court protective measures in the form of: (i) use of a pseudonym for the purpose of the trial; and (ii) voice and face distortion during testimony.<sup>175</sup> While the potential impact of these measures may be taken into consideration in its assessment of the witnesses' evidence,<sup>176</sup> the Chamber does not consider that the granting of protected measures necessarily impacts the truthfulness of a witness's account. Further, although relevant factors have been discussed in relation to specific witnesses below,<sup>177</sup> the Chamber also finds that protection-related assistance, such as admission in the ICCPP, and/or relocation, or associated expectations,<sup>178</sup> do not necessarily qualify as benefits and, without more, do not

<sup>175</sup> See Annex A, providing statistics on protective measures granted. The Chamber notes that it has refrained from revealing potentially identifying information relating to protected witnesses in this judgment. As a consequence, certain considerations in the Chamber's reasoning have been kept deliberately general, *inter alia*, by referring to transcript references that are not currently available to the public.

<sup>176</sup> See Defence Closing Brief, paras 250, 299, 330 and 380; and Defence Reply Brief, paras 43 to 44.

<sup>177</sup> See credibility assessments of P-0055 and P-0907.

<sup>178</sup> In this regard, the Chamber notes the Defence challenge based on P-0019's 'denial' of an alleged statement made to the VWU, conveyed orally to the OTP, that she 'expressed the desire' to receive a house upon her return to her village (Defence Closing Brief, para. 953, referring to **P-0019**: T-117, page 26; and DRC-OTP-2094-0289, at 0291). Considering the lack of detail concerning the circumstances and content of the witness's alleged statement, and noting the apparent difficulties faced by the witness when questioned on her

undermine a witness's credibility.<sup>179</sup> Similarly, the fact that a witness was given Rule 74 assurances, and knew or was reminded that potentially incriminating material provided would be kept confidential and not be disclosed to the public or any State,<sup>180</sup> does not, in and of itself, negatively impact a witness's credibility. The Chamber also recalls that in accordance with the protocol on witness preparation,<sup>181</sup> witnesses are to be provided with an opportunity to review their prior statements and to confirm their accuracy or explain any necessary changes.<sup>182</sup> Given that the amount of material to be reviewed, the extent of changes to be made, and, in certain cases, the time available for this review, may differ from one witness to the other, the Chamber considers that the mere fact that certain witnesses benefited from more time to review their statement does not, without more, affect the credibility of the witnesses' testimony.<sup>183</sup>

85. *Victim application forms*: The Chamber further notes that the credibility of certain witnesses who are also participating victims (dual status) has been challenged on the basis of inconsistencies between their testimony and the information provided in their victim application forms.<sup>184</sup> In this regard, the Chamber notes that, with the exception of two witnesses,<sup>185</sup> the dual status witnesses in this case were, as most applicants, assisted by intermediaries in completing their application forms.<sup>186</sup> While certain intermediaries have received general guidance and

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interaction with the VWU (*see* **P-0019**: T-117, pages 25 to 26), the Chamber does not consider this issue to affect the credibility of the witness.

<sup>179</sup> *Lubanga* Trial Judgment, para. 347. The Chamber therefore finds the related submissions concerning P-0888 to be unsupported (Defence Closing Brief, para. 1229).

<sup>180</sup> *See* Defence Closing Brief, para. 299.

<sup>181</sup> ICC-01/04-02/06-652 and Annex.

<sup>182</sup> ICC-01/04-02/06-652-Anx, paras 18 to 20.

<sup>183</sup> *See* Defence Closing Brief, para. 299, referring to P-0017 (**P-0017**: T-60, pages 55 to 56). The Chamber notes in this regard the particularly high volume of material relating to this witness. *See also* Defence Reply Brief, para. 50.

<sup>184</sup> For the parties and participants' general submissions concerning the reliability of the information provided in such forms, *see* Prosecution Closing Brief, paras 75 to 79, Defence Reply Brief, paras 52 to 59, LRV1 Response Brief, paras 30 to 31.

<sup>185</sup> *See* VPRS internal memorandum DRC-OTP-2107-1936, at 1937, providing that one of the dual status witnesses (a/30012/15, *i.e.* V-3) was assisted directly by VPRS staff, and 1938, providing that another dual status witness (a/01308/13, *i.e.* P-0010) was assisted by the legal representative of victims.

<sup>186</sup> DRC-OTP-2107-1936, at 1937.

information by the VPRS prior to assisting applicants, stressing that statements should be read back to the applicants for their acknowledgement before signing, the VPRS also emphasised the limits of the training it provided, and was not in a position to indicate whether the intermediaries did in fact read back the statements to the relevant applicants.<sup>187</sup> In this regard, the Chamber also notes that a number of dual status witnesses testified that the forms had not been read back to them,<sup>188</sup> and/or that the intermediaries had inaccurately recorded aspects of their statements.<sup>189</sup> As such, the conditions of production of victim applications differ from those of formal witness statements, which are taken by a party, assisted by staff qualified to do so, and recorded after having been read back to the witness. Accordingly, the Chamber has generally attributed less weight to inconsistencies between a witness's testimony and a victim application, than to inconsistencies with a formal witness statement. Major identified inconsistencies have been assessed on a case-by-case basis, considering, *inter alia*, the nature and scope of the inconsistencies, the explanations provided by the witness in this regard, and the conditions of production of the application, including, in particular, whether the form was completed with the assistance of an intermediary or individuals formally connected to the Court.

86. *Birth dates provided in official documents:* With regard to the various types of documentary evidence submitted concerning the age of alleged child soldiers, it is noted that, generally, the reported conditions of production of most of these documents were such that the Chamber only attached a very low probative value to them. Where it appeared that documents were produced on the basis of the witness's account alone, or that of their parents, and that no further verification as

<sup>187</sup> See VPRS internal memorandum DRC-D18-0001-6742, at 6744 and 6746.

<sup>188</sup> **P-0805:** T-26, pages 50 to 51; **P-0883:** T-169, page 25; **P-0892:** T-86, page 9; **P-0887:** T-94, page 83; **P-0100:** T-132, page 22.

<sup>189</sup> **P-0887:** T-93, page 5; T-94, pages 77, and 80 to 81; **P-0039:** DRC-OTP-2089-0053, at 0054; **V-1:** T-201, pages 70, and 72 to 73; **P-0857:** T-194, pages 12, and 39 to 42; **P-0100:** T-132, pages 19 to 20; **P-0883:** T-169, pages 11 and 15; **P-0868:** T-178, pages 31, and 33 to 34; **P-0805:** T-26, page 43.



to the accuracy of the provided information was effectuated,<sup>190</sup> the Chamber found that these documents had limited or no corroboratory value. This was the case, for example, for most of the birth certificates issued by the *Etat civil*. The Chamber however considered that the documents, to the extent that discrepancies could not be explained in a satisfactory manner, could be of relevance to impeach a witness's credibility.

87. *School records*: When considering school records, and having had particular regard to the informed evidence provided by P-0551,<sup>191</sup> the Chamber found that these records, to the extent that they are contemporaneous documents containing personal information about witnesses, can be given some weight in assessing the witnesses' evidence. Relevant discrepancies, most notably regarding the purported age of alleged child soldiers, but also their attendance of or absence from school during periods for which they report having undergone training, have been discussed on a case-by-case basis.

88. *Delayed reporting of rape*: Finally, in assessing the evidence and credibility of the witnesses who are allegedly victims of rape and sexual slavery, the Chamber found that cultural or communal stigmatisation, shame and fear, as well as the general lack of trust in authorities, were factors which can explain the difficulties faced in coming forward, especially in a conflict or post-conflict area like Ituri.<sup>192</sup>

<sup>190</sup> See e.g. **D-0163**: DRC-D18-0001-6159, at 6161, para. 15; and **D-0150**: DRC-D18-0001-6146, at 6148, para. 15.

<sup>191</sup> The Chamber has noted, for example, that P-0551 suggested that the schools in some parts of Ituri were not functioning normally during the conflict (**P-0551**: DRC-OTP-1054-0031, at 0033 to 0034, paras 13 to 15) and acknowledged that falsification of certain school documents was not uncommon (**P-0551**: DRC-OTP-1054-0031, at 0037 to 0039, paras 35 to 46).

<sup>192</sup> In this context, the Chamber particularly relies on the evidence provided by psychological expert Ms Maeve Lewis. Although noting that Ms Maeve Lewis's experience is based on areas outside the DRC (**P-0938**: DRC-OTP-2050-0069-R04, from 0070 to 0071), the Chamber is of the view that it has nonetheless been acquired in comparable post-conflict areas and is thus relevant to the present case. Ms Maeve Lewis testified that delays in reporting of rape are 'extremely common', regardless of where the rape occurred (**P-0938**: T-113, page 62), but that women are particularly reluctant to report their sexual assaults in conflict or post-conflict areas, where there is little trust in civil authorities, fear of stigmatisation, and fear of reprisals (**P-0938**: T-113, page 62; see also **P-0018**: T-111, pages 32 to 33; **P-0113**: T-118, page 63). The expert explained that one of the major reasons for delayed reporting of rape is the shame and stigma attached to it, the victims' fear that relationships will be broken and that they will be ostracised by their families (**P-0938**: T-113, pages 49 to 50). She further clarified that this fear is particularly prevalent in relation to female rape victims who fear

Accordingly, the Chamber considered delayed reporting of instances of rape,<sup>193</sup> including after conversations with a counsellor or therapist,<sup>194</sup> to be an understandable consequence of the victims' alleged experience, and therefore found that late reporting does not, as such, affect the relevant witness's general credibility.<sup>195</sup>

## 2. Assessment of individual witnesses' credibility

### a) P-0010

89. The witness testified to having been enlisted with the UPC/FPLC in 2002, when she was 13 years old. She stated she followed training in Rwampara and Mandro, served in Mr Ntaganda's personal escort, and participated in UPC/FPLC military operations. She further testified about sexual violence she witnessed and experienced during her time with the UPC/FPLC.<sup>196</sup>

90. At the beginning of her testimony, P-0010 seemed nervous and appeared reluctant to answer the questions asked. She explained that she was afraid

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rejection by their husbands (**P-0938**: T-113, page 49; *see also* **P-0018**: T-111, page 32; and **P-0014**: T-138, pages 100 to 101). The expert's observations are corroborated by witnesses familiar with the DRC's cultural context (**P-0365**: T-147, pages 34 to 35; **P-0790**: T-54, page 35; **P-0014**: T-138, page 101). Notably, **P-0365**, testified that victims would hide their rape in order to avoid social consequences (**P-0365**: T-147, page 36) and **P-0014** indicated that rape of their wives brings 'great shame on men' in the DRC culture (**P-0014**: T-138, pages 100 to 101).

<sup>193</sup> P-0018, P-0019, and P-0113 testified that they did not report their rape the first time they met with the Prosecution, *inter alia*, because they were ashamed (**P-0018**: T-111, page 31; **P-0019**: T-115, pages 55 to 56; and **P-0113**: T-118, pages 63 to 64). The Chamber also notes the Defence submission that the fact that P-0018, P-0019, and P-0113 all made no allegations of rapes in their first interview in 2005, but did so in 2013 raises doubts about whether they have been influenced by P-0154 or another community leader (Defence Closing Brief, paras 946 and 951; and Defence Reply Brief, para. 333). Given its above conclusion on delayed reporting of rape, the Chamber is therefore not persuaded by the Defence submissions in this regard and finds that there is no indication that the witnesses' relevant testimony was influenced by P-0154.

<sup>194</sup> *See* Defence Reply Brief, para. 335.

<sup>195</sup> The Chamber also notes in this context that Ms Maeve Lewis examined P-0018, P-0019 and P-0113 and concluded that their reluctance to report their rapes may be compounded by 'the strong cultural stigma attached to rape victims in [their] community and the fear of being ostracised', and that their delayed reporting of their rapes is consistent with the 'experience of raped women worldwide' (Expert Report DRC-OTP-2059-0058-R02, at 0062 [P-0018]; Expert Report DRC-OTP-2059-0080-R03, at 0084 [P-0019]; Expert Report DRC-OTP-2050-0069-R04, at 0073 [P-0113]).

<sup>196</sup> For the assessment of P-0010's credibility, the Chamber has also taken into consideration the relevant submissions in CLR1 Closing Brief and CLR1 Response Brief.

because of the proximity to Mr Ntaganda,<sup>197</sup> and appeared more at ease once Mr Ntaganda was no longer present in the courtroom.<sup>198</sup>

91. P-0010's demeanour and level of detail provided during her testimony was the same during examination-in-chief and cross-examination, but within each part it appeared to vary to some extent depending on the nature of the issues discussed. In relation to certain issues, such as the circumstances of her alleged abduction and initial time with the UPC/FPLC, she frequently noted that she did not understand a question, or that her memory was failing her. In relation to other issues, such as her experiences within Mr Ntaganda's escort, the witness was more forthcoming and clearly distinguished between things she witnessed with her own eyes and things she heard about.<sup>199</sup> She also made it clear when she was not in a position to provide incriminating information with certainty.<sup>200</sup> She readily admitted that she had made a number of corrections to her prior statements during her preparation session.<sup>201</sup> In these circumstances, the Chamber finds no support for the Defence's general contention that P-0010 'was a combative, biased and uncooperative witness'.<sup>202</sup>

92. *Date of birth*: With regard to the specific challenges raised by the Defence, the Chamber first turns to the issue of P-0010's date of birth and the circumstances of

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<sup>197</sup> T-46, page 52.

<sup>198</sup> In this regard, the Chamber notes that the Victims and Witnesses Unit, pursuant to Rule 88 of the Rules, and on the basis of their vulnerability assessment, recommended the use of video-link for her testimony. This measure was not granted, but, on this occasion, the Chamber noted that it would closely monitor the witness's demeanour and well-being and, should it become necessary at any point during her testimony, it would direct the use of video-link (T-46, pages 7 to 8). At the first day of testimony, the witness expressed her fear due to the proximity to Mr Ntaganda in the courtroom and confirmed that she would feel more at ease if she was allowed to testify via video-link from a room next to the courtroom. Upon the question whether the Defence maintains its previously expressed opposition to the use of video-link, the Defence, in consultation with the accused, indicated that for the purpose of facilitating the conduct of proceedings, the accused would agree to follow the proceedings from outside the courtroom. In these circumstances, the Chamber decided that, on an exceptional basis, Mr Ntaganda would follow the hearing from outside the courtroom (T-46, pages 52 to 55, and T-47, page 2).

<sup>199</sup> See e.g. T-47, page 36.

<sup>200</sup> See e.g. T-47, pages 19, 34, and 36 to 37.

<sup>201</sup> T-50, page 27.

<sup>202</sup> See Defence Closing Brief, paras 1280 to 1281.

her alleged abduction.<sup>203</sup> The witness testified that she was born in Bunia in August 1989,<sup>204</sup> and that she was abducted by the UPC in the context of the attack on Bunia in August 2002, when she was 13 years old.<sup>205</sup> When confronted with challenges to her date of birth, she insisted that she was born in 1989,<sup>206</sup> stressing that only her parents could know the real date.<sup>207</sup> P-0010 also acknowledged having corrected her date of birth a number of times in her written statements.<sup>208</sup>

93. The related documentary evidence in the case record refers to five different dates of birth in 1986, 1987, 1988 or 1989,<sup>209</sup> as well as to two places of birth, including one that differs from the place mentioned in P-0010's testimony. In this regard, the Chamber considers the following explanations from the witness to be satisfactory: (i) for the place of birth, where P-0010 acknowledged having erroneously provided her mother's village as her place of birth;<sup>210</sup> and (ii) for the birth date on an electoral card, where she admitted having provided wrong information to the authorities in order to obtain the card for security reasons.<sup>211</sup> Notwithstanding this, the Chamber notes that many other discrepancies remain unanswered. In particular, according to the date of birth provided by the witness

<sup>203</sup> The Chamber notes the Prosecution's submission in its closing brief that '[w]hile the Prosecution did not put P-10 forward as a former child soldier, it is open to the Chamber to make such a finding based on the evidence' (Prosecution Closing Brief, para. 742). The Chamber further notes that in relation to Counts 6 and 9, the Prosecution did put P-0010 forward as a former child soldier under the age of 15 (*see* Pre-Trial Brief, paras 777 to 778).

<sup>204</sup> T-46, page 28.

<sup>205</sup> T-46, pages 29 to 31; and T-50, pages 59 to 60.

<sup>206</sup> T-50, pages 31, 33, and 35.

<sup>207</sup> T-50, pages 28 and 34.

<sup>208</sup> T-50, pages 27 to 28.

<sup>209</sup> DRC-OTP-0206-0120, at 0120 (a summary of a MONUC interview conducted in December 2003.); DRC-OTP-0132-0012 (a birth certificate dated 8 December 2005.); DRC-D01-0003-5482 and DRC-OTP-0231-0275 (an electoral card and a related *extrait d'identité du porteur de la carte d'électeur*); DRC-OTP-0206-0255, at 0257 (a victim application form dated 24 May 2006); DRC-OTP-2078-2252 (a victim application form dated 12 June 2013).

<sup>210</sup> T-50, page 28.

<sup>211</sup> T-50, pages 56 to 57. P-0010 explained that, because the card could not be obtained by individuals under 18 years of age, she stated, in 2005, that she was born in 1986. In this regard, the Chamber also considered the testimony of D-0172, who explained that he was not entitled to an electoral card at the time and similarly described providing an inaccurate date of birth to the authorities in order to obtain one and avoid difficulties (D-0172: T-245, pages 17 to 19 and 63 to 64).

during a MONUC interview in 2003, P-0010 would have been born in 1987, and would therefore have been 15 years old at the time she joined the UPC/FPLC.<sup>212</sup>

94. In light of the aforementioned considerations, having in mind the Chamber's conclusion detailed below regarding the credibility of the witness's account concerning the circumstances of her abduction, and independently of the testimony of two Defence witnesses suggesting that P-0010 was not under 15 at the time of the events,<sup>213</sup> the Chamber cannot establish beyond reasonable doubt that she was under 15 at the time of the events referred to during her testimony.

95. *Abduction and training:* The Chamber observes that the witness's in-court testimony on being abducted by the UPC when fleeing fighting between the APC and the UPC and being taken to the Rwampara training camp<sup>214</sup> differs, in crucial aspects, from the information in the abovementioned MONUC document. This document provides, *inter alia*, that the witness stated she was recruited by force by the APC at the end of 1999 and taken to Rwampara, where she was trained for nine months under the orders of Ugandan commanders.<sup>215</sup>

<sup>212</sup> The person who conducted the interview underlying the summary did not appear before the Chamber: *see* DRC-OTP-0206-0120, at 0120, where 'ACPA' followed by a name is written next to the interview entry which appears to be related to P-0010, and Kristine Peduto (**P-0046**): T-100, page 86 (stating that the initials ACPA refer to one of her child protection colleagues), page 32 (stating that interviews were conducted by her or one of her colleagues), page 46 (stating that she conducted the majority of interviews herself, but that she was occasionally assisted by colleagues). It is however noted that Kristine Peduto, a MONUC Child protection advisor who conducted other similar interviews with former UPC soldiers at the time, stated that, while most of the children knew and were capable of providing their age, some 'did not say the truth' (**P-0046**: T-100, pages 24 to 25). *See also* T-100, pages 78 to 79).

<sup>213</sup> **D-0211**: T-247, pages 14 and 78; T-248, pages 15 to 16 (testifying that P-0010 informed her that she was born in 1985, but that she does not know whether she gave her exact date of birth); **D-0251**: T-260, page 20 (testifying that all the girls staying with Mr Ntaganda were, by appearance, roughly the same age) and page 23 (stating that none of the individuals staying with Mr Ntaganda was under 15). However, despite the apparent relatively close relationship between P-0010 and D-0211 (*see* **D-0211**: T-247, page 86; DRC-OTP-0221-0375; *see also* Defence Closing Brief, para. 1281), the Chamber notes remaining uncertainties regarding D-0211's knowledge of P-0010's biographical details, including her date of birth. The Chamber further notes that D-0251's evidence on other aspects of the case is contradicted by a number of other witnesses whom the Chamber has found credible. Accordingly, the aforementioned statements did not affect the Chamber's conclusion concerning P-0010's date of birth.

<sup>214</sup> T-46, pages 29 to 31.

<sup>215</sup> DRC-OTP-0206-0120.

96. When confronted with this discrepancy, P-0010 strongly denied having had any involvement with the APC.<sup>216</sup> However, the Chamber notes that this aspect of the witness's testimony is characterised by a certain scarcity of details, when compared to other parts of her testimony, and that a number of discrepancies, of variable importance, have been identified with the victim application form submitted on her behalf, notably with regard to the supplementary information provided with the assistance of individuals formally connected to the Court.<sup>217</sup>
97. The Chamber further notes the Defence's submissions to the effect that the details in the MONUC document are 'corroborated by extrinsic evidence' relating to the APC.<sup>218</sup>
98. In light of the aforementioned discrepancies and uncertainties, the Chamber cannot exclude the possibility that P-0010 misrepresented the truth when stating that she was abducted by the UPC when she was 13 years old, and then followed training with the UPC in the Rwampara and Mandro training camps. Accordingly, the Chamber finds that the witness's testimony on her abduction by and training with the UPC/FPLC, or her related experiences in this regard, cannot be relied upon.
99. However, the Chamber notes that, contrary to her testimony on her alleged abduction and initial time with the UPC, P-0010 provided detailed and coherent information about her experiences in Mr Ntaganda's escort,<sup>219</sup> for which she was

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<sup>216</sup> T-49, pages 41, 45, 70 to 71, and 75; and T-50, page 12.

<sup>217</sup> The witness namely gave differing accounts with regard to the sequence of events in connection with her military training: DRC-OTP-0206-0255, at 0281 (stating that, after being abducted, she was first taken to Bunia, then to a training centre in Mandro for two weeks, underwent military training in Rwampara for another two weeks, and returned to Mandro where she was given a weapon) *versus* T-46, pages 30 to 31 and 41 to 42; and T-49, page 7 (testifying that, after being enlisted by the UPC, she was taken to a training camp in Rwampara for approximately one month, then went to Mandro for further training and then back to Rwampara, where she was given a weapon and military clothing). *See also* Defence Closing Brief, para. 1265.

<sup>218</sup> Defence Closing Brief, paras 1262 to 1263. Concerning the Defence argument that the APC had a military training camp in Rwampara in 1999 and that the evidence suggests that the UPC training camp in Rwampara did not exist in 2002 (Defence Closing Brief, paras 1245(f) and 1263), the Chamber notes that on the basis of the overall evidence provided, the precise timing of the opening of the camp cannot be conclusively established (*see* section IV.A.3.b)(1) Training camps).

<sup>219</sup> T-46, pages 47 to 48.

selected when she returned to Bunia,<sup>220</sup> together with other boys and girls,<sup>221</sup> and which is generally in line with, or corroborated by, other evidence in the case record. Specifically, she was able to describe how she was chosen as Mr Ntaganda's bodyguard,<sup>222</sup> remembered the names of other bodyguards<sup>223</sup> and their respective age range,<sup>224</sup> knew the name of the chief escort,<sup>225</sup> and was able to remember the location of Mr Ntaganda's residence.<sup>226</sup> She also remembered the specific operations she participated in,<sup>227</sup> including reconnaissance missions,<sup>228</sup> and was able to provide details concerning other trips she made with Mr Ntaganda in her capacity as his bodyguard.<sup>229</sup>

100. For example, P-0010 provided detailed information concerning her participation in the First Operation,<sup>230</sup> was able to remember the names of other UPC/FPLC commanders who were present,<sup>231</sup> the weapons used,<sup>232</sup> communications of Mr Ntaganda,<sup>233</sup> the residence of Mr Ntaganda and the soldiers in Mongbwalu,<sup>234</sup> and what was referred to as the *Appartements* area.<sup>235</sup> She firmly rejected the Defence suggestion that she did not go to Mongbwalu with Mr Ntaganda, and insisted that she was present at both the first and second assault on Mongbwalu,<sup>236</sup> which she was able to clearly distinguish from one another.<sup>237</sup> She also remembered the items she looted.<sup>238</sup>

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<sup>220</sup> T-50, page 11.

<sup>221</sup> T-46, page 48.

<sup>222</sup> T-47, pages 20 to 21.

<sup>223</sup> T-47, pages 5 to 6.

<sup>224</sup> T-47, page 6.

<sup>225</sup> T-47, page 10.

<sup>226</sup> T-47, page 8.

<sup>227</sup> T-47, page 21.

<sup>228</sup> T-47, pages 46 to 50. *See* para. 404 below.

<sup>229</sup> T-47, page 27.

<sup>230</sup> T-47, pages 9 to 10; and T-50, pages 15 to 18.

<sup>231</sup> T-47, page 9.

<sup>232</sup> T-47, pages 11 to 12.

<sup>233</sup> T-47, page 12.

<sup>234</sup> T-47, pages 12 to 13.

<sup>235</sup> T-47, page 19.

<sup>236</sup> T-50, pages 17 to 18.

<sup>237</sup> T-47, page 16; and T-50, page 18.

<sup>238</sup> T-47, page 13.

101. In light of the aforementioned details provided by the witness, the Chamber is satisfied that the witness's testimony relating to her experiences in Mr Ntaganda's escort is credible and can be relied upon.<sup>239</sup>

102. Concerning the sexual violence P-0010 states she witnessed and personally experienced while she was part of Mr Ntaganda's escort, the Chamber does not take issue with the fact that the relevant acts were not reported on the first occasion.<sup>240</sup> In this regard, the Chamber considers that, while P-0010 previously reported other accounts of sexual violence, various reasons, including shame or fear of reprisals, stigmatisation or ostracization, may explain why she may have chosen not to volunteer the identities of certain alleged perpetrators, particularly if these were well-known, powerful, and/or respected figures at the time.<sup>241</sup> Moreover, the witness's hesitations as regards timing, as identified by the Defence, do not indicate that P-0010 fabricated this aspect of her testimony and as such do not meaningfully affect the credibility of her account.<sup>242</sup> The Chamber also does not find that the witness's accounts related to chief escort Claude Uzauakiliho lack the required level of details.<sup>243</sup> Notably, the Chamber points to P-0010's evidence about a pattern of daily sexual violence perpetrated by Claude against Mr Ntaganda's escorts as being sufficiently precise.<sup>244</sup> Recalling its above

<sup>239</sup> It is noted that D-0017, whose credibility is discussed further below, initially spontaneously listed an individual with the name of P-0010 as part of Mr Ntaganda's escorts who went to Bunia together with Tiger One/Salongo Ndekezi for the Mongbwalu operation and only corrected himself after he was asked by the Defence, whether the individual with P-0010's name was present at that operation or another operation, to state that he was referring to another operation (**D-0017**: T-253, pages 33 to 34, and 38). The Defence's claim that P-0010 did not participate in the attack on Mongbwalu (Defence Closing Brief, paras 1278 to 1279) is therefore not substantiated.

<sup>240</sup> In this regard, the Chamber notes that the Defence refers to both the report of an interview P-0010 gave to MONUC officials in 2003 and her 2005 statement to the Prosecution (Defence Closing Brief, paras 1272 and 1274, referring to DRC-OTP-0206-0120, at 0121 and DRC-OTP-0126-0122, para. 38). With regard to the 2005 statement specifically, the Chamber notes that the accounts reported in the excerpt identified by the Defence concern the witness's training and not the period of time when she was part of Mr Ntaganda's escort.

<sup>241</sup> See para. 88 above on delayed reporting of rape. Further, the Chamber specifically considered the fact that the witness had already testified about the sexual violence she suffered, notably in 2009 (T-50, page 38).

<sup>242</sup> See Defence Closing Brief, para. 1273. Accordingly, the Chamber does not find that P-0010's inability to recall whether a certain event happened in Mabanga 'before' or 'after' the First Operation unduly undermines her credibility.

<sup>243</sup> See Defence Closing Brief, para. 1274.

<sup>244</sup> T-47, pages 35 to 36.



finding that P-0010's reported experiences as part of Mr Ntaganda's escort are credible, and noting further that a number of other witnesses testified that escorts were victims of sexual violence committed by UPC/FPLC commanders or soldiers,<sup>245</sup> the Chamber finds that the related accounts concerning sexual violence are equally credible.

103. This conclusion remains unaffected by the evidence of Defence witnesses who testified on this point.<sup>246</sup> Recalling its aforementioned considerations concerning the delayed reporting of rape, it is understandable that P-0010 may not have informed D-0211 of the details of the sexual violence suffered, and related consequences.<sup>247</sup> As for the testimony of D-0251 that Mr Ntaganda never forced her or any other female bodyguard into sexual relations, and that she never heard anyone speak about rape committed by UPC/FPLC soldiers,<sup>248</sup> the Chamber finds D-0251's categorical statements on this issue not credible, notably in light of the other evidence on the record.

104. Finally, P-0010 also testified to having accompanied Mr Ntaganda on his visit to the Rwampara training camp,<sup>249</sup> and remembered a variety of details regarding this trip.<sup>250</sup> When presented video scenes<sup>251</sup> depicting Rwampara training camp, she was able to identify a number of individuals,<sup>252</sup> certain locations and what they were used for.<sup>253</sup> P-0010 also recognised songs being sung<sup>254</sup> and certain

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<sup>245</sup> See section IV.A.3.d) Treatment of female recruits below.

<sup>246</sup> See Defence Closing Brief, paras 1275 to 1276, referring to the evidence of D-0211, D-0017 and D-0251. With regard to D-0017, the Chamber refers to its conclusion in the relevant credibility assessment and therefore considers that his testimony does not affect the credibility of P-0010.

<sup>247</sup> In this regard, the Chamber notes the related statements from D-0211 (**D-0211**: T-248, pages 32 to 33), but also that D-0211 stated that P-0010 did not provide much detail concerning her service with the UPC (T-248, page 34), and that she was not specifically asked whether P-0010 reported to her having suffered sexual violence during her time with the UPC/FPLC.

<sup>248</sup> **D-0251**: T-260, pages 33 to 34.

<sup>249</sup> T-47, pages 52 to 55.

<sup>250</sup> See e.g. T-48, page 16.

<sup>251</sup> DRC-OTP-0120-0293. See also DRC-D18-0001-0463.

<sup>252</sup> T-47, page 62; and T-48, pages 3 to 4, 6 to 9, 11, and 13.

<sup>253</sup> T-48, pages 4 to 5.

<sup>254</sup> T-48, page 10.

events depicted in the video.<sup>255</sup> Moreover, she identified herself in a video-scene depicting the alleged visit with Mr Ntaganda,<sup>256</sup> and firmly rejected the Defence's suggestion that the individual was in fact someone else,<sup>257</sup> and that she made a mistake concerning her identification.<sup>258</sup> The witness was able to remember and spontaneously provide details concerning certain accessories she could be seen wearing in the scene.<sup>259</sup> Notwithstanding the challenges to the witness's self-identification by certain other witnesses,<sup>260</sup> the Chamber finds P-0010's self-identification and her account concerning the visit to Rwampara training camp credible.

105. In light of the above, the Chamber considers that its decision not to rely on the witness's testimony about her abduction and training does not warrant a finding that the witness was biased against the accused or a conclusion that her testimony is entirely unreliable.<sup>261</sup> The Chamber finds P-0010 credible, notably regarding her experiences in Mr Ntaganda's escort, and shall determine on a case-by-case basis which other aspects of her testimony can be relied upon with or without corroboration.

#### **b) P-0017**

106. The witness is a UPC/FPLC soldier who served in Salumu Mulenda's brigade. He testified about his service and his participation in military interventions in the context of the First and Second Operation.

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<sup>255</sup> T-48, pages 14 to 15.

<sup>256</sup> T-47, pages 58 to 59 (referring to extracts of DRC-OTP-0120-0293), pages 60 and 62 (referring to extracts of DRC-OTP-0120-0293); and T-49, page 23 (referring to extracts of DRC-D18-0001-0463).

<sup>257</sup> T-49, pages 24 and 33.

<sup>258</sup> T-49, page 25.

<sup>259</sup> T-49, pages 24 to 25.

<sup>260</sup> See **D-0017**: T-253, pages 59 to 60 (this witness's credibility is addressed further below); **D-0038**: T-250, pages 7 to 8; and **D-0300**: T-220, pages 40 to 41. See also Defence Closing Brief, para. 1277 and Defence Reply Brief, para. 351.

<sup>261</sup> As for the Defence's submission that P-0010's 'right to participate in these proceedings [...] should be revoked' (see Defence Closing Brief, para. 1282), the Chamber considers that related requests are to be more appropriately addressed in the context of the reparations phase, if any.

107. His evidence on these issues was rich in detail, in particular in relation to subjects where the witness possessed personal knowledge and expertise. P-0017 explained the circumstances in which he came to know of certain facts, readily conceded when he was not able to answer a question, and the inferences he made appeared reasonable.
108. Specifically, and noting the Defence's challenge in this regard,<sup>262</sup> the Chamber considers that the witness provided a detailed and logical account concerning his stay in Mongbwalu after the Sayo operation and his presence at the *Appartements* camp at the same time as Mr Ntaganda. Certain details of his account in this regard are consistent with the testimony of other witnesses.<sup>263</sup>
109. As for the Defence's challenge based on the witness's inability to recognise the *Appartements* camp area,<sup>264</sup> Thomas Kasangaki<sup>265</sup> or Salumu Mulenda<sup>266</sup> in a video recording shown to him in court,<sup>267</sup> the Chamber notes that the witness: (i) maintained that he was present at the *Appartements*;<sup>268</sup> (ii) explained that he did not go to the specific houses that appear on the recording because they were occupied by the officers;<sup>269</sup> (iii) testified that he knew that Mr Ntaganda lived in those houses, but did not know the specific house inhabited by Mr Ntaganda;<sup>270</sup> (iv) recognised the *Appartements* camp area on two satellite images in cross-examination;<sup>271</sup> and (v) explained his failure to recognise Thomas Kasangaki and Salumu Mulenda by the quality of the images and the time passed.<sup>272</sup> In

<sup>262</sup> See Defence Closing Brief, paras 303 to 304 and generally paras 302 to 308; Defence Reply Brief, paras 88 to 94.

<sup>263</sup> See e.g. P-0017's testimony concerning the prison at the *Appartements* (para. 528 below).

<sup>264</sup> T-62, page 50 with video recording DRC-OTP-2058-0251, from 00:45:54 to 00:48:35.

<sup>265</sup> T-62, page 51 with image captured in video recording DRC-OTP-2058-0251, at 00:46:09.

<sup>266</sup> T-62, page 52 with image captured in video recording DRC-OTP-2058-0251, at 00:46:55.

<sup>267</sup> Defence Closing Brief, para. 302 and Defence Reply Brief, para. 88. See also Prosecution Response Brief, paras 57 to 58.

<sup>268</sup> T-62, page 50.

<sup>269</sup> T-62, page 50.

<sup>270</sup> T-62, page 50.

<sup>271</sup> T-61, page 88 (in relation to DRC-D18-0001-0491, page 0496), and page 90 (in relation to DRC-D18-0001-0491, page 0497).

<sup>272</sup> T-63, page 60 (stating further that there are a number of things he 'buried' because he wanted to forget them, and that even in relation to a good friend, he does not have a 'clear image of his face').

consideration of the foregoing, the Chamber finds that the Defence challenge based on the witness's inability to recognise the *Appartements* camp area, Thomas Kasangaki or Salumu Mulenda in the video recording does not, without more, cast doubt on the witness's alleged presence in the area at the relevant time.

110. Noting the witness's inability to remember seeing Floribert Kisembo in Mongbwalu, or certain events that the Defence alleges took place during the time of P-0017's purported presence in Mongbwalu,<sup>273</sup> the Chamber considers that this may be explained by the fact that at the relevant time, the witness was at a different location in Mongbwalu where he could not have seen Floribert Kisembo or the events referred to by the Defence, or the loss of memory in relation to events that have taken place a long time ago and may not have constituted the focus of the witness's attention. As for the Defence argument that P-0017 provided false evidence concerning the arrival of Mr Ntaganda in Mongbwalu, based on the contrasting evidence provided by Mr Ntaganda, including his testimony on the absence of a motorable road or serviceable cars,<sup>274</sup> the Chamber considers Mr Ntaganda's testimony in this respect to be implausible, considering, *inter alia*, his role in the planning of the operation, the position he held in the UPC/FPLC at the time, and the importance of the Mongbwalu operation, especially considering that an attack on the town had already failed, as well as the fact that both P-0017 and P-0963 testified that it was possible to go to Mongbwalu by vehicle.

111. Further, regarding the Defence argument relating to the timing of P-0017's account concerning his presence at the *Appartements* with reference to the appointment of Salongo Ndekezi as sector commander,<sup>275</sup> the Chamber notes that:

(i) the witness stated that when Salumu Mulenda ordered him to go to the *Appartements*, Salongo Ndekezi was to be made sector commander, and not that

<sup>273</sup> See Defence Reply Brief, para. 94.

<sup>274</sup> Defence Closing Brief, paras 309 to 313.

<sup>275</sup> See Defence Closing Brief, para. 305.

he had already been made sector commander;<sup>276</sup> and (ii) the mere fact that there was no mention in the logbooks before 4 December 2002 of Salongo Ndekezi being sector commander does not exclude that his *de facto* appointment had taken place at an earlier date.<sup>277</sup> Accordingly, the Chamber does not find the witness's testimony to be contradicted by the sequence of events. Lastly, the Chamber considers that the Defence failed to substantiate any lack of plausibility in P-0017's testimony that he did not go to Kilo after the operation in Sayo, a point on which the witness insisted.<sup>278</sup>

112. The Defence also challenges the witness's account of his alleged participation in the Sayo operation.<sup>279</sup> On this point, the Chamber considers that the witness's evidence about having received an order to shoot at civilians is detailed, consistent throughout his testimony, and plausible.<sup>280</sup>

113. The Defence further argues that the fact that the witness did not see certain persons who were present on that occasion 'seriously casts doubt as to whether he was even present in Sayo on that day',<sup>281</sup> an argument assessed elsewhere in this Judgment.<sup>282</sup>

114. Turning to P-0017's testimony about people finding shelter in the Sayo church, the Chamber observes that his account was precise,<sup>283</sup> coherent throughout his testimony, and not incompatible with his previous statements.<sup>284</sup>

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<sup>276</sup> T-59, page 16.

<sup>277</sup> In this regard, the Chamber also notes that P-0017's testimony that he went to the *Appartements* about one week after Mongbwalu was captured (T-59, page 17) is consistent with the testimony of P-0901 and P-0907, suggesting that Salongo Ndekezi was appointed sector commander in Mongbwalu shortly after it was captured (**P-0901**: T-28, pages 12 to 13 ; **P-0907**: T-29, page 9).

<sup>278</sup> Defence Closing Brief, para. 306. *See also* T-62, page 59.

<sup>279</sup> Defence Closing Brief, paras 314 to 318, 321, and 323 to 326.

<sup>280</sup> T-58, pages 70 to 73; T-59, page 4; T-61, page 106; T-62, pages 27 to 28, referring to DRC-REG-0001-0017, and pages 34 to 35, referring to DRC-REG-0001-0019.

<sup>281</sup> Defence Closing Brief, para. 326.

<sup>282</sup> In this regard, *see* footnote 1452.

<sup>283</sup> T-58, pages 73 to 74; T-61, page 71; T-62, pages 40 to 44.

<sup>284</sup> The Defence argues that the witness's account concerning people taking shelter in the church is inconsistent with the statements he made in 2006 and 2009 (Defence Closing Brief, paras 322 and 323). However, noting that neither of these statements explicitly exclude that people were taking shelter in the church, and noting the witness's explanation that at his initial meeting with the Prosecution, he gave less information than in its

115. However, P-0017 also testified that one of Mr Ntaganda's bodyguards killed an unarmed Lendu man in front of the church in Mr Ntaganda's presence,<sup>285</sup> while in his statement from 2006, he stated that, when he arrived at the church, women and children were shot dead upon Mr Ntaganda's order.<sup>286</sup> When this information was put to him in cross-examination, the witness appeared to no longer stand by the information provided in 2016, and could not provide a satisfactory explanation for this change.<sup>287</sup> In light of this significant discrepancy, the Chamber finds that it cannot rely on this specific aspect of P-0017's evidence.

116. Concerning the Defence arguments underpinning its general submission that P-0017 provided false and implausible evidence concerning Motorola radio conversations and the events in Kobu,<sup>288</sup> the Chamber notes, at the outset, that the Defence's argument that P-0017's testimony on spying everyday on Salumu Mulenda is impossible is unsupported by the evidence.<sup>289</sup> The Chamber further considers that P-0017's evidence on having heard Salumu Mulenda over the Motorola is not implausible,<sup>290</sup> and that, while it may have helped the witness to refresh his memory, nothing indicates that listening to the audio recordings has led the witness to adjust his testimony.<sup>291</sup>

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further statements (T-61, page 109), the Chamber does not discern any substantial discrepancy within the witness's testimony.

<sup>285</sup> T-58, pages 73 to 77; T-59, page 5; T-61, pages 71 to 72; T-62, pages 40 to 44.

<sup>286</sup> See Defence Closing Brief, paras 322 to 323.

<sup>287</sup> T-61, pages 108 to 109.

<sup>288</sup> Defence Closing Brief, paras 327 to 329; Defence Reply Brief, para. 96.

<sup>289</sup> See Defence Closing Brief, para. 327, submitting that P-0017's evidence on spying everyday on Salumu Mulenda is impossible, because D-0243 confirmed that Motorola radio communications were not possible between Mongbwalu and Kobu. In relation to this argument, the Chamber notes that D-0243 merely stated that he has not heard of any such communications from his house, located in Bunia, rather than saying that such communications did not occur or were impossible (see **D-0243**: T-257, pages 56 to 57). The Chamber further considers that the overall evidence presented in this case does not suggest that radio communication between Mongbwalu and Kobu was technically impossible. See para. 343 below on the range of Motorola.

<sup>290</sup> Defence Closing Brief, para. 327. The Chamber notes in this regard that the witness specified that he could hear the conversations because Salumu Mulenda was not far away and was speaking loudly, and that he also had the possibility of using his own radio (T-59, page 79).

<sup>291</sup> Defence Closing Brief, para. 328; Defence Reply Brief, para. 96. In relation to the Defence claim that P-0017 lied about having been in the proximity of Echo Charlie during the first excerpt because Echo Charlie was involved in the operation in the field at that time, the Chamber notes that: (i) the content of the first excerpt (DRC-OTP-0162-0115, from 00:06:50 to 00:13:38; and DRC-OTP-2101-2958) does not contradict P-0017's account of having been in the proximity of Echo Charlie during the relevant part of the conversation; (ii) the

117. In light of the above, and particularly having considered that none of the aforementioned Defence challenges affect the general credibility of the witness, the Chamber considers P-0017 to be credible.

**c) P-0055**

118. The witness is a high-level UPC/FPLC insider who testified to the structure of the UPC/FPLC, including the role of Mr Ntaganda, communication within the UPC/FPLC, the planning of the First Operation, as well as the planning and unfolding of the Second Operation.

119. As a preliminary matter, the Chamber notes that during his testimony, P-0055 was forthcoming concerning his criminal record before joining the UPC/FPLC,<sup>292</sup> and explained his previous omission of this information by the fact that the question was not put to him,<sup>293</sup> and the advice given by his Rule 74 legal counsel.<sup>294</sup> In these circumstances, the Chamber considers that the witness's attitude concerning his previous convictions has no impact on his credibility.<sup>295</sup>

120. Concerning the witness's motivation to testify,<sup>296</sup> the Chamber considers, at the outset, that the witness's relocation prior to and in connection with his

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change in tone and the disruption of the recording can be explained by reasons other than Echo Charlie being on the move, such as bad connection; (iii) one of the speakers who appears to be Echo Charlie, says that he was at home, and gives orders, while another speaker gives information from the field; and (iv) it is possible that P-0017 was in the proximity of Echo Charlie when the fighting erupted, but that they later separated, noting that P-0017 clarified that in the first excerpt, Echo Charlie was asked to go and assist. Concerning the Defence contention that P-0017 adjusted his testimony to what he heard on the audio intercepts, which he listened to in full during his preparation sessions, the Chamber considers that while having listened to these excerpts may have helped the witness refresh his memory of the events, there is no indication that the witness adjusted his testimony based on the excerpts. In this regard, the Chamber notes, in particular, that: (i) P-0017's description of the sequence of events prior to listening to the audio conversations appears largely similar to his description of what he heard on the excerpts; and (ii) the reference to 'Romeo Whisky' after having listened to the audio excerpts in court does not indicate that he adjusted his testimony, in any event, noting that the witness had already listened to the excerpts prior to his testimony.

<sup>292</sup> See T-70, page 30; T-72, page 86; T-73, page 27. *See also* Defence Reply Brief, para. 228.

<sup>293</sup> T-73, page 31.

<sup>294</sup> T-73, page 32. *See also* page 20.

<sup>295</sup> *See* Defence Reply Brief, para. 228.

<sup>296</sup> *See* Defence Reply Brief, paras 230 to 234, arguing that P-0055's credibility is undermined by his 'attitude towards justice', noting that the witness: (i) was relocated via the ICCPP; (ii) repeatedly refused to testify and subjected his testimony to obtaining assistance from the Court; and (iii) made serious accusations of interference against Mr Ntaganda which were never adjudicated or proved.

interaction with the Court does not, without more, affect his credibility. It is noted, however, that the witness: (i) made his testimony dependent on guarantees being provided by the Court relating to his family's situation;<sup>297</sup> (ii) seemed to be irritated by a feeling that the Court did not fulfil its promises; and (iii) eventually agreed to testify after having obtained part of the requested guarantees.<sup>298</sup>

121. Mindful that this reflects a strong personal interest by the witness to testify, the Chamber also observes that the witness's demand seemed to be based on a genuine concern about the security of his family.<sup>299</sup> Considering further that there is no indication that the witness was biased against Mr Ntaganda,<sup>300</sup> the Chamber finds no indication that his personal interest related to his testimony prompted the witness to lie.

122. Turning to the witness's general demeanor during, and substance of, his testimony, the Chamber notes that the information provided by the witness was often clear, rich in detail, and consistent throughout examination-in-chief and cross-examination. On most occasions, P-0055 indicated the basis for his knowledge, recognised the limitations of what he could testify to, and refrained from providing information he was not sure about.<sup>301</sup> He appeared alert throughout his testimony, and immediately offered clarifications and corrections when needed.<sup>302</sup> Moreover, as set out in the Factual Findings, many aspects of his testimony are corroborated by other reliable evidence.

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<sup>297</sup> T-43, page 4.

<sup>298</sup> ICC-01/04-02/06-1121-Conf-Exp.

<sup>299</sup> ICC-01/04-02/06-995-Conf-Anx, pages 5 to 6.

<sup>300</sup> See e.g. Defence Closing Brief, para. 820. In this regard, the Chamber further notes that: (i) the witness's testimony suggests that he has a certain family connection with Mr Ntaganda (see T-70, page 34); and (ii) his allegations were mainly directed against Mr Ntaganda's family or network, rather than Mr Ntaganda himself (see T-41; T-42; T-43; ICC-01/04-02/06-995-Conf; and DRC-OTP-2058-0125).

<sup>301</sup> See e.g. T-71, pages 23 to 24, and 44.

<sup>302</sup> See e.g. T-71, page 31. Concerning a specific issue where the witness contradicted a previous statement (see Defence Closing Brief, para. 229), the Chamber observes that the witness clarified his previous statement (T-73, pages 55 to 57), stating that errors were made in the transcription of his statement (T-73, page 58), and therefore concludes that there is no indication that the witness lied on this point.



123. P-0055 had obvious difficulties remembering dates or timeframes, which he openly emphasised at the beginning,<sup>303</sup> and throughout the course,<sup>304</sup> of his testimony, preferring to frame periods by indicating major events.<sup>305</sup> However, the Chamber notes that the witness acknowledged his difficulties in this regard, and that he appeared to nonetheless have, in most instances, a clear recollection of the sequence of events.<sup>306</sup> It is further of the view that the relatively short period of time he spent with the UPC reduces the risk of confusing different assaults against the same locations. In these circumstances, the Chamber considers that the aforementioned difficulties do not render his evidence unreliable.<sup>307</sup> Any challenges pertaining to the reliability of specific aspects of his testimony in this regard will be assessed on a case-by-case basis.

124. The witness was generally able to recall the names and titles of numerous high level commanders, including their call signs, and he clearly indicated when his memory failed him in this regard.<sup>308</sup> The witness however remembered only a few names of his subordinates and escorts,<sup>309</sup> explaining, in relation to one of them, that he simply used to call him by his function, and not by name.<sup>310</sup> Given the number of individuals that directly reported to the witness at the time,<sup>311</sup> as well as the amount and frequency of reports received,<sup>312</sup> the Chamber considers that the fact that the witness could not remember the name of an individual who reported to him on a given day in relation to the events in Kobu in no way indicates that P-0055's account in this regard is fabricated.<sup>313</sup>

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<sup>303</sup> T-70, page 25.

<sup>304</sup> T-74, page 27.

<sup>305</sup> T-73, page 65.

<sup>306</sup> See e.g. T-71, pages 35 to 36; and T-74, pages 40 to 42. The Chamber notes that P-0055 was usually able to describe events in such detail that they can be placed in time by comparing them with corroboratory accounts of other witnesses.

<sup>307</sup> See Defence Reply Brief, paras 209 to 215, 223 to 224, and 227.

<sup>308</sup> See e.g. T-70, pages 44, 78 to 79, and 81 to 83.

<sup>309</sup> T-72, pages 60 to 62.

<sup>310</sup> T-72, page 62.

<sup>311</sup> T-70, pages 65 to 66; and T-72, pages 63 to 64.

<sup>312</sup> T-70, pages 66 to 67.

<sup>313</sup> See Defence Closing Brief, paras 1134 to 1135.

125. Concerning the Defence argument that the witness deliberately omitted to mention certain information, which he then only provided for the first time in cross-examination,<sup>314</sup> the Chamber notes that the details provided in cross-examination do not contradict the witness's testimony in-chief, where he was not specifically questioned on these matters. The Chamber further notes that the witness tended to gradually remember more and more details throughout the course of his testimony.

126. In view of the foregoing, the Chamber considers that P-0055 is a credible witness whose testimony can be relied upon.

**d) P-0190**

127. The witness occupied senior positions throughout his career, notably with the UPC, providing him with broad access to information on matters of civilian and military nature.<sup>315</sup>

128. He generally provided extensive answers to the questions asked. His answers were mostly clear, and, for many issues, he provided detailed, and seemingly plausible, explanations for the basis of his knowledge, or his conclusions, and distinguished information received through reports from incidents he witnessed himself. He also admitted when he did not remember certain things or was not in a position to provide specific information on a particular point. However, while the witness was generally cooperative during cross-examination, providing clarifications or further explanations,<sup>316</sup> the Chamber observes that towards the end of his testimony, he displayed a tendency to respond by asking counter-questions.

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<sup>314</sup> Defence Reply Brief, paras 216 to 219.

<sup>315</sup> T-96, pages 11 to 12. *See also* pages 40 to 41.

<sup>316</sup> The witness did not remember having met with Prosecution representatives in 2005, and maintained this assertion when being presented with an investigation note which is not signed by the witness and which refers to such a meeting (T-98, pages 7 to 11 referring to DRC-OTP-1062-0395).

129. The Chamber further observes that the witness's general statements about Mr Ntaganda as a person were rather categorical and insistent, often strongly unfavourable to his character or person.<sup>317</sup>

130. With regard to the Defence claims that P-0190 did not travel to Mongbwalu after the First Operation,<sup>318</sup> the Chamber first observes that P-0190 was not always able to respond to the questions asked about the unfolding of this operation.<sup>319</sup> The Chamber however notes that the witness was not a soldier, as he readily acknowledged,<sup>320</sup> and that he stated he arrived in Mongbwalu only a few days after the operation.<sup>321</sup> He may therefore not have been in a position to provide details about its planning or unfolding.

131. Concerning the itinerary allegedly taken by the witness to get to Mongbwalu, the witness was consistent in examination-in-chief and during cross-examination.<sup>322</sup> Some of the observations he made are consistent with the observations made by other witnesses who testified to having been in Mongbwalu at the relevant time.

132. The Chamber further notes P-0190's testimony on having been present when Mr Ntaganda and his men shot at and killed a Kenyan MONUC observer in 2004.<sup>323</sup> In relation to this part of his testimony, he indicated that his account was not necessarily limited to what he personally saw on site, but also reflected information of public knowledge he may have heard, read or looked up on the internet.<sup>324</sup>

<sup>317</sup> See e.g. T-97, pages 18, 20, and 35 to 37; T-98, pages 97 to 98.

<sup>318</sup> Defence Closing Brief, para. 698.

<sup>319</sup> T-98, T-98, page 41, 52, 68 to 69, and 75 to 76.

<sup>320</sup> See e.g. T-98, pages 61, 67 to 68, and 75 to 76.

<sup>321</sup> T-97, pages 7 to 8.

<sup>322</sup> The Chamber however notes that the witness could not explain in a persuasive manner the discrepancy with his prior statement regarding whether or not he asked for Thomas Lubanga's permission to go to Mongbwalu (T-98, pages 69 to 71).

<sup>323</sup> T-96, pages 70 and 74; T-98, pages 96 to 103; and T-99, pages 29 to 30.

<sup>324</sup> T-99, pages 29 to 30. See also T-99-FR, page 29.

133. When confronted with two UN reports which describe the circumstances of the killing of the MONUC observer in a manner that differs from the witness's account in various respects,<sup>325</sup> the witness insisted on his testimony.<sup>326</sup> The Chamber notes that one of the reports appears to contain a contemporaneous description of the event by a UN investigator who was driving one of the vehicles during the clashes.
134. The Chamber recalls that the witness's testimony on the death of the MONUC observer falls outside the scope of the charges, and that it only allowed the Prosecution to question the witnesses on this matter in a very limited scope, recalling its reservations concerning the relevance of such testimony.<sup>327</sup>
135. In light of the above, considering the unresolved discrepancies between the witness's recollections and the two UN reports, as well the current impossibility to distinguish the information based on the witness's personal experience from the information which he may have gathered via other sources at a later stage, the Chamber finds the relevant witness's accounts to be unreliable. The Chamber has also taken these observations into consideration in its assessment of P-0190's general credibility.
136. P-0190's testimony further needs to be assessed in conjunction with the testimony of P-0888, who is related to P-0190 and whose alleged experiences were referred to by P-0190 during his testimony. The two witnesses consistently denied

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<sup>325</sup> Bunia Bi-Monthly Report, DRC-OTP-0155-0147; and Weekly Report, DRC-OTP-0009-0146, from 0146 to 0147, para. 2.a. *See* (i) T-98, page 103 (the witness testified that the MONUC vehicle was alone) *versus* DRC-OTP-0009-0146 (the report provides that there was a convoy of four UN vehicles); (ii) T-98, pages 97 to 100 (the witness testified that when Mr Ntaganda saw the MONUC vehicle, he stopped, got out of the vehicle, said that the people from MONUC have bad intentions and are complicit with the Lendu, ordered to shoot and personally shot at the MONUC vehicle) *versus* DRC-OTP-0009-0146 (the report provides that the convoy was on its way back to the mission headquarters when 'gunmen began firing from the forested banks of the dirt road', after letting pass the first vehicle, whereupon the Kenyan observer 'took a fatal bullet in the head' and 'crash[ed] into a tree'); (iii) T-99, pages 29 to 34 (the witness testified that the incident occurred in Katoto, but insisted that UPC-Kisembo wing did not exist at the time and was therefore not based in Katoto when the incident occurred) *versus* DRC-OTP-0009-0146 with DRC-OTP-0155-0147 (one report provides that the incident occurred in Katoto and the other states that Katoto had been the base for the UPC-Kisembo group since its creation in December 2003).

<sup>326</sup> T-99, pages 33 to 34.

<sup>327</sup> *See* T-96, pages 71 to 74.

having discussed the details of their respective testimony with each other,<sup>328</sup> but indicated having been in contact at the time of P-0888's 2014 interview with the Prosecution.<sup>329</sup>

137. While their respective testimony is consistent on certain points,<sup>330</sup> there are a number of inconsistencies between their accounts, concerning, in particular: (i) the timing of P-0888's involvement with the UPC/FPLC; (ii) the operations he participated in; and (iii) whether, after having left the UPC/FPLC, he lived with P-0190, who claimed to have taken him to his house to protect him, pretending he was his bodyguard.<sup>331</sup> The aforementioned circumstances do not suggest that the entirety of the two witnesses' accounts was impacted by an intention to align their stories. However, the Chamber cannot exclude that P-0190 and P-0888 discussed their respective involvement with the Court, including certain aspects of their testimony, and that those aspects may be affected by their potential interaction.<sup>332</sup>

138. As for the discrepancies identified between their respective testimony, the Chamber notes, in particular, that P-0190's evidence on having taken P-0888 to his house after the Songolo operation is irreconcilable with the latter's testimony. This observation has been taken into consideration in the Chamber's assessment of their general credibility.

139. Finally, the Chamber observes that P-0190 testified to having personally observed how, about one month before the creation of the UPC/FPLC and before

<sup>328</sup> T-99, page 57; **P-0888**: T-106, page 77; T-109, page 34;

<sup>329</sup> T-99, pages 54 to 55, and 57; **P-0888**: T-106, page 78.

<sup>330</sup> For example, both witnesses stated that P-0888 was abducted by the UPC when he was 14 years old, taken to Mandro training camp and that he participated in the Songolo operation.

<sup>331</sup> For example, P-0888 stated that he: (i) participated in both the Songolo and Mongbwalu operations (T-105, pages 46 to 61), and only escaped the UPC during their defeat in Bunia (T-105, pages 88 to 89; and T-107, page 40); and (ii) never lived with P-0190 and was not in contact with him at the time he was with the UPC (T-106, page 76). P-0190, on the other hand, stated that P-0888: (i) only participated in the Songolo operation (T-97, pages 41 to 43, and 76); and (ii) stayed at his house after having left the UPC (T-97, pages 42 to 43).

<sup>332</sup> With regard to the relation between P-0190 and P-0888, the Chamber further observes that during his testimony, P-0190 spontaneously indicated that his discussions with P-0888 were impacted by the latter's trauma and that P-0888's mental reactivity was still affected (T-99, pages 55 to 56).

August 2002, a total of about one hundred children were forcibly recruited and taken to Mandro for training. Specifically, he described in great detail how Mr Ntaganda and his group went to the Mudzipela boys' primary school, and forcibly took children from the fifth year, who would have been between 10 and 13 years old. According to the witness, they also picked up children who were fetching water along the way.<sup>333</sup> The Chamber notes that this aspect of the witness's testimony is generally consistent with his written statement, with the exception of the timing of the alleged incident.<sup>334</sup>

140. P-0190 stated that he knew about the incident at the Mudzipela school because, on the day of the recruitment, he was at a place no more than 50 metres away from the school, and that he heard the noise and received information from people who reported to him that children were being taken away from the school.<sup>335</sup> He conceded that he did not go to the school compound himself, but that he saw Mr Ntaganda walking with the children in single file as they left the school, heading for the camp in Mandro, while the children's family members were 'crying and wailing', and that he talked to a teacher who had been threatened outside the school premises.<sup>336</sup>

141. In relation to the children who were allegedly picked up along the way, he stated that he was given that information in Mandro, where he personally saw the children that had been abducted.<sup>337</sup> He further stated that he also was a victim of

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<sup>333</sup> T-97, pages 31 to 35, and 39. The witness notably stated that he does not remember the names of other commanders present that day, but Mr Ntaganda 'was such a key figure that one could not forget' (T-97, pages 34 to 35).

<sup>334</sup> T-99, pages 52 to 54, referring to DRC-OTP-2075-0691, at 0698 (when confronted with his written statement, providing that the incident occurred in November 2002, the witness first denied having said November, and then said that he can confirm 2002, but had doubts about the month and believes it was before August).

<sup>335</sup> T-97, pages 37 to 38; T-98, pages 28 to 29 and DRC-REG-0001-0024.

<sup>336</sup> T-97, page 35; and T-99, page 50.

<sup>337</sup> T-97, pages 38 to 39.

this incident because P-0888 was among the children who were abducted when drawing water and he later informed P-0190 of the incident.<sup>338</sup>

142. Given the above, and noting that the alleged incidents relate to the direct responsibility of the accused and that they are not corroborated, the Chamber considers that, in the circumstances, the witness's evidence in this respect cannot be relied upon.

143. In view of all of the above issues, considered cumulatively, the Chamber finds that P-0190's testimony lacks in credibility and, having considered the nature of the evidence provided by this witness on the personal conduct of the accused, including evidence that, with the exception of P-0888, is not corroborated by any other witness in this case, it will not rely on his testimony.

**e) P-0290**

144. The witness is a military man,<sup>339</sup> who testified about communication within the UPC/FPLC, notably with regard to logbooks, the training of certain recruits, as well as to the alleged use of child soldiers.

145. P-0290 gave evidence through examination-in-chief by the Prosecution, and was not cross-examined by the Defence.<sup>340</sup> As previously held by the Chamber,<sup>341</sup> the absence of cross-examination does not *per se* minimise the probative value of the witness's testimony. It is one of many factors to be taken into account in the

<sup>338</sup> T-96, pages 88 and 90; T-97, pages 39 to 41. The alleged experience of P-0888 is described in a similar manner in the latter's testimony, but characterised by internal inconsistencies as set out in his credibility assessment. The Chamber notes that, on the basis of P-0190's testimony, and notably his statement that the abduction of children drawing water, including P-0888, occurred at 3:30 or 4:00 in the morning, while the recruitment at school happened during school time, it is not possible to determine the sequence of the alleged events and whether they happened on the same day.

<sup>339</sup> T-65, page 28.

<sup>340</sup> The Defence decided not to cross-examine the witness at the time of his testimony before the Chamber (*see* T-67, pages 22 to 44; *see also* T-65, pages 4 to 12). A subsequent Defence request to recall the witness was rejected by the Chamber (*see* ICC-01/04-02/06-1791-Red, para. 17), and the Chamber, after contemplating calling P-0290 as a Chamber witness, and following submissions by the parties and participants, including the Defence's opposition in this regard, decided not to exercise its discretion to that end (*see* ICC-01/04-02/06-2191, paras 12 to 13; *see also* ICC-01/04-02/06-2134, para. 6).

<sup>341</sup> *See* ICC-01/04-02/06-1791-Red, para. 12.

ultimate determination of the weight to be given to his testimony. In these circumstances, the Chamber has carefully considered the evidence provided by P-0290 during examination-in-chief and has not drawn any adverse inferences from the absence of cross-examination. Any parallels or discrepancies with the testimony of other witnesses, notably the accused, are therefore examined on a case-by-case basis in light of the entirety of evidence provided in this case.<sup>342</sup>

146. The witness's evidence was characterised by a high level of detail and specificity with regard to the areas within the witness's expertise. The Chamber also considers that, due to his role and position at the time of the events, including the location where he carried out his work, he was well-placed to provide direct evidence on a number of relevant issues. In this regard, he described the various types of messages contained in the logbooks,<sup>343</sup> and explained abbreviations, codes, references, and call-signs.<sup>344</sup> He further recognised specific messages in the logbooks and identified handwritings.<sup>345</sup> For events he did not personally observe, he explained the basis of his knowledge, or otherwise indicated when he was not able to provide, or did not remember, specific information.

147. In light of the above, the Chamber considers that the witness is credible.

#### **f) P-0758**

148. The witness testified to having been abducted by the UPC in 2002, following training in a camp in Lingo, working as a bodyguard for a UPC/FPLC commander, and participating in various military operations, as well to sexual

<sup>342</sup> The Chamber notes that the Prosecution submits that, as the Defence elected not to cross-examine the witness, the Chamber should disregard the testimony of the accused to the extent that it 'runs counter to' P-0290's evidence (Prosecution Closing Brief, para. 64). However, the mere fact that the Defence, after having consulted with Mr Ntaganda, chose not to cross-examine P-0290 cannot, without more, lead to any disregarding of parts of Mr Ntaganda's testimony for the sole reason that these parts contradict P-0290's evidence.

<sup>343</sup> See e.g. T-66, pages 8 to 9, and 59 to 60.

<sup>344</sup> See e.g. T-66, pages 11 to 13, 22 to 23, 30, 34, and 63.

<sup>345</sup> T-65, pages 72 to 74; and T-66, pages 6 to 7.



violence she both witnessed and personally experienced. Her testimony is to be analysed in conjunction with the testimony of P-0773 and P-0761, who are connected to P-0758.

149. Throughout her testimony, both during examination-in-chief and in cross-examination, the witness gave predominantly short answers, and frequently asked for questions to be repeated or clarified. She clearly indicated when she was not able to answer a question and mainly testified about what she had personally experienced, without making any general or personal comments or approximations. Her narrative was generally consistent during examination-in-chief and cross-examination.<sup>346</sup>

150. In cross-examination, the witness was, however, confronted with a number of inconsistencies with regard to documentary evidence and other information related to her, including the information provided in an interview with an NGO in 2006 ('NGO Interview'),<sup>347</sup> as well as three different victim application forms completed on her behalf: (i) an application to participate as a victim in the context of the *Lubanga* proceedings completed in 2006 ('2006 Application'),<sup>348</sup> which was rejected by the relevant chamber;<sup>349</sup> (ii) a second application to participate as a victim providing additional information completed in 2007 ('2007 Application'),<sup>350</sup> and following which she was authorised to participate as a victim in the *Lubanga*

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<sup>346</sup> The Chamber also notes that, although, as discussed below, discrepancies were identified with her three victim application forms as well as other evidence and information related to the witness, no substantial discrepancies with her written statement from 2013 were brought to the attention of the Chamber (*see* DRC-OTP-2058-0194, used by the Prosecution with the witness to refresh her memory at T-160, pages 91 to 93 and used by the Defence at T-162, page 7).

<sup>347</sup> T-162, pages 5 and 29, referring to DRC-OTP-2062-0374, at 0388, an NGO report allegedly prepared on the basis of an interview with P-0758 in May or July 2006. The witness remembered having met certain individuals in 2006 in order to talk about the events described during her testimony.

<sup>348</sup> T-162, page 20 referring to DRC-OTP-2066-0154-R05, at 0161 (the witness was registered under application number a/0078/06).

<sup>349</sup> T-162, page 21 referring to DRC-OTP-2066-0154-R05, at 0172. Noting decision ICC-01/04-01/06-601, pages 9, and 13, referring to a/0078/06, the Chamber considers that the Prosecution's argument that the witness's application was not rejected by the Court but that she was asked to provide additional documentation (*see* Prosecution Response Brief, para. 167, *see also* Defence Reply Brief, para. 341) is inaccurate.

<sup>350</sup> T-162, pages 22 to 23, referring to DRC-OTP-2098-0047.

proceedings; and (iii) an application for reparations in the *Ntaganda* case completed in 2008 ('2008 Application').<sup>351</sup>

151. *Date of birth and age at the time of her abduction:* First, the witness consistently testified that she was born in March 1989,<sup>352</sup> and that she was abducted by the UPC/FPLC in 2002.<sup>353</sup> If the relevant information was found to be accurate, the witness would have been 13 years old at the time of the alleged events.

152. In this regard, the Chamber notes that the date of birth provided by the witness is consistent with the testimony of P-0761,<sup>354</sup> and broadly consistent with the testimony of P-0773.<sup>355</sup> It also corresponds to the date of birth in her 2007 Application, on her electoral card,<sup>356</sup> which is based on the witness's own declaration,<sup>357</sup> a birth certificate from October 2006,<sup>358</sup> as well as a birth certificate from January 2008,<sup>359</sup> both issued on the basis of information provided by P-0761.<sup>360</sup> When confronted with the 2006 Application which states that the witness was born in 1988, the witness indicated that she did not remember having provided or discussed this date when completing the form.<sup>361</sup>

153. In light of these inconsistencies, and given that the aforementioned documents appear to be exclusively based on the information provided by P-0758 or P-0761,

<sup>351</sup> T-162, pages 25, referring to DRC-OTP-2067-2084. The witness continues to be registered under application number a/0078/06.

<sup>352</sup> T-160, page 71; and T-162, page 33.

<sup>353</sup> T-162, pages 17 to 18, and 52 to 53.

<sup>354</sup> **P-0761:** DRC-OTP-2054-8283, at 8284, para. 8.

<sup>355</sup> **P-0773:** DRC-OTP-2057-0127-R04, at 0128, para. 9; and T-182, page 38 (stating that P-0758 was born in 1989, but that she is not sure about the exact date).

<sup>356</sup> DRC-OTP-2096-0776.

<sup>357</sup> T-160, pages 71 to 73 (testifying that the date of birth is based on her own declaration when she got enrolled, but that she cannot explain how she got to know that date).

<sup>358</sup> DRC-OTP-2051-2066, indicating that the witness's date of birth is 18 March 1989. *See also* T-160, pages 74 to 75 (referring to DRC-OTP-2051-2066, and testifying that she saw the document for the first time in court).

<sup>359</sup> DRC-OTP-2054-8289. *See also* T-160, pages 75 to 76 (referring to DRC-OTP-2054-8289, and testifying that she did not know where the document was).

<sup>360</sup> **P-0761:** T-163, pages 3 to 5.

<sup>361</sup> T-162, pages 33 to 34 referring to DRC-OTP-2066-0154-R05, at 0155. When confronted with this document, the witness indicated that she did not remember having provided or discussed this date when completing the form.

the Chamber considers that they are of limited value to assist in establishing P-0758's date of birth.<sup>362</sup>

154. Further, the Chamber notes that the evidence on the record is not consistent with regard to the timing of the witness's alleged abduction. Specifically, while the witness and P-0761 both testified that P-0758 was abducted in August 2002,<sup>363</sup> the first two documents describing P-0758's abduction, *i.e.* her 2006 Application and the NGO Interview provided the same year, indicate that the abduction took place in August 2003.<sup>364</sup> When confronted with these inconsistencies, P-0758 maintained that the abduction took place in 2002, but was not in a position to provide clarifying details.<sup>365</sup>

155. With regard to the steps undertaken to be recognised as a victim, the Chamber observes that P-0758 appeared evasive, notably with regard to the role and intervention of P-0761 in this process. P-0758 stated that she did not remember how things unfolded at the time, and declared that she was not thinking straight when completing the 2006 Application.<sup>366</sup> Having in mind that the information provided for both the timing of the witness's abduction and her date of birth has changed in the subsequent victim application forms, the Chamber notes with

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<sup>362</sup> The Chamber also notes a minor inconsistency between the witness's testimony and her October 2006 birth certificate on the one hand and her January 2008 birth certificate and electoral card on the other concerning the witness's place of birth, which, according to P-0761, may be explained by the fact that the witness was born in one place but that the birth was registered in another place. *See P-0761*: DRC-OTP-2054-8283, at 8285, para. 9. *See also* T-162, page 35. Considering this explanation as satisfactory, this inconsistency has no impact on the Chamber's conclusion on P-0758's date of birth.

<sup>363</sup> **P-0761**: DRC-OTP-2054-8283, at 8285, para. 12; T-162, page 65 (stating that P-0758 was abducted on 5 August 2002, specifying that this was at a time when Lompondo was District Commissioner). The Chamber notes that when confronted with a statement in an interview of 2006 that the abduction took place in early 2003, P-0761 stated that the people who took the statement got the date wrong (**P-0761**: T-163, pages 47 to 48 referring to DRC-OTP-2062-0374, at 0392, para. 7). The date of August 2002 is also mentioned in the 2007 Application (T-162, page 22 to 23 referring to DRC-OTP-2098-0047) and the 2008 Application (T-162, page 25 referring to DRC-OTP-2067-2084, at 2093).

<sup>364</sup> T-162, page 20 referring to DRC-OTP-2066-0154-R05, at 0161 and page 34.

<sup>365</sup> *See e.g.* T-162, page 17.

<sup>366</sup> T-162, pages 20 to 23. *See also* T-162, page 25 (when asked how she was able to provide this precise date in the 2008 Application, the witness responded that she has forgotten everything that she had said in 2006 and 2007).

concern that P-0761 first denied his involvement in this process,<sup>367</sup> and only acknowledged that he was present when the 2007 Application was completed when confronted with his own signature on the form.<sup>368</sup> It is also worth noting that he appended a declaration to the 2007 Application, indicating that the timeframe in the 2006 Application was incorrect and reiterating that P-0758 was abducted in August 2002.<sup>369</sup>

156. Moreover, the Chamber notes that, as submitted by the Defence,<sup>370</sup> certain details which are part of P-0758's narrative suggest that the events she described may have taken place in 2003. In this regard, the Chamber points to P-0758's statements concerning: (i) the arrest of police officers;<sup>371</sup> (ii) the unfolding of a battle in Bunia under Floribert Kisembo's command;<sup>372</sup> and (iii) her departure from the UPC/FPLC at the time of the arrest of Floribert Kisembo.<sup>373</sup> At the same time, no specific detail from her testimony, such as the battles she participated in or other contextual information could be identified to attest that she was with the UPC/FPLC in 2002. In particular, the Chamber emphasises that the record does

<sup>367</sup> **P-0761**: T-163, pages 26 to 27 (stating that he never assisted P-0758 in preparing a victim application and that he authorised an organisation to obtain a birth certificate for P-0758 because he was told that the birth certificate was necessary to facilitate medical services), page 32 (stating that the organisation authorised to obtain P-0758's birth certificate never mentioned the existence of a prior application to participate in the proceedings at the ICC), page 40 (stating that he only accompanied P-0758 to the place where she completed her victim application in order for her to receive assistance and treatment), page 38 (stating that he had never been present when P-0758 filled in an application form and heard about her application for the first time at the Court).

<sup>368</sup> **P-0761**: T-163, pages 39 and 42.

<sup>369</sup> DRC-OTP-2066-0154-R05, at 0176.

<sup>370</sup> Defence Closing Brief, paras 1166 and 1175. *See also* Defence Reply Brief, para. 345.

<sup>371</sup> *See* T-160, page 87 (stating that when she was at Mahabusu camp, there were policemen from Kinshasa who had come to Bunia for peacekeeping activities and who had been imprisoned) which appears to correspond to a reference in press report DRC-D18-0001-2439 from October 2003 (reporting that seven people from the national police were released by the UPC on 29 September 2003) as well as a reference in UN report DRC-OTP-0074-0422, at 0483 (providing that on 29 September 2003, eight police officers arrested in May 2003 were released).

<sup>372</sup> *See* T-161, pages 34, 36 and 42 to 44, descriptions which, in the view of the Chamber, correspond to a battle that took place in May 2003 in Bunia (*see* footnote 2089 below on P-0758's participation in the May 2003 battle in Bunia).

<sup>373</sup> *See* T-161, page 57 and **P-0761**: DRC-OTP-2054-8283-R05, at 8286, para. 18 (both stating that P-0758 left the UPC when French soldiers arrested Kisembo) which appears to correspond to a reference in MONUC chronology DRC-OTP-0074-0422, at 0483, which provides that on 15 September 2003, the UPC asked for leaders arrested by MONUC to be released, and that Kisembo was kept under house arrest for a few days; and **D-0300**: T-222, pages 16 to 18 (referring to the arrest of Kisembo in mid-September by Artemis which appears to be also referred to as 'the French', *see* DRC-OTP-0005-0191, at 0191, para. 1; and **D-0300**: T-222, page 14).

not support a finding that the UPC/FPLC camp in Lingo, where P-0758 reports to have been trained, already existed in 2002.<sup>374</sup>

157. Finally, the Chamber notes that the various accounts heard in relation to the circumstances of P-0758's abduction,<sup>375</sup> as well as her school situation at the relevant time,<sup>376</sup> are not fully compatible. In relation to the latter, the Chamber considers that the school records submitted are internally inconsistent and, accordingly, cannot assist in evaluating the witnesses' accounts on this issue.<sup>377</sup>

158. In light of all of the above, and while mindful that the witness may have faced particular difficulties in remembering specific dates and timeframes, including in light of her increased vulnerability, it cannot be established beyond reasonable

<sup>374</sup> See para. 370 below on UPC/FPLC training camps.

<sup>375</sup> See e.g. T-162, pages 15 to 16, and 27 (testifying that she was abducted by UPC soldiers at a specific location, when she was living with her father and that she was taken while on her way to visit her sister) *versus* T-162, pages 28 to 29 (when confronted with the account of non-trial witness P-0806, DRC-OTP-2058-1087, at 1089, describing that P-0758 was arrested and abducted by UPC soldiers at her sister's place, the witness re-asserted her account that she was abducted at the aforementioned location); T-162, pages 30 to 31 (referring to the 2008 Application, providing that she was abducted at a different location on her way to a place other than the one where her sister lived. When confronted with this apparent inconsistency, the witness explained that the two locations are on the same road and in the same neighbourhood); **P-0761**: T-163, page 20 (stating that P-0758 lived with her father at the time of her abduction, but that she would regularly visit and stay with her sister and grand-mother, and that at the time of her abduction she was staying with someone else for a few days); **P-0773**: DRC-OTP-2057-0127, at 0129, paras 13 and 16 (stating that P-0758 was staying with her sister at the time of her alleged abduction). See also Defence Closing Brief, paras 1180 to 1181.

<sup>376</sup> See T-160, pages 77 to 78; T-162, pages 8 to 10; and **P-0761**: T-162, page 72; T-163, page 58 (testifying that P-0758 attended school until the fifth year, having repeated her third year, and without finishing the fifth year, since her studies were interrupted by the war) *versus* **P-0773**: DRC-OTP-2057-0127, at 0129, para. 11; and T-182, pages 16 to 19 (indicating, in her written statement, that P-0758 had completed two years of secondary school before her abduction, but then testifying in Court that she had just assumed that P-0758 had completed primary education and only learned from P-0758 later that she had not continued education until secondary school, and stopped at the fifth year in primary school).

<sup>377</sup> While a school record appears to corroborate her statement that she was in the fifth year of primary school in 2002 (DRC-OTP-0225-0064, at 0085, entry 977; see also **P-0761**: T-162, pages 73 to 75; and T-163, page 49 testifying that P-758 was enrolled in that school and that this entry referred to her), another school record from July 2002 appears to indicate that an individual with the same name received a final grade for the fifth year of primary school (DRC-OTP-2082-0124, at 0144, entry 15). When confronted with this document and questioned how it was possible for her to receive a final grade if she was arrested before the end of the school year, the witness responded that she did not know (T-162, pages 9 to 10). The Chamber also notes the Defence's submission that a further school record indicates that an individual with P-0758's name completed primary education in the 1998-1999 school year and completed her third year of secondary education in 2001-2002 (see Defence Closing Brief, para. 1183, referring to DRC-OTP-2082-0187, page 0188, entry 48; and DRC-OTP-2054-8488, page 8494). When confronted with the secondary school document, the witness responded that it did not refer to her but to another person (T-162, pages 14 to 15). Relatedly, the Chamber notes that one of the school records (DRC-OTP-0225-0064, at 0085, entry 977), which appears to be based on the information provided by P-0761 when he enrolled P-0758 at school (see **P-0761**: T-162, page 71) further points to a different date of birth of the witness, which P-0761 explained as being incorrect in so far as the day and month are concerned, because the teacher who wrote down the information got the date wrong (**P-0761**: T-162, page 75).

doubt that the witness was under 15 years old when she joined the UPC/FPLC, notably because it cannot be established that this happened in 2002.

159. That notwithstanding, while mindful of the Defence's submission that P-0758's testimony relating to the circumstances and timing of her alleged abduction was motivated by an intention, potentially influenced by P-0761, to obtain victim status and related expected benefits,<sup>378</sup> the Chamber notes that the witness's testimony concerning the time she allegedly spent within the UPC/FPLC was generally coherent, spontaneous, detailed on certain issues,<sup>379</sup> and largely consistent with the testimony of other witnesses who had comparable experiences. As for the Defence's challenge based on the witness's alleged inability to identify the commander for whom she served as a bodyguard,<sup>380</sup> the Chamber did not consider it in its assessment of the witness's credibility since, as acknowledged by the Defence, there is no evidence identifying the individual in the video as the relevant commander.<sup>381</sup>

160. In light of the above, noting in particular the aforementioned finding that it cannot be established that the witness was under 15 years old when she joined the UPC/FPLC, the Chamber will not rely on P-0758's status as a child soldier, namely her alleged abduction, conscription, and the reported acts of sexual violence she personally suffered. The Chamber shall determine on a case-by-case basis which remaining aspects of P-0758's testimony can be relied upon and, in

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<sup>378</sup> See Defence Closing Brief, paras 1168 to 1179. See also Defence Reply Brief, para. 342.

<sup>379</sup> See e.g. T-160, page 89; T-161, pages 20 to 21 (providing the names and ages of specific victims of sexual violence, including details of injuries sustained by one of these girls), pages 10 to 11, and 15 (concerning the visit of Mr Ntaganda at Lingo camp), pages 30 to 31 (concerning training), pages 11 to 12 (concerning living conditions at training camps), pages 18 to 20 (concerning discipline at the camps), pages 21 to 23 and 31 to 32 (concerning sexual violence allegedly committed by UPC/FPLC soldiers), pages 32 to 34 (concerning bodyguards of UPC/FPLC commanders), pages 34 to 44; T-162, pages 36 to 38 and 40 (concerning the battle in Bunia).

<sup>380</sup> See Defence Closing Brief, para. 1188.

<sup>381</sup> Relatedly, and concerning the witness's misidentification of one individual depicted in a video as Mr Ntaganda (See Defence Closing Brief, para. 1182), the Chamber considers that this misidentification may reasonably be explained by the quality of the image, the fact that the witness does not seem to have worked closely with Mr Ntaganda, her vulnerability, the time passed since the events, or the stress associated with the task of spontaneously providing identifications on the basis of video excerpts in court.

the circumstances, it will pay particular attention to assessing the timeframe of the relevant events.

**g) P-0768**

161. The witness is a UPC/FPLC military insider who testified, *inter alia*, about the organisational structure of the UPC/FPLC, the recruitment, training, and alleged use of child soldiers, and his participation in military interventions in the context of the First Operation.

162. The witness generally provided detailed evidence, explained the basis of his knowledge, and acknowledged when he did not directly witness certain events, or when his testimony was based on information received from others. He indicated when he had no knowledge in relation to a specific issue, or did not remember certain events. The Chamber notes that, as set out in the Factual Findings, many aspects of P-0768's testimony are corroborated by, and consistent with, other evidence on the record.

163. The Defence avers that the witness holds a 'malignant grudge' against Mr Ntaganda, who: (i) 'chastised and side-lined' him for arriving late after a specific battle; (ii) asked a commander to take measures against the witness on reports that he was involved in theft; (iii) submitted a report to authorities leading to the witness's imprisonment for spying; and (iv) refused the witness as a member of a specific armed group.<sup>382</sup> The Chamber notes that these factual allegations are based on the testimony of Mr Ntaganda alone<sup>383</sup> and otherwise not supported by other evidence.<sup>384</sup> These claims have also been convincingly denied

<sup>382</sup> Defence Closing Brief, para. 252.

<sup>383</sup> See Defence Closing Brief, para. 252 and footnotes 525 to 528.

<sup>384</sup> Concerning the logbook entry relied upon by the Defence in support of its contention that Mr Ntaganda asked a commander to take measures against the witness on reports that he was involved in theft (*see* Defence Closing Brief, footnote 526, referring to logbook DRC-OTP-2102-3854, at 4000), the Chamber notes that: (i) in the relevant entry, Mr Ntaganda accuses two individuals of theft with another third individual carrying a short form of P-0768's name, and requests the commander to take measures in relation to the first two persons, but not in relation to the third one, whose involvement is only mentioned without being the target of measures;

by the witness in court.<sup>385</sup> Similarly, the Chamber does not consider that the witness's credibility is affected by his 'denial' of having been involved in obtaining weapons from Uganda for the FAPC,<sup>386</sup> or his testimony concerning the involvement of an individual named Kubi.<sup>387</sup>

164. As identified by the Defence, the Chamber notes the uncertainty concerning the circumstances of the first contact between the witness and the Prosecution. In this regard, the Defence points out that, contrary to the witness's insistence that he was contacted and asked to testify,<sup>388</sup> a document prepared by the Prosecution suggests that the witness himself initiated the contact and 'expressed an interest to testify against [the accused]'.<sup>389</sup>

165. The Chamber first observes that the note reports on contacts between P-0768 and different individuals, amongst others an unidentified 'ICC staff member' whom P-0768 would have contacted of his own initiative. However, the note also indicates that the Prosecution's investigation team, having been provided with the witness's phone number, subsequently contacted the witness and arranged a meeting.<sup>390</sup> It is unclear to the Chamber whether the witness sufficiently understood the scope of the Defence's questioning on this issue, notably the

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and (ii) when confronted with this entry, the witness stated that he was not aware of the message, that the individual mentioned was someone else, that he does not know the other individuals mentioned, and that he was not at the location of the alleged theft at the time. *See* T-36, pages 38 to 40.

<sup>385</sup> *See e.g.* T-35, pages 16 to 18. The Chamber notes that the witness was not questioned in relation to the allegation that he was chastised and side-lined for arriving late after a specific battle, which was only raised after the witness's testimony, in the context of the testimony of the accused.

<sup>386</sup> Defence Closing Brief, para. 297. In this regard, the Chamber notes that the document underlying the Defence allegation, which is not admitted into evidence, merely refers to unidentified 'contacts' pointing out that the witness 'reportedly brought' a large quantity of arms.

<sup>387</sup> Defence Closing Brief, para. 298; Defence Reply Brief, paras 79 to 82. In this regard, the Chamber considers that the mere fact that the witness is the only witness testifying about the relevant individual's involvement in the events and gold-related activities linked to Mr Ntaganda, and making allegations of interference, is not, without more, indicative of a motivation to provide false incriminating evidence against Mr Ntaganda on other aspects of the present case.

<sup>388</sup> T-36, page 41.

<sup>389</sup> *See* Defence Closing Brief, para. 251, referring to DRC-OTP-2055-0254, at 0255, put to the witness in T-36, page 41.

<sup>390</sup> In this regard, the Chamber notes that the issue was merely briefly and not exhaustively explored with the witness in court and that he was, as a result, not effectively given an opportunity to explain the apparent inconsistencies. In particular, the Defence confronted the witness by suggesting to him that he took the initiative to contact 'the investigators', to which the witness answered that he 'did not even know the members of the OTP' (T-36, page 41).



specific suggestion regarding contacts which would have taken place prior to the first phone call he received from the investigators.

166. The Chamber considers that, although the fact that a witness volunteered to provide testimony may be a relevant factor when examining a witness's motivation to testify, it does not, in itself, reveal bias or an intention to fabricate evidence.

167. In the case at hand, noting the remaining uncertainties, and having found that the content of the note and the witness's related testimony are not necessarily incompatible, no particular conclusion can be drawn from the circumstances of P-0768's first contact with the Prosecution.

168. The Chamber further notes the Defence's claim that P-0768 fabricated his narrative concerning his arrival and participation in the Mongbwalu assault, suggesting that he only arrived in Mongbwalu after the liberation of Sayo.<sup>391</sup> In this regard, it is noted that P-0768 provided a detailed<sup>392</sup> account concerning his participation in the Mongbwalu operation and his interactions with Mr Ntaganda in this context, which he upheld in cross-examination,<sup>393</sup> adding further details.<sup>394</sup> He was able to provide a geographic description of Mongbwalu, including the locations relevant to his account concerning the unfolding of the attack.<sup>395</sup> He explained or acknowledged and corrected certain potential discrepancies or inaccuracies identified by the Defence, including, in particular, the route taken to

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<sup>391</sup> See in particular, Defence Closing Brief, paras 278 to 281; and Defence Reply Brief, paras 61 to 69.

<sup>392</sup> See T-33, pages 28 to 37, and 59 to 61.

<sup>393</sup> See e.g. T-35, pages 40 to 43 (maintaining his testimony that he was in Mongbwalu when the troops under the command of Seyi took over the control of Mongbwalu, and disagreeing with a Defence suggestion, based on logbook message DRC-OTP-2055-0056, at 0056, that he was still in Aru at that time, and did not meet Mr Ntaganda when he arrived in Mongbwalu), page 45 (maintaining his testimony that Mr Ntaganda assigned him to take over the hill), and pages 43 to 44 (disagreeing with the Defence's suggestion that he was still in Pluto when Sayo was taken over, clarifying that no soldier was left in Pluto at that time, and that he was with the troops).

<sup>394</sup> T-34, pages 13 to 14 and 59 to 60; and T-35, page 7, and page 44.

<sup>395</sup> T-33, pages 38 to 40 (the witness further explained his annotations in a sketch of Mongbwalu prepared by him, DRC-OTP-2058-0664).

Mongbwalu.<sup>396</sup> In this regard, the Chamber does not consider that P-0768's inaccurate identification of Aru on a partial map of Djugu territory – which did not include that location<sup>397</sup> – affects the credibility of his account. The witness also recognised himself in a video filmed when Mongbwalu was captured, and was able to identify a number of individuals and scenes depicted therein.<sup>398</sup>

169. The Chamber finally notes that P-0768's participation in the Mongbwalu operation is largely corroborated by other evidence in this case and, in light of the foregoing, finds the relevant part of his testimony to be credible. Relatedly, and as discussed further in the relevant section of the present Judgment, the Chamber also found P-0768's testimony on seeing dead bodies in Mongbwalu<sup>399</sup> and Sayo, as well as his unique account of the assault on Nzebi, and his evidence on the killing of two Lendu persons by Mr Ntaganda's bodyguards, and the killing of an *abbé* to be credible. Concerning the Defence challenge to the witness's evidence concerning the involvement of Mr Ntaganda in the transport of pillaged goods from Mongbwalu to Bunia, the Chamber notes that P-0768's testimony, including about the pillaging of the health centre, is corroborated by a number of other credible witnesses.<sup>400</sup>

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<sup>396</sup> See generally: T-35, pages 30 to 35 with DRC-REG-0001-0004. In particular: T-35, pages 31 to 32 (acknowledging that he might have been mistaken about his previous statement that he did not go to Baku in order to go to Mongbwalu), page 33 (stating that he made a mistake in his prior statement with regard to the route taken from Aru to Nzebi), and pages 34 to 36 referring to DRC-OTP-0058-0664-R2 (acknowledging that the diagram he had prepared in relation to Mongbwalu town and the precise location of Nzebi is an illustration and was almost correct but needed to be rotated).

<sup>397</sup> Defence Closing Brief, para. 274, referring to DRC-REG-0001-0004. This finding is unaffected by the question whether the witness had previously seen that document in 2013.

<sup>398</sup> T-34, pages 32 to 43, and 45 to 47 referring to DRC-OTP-2058-0251.

<sup>399</sup> Noting that P-0768's testimony on seeing dead bodies in Mongbwalu is corroborated by other credible witnesses, the Chamber does not consider his evidence to be undermined by the logbook messages relied upon by the Defence (Defence Closing Brief, paras 253, and 286 to 288). As for the Defence argument that the witness's statement that he never saw a soldier being sanctioned for having killed a Lendu is contradicted by logbook messages, the Chamber notes that the first two messages relied upon by the Defence only refer to the conduct of individual soldiers and not the consequences thereto, and that when questioned about the third message, the witness stated that it was falsified (*see* Defence Closing Brief, paras 289 to 292).

<sup>400</sup> See paras 514 and 516 below.

170. P-0768 also provided information about the alleged recruitment and use of child soldiers.<sup>401</sup> He clarified that he personally visited training camps in Mandro<sup>402</sup> and Aru,<sup>403</sup> and admitted that he was personally in regular contact with soldiers under 15.<sup>404</sup> While his various identifications of individuals as being under 15 years old<sup>405</sup> are to be examined on a case-by-case basis in their context and in light of other evidence available,<sup>406</sup> the factors underlying the witness's assessments<sup>407</sup> are generally pertinent for that purpose. In view of the foregoing, the Chamber considers that the Defence general contention that P-0768 provided false evidence about the age of some soldiers is not substantiated.

171. Further, concerning the witness's testimony that Mr Ntaganda ordered the placement of anti-personnel mines in all entry and exit points of the town of Mongbwalu, causing many civilians to be injured or killed,<sup>408</sup> the Chamber observes that the witness: (i) reiterated his account in cross-examination, providing additional information when requested,<sup>409</sup> and (ii) satisfactorily

<sup>401</sup> See e.g. T-34, pages 48 to 49, and 50 to 55.

<sup>402</sup> T-34, pages 50 to 51. See also T-36, pages 21 to 22. The Chamber considers that the Defence submissions that P-0768 lied about his visit to Mandro are either based on the testimony of Mr Ntaganda, not supported by any other evidence, or speculative.

<sup>403</sup> T-34, page 53.

<sup>404</sup> T-34, pages 48 to 49.

<sup>405</sup> Concerning the Defence submission that P-0768 was not able to distinguish a female from a male and was not able to identify Lamama, who was much older than 15 (see Defence Closing Brief, para. 295, referring to T-34, page 47; see also DRC-OTP-2058-0251 at 00:48:34), the Chamber refers to its findings at para. 387 below, and further considers that an inaccurate description of the gender of an individual does not automatically undermine an individual's age assessment capacities.

<sup>406</sup> In this regard, the Chamber also notes the Defence submission that P-0768 provided false evidence regarding photograph DRC-OTP-2058-0667-R02 'showing children evidently below 15' (see Defence Closing Brief, paras 295 to 296). Absent any other evidence concerning the circumstances of this picture, and noting that the Defence submissions to challenge specific aspects of P-0768's testimony in this regard are exclusively based on the testimony of Mr Ntaganda, the Chamber does not consider that P-0768's testimony in this regard affects the credibility of his testimony on alleged child soldiers as a whole.

<sup>407</sup> T-34, page 47 (identifying the individual depicted in DRC-OTP-2058-0251, at 00:48:34 as Mr Ntaganda's bodyguard who was under 15, saying that there were many more of them not depicted in the video, and basing his assessment on the individuals' appearance, size and behaviour) and page 58 (describing the individuals depicted on photograph DRC-OTP-2058-0667-R02 as being under 15, based on the size of the uniforms they were wearing).

<sup>408</sup> T-33, pages 59, and 65 to 66; see also T-35, pages 71 to 74 (testifying that he heard over the radio an order to place the landmines being given by Mr Ntaganda as well as a report of the implementation of the order). For the parties' submissions in this regard, see Defence Closing Brief, paras 254 to 258, Prosecution Response Brief, para. 50, and Defence Reply Brief, paras 70 to 73.

<sup>409</sup> T-35, page 71 to 76.

explained the absence of this allegation in his first statement.<sup>410</sup> In addition, noting that anti-personnel mines were part of the UPC/FPLC inventory,<sup>411</sup> and that UPC/FPLC communications establish that the use of land-mines was – at a minimum – being contemplated,<sup>412</sup> the Chamber considers that there is no reason to doubt the truthfulness of P-0768's account regarding the planting of landmines.<sup>413</sup>

172. Lastly, regarding the Defence allegation that P-0768 fabricated personal knowledge about the events in Kobu,<sup>414</sup> the Chamber observes that the witness clarified that his related testimony is based on information provided by Salumu Mulenda or heard over the Motorola, and acknowledged that he had never been to Kobu.<sup>415</sup> Further, the Chamber notes that, while the witness stated that he was 'quite far away' from the operation,<sup>416</sup> and even if, after 6 March 2003, both P-0768 and Salumu Mulenda served together in the FAPC, it is not apparent from the logbook messages referred to by the Defence that the witness was necessarily in Aru at the time of the events in Kobu.<sup>417</sup> Accordingly, having considered the other evidence on the record, as well as the witness's position within the UPC/FPLC at

<sup>410</sup> In cross-examination, the witness acknowledged not having mentioned this allegation when he first met with the OTP investigators, stating that he was not prepared to testify and that, therefore, certain events 'may have escaped him' (T-36, pages 4 to 5).

<sup>411</sup> See para. 334 below.

<sup>412</sup> Logbook entries DRC-OTP-2102-3854, at 3863 and 4031, referring to a message from Salongo Ndekezi asking Mr Ntaganda about the placement of mines, in response to which Mr Ntaganda enquired about the type of mines needed.

<sup>413</sup> The Chamber therefore excludes Mr Ntaganda's denial on this specific issue as not credible (**D-0300**: T-218, page 41). The Chamber further considers that the mere fact that this specific aspect of P-0768's evidence is not corroborated by any other witness does not render his testimony unreliable.

<sup>414</sup> Defence Closing Brief, paras 259 to 267; see also Defence Reply Brief, paras 75 to 78.

<sup>415</sup> See **P-0768**: T-34, pages 59 to 61.

<sup>416</sup> **P-0768**: T-34, page 61.

<sup>417</sup> The Chamber notes that the Defence assertions on the timing of P-0768's return to Aru in paras 260 and 261 of the Defence Closing Brief were not put to the witness during cross-examination, and that contrary to the Defence submission, P-0768 testified that as of 17 February 2003, he was still in Mongbwalu (**P-0768**: T-36, pages 38 to 40). The Chamber further notes that the specific logbook entry referred to in footnote 590 of Defence Closing Brief, para. 267 to assert that P-0768 was in Aru at the time of the Kobu events is undated, and that the evidence referred to by the Defence does not establish that Jérôme Kakwavu and his forces were no longer in the UPC/FPLC at the time of the events in Kobu. On the latter point, both P-0901 and Mr Ntaganda testified that Jérôme Kakwavu left the UPC/FPLC shortly before or at the time of the 6 March 2003 fighting with the UPDF (**P-0901**: T-32, page 21; and **D-0300**: T-221, page 42), which the Chamber notes is after the Kobu events.

the time of these events, and within the FAPC immediately after, the Chamber finds his related statements credible.

173. In view of all of the above, the Chamber finds that P-0768 is a credible witness.

**h) P-0883**

174. The witness testified to having been abducted in October 2002, when she was 12 years old, on her way home from primary school, and taken to Bule camp for training, where she was mistreated and sexually abused. She stated that after having received treatment for an injury inflicted during a battle in Largu in March 2003, she returned to her village, where both her parents had passed away, and gave birth to a child without knowing who the father was.<sup>418</sup>

175. The Chamber notes that she provided clear accounts which were rich in detail, notably as regards the timing of most events described. P-0883's narrative was also consistent throughout examination-in-chief and cross-examination.<sup>419</sup> She mainly testified about what she had personally experienced, and refrained from general comments or approximations. In this regard, the Chamber refers to the descriptions she provided of her abduction, her first night as a captive, the camp's daily routine, as well as the visit of Mr Ntaganda to the camp in Bule. The Chamber further notes that certain aspects of her testimony are consistent with the experience of UPC/FPLC recruits in other camps.<sup>420</sup>

176. The Chamber notes that P-0883 consistently provided the same date of birth during her testimony.<sup>421</sup> She also explained that she used to have a birth certificate

<sup>418</sup> For the assessment of P-0883's credibility, the Chamber has also taken into consideration the relevant submissions in CLR1 Closing Brief and CLR1 Response Brief.

<sup>419</sup> The Chamber further notes that, although, as discussed below, discrepancies were identified with the two victim application forms submitted on the witness's behalf in 2011 and 2013, respectively, no discrepancies with her written statement from 2014 were brought to the attention of the Chamber (*see* the discussion of DRC-OTP-2074-0393 in court at T-169 and T-170).

<sup>420</sup> The Chamber refers to the testimony of P-0758, P-0769, P-0888, P-0898, P-0901, P-0907, and P-0963.

<sup>421</sup> As noted by the Defence (Defence Closing Brief, para. 1204), the Chamber notes one exception where, when confronted with the information in her preparation session note providing that the witness had indicated a

from the hospital where she was born,<sup>422</sup> but that the document was lost when her family home burned down.<sup>423</sup>

177. Her electoral card, issued in 2011, contains the names of her parents, and the same place and date of birth provided by the witness.<sup>424</sup> After discussion with the Prosecution to that effect in 2016, the witness also sought and obtained birth certificates, which contain the same information, from both the hospital where she was born and her region's *État civil*.<sup>425</sup> She described how, when collecting the certificate from the hospital, a midwife found the witness's date of birth as well as the birth details and names of her parents in the hospital's birth register for the relevant period, copied the information in another document, and a doctor stamped and signed the document and gave it to the witness.<sup>426</sup> Further, following the directions provided by the doctor, P-0883 obtained a second birth certificate by the *État civil* on the basis of the document from the hospital.<sup>427</sup> The Chamber considers that, because of the way they were issued, *i.e.* on the basis of the witness's accounts alone for the electoral card and on the basis of the hospital's certificate for the document from the *État civil*,<sup>428</sup> these items cannot serve as independent corroboration. The Chamber further notes the challenges made with respect to the certificate produced by the hospital, specifically with regard to the purported date of issuance.<sup>429</sup> It therefore attaches only limited

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different day of birth, and asked what her real date of birth was, the witness responded by saying 'I don't know' (T-169, page 70). Having considered the witness's personal situation, and given the clarifications she provided for her confusion, reaffirming the date of birth consistently provided (T-170, pages 17 to 18), the Chamber does not find this exception to affect the credibility of the witness's statement concerning her date of birth.

<sup>422</sup> T-167, page 91; and T-168, page 44.

<sup>423</sup> T-168, page 44; and T-169, page 44.

<sup>424</sup> DRC-OTP-2078-2736, page 2736. *See also*, T-167, page 92; T-168, pages 48 to 49; and T-169, pages 28 to 30. The Chamber notes that the transcript incorrectly refers to 17 June 2011 as the date of issuance, while the card, clearly shows the date of issuance to be 17 May 2011 (DRC-OTP-2078-2736-R02).

<sup>425</sup> DRC-OTP-2094-0656; and DRC-OTP-2094-0655.

<sup>426</sup> T-168, pages 44 to 45; and T-169, pages 66 to 67.

<sup>427</sup> T-168, pages 50 to 51.

<sup>428</sup> In addition to the witness's evidence (T-169, page 29; and T-168, page 50), the Chamber notes that birth certificates from the *Etat Civil* appear to be issued without further verifications regarding dates of birth (**D-0163**: DRC-D18-0001-6159, at 6161, para. 15; and **D-0150**: DRC-D18-0001-6146, at 6148, para. 15).

<sup>429</sup> Defence Closing Brief, para. 1202.

weight to this document for the purpose of corroboration of the witness's evidence concerning her date of birth.<sup>430</sup>

178. The Chamber further notes that, on a 1997 record from the school attended by P-0883 and listing various students' names, together with their respective dates of birth and the names of their fathers, the witness's name is listed as having a different month and year of birth than that provided by the witness.<sup>431</sup> On another school record, which is otherwise identical to the former, the date of birth has been changed to a date that corresponds to the date of birth provided by the witness.<sup>432</sup> While different versions of the same record and potential modifications made to items of evidence are in themselves concerning, absent any indication as to the circumstances surrounding these alterations, and since there is no indication that P-0883 was in any way involved,<sup>433</sup> the Chamber considers that no conclusions can be drawn from these documents. The Chamber further observes that the year of birth originally appearing on the document would make the witness one year younger than she reports, and, as such, has no impact on the question whether the witness was under 15 at the time of the events described during her testimony.

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<sup>430</sup> The Chamber observes that the birth certificate issued by the hospital contains a date of issuance corresponding to five days after the witness's date of birth, while the witness testified having obtained the document in 2016. While the date of issuance written on the document is obviously inaccurate, the Chamber notes P-0883's testimony that a nurse looked up the relevant information for her. The person issuing the document may therefore have noted down the date as it appeared in the consulted hospital records. In assessing the authenticity of the certificate, the Chamber has considered the circumstances described by P-0883 together with the evidence provided by **D-0148**, notably relating to the form used and the two handwritings it contains (DRC-D18-0001-6141, at 6143 to 6144, paras 13 to 19; and DRC-OTP-2097-0455-R01, at 0457, paras 12 to 19).

<sup>431</sup> DRC-OTP-2082-0368, line 7952.

<sup>432</sup> DRC-OTP-2097-0540, at 0541. *See* Defence Closing Brief, para. 1201.

<sup>433</sup> The Chamber notes that the second school record was directly provided to the Prosecution by the relevant DRC authorities.

179. In light of the above, and having considered the witness's evidence regarding her date of birth as credible,<sup>434</sup> the Chamber concludes that P-0883 was under the age of 15 at the time of her alleged abduction, in October 2002.

180. *Testimony on abduction:* With regard to the inconsistencies between the witness's testimony and her two victim application forms,<sup>435</sup> the Chamber notes that, as compared to her testimony – where she described her capture in Mahagi by UPC soldiers, being taken to their nearby camp Baudouin, and being sent, the following day, to their training camp in Bule – the application forms indicate that the witness was abducted by APC soldiers, taken to a camp in Zale, and subsequently handed over to the UPC following a battle, and brought to Nioka, in addition to her stay in Bule and Baudouin.

181. The witness's testimony on this point is consistent with the descriptions provided in her 2014 statement to the Prosecution<sup>436</sup> and a form for additional information annexed to her 2013 victim application.<sup>437</sup> P-0883 rejected the suggestion that she would have spent any time in a camp located in Zale or with the APC militia, mentioning 'Zale' and 'Nioka' as transit places located along the road taken during her transfer between camp Baudouin and camp Bule,<sup>438</sup> as opposed to camps where she would have stayed for a prolonged period. To explain the discrepancy, the witness suggested that the persons who prepared her victim application forms may have made mistakes,<sup>439</sup> and submitted that her forms were not read back to her.<sup>440</sup>

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<sup>434</sup> The Chamber notes that the witness's accounts concerning the steps undertaken to obtain the various documentary evidence are very detailed, consistent throughout her testimony and considers them plausible. In the same vein, the Chamber finds her credible where she answered Defence questions about her names and her parents' names (*see e.g.* T-169, pages 30 to 31, 38 to 40, 58 to 60. *See* Defence Closing Brief, paras 1198 to 1199).

<sup>435</sup> DRC-OTP-2079-1430, dated 19 May 2011; and DRC-OTP-2090-0085, dated 14 December 2013. *See also* Defence Closing Brief, paras 1193 to 1195.

<sup>436</sup> T-169, page 17. *See also*, T-169, pages 76 to 77.

<sup>437</sup> DRC-OTP-2090-0085, at 0088.

<sup>438</sup> T-168, page 16. *See also*, T-168, page 15.

<sup>439</sup> T-169, pages 13 to 15 and 19.

<sup>440</sup> T-168, pages 70 to 71; T-169, pages 13 and 21 to 22.



182. The Chamber notes that the two application forms, as well as two narratives contained in an annex to the first form, describe, with a considerable amount of detail, how the witness was first abducted by militiamen from the APC and only subsequently, after a battle during which the UPC defeated the APC, incorporated into the UPC ranks, together with other members of the APC.<sup>441</sup> They mention specific positions where she was allegedly trained or deployed, as well as the amount of time spent in these locations. The Chamber finds that the inclusion of these details of great specificity, on multiple occasions, cannot easily be attributed to mistakes or misunderstandings by the individuals who assisted the witness in completing two separate victim application forms in 2011 and 2013.

183. The Chamber further notes that the case record does not contain any information on 'Baudouin' or 'Zale' and whether any camps, belonging to the APC or the UPC, were located there at the relevant time. There is therefore no corroboration with regard to the locations where the witness, according to her victim application forms, would have been taken upon abduction. With regard to Bule, on the other hand, the Chamber notes that, although P-0883 was the only witness who specifically testified about her personal experiences at this camp, the evidence on the record supports the existence of military training being conducted by the UPC in Bule during the relevant time frame.<sup>442</sup>

184. P-0883 also claims to have been able to identify the UPC as being the organisation that abducted her on the basis of their uniforms, where 'UPC' was written on the sleeves. The Chamber observes in this regard that there is no evidence showing that the acronym 'UPC' was written on any of the uniforms

<sup>441</sup> See DRC-OTP-2079-1430, at 1434; and DRC-OTP-2090-0085, at 0085. An annex to the 2011 application form also contains two lengthy descriptions of the witness's accounts, stating that she reported having been abducted by militiamen who were from the APC and had subsequently been incorporated into the UPC. Each of these descriptions appears to have been made in the presence of a witness, two distinct individuals having signed the relevant pages, directly below the descriptions (DRC-OTP-2079-1430, from 1440 to 1441).

<sup>442</sup> **P-0017**: T-58, page 36; T-60, page 36; **P-0901**: T-29, page 50; UN report DRC-OTP-0074-0422, at 0464, para. 153; **P-0963**: T-80, page 37; logbook DRC-OTP-2102-3854, at 3905 (referring to 450 soldiers who had completed their training at Bule Centre in December 2002); Individual case story DRC-OTP-0208-0284, at 0333 to 0334 (soldier trained by the UPC in Bule before November 2002).

used by UPC/FPLC soldiers, including those of the most senior commanders.<sup>443</sup> The Chamber further notes that D-0172 testified that the APC did have the acronym 'APC' on its sleeves.<sup>444</sup>

185. While recalling the limited evidentiary value of information included in victim application forms,<sup>445</sup> the Chamber recalls that the witness's first recorded accounts concerning her abduction consistently refer to the APC instead of the UPC in four separate instances.<sup>446</sup> The Chamber further notes that the case record shows that it was not uncommon for members, including young women, of the APC to subsequently be integrated into the UPC/FPLC, including in the Mahagi territory.<sup>447</sup> In these circumstances, and absent any sufficiently convincing explanation for the repeated references to the APC in prior related statements, the Chamber considers that it cannot rely on the witness's accounts concerning her abduction and the period immediately following the abduction.

186. Concerning her training specifically, the Chamber recalls, as noted above, that the existence of a UPC/FPLC training camp in Bule is corroborated by the evidence. It further observes that the witness: (i) recalled being told, upon arrival, that 'Bosco Ntaganda' was the commander in charge of the camp, although he was not physically present;<sup>448</sup> (ii) indicated that 'Bosco' and 'Bahati' were two of the commanders whose names were mentioned in songs 'to pay homage to them';<sup>449</sup> (iii) gave a detailed description of Mr Ntaganda's alleged visit to the camp;<sup>450</sup> and (iv) upon being confronted with the suggestion that Christian De

<sup>443</sup> Indeed, the evidence does show that in 2004, UPC/FPLC uniforms had insignia with an acronym: 'FPLC' (DRC-OTP-0127-0064, from 00:47:10 to 00:47:23).

<sup>444</sup> **D-0172**: T-245, page 27.

<sup>445</sup> See para. 85 above.

<sup>446</sup> DRC-OTP-2079-1430, at 1434 and from 1440 to 1441; and DRC-OTP-2090-0085, at 0085.

<sup>447</sup> See DRC-OTP-0206-0120; **D-0211**, T-247, pages 79 to 80; and **D-0251**, T-260, pages 19 to 20.

<sup>448</sup> T-168, page 18; T-169, pages 74 to 75. The witness also specified that she knew Thomas Lubanga was his superior.

<sup>449</sup> T-170, page 20 to 22.

<sup>450</sup> T-168, pages 18 to 19. The Chamber notes in this regard that while referring to Mr Ntaganda as being in charge, the testimony she provided about him personally is positive in nature, *inter alia*, stressing that he told the commanders to treat and feed the recruits well. This aspect of her testimony can therefore not be seen as deliberately exaggerating or incriminatory vis-à-vis the accused.

Gaulle was responsible for the training, acquiesced and specified that the commanders took turns and therefore changed regularly.<sup>451</sup> Noting further the witness's position as a recruit at the time of these events, the time passed since then,<sup>452</sup> as well as the fact that the details she provided are broadly consistent with the testimony of other former recruits,<sup>453</sup> the Chamber considers that the witness's testimony in this regard is credible.

187. Finally, concerning the Defence's suggestion that P-0883 made inconsistent statements about the nature of her sexual and personal relations with various individuals,<sup>454</sup> the Chamber recalls its finding on the fact that delayed reporting of rape is a comprehensible consequence of the victims' experience, especially in conflict areas.<sup>455</sup> In the case at hand, the Chamber notes that P-0883 reported having been raped by many soldiers, stressing that 'anyone who wanted to do so could rape you'.<sup>456</sup> Her testimony in this regard is also nuanced and not necessarily incriminating on all aspects.<sup>457</sup> In the view of the Chamber, the language used by P-0883 to describe her experience, notably the use of the term 'wife' or 'partner', does not undermine the fact that she was forced into certain form of sexual conduct.<sup>458</sup> The Chamber also finds the Defence's submissions relating to the witness's relationship with one of the alleged perpetrators to misrepresent her evidence on this point.<sup>459</sup> Accordingly, having considered the

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<sup>451</sup> T-170, page 7.

<sup>452</sup> For these reasons, the Chamber considers that the fact that she could not remember the name of the commander in charge of Bule is of limited relevance (*see* Defence Closing Brief, para. 1206, referring to **P-0963**: T-80, page 37; and **P-0017**: T-60, page 36).

<sup>453</sup> *See* para. 175 above.

<sup>454</sup> Defence Closing Brief, paras 1207 to 1208.

<sup>455</sup> *See* para. 88 above.

<sup>456</sup> T-168, page 32.

<sup>457</sup> In this regard, the Chamber notes that the witness indicated that one individual was punished for the fact that he raped her (T-168, page 33).

<sup>458</sup> As set out in the Factual Findings (footnote 1156 below), the Chamber notes that, in the circumstances, the term 'wife' is commonly used to refer to coerced sexual relationships.

<sup>459</sup> The Defence appears to suggest that the witness stated to have only been with a named individual at camp Baudouin (Defence Closing Brief, para. 1208, referring to T-170, page 6), which would be during one night in October 2002. The Chamber however notes that the witness specifically indicated that the named individual remained with her in camp Bule, indicating that their relationship lasted until she was deployed for the battle in

witness's description of the relevant event,<sup>460</sup> as well as her detailed description of the consequences thereof, notably on her health and that of her child born in 2004,<sup>461</sup> the Chamber finds her testimony in this regard credible.

188. In view of the foregoing, and recalling the aforementioned finding that it will not rely on P-0883's account related to her abduction and the period immediately after, the Chamber shall determine on a case-by-case basis which remaining aspects of her testimony can be relied upon and, in the circumstances, it will pay particular attention to assessing the timeframe of the relevant event.

**i) P-0888**

189. P-0888 testified to having been enrolled in the UPC/FPLC when he was 14 years old, followed training in Mandro, worked as a bodyguard for the accused, and participated in various military operations.

190. The witness generally described his experiences with a significant level of detail, but also repeatedly stressed the time passed since the events, and that he might not remember certain information. He further admitted when he was not in a position to answer a question, and specified when he was not an eyewitness to certain events.

191. P-0888 appeared generally cooperative in both examination-in-chief and in cross-examination, where, for example, he acknowledged being confused at times because of the way questions were asked, and admitted he may have made mistakes with regard to certain questions. When confronted with alleged contradictions, or a suggestion he did not agree with, he reacted in a calm manner, engaging with the question put to him, and attempting to provide explanations, which appeared to be genuine.

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Largu (T-170, pages 6 to 7. *See also* T-168, pages 32 to 33; and T-169, page 18), which means that, according to her, they were in the same camp from October 2002 until March 2003.

<sup>460</sup> T-168, pages 32 to 33; T-169, pages 20 to 21.

<sup>461</sup> T-167, page 96; T-168, pages 34, and 63 to 65; and T-168, pages 13 to 14, 36, and 65.

192. As a preliminary remark, the Chamber recalls its conclusions concerning the credibility of P-0190, and considers that the possible interaction between the two witnesses may have impacted certain aspects of P-0888's testimony. This warrants particular caution in assessing this witness's credibility.

193. *Testimony on date of birth and abduction:* Turning to the issue of P-0888's age at the time of the events, the Chamber notes that he stated that he was born in 1988,<sup>462</sup> which corresponds to the date written in both his passport, issued in 2016,<sup>463</sup> and a school register dated 1999-2000.<sup>464</sup> Another identity document, issued in 2013, refers to 1988 as his year of birth, but the specific day included therein appears to contain a digital error, which the witness attributed to the person who wrote down the information he provided at the time.<sup>465</sup> On the basis of the aforementioned information, and assuming that the witness joined the UPC/FPLC ranks in the second half of August 2002,<sup>466</sup> P-0888 would have been 14 years old at the time of the events.

194. An entry in a 1998 baptismal record however indicates that the witness was born in 1984.<sup>467</sup> The Chamber notes in this regard that, when confronted with this document, the witness: (i) recalled having been baptised when he was in the sixth year of primary school; (ii) recognised his name and the names of his parents in

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<sup>462</sup> T-105, page 8.

<sup>463</sup> DRC-OTP-2094-0031. *See also* T-106, page 62; and T-107, pages 32 to 36.

<sup>464</sup> DRC-OTP-2094-0034 at 0073. The school record for 1999-2000 specifies the day and month of the witness's date of birth as indicated in his passport, but, due to the poor quality of the scan, the Chamber cannot ascertain whether the year written down in this record is 1984 or 1988.

<sup>465</sup> DRC-OTP-2075-0644. According to this document, the witness would have been born on the first of the month instead of the tenth. *See also* T-105, pages 9 to 10; and T-106, pages 60 to 61.

<sup>466</sup> The Chamber determined the approximate date of his enrolment on the basis of the following events mentioned by the witness himself: (i) the fact that he was enlisted after Lompondo was chased from Bunia (T-105, pages 13 to 15); (ii) the fact that he participated in the Songolo operation in 2002, two days after the end of his training in Mandro (T-106, page 56); and (iii) the fact that his training lasted two weeks (T-105, page 17).

<sup>467</sup> DRC-D18-0001-1464 at 1468. The Chamber notes that D-0134 stated that he was familiar with the baptismal record, recognised the images as depicting the original record, and explained the way it was filled and stored (**D-0134:** DRC-D18-0001-5822, from 5823 to 5825). In light of the information before it, and having had regard to its content and the way it intends to rely on it, the Chamber does not require access to the complete register to reach the above conclusion (*see* Prosecution Closing Brief, para. 733).

the record; but (iii) contested the date of birth listed therein, stressing that he has always been told by his parents that he was born in 1988.<sup>468</sup>

195. In any event, the Chamber observes that, if P-0888 was in the sixth year of primary school when he was baptised in 1998, as he claims,<sup>469</sup> and assuming that he did not skip or repeat any year of primary education, he would have started primary school in 1993.<sup>470</sup> Considering that children had to be six years of age in September before entering primary school in the DRC,<sup>471</sup> this statement suggests that the witness was born at the latest in September 1987.

196. In light of the above, the Chamber considers that it cannot be established beyond reasonable doubt that P-0888 was under 15 years of age at the time of the events discussed in his testimony. Further, the Chamber cannot exclude that P-0888's testimony on his alleged abduction by the UPC, which is described in a similar manner by P-0190, and characterised by internal inconsistencies,<sup>472</sup> was influenced by P-0190.

197. Regarding other aspects of P-0888's testimony, the Chamber notes a number of discrepancies and alleged shortcomings in the witness's statements,<sup>473</sup> including his inability to remember the names of other escorts or recruits, with

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<sup>468</sup> T-106, pages 67 to 70.

<sup>469</sup> T-106, page 70. Considering that these details are of a nature which would ordinarily be remembered well by a child, the Chamber attaches high probative value to these statements.

<sup>470</sup> School records attesting to the fact that P-0888 attended the first year of secondary school in 1999-2000 and in 2000-2001 are also consistent with this conclusion (DRC-OTP-2094-0034, at 0071 to 0073; and DRC-OTP-0118-0043, at 0043 and 0046).

<sup>471</sup> P-0551 testified that, in the DRC, children had to be six years of age in September before entering primary school (**P-0551**: T-197, page 32).

<sup>472</sup> The witness was not in a position to provide a date or year for his abduction, and testified that he was abducted after, but still during the same year when, Lompondo was chased from Bunia, on his way to school to fetch water, at the time when he was attending a specific school, and that he did not attend the second year of secondary school as a result of his abduction by the UPC (T-105, pages 13 to 15). In this regard, the Chamber notes: (i) the Defence's challenges based on the absence of any entry relating to P-0888 in the school records for the years 2001-2002 and 2002-2003, whereas the school record for 2000-2001 provided that P-0888 was excluded for age and conduct (*see* Defence Closing Brief, paras 1216 to 1217); and (ii) the witness's statement that he participated in the Songolo operation two days after the end of two weeks of training in Mandro which would place his testimony on his alleged abduction in the last two weeks of August 2002, which would be during the school holidays (*see* **P-0551**: T-197: page 32) and therefore inconsistent with his statement that he was abducted on his way or when getting ready for school.

<sup>473</sup> *See*, Defence Closing Brief, paras 1218 to 1220 and 1226.

the exception of three of his friends, in relation to whom he was not able to provide certain biographical details, his misidentification of Rwampara as Mandro, or his failure to describe the road to, or to provide details about places in, Mongbwalu. However, the Chamber considers that these issues can be explained by a lack of memory or confusion, related to the trauma suffered by the witness, and the time passed since the events, and do not automatically affect his credibility. The Chamber further notes, in line with its general observations concerning P-0888's demeanour in court, that, when confronted with these inconsistencies, the witness remained composed and cooperative, admitting that he may have made a mistake or trying to find explanations for the issues identified by the Defence.

198. The Chamber further observes that P-0888 provided detailed and mostly coherent information about many aspects related to his involvement with the UPC/FPLC, notably his training and his participation in certain operations, which are, furthermore, largely consistent with the testimony of other former UPC/FPLC soldiers who testified before the Chamber. He also clarified the basis of his knowledge, and admitted when he did not remember certain details. Recalling that, on certain aspects, the witness's testimony in this regard departed from that of P-0190,<sup>474</sup> the Chamber finds that this part of his testimony is unaffected by any interaction with P-0190 and can generally be relied upon.<sup>475</sup>

199. In light of the above, the Chamber finds that P-0888's testimony is to be considered with caution. Bearing in mind its conclusion on the witness's account concerning his abduction, the Chamber shall determine on a case-by-case basis which remaining aspects of his testimony can be relied upon.

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<sup>474</sup> Paras 136 to 138 above.

<sup>475</sup> In this regard, the Chamber however notes P-0888's reference to the FPLC's cooperation with '*effacer le tableau*' soldier, which was also referred to by P-0190 (*see* Defence Closing Brief, paras 1221 to 1224). The Chamber considers that this does not, without more, impact the general assessment of the witness's credibility on this part.

j) **P-0898**

200. P-0898 testified to having been enlisted in the UPC/FPLC around August 2002, when he was 13 years old, and subsequently following training in Mandro, serving as a bodyguard for a UPC/FPLC commander, and participating in various military operations.

201. His evidence on these issues was mostly precise and included many details, and he appeared cooperative both in examination-in-chief and in cross-examination. The witness admitted when he did not remember certain things, or was not able to answer a question. He also clarified that there were events he witnessed personally, others he was told about, or things learned through his research for his end-of-university studies dissertation.<sup>476</sup> In relation to the latter, he was open and forthcoming in providing details, including the sources relied upon and his knowledge of the ICC.<sup>477</sup> Noting further the level of specificity of the witness's evidence about the circumstances in which he joined the UPC, and his experiences as a recruit at UPC/FPLC training camps and as an FPLC soldier,<sup>478</sup> the Chamber is satisfied that the information collected when preparing his dissertation has no impact on the reliability of those aspects of the witness's testimony which he stated to be based on his personal experience.<sup>479</sup>

202. P-0898 testified that he joined the UPC when he was 'between 13 and a half and 14 years of age',<sup>480</sup> which is consistent with his statement concerning his date

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<sup>476</sup> T-154, page 42.

<sup>477</sup> T-154, pages 44 to 51 and 53 to 64 referring to DRC-OTP-2077-0365.

<sup>478</sup> See e.g. T-153, page 51 (concerning the circumstances and motivation for his decision to become a soldier), pages 52 to 53 (concerning his arrival at the training centre at the UPC headquarters), pages 53 to 54, and 76; T-154, pages 6 to 7 (concerning the content of the training, and the names of instructors); T-153, page 55 (responsibilities as a recruit, notably the burying of bodies), pages 71 to 72 (living conditions in Mandro); and T-154, pages 8 to 19 (concerning his participation in the fighting on the Komanda road and the Mongbwalu operations, providing a step-by-step account of his movements in that context and the unfolding of the operations and orders received, and alleged crimes committed during the second Mongbwalu operation), pages 25 to 27 (concerning his participation in the operation in Sayo). The Chamber further notes that the witness was able to recite songs that were sung in Mandro (T-155, pages 55 to 57).

<sup>479</sup> See Defence Closing Brief, para. 1246.

<sup>480</sup> T-153, page 30; and T-154, page 41.



of birth,<sup>481</sup> which, in turn, corresponds to the information provided in documentary evidence related to the witness.<sup>482</sup> In light of the foregoing, and absent any specific challenge concerning the witness's date of birth, the Chamber finds that the witness was under 15 years old at the time of the events referred to in his testimony.

203. As for P-0898's age assessments of other individuals he observed or was in contact with in the context of his involvement with the UPC/FPLC, the Chamber notes that the witness acknowledged on several occasions that he was not in a position to provide the precise age of a person he was not related to, which, according to the witness, only parents can do,<sup>483</sup> and based his assessments on the size and other physical features of the relevant individuals.<sup>484</sup> He further clearly explained when he was of the view that certain individuals were older than him.<sup>485</sup> In these circumstances, and noting that the assessments he provided relate to individuals who were in the same age range as the witness, the Chamber considers that P-0898's age assessments are generally reliable.

204. Concerning the Defence challenges based on the witness's failure to identify a specific individual and purported misidentification of a specific scene in a video showing Mandro,<sup>486</sup> the Chamber notes the witness's explanation based on the poor quality of the images,<sup>487</sup> and his response that at the time, he did not have the relevant information.<sup>488</sup> Bearing further in mind the time passed since the events, the Chamber does not find that the aforementioned challenges raise any

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<sup>481</sup> T-153, page 29.

<sup>482</sup> See DRC-OTP-2078-2318, an electoral card issued in 2011, providing a birth date which, according to the witness, is based on the information he provided upon registration, and which he had, in turn, received from his parents (T-153, page 32); DRC-OTP-2078-2320, a duplicate of an electoral card, DRC-OTP-2077-0264, a citizenship certificate and a birth certificate, gathered by the witness at the end of his studies and based on the information in his identity card as confirmed in a civil status officer's archives (T-153, page 35); DRC-OTP-2082-0563, school record.

<sup>483</sup> See e.g. T-153, page 73; and T-154, page 43.

<sup>484</sup> See e.g. T-153, pages 58 and 73; and T-154, page 6.

<sup>485</sup> See e.g. T-153, page 58.

<sup>486</sup> See Defence Closing Brief, para. 1245(g), referring to DRC-OTP-0082-0016, at 00:08:24.

<sup>487</sup> T-155, pages 24, 26, and 30 to 31.

<sup>488</sup> T-155, page 30.

doubt concerning the reliability of the witness's testimony on his experiences at Mandro training camp. As for the Defence's argument that the witness's statement that he saw the airdrop of weapons is inaccurate because, according to the testimony of Mr Ntaganda, this occurred prior to his arrival,<sup>489</sup> the Chamber notes that the evidence on this point does not conclusively support the Defence submission.<sup>490</sup> With reference to the Defence argument that the witness's testimony that among his group of recruits some were sent to Rwampara is contradicted by evidence indicating that the Rwampara training centre did not exist at that time,<sup>491</sup> the Chamber notes that the witness confirmed in cross-examination that his statement was based on the information he had, and that, on the basis of the overall evidence provided, the precise timing of the opening of the centre cannot be conclusively established. In these circumstances, the Chamber considers that this issue has no negative effect on the general credibility of the witness and on the reliability of his testimony.

205. Noting the Defence submissions relating to the witness's testimony on his registration in Mandro and the relevant lists,<sup>492</sup> the Chamber finds that the witness was consistent in his descriptions of the registration process,<sup>493</sup> and sees no indication that his testimony was influenced by having consulted the lists during his preparation session.<sup>494</sup> Lastly, noting the witness's confirmation that he

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<sup>489</sup> See Defence Closing Brief, para. 1245(g), referring to **D-0300**: T-241, page 55.

<sup>490</sup> See para. 336 below.

<sup>491</sup> Defence Closing Brief, para. 1245(f).

<sup>492</sup> See Defence Closing Brief, paras 1245(e) and 1252 to 1256.

<sup>493</sup> T-153, pages 59 to 60 (recognising his name in DRC-OTP-2081-0072, stating that the register was drawn up upon completion of the training, confirming that the information provided in relation to him was accurate, and that recruits were told that the document would be sent to the general staff as proof that they had become soldiers), page 59 (stating that in Mandro, recruits were required to provide information, including their names, names of parents, where they came from, level of education, and date of birth for the registration list that was held by the admin); T-155, pages 10, and 19 to 20 (providing further details as to the timing of the filling out of the forms).

<sup>494</sup> In this regard, the Chamber notes that the witness explained that he did not refer to registration at the end of his training in his previous statement with the fact that he might not have remembered certain details during his interview, and the time elapsed since the events (T-155, page 16), which the Chamber considers to be a plausible explanation, and further notes that the witness disagreed with the Defence suggestion that he only referred to these lists in court because he was shown them during his preparation session and that the only

had never seen the lists before his preparation session,<sup>495</sup> the Chamber finds that the reliability of the witness's testimony in this regard is not affected by the Chamber's conclusion regarding their authenticity, as discussed further below.

206. As for the issue whether the witness's testimony on having been with the UPC for most of the 2002-2003 school year is contradicted by his school records, which suggest that the witness attended school during this period,<sup>496</sup> the Chamber considers that the witness plausibly explained why his school transcripts for the relevant timeframe include marks for each term.<sup>497</sup> In the view of the Chamber, P-0898's explanation is not affected by the testimony of P-0551, D-0201 or P-0918 in this regard.<sup>498</sup> The Chamber also observes that the witness was consistent when discussing the dates relating to his departures from and returns to school.<sup>499</sup>

207. Moreover, the Chamber notes that P-0898 identified himself, as well as another individual in an excerpt of a video recorded in May 2003.<sup>500</sup> The witness explained the events depicted in the excerpt, providing a plausible explanation for the fact that he was wearing civilian clothing on this occasion.<sup>501</sup> Having compared the physical features of the witness and the individual in the video purported to be P-0898, the Chamber is satisfied that the witness's self-

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reason he referred to registration at the end of his training was that the 27 August 2002 date on the list did not correspond to his account on the timing when he joined the UPC (T-155, pages 17 and 21).

<sup>495</sup> T-155, page 11.

<sup>496</sup> See Defence Closing Brief, paras 1232, 1235 to 1244.

<sup>497</sup> T-153, pages 43 to 44 referring to DRC-OTP-2082-0572 (stating that, after his return to school, the marks for the first term were included, taking into consideration the marks from the second term, so that the report would not be empty, and that this was done for all children who had returned to school to study); T-155, page 47.

<sup>498</sup> See Defence Closing Brief, paras 1237 to 1244. In this regard, the Chamber notes that: (i) the fact that P-0918 was not able to explain the entries may be explained by her possible access to the school administration and potential impact on P-0898's school record; (ii) P-0551's and D-0201's testimony on the consequences of a student's absence for a school record was very general and does not exclude modifications on an individual basis; (iii) D-0201 was not able to confirm that P-0898 attended school during the relevant time-frame (see **D-0201**: T-246, page 87); (iv) D-0201's testimony that absences from school could not be justified for reasons related to military service (see **D-0201**: T-246, pages 73 to 74) appears implausible considering the circumstances at the relevant time. Moreover, the Chamber considers that the mere absence of 'discernible "averaging"' in P-0898's school record (see Defence Closing Brief, para. 1237) does not undermine the explanation provided by P-0898.

<sup>499</sup> T-153, pages 43 to 45; T-154, page 42; T-155, pages 44 to 45.

<sup>500</sup> T-154, pages 28 to 32 referring to extracts of DRC-OTP-0103-0008.

<sup>501</sup> T-154, pages 29, and 31 to 33.

identification is accurate.<sup>502</sup> Relatedly, the Chamber considers that D-0207's broad statements – that P-0898 was never part of any armed group and that he never saw him in military uniform<sup>503</sup> – have no rebuttal value vis-à-vis P-0898's testimony.<sup>504</sup> Lastly, noting its conclusions on the credibility of P-0911, the Chamber finds that the alleged contradictions between the latter's testimony and P-0898's account have no impact on P-0898's credibility.

208. In light of the above, the Chamber considers P-0898 to be a credible witness who provided first-hand evidence that can be fully relied upon.

#### k) P-0901

209. P-0901 is a UPC/FPLC insider who testified to the structure of, and communication within, the FPLC, the alleged use of child soldiers, as well as the unfolding of the First and Second Operation, and alleged crimes committed in that context.

210. His evidence was generally precise and, for issues of which he had personal knowledge, the witness provided details and explained the basis of knowledge for his statements. P-0901 openly admitted when he did not know or did not remember certain things, or was otherwise not in a position to answer a question.

<sup>502</sup> See Defence Closing Brief, para. 1258. The Chamber does not consider that corroboration from P-0911 or, more importantly, P-0918, was required. Further, the fact that D-0201 did not confirm, and that D-0207 disputed, the identification of P-0898 in this excerpt, is not determinative (**D-0201**: T-246, page 76 referring to DRC-D18-0001-3442, which is a screenshot of DRC-OTP-0103-0008, at 00:32:17 and 00:32:20; and **D-0207**: T-261, pages 26 to 28 referring to DRC-OTP-0103-0008, at 00:32:17 and 00:32:20).

<sup>503</sup> See Defence Closing Brief, para. 1258, referring to **D-0207**: T-261, page 28.

<sup>504</sup> In this regard, it is noted that: (i) D-0207 stated that 2002/2003 was a chaotic time for him, confirmed that he never went to Lubanga's residence or the UPC training centres in Mandro, Rwampara or Bule and, upon the suggestion that he would not necessarily know who joined the UPC, he provided a, in the view of the Chamber, implausible explanation that those who went to training could be recognised because they returned wearing uniforms and that those who had not gone for training were also recognisable (T-261, pages 43 to 44); (ii) when asked whether he would have had any reason to go to the school attended by P-0898 at the relevant time on account of his business, the witness was first evasive, and then conceded that during class hours, he did not have any reason to go there (T-261, pages 51 to 52); (iii) D-0207 conceded that the church where he and P-0898 used to go can fit up to 1000 people and that he could not tell whether P-0898 attended church from 2002 to 2003 (T-261, pages 53 to 54); and (iv) the Chamber cannot discern any reason why D-0207 would have monitored the presence of P-0898, a young person of no specific importance to D-0207 and with whom he did not have any particular relationship, enabling him to affirm that P-0898 never trained or fought with the UPC/FPLC.

He specified when his statements were based on his personal opinion, or hearsay, offering explanations for his conclusions. P-0901 appeared cooperative in examination-in-chief and cross-examination alike.<sup>505</sup>

211. P-0901 was open about having been contacted by both the Prosecution<sup>506</sup> and the Defence,<sup>507</sup> as well as his knowledge of and contacts with P-0190.<sup>508</sup> In relation to the latter, the Chamber considers that regardless of whether P-0901 was contacted by the Prosecution at the suggestion of P-0190,<sup>509</sup> there is no indication that the content of P-0901's testimony was affected by his relationship and contact with P-0190.

212. The Chamber notes P-0901's testimony about radio conversations, which, as set out in the Factual Findings, is largely consistent with the information provided by other witnesses, including D-0243.<sup>510</sup> More specifically, the Chamber considers that there is no indication that P-0901 provided false evidence regarding radio equipment available to him and the distances over which he was able to hold conversations.<sup>511</sup> First, the witness clearly described the circumstances in which communications were possible over longer distances,<sup>512</sup> and the Chamber notes that his account is consistent with the testimony of other

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<sup>505</sup> The Chamber does not consider P-0901 to be an 'obstructive witness', as argued in the Defence Closing Brief, para. 383 and Defence Reply Brief, para. 110. In this regard, the Chamber notes that: (i) the witness generally provided precise and direct answers during cross-examination (*see e.g.* T-31, pages 53 to 66) (ii) he occasionally asked for more details or specifications to be provided before answering a question in cross-examination (*see e.g.* T-32, pages 23 to 24); (iii) when confronted with a Defence suggestion that did not correspond to his own conclusion, the witness answered that he had no recollection of events corresponding to the Defence suggestion (*see* T-30, page 38); and (iv) in the examples cited by the Defence in support of its submission, the witness merely indicated that he did not remember certain things, and could not answer to the question asked by the Defence, and also asked for clarification to 'jog' his memory (*see* T-31, pages 67 to 68; T-32, pages 33, and 35 to 36).

<sup>506</sup> T-30, page 5.

<sup>507</sup> T-32, pages 52 to 53 (indicating further that he told a Defence investigator in the field that he was not inclined to meet Defence lawyers). *See* Defence Closing Brief, para. 379.

<sup>508</sup> T-32, page 38.

<sup>509</sup> *See* Defence Closing Brief, para. 378; and T-32, page 37. The Chamber notes that this specific issue was not explored with the witness in court.

<sup>510</sup> *See* para. 343 below.

<sup>511</sup> *See* Defence Closing Brief, paras 385 to 392. *See also* Defence Reply Brief, para. 112.

<sup>512</sup> T-28, pages 15, 18, and 37 to 38.

witnesses in this regard.<sup>513</sup> Second, the witness never claimed that he personally operated the Motorola base and, in light of the questions put to him, his statement that he communicated via the base, without providing specific technical details or mentioning the involvement of the VHF operator, is plausible and credible.<sup>514</sup>

213. The Chamber further finds no support for the Defence's general contention that P-0901 lied about having listened, in real time, to conversations between commanders in the context of the operations in Kobu, Bambu, and Lipri.<sup>515</sup> In this regard, the Chamber notes that the witness recognised various excerpts of the recording played to him in court, was able to identify speakers as well as events that were discussed,<sup>516</sup> and provided sufficient explanations regarding his whereabouts at the relevant time, notably upon being confronted with apparent inconsistencies.<sup>517</sup> Similarly, the Chamber finds no support for the Defence claim that the witness fabricated evidence about having seen looted goods during the Second Operation.<sup>518</sup> The Chamber also finds that P-0901 was well placed to testify about FPLC members returning to Bunia after the Second Operation.

214. Lastly, noting the Defence challenges to the witness's evidence concerning the UPC/FPLC operations in Mongbwalu,<sup>519</sup> the Chamber will address the Defence specific arguments on a case-by-case basis in the Factual Findings, but finds no support for the Defence general assertion that most of the witness's evidence in this regard is unreliable. More specifically, regarding the witness's testimony on having seen certain goods in Mr Ntaganda's residence after the operation in Mongbwalu, the Chamber notes that the witness: (i) was able to explain the circumstances of his visit; (ii) recalled specific items he saw for the first time in the

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<sup>513</sup> Para. 116 above.

<sup>514</sup> T-28, pages 36 to 37. In this regard, the Chamber further notes that the witness's statement on this point does not refer to any specific time frame and that the questioning on this point was framed in a general and broad manner. *See* T-28, page 36.

<sup>515</sup> Defence Closing Brief, paras 393 to 398.

<sup>516</sup> T-29, pages 30 to 33 and 36 to 39 referring to DRC-OTP-0162-0115.

<sup>517</sup> T-31, pages 49 to 50. *See also* T-29, pages 11 to 16.

<sup>518</sup> *See* Defence Closing Brief, paras 399 to 400.

<sup>519</sup> Defence Closing Brief, paras 403 to 410.

residence during this visit;<sup>520</sup> (iii) indicated that he was not aware of the origin of the goods;<sup>521</sup> and (iv) rejected the Defence's suggestion that it was not possible to transport goods all the way to Bunia.<sup>522</sup> In these circumstances, the Chamber finds no support for the Defence's claim that the witness 'fabricated evidence implicating Mr Ntaganda in looting in Mongbwalu'.<sup>523</sup>

215. In light of the above, the Chamber considers that P-0901 is a credible witness.

**1) P-0907**

216. P-0907 is a man of Hema ethnicity who was living in Mongbwalu in July 2002, and then left to Bunia to join the UPC/FPLC.<sup>524</sup> He testified to having followed training in Mandro, worked as a bodyguard for UPC/FPLC commanders, and notably participated in the first UPC/FPLC attempt to liberate Mongbwalu as well as in the First Operation.

217. His evidence on these issues was characterised by a high level of spontaneity and detail. In cross-examination, the witness consistently maintained, re-affirmed or elaborated upon the statements made during examination-in-chief, or volunteered to provide the names of individuals he believed to have witnessed the same events.<sup>525</sup> Further, many aspects of the witness's evidence on these issues are consistent with the testimony of other witnesses on the same issues.

218. Moreover, the Chamber considers that due to his specific location and/or role at the time of the relevant events, the witness was well placed to provide pertinent and reliable information.<sup>526</sup> He specified when he had personal

<sup>520</sup> T-28, page 58; T-32, pages 29 to 32.

<sup>521</sup> T-29, page 58; and T-32, page 32.

<sup>522</sup> T-32, page 32.

<sup>523</sup> Defence Closing Brief, paras 411 to 415.

<sup>524</sup> T-89, pages 12 to 14.

<sup>525</sup> T-91, pages 73 to 74; and T-92, pages 46 to 47.

<sup>526</sup> See e.g. T-90, page 5; and T-90, pages 42, and 46 to 47.

knowledge of certain events,<sup>527</sup> and otherwise indicated when he did not witness something himself or was not in a position to provide additional information. It is further noted that the witness was forthcoming in providing information about his own involvement in these events, including in criminal conduct.<sup>528</sup> Although he confused on a few occasions the two successive FPLC assaults on Mongbwalu, P-0907 acknowledged his confusion,<sup>529</sup> and the Chamber is of the view that he nonetheless succeeded in providing a clear and persuasive account of the two separate events.<sup>530</sup>

219. The Chamber further notes the Defence challenges based on D-0017's testimony that he never saw P-0907 in Mandro,<sup>531</sup> Komanda,<sup>532</sup> or during the First Operation.<sup>533</sup> However, in light of its reservations concerning the credibility of D-0017, and the number of individuals having undergone training in Mandro<sup>534</sup> and participated in the First Operation, the Chamber does not consider these points to affect the reliability of P-0907's account concerning his experiences in these regards. Further, the Chamber finds that the fact that the witness testified that he did not receive a weapon before going to Tchomia<sup>535</sup> and failed the marching test<sup>536</sup> does not undermine the credibility of his testimony on his training in Mandro. Further, concerning the Defence argument that the witness's evidence concerning the nomination of Salongo Ndekezi as sector commander is unreliable,<sup>537</sup> the Chamber notes that (i) the mere fact that there was no mention in

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<sup>527</sup> See e.g. T-89, pages 45 to 46.

<sup>528</sup> See e.g. T-90, page 36; T-92, page 51.

<sup>529</sup> T-90, page 26.

<sup>530</sup> T-90, pages 19 to 26.

<sup>531</sup> Defence Closing Brief, para. 368, referring to **D-0017**: T-253: page 14.

<sup>532</sup> Defence Closing Brief, para. 205, referring to **D-0017**: T-253, page 28.

<sup>533</sup> Defence Reply Brief, para. 125, referring to **D-0017**: T-253, pages 43 to 44.

<sup>534</sup> Para. 365 below.

<sup>535</sup> See Defence Closing Brief, para. 369. Noting other evidence to the effect that not all recruits bound for Rwanda were armed (see **P-0017**: T-253, page 12; **P-0963**: T-81, pages 13 and 17), the Chamber does not consider P-0907's testimony in this regard (T-81, page 13) to be contradicted by other evidence.

<sup>536</sup> See Defence Closing Brief, para. 369. In coming to this conclusion, the Chamber notes that P-0907 explained the circumstances in which he did not pass the test, indicating that he had not completed his training and that he was not the only recruit in that situation (T-89, pages 31 to 33).

<sup>537</sup> Defence Closing Brief, para. 374, and Defence Reply Brief, paras 121 to 124.



the logbooks before 4 December 2002 of Salongo Ndekezi being sector commander does not exclude that his *de facto* appointment had taken place at an earlier date;<sup>538</sup> and (ii) in any event, P-0907's evidence remains broadly consistent, even adopting the 4 December 2002 date for Salongo Ndekezi's appointment.<sup>539</sup> Accordingly, the Chamber does not find the witness's testimony to be contradicted by the sequence of events. In relation to the Defence arguments that Salongo Ndekezi did not come along with the troops from Aru, and Sayo was not already 'occupied' when Mr Ntaganda arrived in Mongbwalu,<sup>540</sup> the Chamber considers that given the witness was not in a position to know these things first hand, given the timing of his own arrival in Mongbwalu,<sup>541</sup> and has not relied on his evidence on these points, but does not consider this to affect his credibility.

220. In light of the above, the Chamber finds no support for the Defence general contention that P-0907 fabricated evidence on having followed training in Mandro,<sup>542</sup> and on participating in the first FPLC attempt to liberate Mongbwalu,<sup>543</sup> as well as in the First Operation.<sup>544</sup>

221. Lastly, the Chamber notes the Defence allegation that the witness switched from being a Defence witness to becoming a Prosecution witness in order to support the testimony of P-0887, who also appeared as a Prosecution witness, as part of a scheme to obtain financial benefits.<sup>545</sup> In this regard, the Chamber

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<sup>538</sup> See para. 111 above.

<sup>539</sup> Even assuming that Salongo Ndekezi was appointed on 4 December 2002, this would place him as sector commander approximately 14 days after the start of the First Operation. In P-0907's account, he learned of Salongo Ndekezi's rank when he got to the *Appartements* camp (P-0907: T-92, page 48), which, according to the sequencing of events in P-0907's account, appears to have been approximately 10 days after the start of the First Operation (in P-0907's account, he came to Mongbwalu on the second or third day of the attack, and took part in the mop-up operation (P-0907: T-90, page 33, and 37 to 38), which he says lasted about a week (P-0907: T-90, pages 33 to 34), and then moved to the *Appartements* a few days after its end (P-0907: T-92, page 63). In the Chamber's view, the discrepancy of approximately four days is not significant, in particular noting that the periods given by the witness were approximations.

<sup>540</sup> Defence Closing Brief, para. 374.

<sup>541</sup> As noted above, the witness testified that he only went to Mongbwalu for the *ratissage* operation (P-0907: T-90, page 33).

<sup>542</sup> Defence Closing Brief, paras 365 to 369.

<sup>543</sup> Defence Closing Brief, para. 370.

<sup>544</sup> Defence Closing Brief, paras 371 to 374.

<sup>545</sup> Defence Closing Brief, paras 356, 359 to 363 and 419 to 421; Defence Reply Brief, paras 114 to 115.

understands that perspectives of protection-related assurances may partly explain why a witness ultimately decides to appear for the Prosecution rather than the Defence. While such decisions may in certain circumstances impact on a witness's credibility, and therefore warrant further examination, such decisions do not, in themselves, render a witness's testimony unreliable.<sup>546</sup>

222. Concerning the specific situation of P-0907, the Chamber notes that: (i) the witness provided a clear, detailed, and plausible explanation for his decision to cease cooperation with the Defence and become a Prosecution witness;<sup>547</sup> (ii) the witness demonstrated – in the view of the Chamber – a genuine intention to tell the truth, unrelated to P-0887's involvement in the case;<sup>548</sup> (iii) contradictions between the testimony of P-0907 and P-0887 on a number of issues<sup>549</sup> point to the absence of collusion between the two witnesses; and (iv) P-0907 was straightforward in his testimony concerning measures of relocation related to cooperation with the Court.<sup>550</sup>

223. In view of the foregoing considerations, and recalling its above observations on P-0907's demeanor during his testimony and the answers provided, the Chamber concludes that none of the issues raised by the Defence, individually or in conjunction with others, raise doubt concerning the general credibility of the witness.

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<sup>546</sup> See para. 84 above.

<sup>547</sup> T-91, page 10; and T-92, pages 69 to 70. In this regard, the Chamber also notes the level of detail given by the witness in relation to his meetings with the Defence (T-91, pages 5 to 12; and T-92, pages 65 to 74) and finds that the Defence claim that the witness tried to 'downplay his cooperation with the Defence' (Defence Closing Brief, para. 363) misrepresents his testimony in this regard.

<sup>548</sup> Concerning the witness's statement that he is 'ready to support everything' that P-0887 said because he is 'on her side' (T-92, page 34), the Chamber is of the view that it has to be read in its context (T-92, pages 33 to 34, a response to a Defence suggestion that the witness had made up evidence to support P-0887) and in light of the witness's other related statements (T-92, pages 66, and 69 to 71). As such, the Chamber is of the view that this reference does not suggest any intention not to tell the truth in order to support P-0887.

<sup>549</sup> See **P-0907**: T-90, pages 41 to 42, 80 to 83, and 88 to 90 *versus* **P-0887**: T-93, page 10; and T-94, page 74).

<sup>550</sup> T-92, pages 66 to 67.

224. The Chamber considers P-0907 to be a credible witness and will fully rely on his testimony, notably as providing first-hand information on the training camp in Mandro, as well as the first and second UPC/FPLC assault on Mongbwalu.

**m) P-0911**

225. P-0911 is a former UPC/FPLC soldier who testified that he worked on the administration of training camps in Mandro, Rwampara, and Lingo.<sup>551</sup> He testified to, *inter alia*, the organisational structure of the UPC, operations in and around Tchai, recruitment at the training camps, his relationship with P-0898, and three purported registration lists of UPC recruits.<sup>552</sup>

226. While the witness should have been able to provide detailed first-hand evidence by virtue of his position at the time, the Chamber observes that throughout his testimony, in examination-in-chief and cross-examination alike, the witness appeared frequently evasive,<sup>553</sup> and at times uncooperative. In addition, on a few occasions, the witness declined to provide clarifications and explanations which could reasonably have been expected of him, considering his educational background.<sup>554</sup>

227. P-0911's in-court testimony was characterised by a number of internal inconsistencies.<sup>555</sup> The Chamber further notes that on a number of important

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<sup>551</sup> T-157, pages 19 to 21.

<sup>552</sup> DRC-OTP-2081-0003, DRC-OTP-2081-0072, DRC-OTP-2081-0005.

<sup>553</sup> See e.g. the witness's demeanour when questioned about his Facebook relationship with **P-0898**: T-159, pages 29 to 30. When confronted with P-0898's testimony to the effect that he was Facebook friends with the witness, P-0911 stated that 'he can appear on Facebook without necessarily accepting an invitation' (T-159, pages 31 to 32).

<sup>554</sup> T-157, page 14.

<sup>555</sup> See e.g. T-157, pages 31 to 33 (stating that P-0898 should not take up weapons, that he took him with him to the first and second Mongbwalu operation for P-0898's protection, and that he was not taken on any military operations, was seen as a simple soldier and did not operate as a soldier); *versus* T-160, page 38 (stating, in cross-examination, when confronted with his previous statement that P-0898 did not operate as a soldier that 'it's just a misunderstanding. He was a soldier and he can operate as a soldier'); T-157, pages 35 to 36 and 38 to 39; T-159, pages 61 to 62 (explaining for DRC-OTP-2081-0005, that a named individual assisted drafting the document while he went out to relieve himself on the same day the first list was prepared, later explaining, with regard to the question of why so many individuals could have been entered in the list while he relieved

issues, the witness provided accounts which were not consistent with his written statement.<sup>556</sup>

228. Furthermore, on a number of issues, the witness provided seemingly implausible information,<sup>557</sup> especially when considered cumulatively, or information that is contradicted by other reliable evidence on the record.

229. Specifically, the Chamber notes that the witness's assertions that when he went to the Mandro training centre as a recruit, the age range of the recruits there was from 18 years upwards,<sup>558</sup> and that recruits who were under 18 years old were sent home,<sup>559</sup> is contradicted by the overall evidence provided in this case.<sup>560</sup> In this regard, the Chamber considers that the witness provided an unconvincing explanation for the fact that, despite alleged instruction not to register individuals under 18 years, the three Mandro registration lists discussed during his testimony include entries relating to individuals who would have been under 18 and even under 15 years old at the time of the events.<sup>561</sup>

230. Further in relation to the lists, allegedly prepared at Mandro training centre,<sup>562</sup> the Chamber considers that the witness was unclear as to what happened to the alleged duplicates of the lists,<sup>563</sup> and the circumstances and manner in which he

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himself, that he also dealt with some other things), page 27 (stating that he never taught P-0898 at university and did not believe having given lessons to P-0898 as a secondary school teacher) *versus* T-160, page 10;.

<sup>556</sup> T-157, page 36 (stating that the named individual who assisted with preparing the list was a recruit at the time he assisted the witness filling in the list) *versus* DRC-OTP-2083-0993, at 0997 (providing that the witness and the named individual followed military training together). When confronted with this discrepancy, the witness stated he completed military training before the named individual, and that it was the fault of the person writing down the interview and that he had asked for that information to be corrected (T-159, pages 60 to 64); T-159, pages 33 to 35 (stating, when cross-examined with regard to his written statement DRC-OTP-2083-0753, at 0757 providing that he had talked to P-0918 over the phone, that the Defence had 'just jogged [his] memory in fact', and that he had forgotten the contact because it was 'a long time ago'), and pages 35 to 36 (stating that P-0918 used to contact him at least once a night, that he was close with her and spoke to her regularly). The Chamber notes that no request to declare the witness hostile was made (T-157, page 43).

<sup>557</sup> See *e.g.* T-157, page 45; T-158, page 8.

<sup>558</sup> T-157, page 15.

<sup>559</sup> T-157, pages 19 and 40.

<sup>560</sup> See section IV.A.3.a) Recruitment.

<sup>561</sup> T-157, pages 39 to 42 and 44 to 46.

<sup>562</sup> T-157, pages 21, 24 to 25, 35 to 36, and 38 to 39; T-159, pages 61 to 62.

<sup>563</sup> T-157, pages 46 to 47; T-160, pages 37 and 46.

retrieved the lists upon the attack on Mandro.<sup>564</sup> In addition, the witness's purported reasons for keeping the lists despite alleged security concerns related to the possession thereof,<sup>565</sup> his testimony about where he stored the list referring to P-0898,<sup>566</sup> and the stated circumstances in which he retrieved the lists and handed them over to the Prosecution,<sup>567</sup> are all unpersuasive.

231. The Chamber also notes the Defence arguments that the 27 August 2002 date on two of the lists is incompatible with the date of the alleged circumstances prompting the witness to leave Mandro,<sup>568</sup> and that these documents constitute the first UPC documents in the record of the case that include a reference to the title 'FPLC'.<sup>569</sup>

232. Concerning the content of the lists, the Chamber notes that one list includes a name similar to that of P-0911,<sup>570</sup> a phenomenon for which the witness provided an, in the view of the Chamber, unconvincing explanation, stating that the entry refers to his deceased twin brother.<sup>571</sup> This list also includes biographical information roughly corresponding to that of another witness in this case,<sup>572</sup> whom the Chamber found credible, but who stated having started training in July 2002,<sup>573</sup> and denied having been asked this information upon his arrival in Mandro,<sup>574</sup> whereas P-0911 testified that arriving recruits were asked first for their

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<sup>564</sup> T-160, pages 45, and 49 to 50.

<sup>565</sup> T-157, pages 49 to 51; T-160, pages 53 to 55.

<sup>566</sup> T-160, page 58.

<sup>567</sup> T-160, pages 46, and 55 to 61. *See also* Defence Closing Brief, para. 1253.

<sup>568</sup> T-159, pages 47 to 49. *See also* Defence Closing Brief, para. 1252. When asked to specify at what time the attack on Mandro occurred, the witness stated that he was not able to provide a precise date and that to the best of his knowledge, there was an attack on Mandro (pages 49 to 50).

<sup>569</sup> *See* T-160, pages 36 to 37; Defence Closing Brief, para. 1254; and Prosecution Response Brief, para. 172.

<sup>570</sup> *See* DRC-OTP-2081-0003, entry 44.

<sup>571</sup> *See e.g.* T-157, pages 27 to 28; T-160, page 24 (stating that the entry referred to his twin brother who had the same name as him and only the given name was different); T-160, page 20 (confirming that there is no inscription on his brother's grave to enable his identification), pages 20 to 21 (stating that he has no certificate to attest to his brother's death). *See also* Defence Closing Brief, para. 1255.

<sup>572</sup> *See* DRC-OTP-2081-0003, entry 29 and **P-0963**: T-78, pages 21 to 22 (providing a month of birth and name of his mother differing from the information included in the list).

<sup>573</sup> **P-0963**: T-80, page 58.

<sup>574</sup> **P-0963**: T-81, pages 5 to 6. *See also* Defence Closing Brief, paras 1255 to 1256.

age, and then the remaining biographical details were written down.<sup>575</sup> The Chamber further notes that the lists include names of individuals, who according to other witnesses, never trained in Mandro.<sup>576</sup>

233. More generally, the Chamber observes that P-0911 denied any commission of crimes by UPC soldiers,<sup>577</sup> and displayed a tendency to downplay his own involvement in this regard.<sup>578</sup> Further, when talking about the UPC/FPLC's chain of command in Mandro, while stating that there was 'an organigram structure',<sup>579</sup> he was evasive when it came to providing concrete names.<sup>580</sup>

234. Finally, P-0911's testimony was characterised by a number of discrepancies with regard to the testimony of P-0898, whom the Chamber has found to be credible. These discrepancies concern, in particular, whether P-0911 participated in the second Mongbwalu operation,<sup>581</sup> as well as their relationship and contacts prior to their respective testimony.<sup>582</sup>

235. In light of the above issues, considered together, the Chamber finds that P-0911 is not credible and will not rely on his testimony and the documentary evidence introduced through this witness. In particular, the Chamber has serious doubts about the authenticity of the lists provided by P-0911 and will therefore not rely on them in its assessment of the evidence.

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<sup>575</sup> T-157, pages 19 to 20.

<sup>576</sup> See DRC-OTP-2081-0072, entry 19 *versus* **D-0172**: T-245, pages 36 to 37, and 80. See also **D-0038**: T-249, pages 67 to 71 (stating that he personally knows the individuals listed at entry 32 of list DRC-OTP-2081-0003, and entries 9 and 24 of list DRC-OTP-2081-0072, and that none of them did military training at Mandro in 2002-2003).

<sup>577</sup> T-157, pages 16 to 17; T-160, pages 42 to 43, and 62.

<sup>578</sup> See *e.g.* T-157, pages 19, 31, and 33 to 34.

<sup>579</sup> T-157, page 22.

<sup>580</sup> See T-157, page 20.

<sup>581</sup> See *e.g.* T-160, page 41 *versus* **P-0898**: T-154, pages 12 to 19; and T-160, pages 41 to 42 referring to DRC-OTP-2077-0235, page 0247, para. 82 *versus* **P-0898**: T-154, page 22.

<sup>582</sup> See *e.g.* T-159, pages 27 to 29 *versus* **P-0898**: T-154, pages 64 to 65; and T-159, pages 32 to 33 *versus* **P-0898**: T-154, pages 63 to 64.

**n) P-0963**

236. P-0963 is a UPC/FPLC soldier who served in Salumu Mulenda's brigade. He testified about, *inter alia*, the organisational structure of the UPC, the training of new recruits, and his participation in the First and Second Operation.
237. His evidence on these issues was rich in detail, particularly in relation to subjects where the witness possessed personal knowledge. He openly admitted when he did not know certain things, and clarified when he was relying on information provided by others, or could not remember certain facts, emphasising the time passed since the events.
238. Concerning the Defence submission that P-0963 fabricated evidence because he was coached by Prosecution intermediary P-0316,<sup>583</sup> who was also an intermediary for the Prosecution in the *Lubanga* case,<sup>584</sup> the Chamber first notes that P-0963 was generally forthcoming about his contacts with P-0316. The witness presented a clear and consistent explanation of why they initially met, and consistently rejected any suggestion that he had been influenced by P-0316.<sup>585</sup>
239. Concerning his first encounter with a Prosecution investigator, the Chamber observes that the screening note produced by the Prosecution after the relevant meeting contains a number of substantial discrepancies with the content of P-0963's testimony.<sup>586</sup> The note is however not signed, indicates that particular information 'remains to be confirmed',<sup>587</sup> and specifies that it 'was provided hastily and needs to be reviewed with the interviewee'.<sup>588</sup> In line with this, it is noted that the witness: (i) explained, for some of the note's content, that he did

<sup>583</sup> Defence Closing Brief, paras 331 and 333 to 337; and Defence Reply Brief, para. 106.

<sup>584</sup> *Lubanga* Trial Judgment, para. 294. In the *Lubanga* Trial Judgment, the Trial Chamber found that 'there are strong reasons to conclude [P-0316] persuaded witnesses to lie as to their involvement as child soldiers within the UPC' (para. 373) and that '[t]his conclusion potentially affects the Chamber's attitude to the witnesses called by the prosecution at trial with whom P-0316 had contact' (para. 374).

<sup>585</sup> See T-82, pages 52 to 81.

<sup>586</sup> See Defence Closing Brief, para. 334.

<sup>587</sup> DRC-OTP-0147-0566, at 0568, para. 14.

<sup>588</sup> DRC-OTP-0147-0566, at 0566, para. 8.

not provide the relevant information; (ii) had already requested that corrections be made before appearing before the Chamber;<sup>589</sup> (iii) insisted that the note was not read back to him at the time;<sup>590</sup> and (iv) attributed some of the apparent inconsistencies to misunderstandings by the investigators.<sup>591</sup>

240. As for the Defence's suggestion that P-0316 coached P-0963 prior to other meetings with the same Prosecution investigator on the basis of the existence and submission of two handwritten documents,<sup>592</sup> the Chamber notes that P-0963 stated to have prepared the first note because, at a prior meeting, he was asked by the investigator to write down the names of some officers, but was not in a position to start writing at the time since they were meeting inside a vehicle.<sup>593</sup> The witness further expressed that he needed to 'think about things and then write them down'.<sup>594</sup> Given the above, the Chamber considers that P-0963 provided a satisfactory explanation for the production of the two documents.

241. In addition, concerning certain inconsistencies put forward by the Defence as further indication of coaching by P-0316,<sup>595</sup> the Chamber notes the mention of the killing of *Abbé* 'Bwanalungwa' on the order of Mr Ntaganda, and of civilians massacred in Sayo, in one of the above-mentioned handwritten documents. While noting that, in his testimony, the witness did not refer to the *Abbé* being killed on Mr Ntaganda's order,<sup>596</sup> the Chamber does not consider that this reference in the document is, in itself, suggestive of coaching. Likewise, the Chamber finds that

<sup>589</sup> T-82, pages 70 to 71; and DRC-OTP-2092-0055, at 0061 and 0063.

<sup>590</sup> T-82, pages 85 to 86.

<sup>591</sup> T-82, pages 69 to 74.

<sup>592</sup> See Defence Closing Brief, paras 336 and 337, referring to DRC-OTP-0147-0333 and DRC-OTP-0149-0049.

<sup>593</sup> T-82, pages 77 and 79.

<sup>594</sup> T-82, page 78. See also, T-82-FRA, page 85. The Chamber has duly considered the Defence suggestion that the following statement from P-0963 is indicative of coaching: 'if the ICC gave me some names, names of commanders that had led during a particular fight, I needed to refresh my memory' (Defence Closing Brief, paras 337, referring to T-82, page 81). The Chamber notes, in this regard, that it has relied on the corresponding French transcript as reflecting more accurately the witness's relevant statement ('*Ce que moi je faisais, c'était quand on a parlé, avec [...], elle me dit: « Si tu peux me donner quelques noms ou bien de quelques commandants qui vous ont dirigés pendant tel, tel, tel combat » Il fallait réfléchir et puis écrire.*') and dismisses the related Defence suggestion.

<sup>595</sup> Defence Closing Brief, paras 336 and 337, referring to DRC-OTP-0147-0333 and DRC-OTP-0149-0049.

<sup>596</sup> T-79, pages 23 to 25.



the Defence failed to explain why the mere reference in this document to civilians massacred in Sayo, an allegation made by other witnesses in this case, would be indicative of coaching. Concerning inconsistencies identified by the Defence in the second handwritten document, the Chamber notes the witness's statement that it refers to events that he did not personally witness,<sup>597</sup> and therefore finds that the issues arising from this material do not affect P-0963's general credibility.

242. In view of the foregoing, and having considered the overall involvement of P-0316 in the Prosecution's contacts with P-0963, the Chamber finds no indication that the witness was coached by intermediary P-0316.

243. Turning to the witness's evidence related to his training in UPC/FPLC camps, the Chamber generally observes that his testimony is detailed and consistent with the testimony of other witnesses.<sup>598</sup>

244. More specifically, regarding the Defence's claim that the witness remained in school until July 2002,<sup>599</sup> the Chamber considers that: (i) the witness's school records<sup>600</sup> are not necessarily incompatible with him attending training in Katoto around April and May 2002;<sup>601</sup> (ii) the contradiction with the testimony of Mr Ntaganda and D-0017 on the issue as to whether or not the training in Katoto had been interrupted by an attack<sup>602</sup> does not undermine the overall credibility of

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<sup>597</sup> T-82, page 78.

<sup>598</sup> See section IV.A.3.b) Training.

<sup>599</sup> See Defence Closing Brief, paras 338 to 345.

<sup>600</sup> See Defence Closing Brief, para. 340, referring to a *palmarès scolaire* ('school record', DRC-OTP-0118-0020) and a *bulletin scolaire* ('school transcript', DRC-D18-0001-0508), and arguing that P-0963 completed the 2001-2002 academic year, took the exams, and therefore did not attend training in Katoto. See also Defence Reply Brief, paras 103 and 104; Prosecution Response Brief, para. 62.

<sup>601</sup> In coming to this conclusion, the Chamber notes that: (i) the school transcript appears to be dated December 2001, and as such, would not necessarily indicate that the witness completed the 2001-2002 school year; (ii) P-0551 testified to the effect that headmasters had some discretion to allow students who had abandoned school to reintegrate school (see T-197, pages 28, and 71 to 72); and (iii) the school transcript and the school record both refer to precisely the same grade, which may be considered as suggesting that the December 2001 results were copied at the end of the 2001-2002 school year.

<sup>602</sup> See Defence Closing Brief, paras 338 to 340 and Defence Reply Brief, para. 103, arguing that the training in Katoto was never interrupted due to an attack. The witness's testimony on being driven out of Katoto bears some similarity with Mr Ntaganda's description of an APC attack on Mandro in early June 2002, whereupon recruits fled to Katoto (D-0300: T-214, page 12). As for the testimony of D-0017, the Chamber refers to its reservations concerning this witness's credibility as set out below.

P-0963's account concerning his alleged training in Katoto; and (iii) it cannot find fault with the witness's hesitations and, ultimately, his approximation, of the timing of his training.<sup>603</sup>

245. Concerning the training in Mandro starting in July 2002, the Chamber considers that neither the alleged inconsistencies concerning the precise location of the training,<sup>604</sup> nor the Defence allegations pertaining to the witness's inability to remember the names of instructors,<sup>605</sup> or fellow recruits,<sup>606</sup> the inaccurate identification of the head of the training centre,<sup>607</sup> the failure to know of fighting by Mr Ntaganda against Lendu 'combatants' in Mudzipela,<sup>608</sup> the lack of evidence supporting P-0963's claim that he joined the UPC as a result of an attack on Mabanga,<sup>609</sup> or his statement that he had not received a weapon before travelling

<sup>603</sup> The Chamber is mindful that P-0963's testimony on the timing of his training in Katoto is unclear (*see* T-80, pages 63 to 70) and inconsistent with a prior statement (*see* T-80, page 69). It however notes that the witness admitted in court that he had got the timeline wrong (T-80, page 70) and that this training was mentioned for the first time during cross-examination (T-80, page 66).

<sup>604</sup> *See* Defence Closing Brief, para. 341, arguing that P-0963's testimony contains internal inconsistencies as well as inconsistencies with prior statements concerning the location of the training, and notably in relation to the witness's assertion that the training took place in Saikpa, arguing that in July 2002, training was conducted in Kudja. In this regard, the Chamber notes that there is evidence suggesting that Saikpa, Kudja and Mandro are in the same area and sometimes considered to be the same place (**P-0907**: T-91, pages 57 to 59; **P-0898**: T-155, pages 34 to 35; **P-0014**: T-137, page 93. *See also* **D-0300**: T-214, page 11).

<sup>605</sup> *See* Defence Closing Brief, para. 342. The Chamber notes that the witness indicated that there were many persons who trained him in Mandro, but might not remember their names or other specifics, emphasising the time passed since the events (T-78, page 38. *See also* T-80, pages 83 to 84).

<sup>606</sup> *See* Defence Closing Brief, para. 342. The Chamber notes that the question whether the witness remembered any names of the people who left Mabanga together with him to go to Mandro, and the related answer, were confined to the issue of individuals that would have been 13 or 14 years old (*see* T-78, page 31).

<sup>607</sup> *See* Defence Closing Brief, para. 342, noting that the witness wrongly identified a named individual as being the commander and did not know that another individual was the commander of Mandro in July 2002, referring to T-78, pages 37 to 38 as maintained in cross-examination (T-80, pages 83 to 84). The Chamber notes that evidence pointing towards another individual being the commander of the Mandro training centre supports the Defence claim that the witness's testimony in this regard is factually inaccurate. However, the Chamber also notes that Mr Ntaganda testified that the named individual fulfilled a certain role in Mandro and trained recruits. Accordingly, this inaccuracy is limited to attributing the incorrect position to the named individual. Noting further the position of the witness at the time vis-à-vis the named individual, the Chamber considers that this apparent factual inaccuracy does not have any bearing on the overall credibility of P-0963's testimony on his training in Mandro.

<sup>608</sup> Para. 446 below. *See* Defence Closing Brief, para. 342. Noting the witness's alleged personal position as a recruit at the relevant time, the Chamber considers that his ability to know and observe certain facts may have been limited, and accordingly, failure to know these facts does not, in itself, undermine the credibility of his testimony on having been trained in Mandro.

<sup>609</sup> *See* Defence Closing Brief, para. 343. The Chamber notes that the witness distinguished the attack he stated was the trigger for joining the UPC from another attack which, according to the Defence, took place on 28 August 2002 and of which the witness stated he had no knowledge (T-81, pages 60 to 61). The Chamber

from Mandro to Tchomia,<sup>610</sup> affect the overall credibility of his account in his regard. Likewise, the Chamber does not discern any substantial discrepancy in the witness's testimony on his employment at Chief Kahwa's residence that would affect his credibility.<sup>611</sup>

246. With reference to the Defence's claim that the witness provided false evidence about his participation in the First Operation,<sup>612</sup> the Chamber generally observes that his testimony in this regard appears clear and detailed, both during the examination-in-chief and cross-examination. Notably, in response to Defence assertions that he had fabricated parts of his evidence or that some of his statements were incorrect, the witness maintained the information given to the Prosecution, while providing additional details. He generally specified the basis for his knowledge,<sup>613</sup> clarified when he did not see a certain event himself,<sup>614</sup> or was not able to answer a question.<sup>615</sup> Moreover, the Chamber notes that certain details concerning the Mongbwalu and Sayo assaults provided by P-0963 are consistent with the details provided by other witnesses who testified to having participated in these operations or to having been present in Mongbwalu following the attack.<sup>616</sup>

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further considers that this issue, without more, is not of sufficient significance to affect the general credibility of the witness's testimony on having attended training in Mandro.

<sup>610</sup> See Defence Closing Brief, para. 344; and Defence Reply Brief, para. 105. Noting other evidence to the effect that not all recruits bound for Rwanda were armed (*see* **P-0017**: T-253, page 12; **P-0907**: T-92, page 13), the Chamber does not consider P-0963's testimony that he 'went to receive the weapons in Tchomia' (T-81, page 13) to be contradicted by other evidence.

<sup>611</sup> See Defence Closing Brief, paras 345 and 339. The Chamber notes that although P-0963 confirmed having received a weapon in Tchomia from a shipment from Rwanda, and having left from there for further training in Rwanda (*see* T-81, pages 13, 17, and 24), he also testified that he received a weapon before being stationed at Chief Kahwa's headquarters (T-78, page 53) and that he was armed while working there (T-80, pages 57 to 58). The Chamber further notes that it was not suggested to the witness that the only weapon he could have had as a guard to Chief Kahwa was the one he obtained in Tchomia. *See also* Prosecution Response Brief, para. 67. As for the alleged discrepancy with a prior statement concerning the timing of his presence at Chief Kahwa's residence, the Chamber notes that the issue was fully explored in cross-examination during which the witness maintained the timing stated during examination-in-chief and explained that he had mistimed this period in his prior statement (T-80, pages 61 to 69; T-81, pages 24 to 26).

<sup>612</sup> See Defence Closing Brief, paras 331, 346, 349, and 352; and Defence Reply Brief, paras 97 to 100.

<sup>613</sup> See *e.g.* T-78, pages 78 and 80.

<sup>614</sup> See *e.g.* T-79, pages 31 to 32.

<sup>615</sup> See *e.g.* T-78, page 73, 75 to 76, and 81; and T-80, page 40.

<sup>616</sup> See section IV.B.7.d) Unfolding of the First Operation.

247. In light of the foregoing, and bearing in mind the time passed since the events, the Chamber considers that the Defence submissions pertaining to the witness's inability to remember certain events,<sup>617</sup> to accurately identify Sayo on a map,<sup>618</sup> contradictions with other evidence concerning the firing of heavy weapons,<sup>619</sup> or lack of corroboration for certain statements,<sup>620</sup> do not affect the credibility of his account concerning his participation in the First Operation.

248. Lastly, the Chamber notes generally that the witness provided a detailed account of the Second Operation, describing events, as they unfolded, by reference to his own participation.<sup>621</sup> Indeed, the Chamber considers that the

<sup>617</sup> Defence Closing Brief, para. 353, concerning an alleged post-Sayo officers' meeting, testified to by Mr Ntaganda, which, the Chamber notes, was not remembered by P-0017 either (*see* T-62, pages 67 to 68); Defence Closing Brief, para. 348 and Defence Reply Brief, para. 98, concerning the identity of the person responsible for the heavy weapons section, which the Chamber does not consider to be significant; Defence Closing Brief, paras 348 and 350, and Defence Reply Brief, para 99, concerning P-0963's alleged lack of knowledge of an ammunition exchange between Salumu Mulenda's brigade and Seyi's forces, and related arguments regarding his testimony on the timing of the liberation of Sayo, subjects on which, the Chamber notes, the witness emphasised that he did not remember precise details (*see* **P-0963**: T-82, page 24; T-82, page 34); Defence Closing Brief, para. 353, concerning Floribert Kisémbu's arrival in Mongbwalu by plane shortly after the attack on Sayo and the witness's statement that he only knew that Kisémbu arrived in Mongbwalu from Kilo by car, three weeks later, which, the Chamber notes, appears consistent with the testimony of P-0017 (T-62, pages 68 to 69, and 71). With reference to the Defence claim that this suggests that neither of the two witnesses were in Mongbwalu at the relevant time (*see* Defence Closing Brief, paras 304 to 308 and 353), the Chamber notes that: (i) the two witnesses provided consistent accounts of having moved to the *Appartements* after the attack and remaining in Mongbwalu after the Sayo operation (*see* **P-0963**: T-78, pages 88 to 89; T-79, pages 17 to 20; and T-82, page 88; and **P-0017**: T-62, page 57; T-63, page 8); (ii) the two witnesses provided similar accounts of prisoners being held at the *Appartements* camp during the First Operation, also compatible with the accounts of other insiders (*see* footnote 1573 below); and (iii) P-0963's evidence about seeing *Abbé* Bwanalunga at the *Appartements* camp and having learned that he had been killed from other soldiers during the operation while he himself was still in Mongbwalu, but that he did not know who shot the *Abbé*, and could not answer whether the *Abbé* was shot while he was still held by the UPC (**P-0963**: T-79, pages 23 to 25), is consistent with Mr Ntaganda's testimony that the *Abbé* was brought there for interrogation shortly after the takeover of Mongbwalu (**D-0300**: T-217, pages 72 to 73; and T-237, pages 2 to 3). Further, noting certain differences between the witnesses' accounts on other issues, the Chamber considers that there are no signs of collusion between the two witnesses on this part of their testimony.

<sup>618</sup> Defence Closing Brief, para. 349. In this regard, the Chamber notes that while the witness's identification appeared indeed inaccurate (DRC-REG-0001-0023, annotation number (8); T-82, pages 38 to 39), it was reasonably close to Sayo and other identifications are consistent with the locations relevant to the First Operation (*see* annotations (1), (2) and (7) which are consistent with, for example, Mr Ntaganda's annotations on DRC-REG-0001-0068 (*see* **D-0300**: T-217, pages 44 to 46). *See also* Prosecution Response Brief, para. 69.

<sup>619</sup> Defence Closing Brief, paras 348 and 352; and Defence Reply Brief, paras 98 and 100. *See* section IV.A.2.f) Weapons, ammunition, and other material.

<sup>620</sup> Defence Closing Brief, para. 351 and Defence Reply Brief, para. 100; Defence Closing Brief, para. 353. In this regard, the Chamber notes that P-0963's evidence on the return of certain officers to the *Appartements* after the Mongbwalu operation (T-78, page 88; T-79, page 23; T-82, page 29 to 30, and 40 to 41) is consistent with the testimony of P-0017 in this regard (**P-0017**: T-58, page 81; T-59, page 16; and T-62, page 55 to 56).

<sup>621</sup> The Chamber considers that the Defence assertion that a significant portion of P-0963's testimony about the events in Kobu-Bambu-Lipri in February 2003 rests on hearsay and/or unreliable evidence (*see* Defence Closing Brief, para. 354) is not an accurate description of his testimony.

Defence's arguments based on discrepancies with the testimony of P-0017,<sup>622</sup> untruthfulness of the witness's statement that David Pigwa was interrogating prisoners in Kobu,<sup>623</sup> and that 'everything was torched in Kobu',<sup>624</sup> or lack of corroboration in relation to certain details of the witness's account,<sup>625</sup> do not support its claim that P-0963 did not participate in the Second Operation.<sup>626</sup> The Chamber has no reason to doubt his credibility on this point.

249. In view of the above, the Chamber considers P-0963 to be a credible witness.

**o) D-0017**

250. D-0017 is a former UPC/FPLC member who worked as a bodyguard for a UPC commander,<sup>627</sup> and then Mr Ntaganda.<sup>628</sup> He testified to having followed military training in Mandro and about the structure of the UPC/FPLC, his role and activities as a bodyguard for Mr Ntaganda, and his involvement in various military operations.

251. The Chamber notes that, while on some issues the witness answered with a significant level of detail, on other issues, D-0017's demeanour was evasive, and,

<sup>622</sup> See Defence Closing Brief, para. 354. The Chamber notes that the Defence general argument is not supported by any concrete reference or the Chamber's analysis of the evidence. As for the Defence's claim that P-0963 testified that he arrived on the day of the attack on Kobu, whereas P-0017 testified that P-0963 arrived after the attack along with reinforcements (*see* Defence Reply Brief, para. 101), the Chamber notes that P-0017 stated that P-0963 came for reinforcement 'after having taken Kobu' (T-59, pages 63 to 64), whereas P-0963 testified to having participated in the taking of Kobu without making this distinction (T-79, page 50). In view of the foregoing, the Chamber does not consider their accounts to be incompatible.

<sup>623</sup> See Defence Closing Brief, para. 355; and Defence Reply Brief, para. 102. The Defence argues that this assertion is not possible because David Pigwa was jailed prior to the operation in Kobu. In this regard, the Chamber observes that the evidence suggests that David Pigwa was imprisoned on more than one occasion (**P-0017**: T-63, page 54; **P-0043**: T-190, page 96; and **D-0300**: T-213, page 86; T-222, pages 68 to 69; and T-233, page 54) and that there is conflicting evidence as to whether David Pigwa was released from detention at the time of the Second Operation (**D-0300**: T-222, pages 68 to 69 *versus* **P-0055**: T-71, pages 27, 42 to 43; T-72, pages 3 to 5; T-74, pages 48 to 49; and **P-0017**: T-58, page 45).

<sup>624</sup> See Defence Reply Brief, para. 101. The Chamber notes that the satellite image (DRC-OTP-2099-0166 at 0192) relied upon by the Defence to undermine the witness's statement that '[e]verything was torched' in Buli (T-79, page 78) appears to predate the Second Operation.

<sup>625</sup> See Defence Reply Brief, para. 101.

<sup>626</sup> Defence Closing Brief, para. 331; and Defence Reply Brief, para. 97.

<sup>627</sup> T-254, page 65.

<sup>628</sup> T-253, page 32; and T-255, page 17.

in cross-examination, at times uncooperative.<sup>629</sup> In relation to certain questions concerning crucial matters, the witness did not answer in a straightforward manner,<sup>630</sup> or appeared inconsistent.<sup>631</sup>

252. The witness acknowledged being close to Mr Ntaganda, whom he considers to be his ‘elder brother’,<sup>632</sup> and having at some point received financial assistance from him,<sup>633</sup> but denied that this had had any impact on his decision to testify in this case.<sup>634</sup> However, concerning the personal conduct of the accused – apart from D-0017’s statement that he saw Mr Ntaganda executing a soldier who had committed theft to serve as an example<sup>635</sup> – the witness generally displayed a tendency to negate knowledge of any potentially incriminating facts.<sup>636</sup> The Chamber notes that the witness appeared cautious not to make generalised assertions,<sup>637</sup> and not to testify about what he had not personally seen or heard,<sup>638</sup> and that he insisted that his testimony was based on what he believes to

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<sup>629</sup> See e.g. T-254, page 13 (when presented with a document, the witness stated that he does not know what kind of questions he will be asked and that he can only speak about things he has seen or knows, prompting the Presiding Judge to remind the witness not to oppose questions put to him) and, pages 29 to 30 (when questioned in relation to allegations of rape in a MONUC report, DRC-OTP-0152-0256 at 0262, the witness responded by requesting the Prosecution to ask a question that concerns him, that there is some confusion in the question, prompting the Presiding Judge to warn the witness to stop with his style to tell counsel which questions should be put to him and not to respond any questions); and T-255, pages 14 to 15 (when questioned whether he heard about the ‘Kobu massacre’, the witness stated that he cannot reply to facts which he has not heard of or experienced).

<sup>630</sup> See e.g. T-253, page 57.

<sup>631</sup> See e.g. D-0017’s account regarding the presence of P-0010 in Mongbwalu: the witness first spontaneously listed P-0010 as being one of the people present during the first assault on Mongbwalu (T-253, pages 32 to 34), however, – after having been refreshed his memory with his written statement – later stated to have only met P-0010 during the second assault on Mongbwalu, called the ‘war of 48 hours’ (T-253, pages 34 and 38; and T-254, pages 41 to 42).

<sup>632</sup> T-255, page 39.

<sup>633</sup> T-255, page 39.

<sup>634</sup> T-255, pages 42 to 43.

<sup>635</sup> T-252, page 65.

<sup>636</sup> See e.g. T-253, pages 16, 52 to 53, 61 and 68; T-254, pages 37 to 39, and 59 (stating that he did not see any dead civilians or civilians being killed during the Sayo operation, that he did not enter the church at Sayo and kill civilians, and that he had no knowledge of Mr Ntaganda ordering his escorts to kill them). With regard to this last statement, the Chamber notes a potential inconsistency in the witness’s account as to whether or not he entered the church. Indeed, while initially stating that he did not enter the church (T-254, page 59), he later, when asked whether any civilians were killed by UPC/FPLC forces in Mongbwalu or Sayo, spontaneously stated, among other things: ‘And even in the church I did not see the dead bodies of people who had been killed’ (T-254, pages 62 and 64).

<sup>637</sup> T-254, pages 28 and 32.

<sup>638</sup> T-254, pages 79 to 80, and 96; and T-255, pages 14, and 18 to 19.

remember.<sup>639</sup> Overall, the Chamber considers that his testimony reflects a concern not to provide any incriminating evidence with regard to the accused.

253. D-0017's testimony included a number of assertions that the Chamber finds implausible, both in themselves and with regard to the overall evidence presented in this case. Namely, D-0017 indicated that the minimum age for recruits was 18 years, and categorically stated that he never saw any recruits aged under 18 years in Mandro.<sup>640</sup> Contrary to other witnesses in this case, he presented the living conditions in the training camp as very positive, notably with respect to food rations,<sup>641</sup> general conditions,<sup>642</sup> and the manner in which recruits were punished for any purported mistakes or misconduct.<sup>643</sup>

254. D-0017 generally denied the commission of crimes by the UPC/FPLC or having personal knowledge thereof.<sup>644</sup> Specifically, he stated that in Mandro, recruits were told to protect the members of the population and their property regardless of their ethnicity,<sup>645</sup> and that they were taught to fire at the enemy only in the direction of where the fire was coming from,<sup>646</sup> which, as set out in the Factual Findings, stands in contrast to the consistent evidence provided by a number of credible witnesses.

<sup>639</sup> T-252, pages 64, 70, 72, 74, and 78; and T-253, pages 14, 28, 49, 54, and 68.

<sup>640</sup> T-252, page 53; and T-253, pages 81 to 83.

<sup>641</sup> T-252, page 63; and T-254, pages 17 to 18, and 22 referring to DRC-OTP-0152-0286. *See* para. 375 below. While the availability of food and the amount provided to the recruits may have differed over time, and the witnesses who testified to eating only once a day may not have been in Mandro at the same time as D-0017, the Chamber notes that the manner in which D-0017 describes the food at Mandro appears to be very positive, which does not appear plausible when compared to the other evidence on the record. The repeated positive answers provided by the witness reinforce the impression of the Chamber that he did not want to provide any incriminating evidence with regard to the accused.

<sup>642</sup> T-252, page 64; T-254, page 22 referring to DRC-OTP-0152-0286. *See* para. 375 below.

<sup>643</sup> T-252, pages 64 to 65; and T-254, pages 7 to 8 and 16 to 17 referring to DRC-OTP-0109-0136 at 0141. *See contra* para. 376 and 377 below.

<sup>644</sup> *See e.g.* T-252, pages 69, 73, 77; T-253, pages 44 to 45; and T-254, page 28. In this regard, the Chamber notes that the testimony of D-0017 on the behaviour of troops attacking Zumbe and Komanda is incompatible with the other evidence on the record on these operations (*See* paras 457, and 463 and 464 below; and section III.D.2.1) P-0907 above).

<sup>645</sup> T-252, page 59.

<sup>646</sup> T-252, pages 59 to 62.

255. In view of all of the above issues, considered together, the Chamber finds that D-0017's testimony lacks in credibility and will not rely on it.

**p) Mr Ntaganda, D-0300**

256. Mr Ntaganda testified<sup>647</sup> about his role as FPLC Deputy Chief of Staff as well as his involvement in the planning and unfolding of the First Operation. He otherwise stated not to have been involved in the Second Operation and denied that children under 15 years of age were recruited into and later on formed part of the UPC/FPLC troops, or were subjected to sexual violence.

257. Mr Ntaganda appeared before the Chamber as the second witness in the Defence's presentation of evidence, between 14 June and 13 September 2017, over the course of 30 court days.<sup>648</sup> Mr Ntaganda was composed throughout his testimony and prudent in providing his evidence.<sup>649</sup> While he generally answered all questions put to him, he was on limited occasions more hesitant, and avoided answering directly a few questions put to him by the Prosecution on certain contested matters.<sup>650</sup>

258. Mr Ntaganda's testimony was detailed and comprehensive, and touched on all matters relevant for this case. Taking into account its length and complexity, the Chamber found the testimony of Mr Ntaganda to be internally consistent, and notes that only a limited number of discrepancies on discrete issues were identified.

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<sup>647</sup> It is noted that Mr Ntaganda also made an unsworn statement at the opening of the trial, as provided for by Article 67(1)(h) of the Statute (T-24, pages 74 to 76). The Chamber did not consider this unsworn statement as forming part of the trial record within the meaning of Article 74(2) (T-24, pages 73 to 74. *See also Ngudjolo Trial Judgment*, para. 67; and *Katanga Judgment*, para. 101).

<sup>648</sup> T-209; T-211 to T-235; T-236 to T-243. The Chamber recalls that as a result of the summer recess, a 37-day break occurred between the seventh day of the cross-examination by the Prosecution and the remainder of the cross-examination.

<sup>649</sup> The Chamber observes, for example, that Mr Ntaganda appeared more at ease and spontaneous when providing evidence about opposing armed groups, such as FRPI (*see* T-230, pages 3 to 20).

<sup>650</sup> *See e.g.* T-225, pages 41 to 42; T-229, pages 61 to 62; T-230, pages 37 to 41; and T-231, pages 56 to 57.



259. Mr Ntaganda stated that he fought and took part in putting an end to the genocide in Rwanda.<sup>651</sup> The Chamber considers the testimony of Mr Ntaganda regarding his suffering from the experience during the Rwandan genocide credible,<sup>652</sup> as well as his experience of the objective discrimination against the Tutsis during his youth, notably in the region of Eastern Congo.<sup>653</sup>

260. Mr Ntaganda affirmed that the FPLC, and he as a commander, had the objective of protecting the civilian population and their property.<sup>654</sup> As regards the training of soldiers in the UPC/FPLC he explained that ideological training formed part of it as follows:

Well, briefly it was about getting them to understand military ideology according to which each soldier had to be disciplined, they needed military discipline. They had to be taught that soldiers ensure the safety and security of civilian[s] and their property. Thirdly, a soldier must fight against other soldiers. Fourthly, they were taught that discipline and morale is the main weapon of all soldiers. And the fifth point, they were taught that the army or soldiers must follow the chain of command and they must show discrimination -- they must show discipline without discrimination towards civilians.<sup>655</sup>

261. As discussed in the present Judgment, the Chamber does not find Mr Ntaganda credible when he affirms that he always fought and acted, including in 2002 and 2003, for the liberation and freedom of the civilian population in general in Ituri and that this revolutionary ideology was governing the functioning of the UPC/FPLC. The Chamber observes that this statement is clearly contradicted by the other available evidence on the record which shows that at least a part of the civilian population in Ituri, in particular the Lendu, was actually the target of violent acts by the UPC/FPLC in 2002 and 2003.

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<sup>651</sup> T-211, page 50. *See also* T-209, page 41 ('I remember that when we put an end to the genocide in Rwanda, our superiors told us that what we had just seen, those of us soldiers, if possible, we had to do everything to prevent this from happening again in Africa. And this was in my mind wherever I went. I testified about that. And I told myself that I do not wish to see any community, any other community experience what my own community went through.').

<sup>652</sup> T-209, pages 39 to 41.

<sup>653</sup> T-211, pages 17, 31, and 33. *See also* DRC-OTP-0214-0091, at 0094.

<sup>654</sup> T-221, page 81.

<sup>655</sup> T-214, pages 4 to 5.

262. The Chamber has taken Mr Ntaganda's testimony into consideration regarding all relevant aspects of the Judgment, and, where appropriate, relied on it for findings of fact. In doing so, the Chamber has assessed the probative value of Mr Ntaganda's evidence in the context of the totality of the evidence. In instances where the evidence provided by Mr Ntaganda is contradicted by other evidence, the Chamber has also considered, on a case-by-case basis and where appropriate, the possibility that Mr Ntaganda had an incentive to provide exculpatory evidence. The Chamber's findings and the reasoning on such points are laid out at appropriate places in the factual findings section of this Judgment.<sup>656</sup>

### **3. Defence's allegations of collusion of witnesses and use of intermediaries**

263. The Defence challenges the testimony of a number of Prosecution witnesses, arguing that they were coached and encouraged to lie, notably by Prosecution intermediary P-0154.<sup>657</sup> Specific allegations of contamination are made by the Defence in relation to the 'pacification meeting' and 'Kobu massacre'.

264. P-0154, who did not testify himself, served as a Prosecution intermediary between 2005 and 2009, mainly for the investigation into crimes allegedly committed during the attacks on Lipri, Bambu, and Kobu in 2003.<sup>658</sup> By virtue of

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<sup>656</sup> See e.g. IV.A.3 Recruitment, training, and assignments of UPC/FPLC soldiers, notably in relation to the issues of the recruitment and use of individuals under 15 by the UPC/FPLC, including the use of bodyguards under the age of 15 by Mr Ntaganda himself, and conditions at training camps, and IV.B The operations involving the UPC/FPLC, notably in relation to the conduct of the various operations and the commission of crimes by UPC/FPLC soldiers in that context.

<sup>657</sup> Defence Closing Brief, paras 331 to 337, 818, 851 to 853, and 857 to 872; Defence Reply Brief, paras 106 and 312 to 339. See also Urgent Request on behalf of Mr Ntaganda seeking disclosure of material related to Intermediary P-0154 as well as the lifting of redactions applied to this material, 15 September 2016, ICC-01/04-02/06-1509-Conf-Exp. The Defence submissions on the influence of intermediary P-0316 on P-0963 has been discussed in the individual credibility assessment for P-0963 above.

<sup>658</sup> Prosecution Response Brief, para. 130.

his role and responsibilities at the time,<sup>659</sup> P-0154 was in contact with many potential<sup>660</sup> and actual Prosecution witnesses.<sup>661</sup>

#### a) Preliminary consideration

265. The Chamber understands the Defence submissions on the alleged existence of earlier attacks on, *inter alia*, Kobu, to suggest that some witnesses, under the influence of collusion, may have confused events which, according to their testimony, took place during the Second Operation, with similar events that occurred in the area in 2001-2002, and which, as demonstrated by evidence referred to by the Defence, shared certain common parallels with the events during the Second Operation.<sup>662</sup> However, the Defence refers to a potential danger of collusion which ‘*could* have a major impact’,<sup>663</sup> but does not point to actual instances where witnesses did in fact confuse earlier incidents with those charged as part of the Second Operation. As such, the Defence preliminary argument is speculative and, without more, does not indicate that any collusion took place. Nonetheless, the Chamber will take these circumstances into account when assessing the evidence on the charged incidents for the Second Operation particularly, in addition to other relevant factors concerning the recollection of the timing of events.

<sup>659</sup> **P-0300**: T-167, page 52; **P-0127**: T-141, page 11; **P-0245**: T-142, pages 95 to 96. *See also* Prosecution Response Brief, para. 132; DRC-OTP-2095-0089, at 0094; DRC-OTP-2096-0566, at 0571; and Prosecution response to the “Redacted version of ‘Urgent Request on behalf of Mr Ntaganda seeking disclosure of material related to Intermediary P-0154 as well as the lifting of redactions applied to this material’”, ICC-01/04-02/06-1509-Conf-Red, 20 September 2016, ICC-01/04-02/06-1519-Conf, paras 14 to 15 (‘Prosecution’s Response to Disclosure Request’).

<sup>660</sup> P-0099, P-0104, P-0107, P-0120, P-0283, P-0140. P-0104, P-0107, and P-0120 are mentioned in DRC-D18-0001-0414, whereas the remaining witnesses are listed in Prosecution’s Response to Disclosure Request, ICC-01/04-02/06-1519-Conf, para. 16.

<sup>661</sup> P-0018, P-0019, P-0100, P-0105, P-0106, P-0108, P-0113, P-0300, P-0301, and P-0792, as well as P-0027, P-0039, P-0103 under Rule 68(2)(b). *See* DRC-D18-0001-0414.

<sup>662</sup> Defence Closing Brief, paras 853 to 856.

<sup>663</sup> Defence Closing Brief, para. 853 (emphasis added).

**b) General allegation of undue influence and collusion**

266. The Chamber now turns to the Defence argument that intermediary P-0154, working closely with witnesses P-0300, P-0790,<sup>664</sup> P-0792, and P-0127 ('Four Witnesses'), exercised 'pervasive influence' during the investigations relating to the Second Operation.<sup>665</sup>

267. In this regard, the Chamber recognises that investigations are conducted in an environment which is not always safe, and that there may be a need to use intermediaries instead of investigators to establish contact with witnesses and monitor their security. In the present case, the Chamber notes that it is not in dispute that P-0154 facilitated the Prosecution's contact with the witnesses in question, nor that the Four Witnesses also played a role in the investigation relating to the Second Operation.<sup>666</sup> It also follows from the evidence that P-0154 sometimes met more than one witness at the same time.<sup>667</sup> The *listes de présences* constitute reports on the witnesses' situation, which reflect P-0154's role within the framework of the investigation<sup>668</sup> and is confirmed by the work plan set out in P-0154's NGO report.<sup>669</sup>

268. As previously emphasised, the fact that witnesses, or potential witnesses, had the opportunity to meet in the course of their Court-related interaction with the intermediary is not, in and of itself, indicative of any collusion or improper influence.<sup>670</sup> Rather, it requires additional inquiry into whether, and to what

<sup>664</sup> In relation to this witness, the Defence notes that he was the direct contact for P-0018, P-0019 and P-0113, and that his testimony that three women were raped in Kobu 'is yet another indication of the lasting impact of P-0154's practices, yet another indication that the contamination and coaching arising therefrom continued right up to the moment of trial' (Defence Reply Brief, para. 339).

<sup>665</sup> Defence Closing Brief, paras 851 to 872; Defence Reply Brief, paras 312 to 319, 320 to 321. In relation to the allegation that P-0019 lied about not knowing P-0113, the Chamber notes that the wrong name was read to the witness, as also acknowledged by the parties (*see* Prosecution Response Brief, para. 127 and Defence Reply Brief, para. 319). The Chamber notes that the Defence also refers to P-0154's contact with P-0022 (Defence Closing Brief, paras 672 to 673).

<sup>666</sup> Prosecution Response Brief, paras 130, 132, and 137 to 138.

<sup>667</sup> **P-0100:** T-132, pages 47 to 48; DRC-OTP-2090-0406; and DRC-OTP-2092-0229.

<sup>668</sup> *See also* Prosecution Response Brief, para. 143.

<sup>669</sup> DRC-OTP-2095-0089, at 0089.

<sup>670</sup> ICC-01/04-02/06-1539, para. 6.

extent, the evidence given by the witnesses contacted by the intermediary in question may be tainted.<sup>671</sup>

269. The Defence bases its allegations of influence on factors relating to the specific individual situations or positions of P-0154 and the Four Witnesses. However, even if these circumstances could have been used to exert influence, as contended by the Defence, it is mere speculation that the Four Witnesses did *in fact* abuse their positions and influenced any of the relevant witnesses. The Chamber considers, for example, that P-0105's statement to have spent time at P-0300's house, or that P-0300 would speak about 'everything that happened during the war',<sup>672</sup> do not indicate any improper conduct by P-0300.<sup>673</sup> Notwithstanding the possibility that witnesses may influence each other's recollection of events when they speak about them together, the circumstances put forward by the Defence do not necessarily indicate, in the view of the Chamber, that P-0300 intentionally coached, or attempted to collude with P-0105.

270. Furthermore, the Chamber considers that the mere fact that some of the relevant witnesses could not remember having had any interaction with P-0154 or meetings with other witnesses does not suggest any intentional withholding of information, nor any other conclusion as put forward by the Defence.<sup>674</sup> Rather, this may be explained by the fact that these events were not central to the

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<sup>671</sup> *Lubanga* Trial Judgment, para. 207. See also ICC-01/04-01/06-2434-Red2, para. 139.

<sup>672</sup> See Defence Reply Brief, para. 321 submitting that P-0300 exerted undue influence over P-0105.

<sup>673</sup> With reference to the Defence argument that P-0300 denied certain alleged details concerning his contacts with P-0154 (Defence Closing Brief, paras 852 and 862), the Chamber notes that the witness indeed denied having accommodated witnesses at his house, introduced himself as P-0154's assistant, or having received monetary compensation for having provided transport, accommodation and food for witnesses, and, when confronted with an investigation note suggesting the contrary, maintained that he had no recollection of such things. The Chamber further notes that P-0105 testified to having been accommodated by P-0300 (**P-0105**: T-134, pages 37 to 39), and that P-0300 appeared somewhat evasive and defensive when questioned on these issues (T-167, pages 43 to 52 and DRC-OTP-2090-0406), or in relation to the appearance of his name on P-0154's *liste de presence* (T-167, pages 54 to 55 and DRC-OTP-2092-0207). However, noting that the witness openly acknowledged having assisted P-0154 with the establishment of contacts, and absent any further information on the details and/or accuracy of the remaining information contained in the investigation note, the Chamber does not consider the witness's testimony on these matters, without more, to be suggestive of collusion (see also Prosecution Response Brief, para. 135).

<sup>674</sup> See Defence Closing Brief, paras 865 to 868.

witnesses' memory, especially when compared to their experiences during and after the Second Operation. Likewise, similarities in the testimony of the relevant witnesses, including the repetition of potentially 'erroneous information',<sup>675</sup> may be explained by the occurrence of collective memory or the body of knowledge ordinarily shared by persons who have experienced the same events. This is not, without more, the result of collusion or coaching.

271. As to the fact that P-0154 hosted witnesses at his house,<sup>676</sup> a circumstance which may give rise to concerns in terms of potential witness contamination, the Chamber notes that P-0154 informed Prosecution investigators of this issue as soon as 2005.<sup>677</sup> Further, the Chamber considers that any possible financial motivation behind P-0154's involvement has no impact on the credibility of the witnesses who have been in contact with him and who testified in this case. Moreover, there is no indication suggesting that actual interference occurred in P-0154's house. On P-0154's comment that he *contemplated* involving the *chef de localité* to manage witnesses and that he invited witnesses' family members to meetings,<sup>678</sup> the Chamber finds the argument raised by the Defence about the 'opportunities for contamination'<sup>679</sup> to be speculative.

272. Finally, as regards the fact that some witnesses are related, or acknowledged knowing each other, is a natural circumstance in a large criminal trial, where a number of witnesses may be called to testify about the same events, or to provide information about a person who appeared as a witness in the case.<sup>680</sup>

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<sup>675</sup> See Defence Closing Brief, paras 895 to 896. Concerning the testimony of P-0300, P-0121, P-0792, P-0018, and P-0103 about the context of the Main Road operation and P-0301's description of the Motorola device in Gutsi, the Chamber further notes that the relevant witnesses were crime base witnesses who can be reasonably expected to have only limited military and technical knowledge. In these circumstances, the Chamber does not consider their testimony in this regard to be suggestive of coaching or collusion.

<sup>676</sup> **P-0100**: T-132, page 51.

<sup>677</sup> DRC-OTP-2090-0407.

<sup>678</sup> DRC-OTP-2095-0089, at 0093; DRC-OTP-2095-0206, at 0208.

<sup>679</sup> Defence Reply Brief, para. 315.

<sup>680</sup> See Defence Closing Brief, para. 872.

**c) Allegation of collusion related to the 'Kobu massacre' and related events**

273. While most of the specific challenges raised by the Defence<sup>681</sup> are discussed in the Factual Findings, the Chamber considers it relevant to already address the Defence submission that the witnesses' testimony on the alleged killings and the crimes in Kobu shows signs of coaching or collusion due to P-0154's 'pervasive influence' on the relevant investigations.<sup>682</sup>

274. The Chamber observes that four of the crime base witnesses<sup>683</sup> who testified directly about the alleged killings in Kobu were introduced to the Prosecution by P-0154 and that their narratives are broadly consistent with each other. In this regard, the Chamber stresses that consistency between the testimony of different witnesses is not, without more, a sign of collusion; on the contrary, corroboration generally serves to support the credibility and reliability of evidence. In the present case, the testimony of the four aforementioned crime base witnesses is not only consistent, but is also corroborated by the testimony of two military insider witnesses, P-0017 and P-0963,<sup>684</sup> neither of whom is alleged to have had contact with any of these crime base witnesses, or with P-0154. The Chamber also observes that, as set out in the Factual Findings, the relevant witnesses' narratives are not identical in substance, but are characterised by a number of divergent recollections and statements on several aspects.

275. In addition, the testimony given by these four crime base witnesses about the alleged killings in Kobu is consistent with, and on specific aspects corroborated by, evidence provided by witnesses who testified about the period following the

<sup>681</sup> Defence Closing Brief, paras 873 to 898; and Defence Reply Brief, paras 322 to 339.

<sup>682</sup> Defence Closing Brief, paras 878 to 891 and 897 to 898; and Defence Reply Brief, paras 324 to 332.

<sup>683</sup> Namely P-0019, P-0039, P-0108, and P-0113.

<sup>684</sup> See footnotes 1936 and 1937 on P-0017 and P-0963 testifying to seeing captured people being brought to Kobu, consistent with P-0019, P-0039, P-0108, and P-0113; all testified to being captured and brought to Kobu in groups.

alleged killings.<sup>685</sup> It is relevant in this regard that three of those witnesses had no association with P-0154.<sup>686</sup> The Chamber notes that the witnesses' narratives of how they came to the banana field where the killings took place, what happened to them before they went there,<sup>687</sup> and what they felt there<sup>688</sup> generally appear personal and unique, and are consistent in terms of sequencing of events.<sup>689</sup> Moreover, certain aspects of these witnesses' testimony are corroborated by other witnesses, who are not alleged to have been associated with P-0154.<sup>690</sup>

276. Lastly, expert witnesses on forensic and exhumation evidence provided additional corroboration.<sup>691</sup>

277. Specifically, the Defence challenges P-0113's recollection<sup>692</sup> of having counted 47 detainees while cooking in Sangi.<sup>693</sup> Although it may seem counterintuitive for

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<sup>685</sup> The Chamber considers that the following six witnesses came to Kobu on or about the day the UPC/FPLC left Kobu, P-0805, P-0301, P-0103, P-0790, P-0106; and P-0857, and that the following four witnesses came to Kobu the next day or days after: P-0857 (returning), P-0121, P-0100, and P-0792 (*see* para. 633). In relation to P-0105, the Chamber notes that he testified that he went to Kobu with one other person on 29 February 2003, after being informed that UPC/FPLC troops had left Kobu (**P-0105**: T-134, page 19; and T-135, page 41). In cross-examination, the Defence put to the witness that he did not go to Kobu on that day but was convinced to testify accordingly (**P-0105**: T-135, pages 41 to 42). While the witness insisted on his evidence (**P-0105**: T-135, page 42), his testimony on going to Kobu contains a number of inconsistencies (*see* **P-0105**: T-134, pages 51 to 55; and T-135, pages 40 to 41). While the Chamber considers the aforementioned inconsistencies to be rather minor, the Chamber notes that according to another witness, the person that the witness testified to having gone to Kobu with never went to see the bodies of the people who died in Kobu, but rather only saw photographs (**P-0300**: T-166, pages 52 to 53; and T-167, pages 68 to 69). In light of the aforementioned unexplained inconsistency, the Chamber does not rely on P-0105's evidence concerning what he allegedly witnessed in Kobu in the aftermath of the massacre.

<sup>686</sup> P-0121, P-0805, and P-0857.

<sup>687</sup> *See* paras 620 to 628 below.

<sup>688</sup> *See e.g.* **P-0100**: T-131, page 67; **P-0105**: T-135, pages 42 to 43; and T-134, page 21; **P-0121**: T-173, page 17; **P-0790**: T-54, page 16; **P-0792**: T-150, page 68; **P-0805**: T-26, pages 8, and 31 to 32; **P-0857**: T-193, pages 79 to 80.

<sup>689</sup> Witnesses who testified to returning to Kobu on or about the day the UPC/FPLC left Kobu all provide evidence consistent with the fact that the body of Dyikpanu was found in the field and removed that same day. **P-0805**: T-26, pages 9 to 10; *see also* paras 633 and 634 below; **P-0103**: DRC-OTP-0104-0170-R02, from 0179 to 0180, para. 47; **P-0301**: T-149, pages 33, 60 to 61, and 76; **P-0790**: T-54, pages 16 and 18). P-0106 did not testify to seeing Dyikpanu's body but he testified that he learned that the body of 'Dhikpanu' was taken to Gutsi on the same day that he discovered corpses in Kobu (**P-0106**: T-45, pages 55 to 56). This is consistent with the evidence from P-0121, who testified that on the evening of the day the UPC/FPLC left Kobu, the body of 'Dikpanu' was brought to Gutsi where he witnessed its burial that night (**P-0121**: T-173, pages 9 to 10, and 33). Similarly, witnesses who testified to returning to Kobu the day or days after the abovementioned all provide evidence consistent with the fact that bodies were buried on this later day/days, and none of those witnesses testified to seeing Dyikpanu's body in the banana field (*see* footnote 1996 below).

<sup>690</sup> *See e.g.* the evidence from P-0121 mentioned above; **P-0868**: T-177, page 76; and **P-0863**: T-180, page 41; and T-181, pages 40 to 41.

<sup>691</sup> *See* paras 628 and 635 below.

<sup>692</sup> **P-0113**: T-118, pages 34 and 42.



P-0113, in the situation she was in, to count the persons who were captured, the Chamber notes that P-0113 provided a reasonable explanation of how<sup>694</sup> and why<sup>695</sup> she counted the persons in the specific situation she found herself in. She asserted that no one told her to mention the number 47,<sup>696</sup> and that she was the one who provided the number to P-0154.<sup>697</sup>

278. As to the figure of 47 persons, the Chamber notes that this number is consistent with the number provided by P-0963, a military insider witness who does not appear to have had any association with either P-0154 or P-0113.<sup>698</sup>

279. Several other witnesses estimated the number of bodies found in Kobu, or the number of detainees allegedly brought to Kobu by the UPC/FPLC. Six witnesses, three of who are not alleged to have been associated with P-0154, gave figures ranging from 45 to 57 bodies.<sup>699</sup> Four other witnesses, who are all alleged to have been associated with P-0154, testified that they did not count the bodies.<sup>700</sup> Lastly in this regard, the Chamber considers that the approximate number of deaths resulting from a well-known incident, such as the alleged killings in Kobu, is generally known in the relevant area, or is part of the collective memory of the affected community.

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<sup>693</sup> Defence Closing Brief, paras 897 and 925.

<sup>694</sup> **P-0113**: T-119, pages 19 and 30.

<sup>695</sup> **P-0113**: T-119, pages 20 and 30.

<sup>696</sup> **P-0113**: T-119, page 20.

<sup>697</sup> **P-0113**: T-119, page 30.

<sup>698</sup> P-0963 testified that 46 or 47 persons were captured in Buli and that he later saw those persons in Kobu (T-79, pages 66 and 68 to 69). P-0963 does not expressly state how he knew the number of persons captured, but rather states '[g]oing by the information that became available to me in Kobu, given that I was not in charge of all that, at least 46 to 47 persons were taken prisoner' (T-79, page 68). The Chamber notes that the number is mentioned in a UPC/FPLC audio intercept that was played to P-0963 in 2006, during his first interview with the Prosecution (**P-0963**: T-79, pages 90 to 91; T-79-FRA, page 93).

<sup>699</sup> See footnote 2016 below. The witnesses not alleged to have been associated with P-0154 are P-0121, P-0805, and P-0857.

<sup>700</sup> P-0100 testified that he was told that there were 70/75 bodies, but that he himself did not participate in the counting of the bodies and that the ones who had counted the bodies had already left when he arrived (**P-0100**: T-132, pages 53 to 54); P-0106 testified that it was difficult to count the number of bodies, that there were many of them and it was no time to be counting, and that anyone who came to the spot could only think of searching for their own family members' bodies and taking them away (**P-0106**: T-44, page 47); P-0301 testified that he did not personally count the number of dead bodies, but estimates that there were 30 to 50 corpses (**P-0301**: T-149, page 60); and P-0792 said he did not count himself and said he was told by P-0805 that there were 49 victims (**P-0792**: T-151, pages 15 to 16).

280. On the basis of the foregoing, it cannot be found that any collusion or coaching on the number of victims took place.

281. The Chamber now turns to the Defence challenges to the authenticity of photographs taken in Kobu ('Kobu Photographs'),<sup>701</sup> and its assertion that there are serious grounds to believe that witnesses extensively discussed them, shared them amongst themselves, and coordinated their testimony to falsely claim that these depict the aftermath of the 'Kobu massacre'.<sup>702</sup>

282. Despite the poor quality of some of the photographs and noting that the evidence on the record as to who took the photographs and how they were developed is indeed unclear,<sup>703</sup> the Chamber notes the consistent evidence that photographs were taken at the site from witnesses whom it considers credible as to their presence at the scene in the days after the alleged killings.<sup>704</sup> It further notes the consistent testimony from seven witnesses that the photographs depict the scene they saw in Kobu.<sup>705</sup> The Chamber therefore considers the Defence arguments that P-0301 and P-0805 failed to recognise photographs during initial

<sup>701</sup> Several groups of pictures were admitted into evidence (either duplicates or annotated versions) (using the Prosecution's group numbers): *Group 1*: DRC-OTP-0077-0292, DRC-OTP-0152-0240 and DRC-OTP-2058-1110; *Group 2*: DRC-OTP-0077-0293, DRC-OTP-0152-0239, DRC-REG-0001-0012, DRC-OTP-2058-1111 and DRC-REG-0001-0046; *Group 3*: DRC-OTP-0077-0294 and DRC-OTP-2058-1112; *Group 4*: DRC-OTP-0077-0295, DRC-OTP-2058-1107 and DRC-OTP-2058-1113; *Group 5*: DRC-OTP-0072-0473-R01 and DRC-OTP-2058-1106; *Group 6*: DRC-REG-0001-0051 and DRC-OTP-2058-1108; and *Group 8*: DRC-OTP-2058-1109. A photograph which the Prosecution calls '*Group 7*' is a single photograph DRC-OTP-2069-0012-R01 purportedly showing the burial of Dyikpanu, which the Chamber treats separately from the Kobu Photographs.

<sup>702</sup> Defence Closing Brief, paras 878 to 891, Defence Reply paras 324 to 327.

<sup>703</sup> See Defence Closing Brief, paras 878 to 883; and Defence Reply Brief, para. 327.

<sup>704</sup> **P-0103**: DRC-OTP-0104-0170-R02, at 0180, para. 48; **P-0121**: T-173, pages 18, and 43 to 44; **P-0301**: T-149, page 63. See also **P-0790**: T-54, pages 19 to 20; **P-0792**: T-150, pages 73, and 88 to 89.

<sup>705</sup> The following witnesses testified that the Kobu Photographs depict the scene in the banana field in Kobu: **P-0100**: T-131, pages 53 to 55 (in relation to DRC-OTP-0152-0239); **P-0106**: T-44, pages 49 to 52 (in relation to DRC-OTP-0152-0240); **P-0121**: T-173, pages 26 to 27 (in relation to DRC-OTP-0072-0473), page 28 (in relation to DRC-OTP-0077-0292), pages 28 to 29 (in relation to DRC-OTP-0077-0293), and pages 29 to 30 (in relation to DRC-OTP-0077-0294); **P-0301**: T-149, pages 63 to 64 (in relation to DRC-OTP-2058-1106), pages 64 to 65 (in relation to DRC-OTP-2058-1110), and pages 65 to 67 (in relation to DRC-OTP-0152-0239); **P-0805**: T-25bis, pages 39 to 40; T-26, pages 15 to 16 (in relation to all Kobu Photographs except Group 7); **P-0857**: T-193, pages 86 to 87 (in relation to DRC-OTP-0152-0239), and pages 87 to 89 (in relation to DRC-REG-0001-0051 (version of DRC-OTP-0072-0475 annotated by the witness in court); **P-0790**: T-54, pages 21 to 23 (in relation to DRC-OTP-0152-0240), pages 23 to 25 (in relation to DRC-OTP-0152-0239), page 26 (in relation to DRC-OTP-0077-0295), and page 27 (in relation to DRC-OTP-0072-0473).

interviews with the Prosecution<sup>706</sup> to be unsubstantiated.<sup>707</sup> The Chamber notes the consistent testimony from witnesses who said they recognised victims in certain photos,<sup>708</sup> and considers the Defence assertion that such identifications were implausible and indicative of contamination<sup>709</sup> to be similarly unsubstantiated.<sup>710</sup> The Chamber also notes the consistency between the images depicted in the photographs and the scene described by eyewitnesses,<sup>711</sup> and that a pair of blue trousers found on one of the skeletal remains exhumed in Kobu<sup>712</sup> looks similar to the trousers in one of the Kobu Photographs.<sup>713</sup> Finally, the

<sup>706</sup> Defence Closing Brief, paras 885 to 886; and Defence Reply Brief, para. 326.

<sup>707</sup> The Chamber considers the Defence arguments as to what inferences should be drawn on this issue regarding P-0301 (Defence Closing Brief, para. 885, and Defence Reply Brief, para. 326) to be speculative. The Chamber notes that P-0805 appears to have recognised seven out of eight photographs in his initial interview, and that the discrepancy relates to only one photograph, DRC-OTP-2058-1112, which the witness identified in court as being adjacent to the banana field (**P-0805**: T-26, pages 54 to 55).

<sup>708</sup> **P-0106**: T-44, pages 49 to 52 (identification of a person on DRC-OTP-0152-0240, consistent with the identification he gave in his Prosecution interview); **P-0790**: T-54, pages 21 to 23 (testifying that he recognised Dyikpanu on DRC-OTP-0152-0240); **P-0805**: T-26, page 15. *See also* pages 9 to 10 (testifying that he recognised Dyikpanu on DRC-OTP-2058-1110. On the ERN *see* T-25*bis*, page 39; and T-26, page 53); **P-0857**: T-193, pages 87 to 89 (testifying that he recognised a person on DRC-REG-0001-0051 (version of DRC-OTP-0072-0475 annotated by the witness in court); **P-0301**: T-149, pages 65 to 67 (testifying that he recognised three persons on DRC-OTP-0152-0239; *see also* DRC-REG-0001-0046).

<sup>709</sup> Defence Closing Brief, paras 885 and 888 to 891.

<sup>710</sup> The Chamber dismisses the Defence's implication that identifications made without faces being visible on the photograph are implausible (Defence Closing Brief, paras 887 and 889), noting that each witness who made an identification testified to having been present at the scene and to seeing the photographed bodies in person shortly after the bodies were discovered (*see* para. 634 below). The same reasoning applies to the Defence argument on P-0301's and P-0790's identification of Dyikpanu based on the red underwear (Defence Closing Brief, paras 887 and 891), with the Chamber further noting that contrary to the Defence assertion that Dyikpanu was buried the night before the photo was taken (Defence Closing Brief, para. 887), the Chamber heard evidence that photographs were taken on the first day that people returned to Kobu (**P-0103**: DRC-OTP-0104-0170-R02, at 0180, para. 48; and **P-0301**: T-149, page 63), and that Dyikpanu's body was only removed and buried that same night (*see* **P-0103**: DRC-OTP-0104-0170-R02, from 0179 to 0180, para. 47; **P-0106**: T-45, pages 55 to 56; **P-0301**: T-149, pages 33, 60 to 61, and 76; and **P-0790**: T-54, pages 16 and 18 together with **P-0121**: T-173, pages 9 to 10, and 33). Regarding the different identifications of the same person by P-0790 and P-0301 (*see* Defence Closing Brief, para. 885), the Chamber does not consider this significant, noting the quality of the relevant photograph. The Chamber also does not consider it necessary to make findings on the identification of the person in DRC-OTP-2069-0012-R01 purportedly showing the burial of Dyikpanu (*see* Prosecution Response Brief, para. 151 and Defence Reply Brief, paras 324 to 325), although it does not consider P-0868's evidence (*see* Defence Reply Brief, para. 325) to affect any of its aforementioned conclusions, noting that the witness testified that he did not go to Kobu to see the bodies (**P-0868**: T-178, page 26).

<sup>711</sup> *See* para.635 below, noting that the photographs depict multiple bodies (*e.g.* DRC-OTP-0077-0292), lying on top of one another (*e.g.* DRC-OTP-0077-0293), including amongst what look like leaves of banana trees (*e.g.* DRC-OTP-0077-0295), some with hands tied (*e.g.* DRC-OTP-0077-0293).

<sup>712</sup> **P-0937**: T-127, pages 23 to 24 and 64 to 66; DRC-OTP-2075-0235 at 0239; DRC-OTP-2067-0721; and DRC-OTP-2067-0722.

<sup>713</sup> DRC-OTP-0072-0473. The Chamber does not consider it necessary to determine whether there is a precise 'match' between the trousers found on the exhumed remains and the ones in the photograph (*see* Prosecution Closing Brief, para. 610, and Defence Closing Brief, para. 932).

Chamber considers to be unsubstantiated the Defence assertion that there are indications that these photographs are not a reflection of any scene in Kobu.<sup>714</sup> Having regard to all of the aforementioned, the Chamber is satisfied that the Kobu Photographs depict the aftermath of the ‘Kobu massacre’.

283. Lastly, concerning the Defence argument that the relevant witnesses could have been ‘contaminated’ by a television interview where details of the events in Kobu were discussed and two of the related photos<sup>715</sup> were shown – an interview which according to P-0792<sup>716</sup> was widely seen<sup>717</sup> – the Chamber notes that: (i) P-0792 gave an unclear account as to the specific video he saw;<sup>718</sup> (ii) the Defence suggestion that P-0792 saw the video showing Kilo and learned about the photos through this video is based on mere assumptions;<sup>719</sup> and (iii) the available evidence on the record does not allow for a finding of whether this video was widely broadcast in the DRC.<sup>720</sup> As such, the Chamber considers that the Defence challenges based on the video interview are speculative and unsubstantiated.

284. In light of the foregoing, the Chamber finds that the Defence challenges on coaching by P-0154, undue influence by the Four Witnesses, and collusion of witnesses are not substantiated. It will therefore rely on the evidence provided by these witnesses in its assessment of the evidence regarding the unfolding of the Second Operation and the events in Kobu on or about 25 to 26 February 2003.

<sup>714</sup> Defence Closing Brief, para. 884. The testimony referred to in support of the Defence contention is P-0976, testifying that a family member took pictures of other massacres, and sent him other negatives (**P-0976**: T-152, page 62). This does not, in the Chamber’s view, affect the abovementioned consistent evidence that the Kobu Photographs depict the scene in Kobu, a fact also testified to by P-0976 himself (T-152, pages 23 to 25 in relation to *Group 1*, 2 and 4 photographs).

<sup>715</sup> DRC-OTP-2058-1110 and DRC-OTP-2058-1111.

<sup>716</sup> **P-0792**: T-151, pages 11, and 31 to 32.

<sup>717</sup> Defence Closing Brief, paras 880 and 889 to 890.

<sup>718</sup> Regarding the Defence assumption that P-0792 is confusing the English journalist with a person from the MONUC (Defence Closing Brief, para. 886), the Chamber notes that the person referred to by P-0792 as having spoken to MONUC (*see* **P-0792**: T-151, pages 11, and 33 to 34) does not have the same name as the person said by P-0976 to have been interviewed by the English journalist (**P-0976**: T-152, page 56).

<sup>719</sup> Defence Closing Brief, para. 886.

<sup>720</sup> It notes in this regard that P-0976 testified that he saw this video for the first time only in Court (**P-0976**: T-152, page 68).

## IV. FACTUAL FINDINGS

### A. THE UPC/FPLC

#### 1. Political leadership and related activities

285. The UPC, as a political entity, existed before September 2002.<sup>721</sup> The Chamber has at its disposal a UPC constituent act, statute, and programme, each dated September 2000.<sup>722</sup> The group's activities were, however, limited, as some of its key leaders were still members of other movements, most notably the RCD-K/ML.<sup>723</sup>

286. As of April 2002, following a split from the RCD-K/ML, the group became active under the name FRP.<sup>724</sup> Thomas Lubanga was one of its leaders.<sup>725</sup> The organisation increased its political activity and started negotiations, in particular with the RCD-K/ML and the authorities of Uganda.<sup>726</sup> The leaders of the FRP

<sup>721</sup> **P-0014**: T-137, pages 25 to 26. The UPC statute is dated 15 September 2000. It is available before the Chamber in two versions. One version, DRC-OTP-0091-0039 (*see also* DRC-OTP-0093-0359, identical but annotated) appears to be a copy of the original, as it contains the hand-written names and signatures of a number of members of the constituent assembly. Some names are illegible, but the name and signature of Thomas Lubanga appear clearly. The second version of the statute, DRC-OTP-0147-0320, contains the typed names of the members of the constituent assembly, and there are no signatures. Notably, an additional set of names of founders and co-founders is contained (marked '*Suite*'). In any case, also in light of the fact that there is no dispute between the parties as to the content and the signatories of the UPC statute, these differences between the two versions do not detract from its value in supporting the conclusions of the Chamber. This statute was then referred to regularly in official documents of the UPC (DRC-OTP-0089-0057, DRC-OTP-0089-0093, DRC-OTP-0091-0016, DRC-OTP-0147-0204, all discussed in more detail below. *See also* DRC-OTP-0113-0117, referring to the UPC born in July 2000). *See also* Defence Closing Brief, para. 68 (referring to the founding document from September 2002).

<sup>722</sup> The UPC's constituent act and statute refer to the need for democratic institutions, mention human rights, and outline that UPC members have equal rights and can be any Congolese without distinction of gender, race, ethnicity, religion or opinion (DRC-OTP-0113-0052, at 0052; and DRC-OTP-0014-0140, from 0141 to 0151). The UPC programme similarly states that the UPC stands for respect of fundamental rights and liberties, against any partition of the country (DRC-OTP-0113-0060, from 0060 to 0068).

<sup>723</sup> **P-0012**: DRC-OTP-2054-0073, at 0089 and 0098; and **P-0116**: T-195, page 14. *See also* DRC-OTP-0113-0135, from 0136 to 0137.

<sup>724</sup> DRC-OTP-0127-0110; DRC-OTP-0194-0328; and DRC-OTP-0113-0117, referring to the FRP created on 15 April 2002.

<sup>725</sup> *See e.g.* DRC-OTP-0127-0110.

<sup>726</sup> **P-0014**: DRC-OTP-0066-0002, from 0013 to 0014. Thomas Lubanga led the FRP delegation in two meetings with RCD-K/ML organised by Uganda (**P-0041**: DRC-OTP-0147-0002, from 0008 to 0011, paras 38 to 42, and paras 50 to 56). It is noted that in June 2002, Thomas Lubanga and certain other FRP delegates were arrested in Kampala and transferred to Kinshasa (*see* **P-0041**: DRC-OTP-0147-0002, from 0011 to 0012, para. 57). They were only released and returned to Ituri at the beginning of September 2002 (*see* **P-0041**: DRC-OTP-0147-0002, at 0014, para. 73). In any case, the evidence indicates that Thomas Lubanga was able to

became the political leaders of the UPC/FPLC, upon its formal creation in September 2002. Accordingly, the Chamber will use the expression ‘emerging UPC/FPLC’ to refer to the UPC/FPLC movement, including communications and actions of its key members, sometimes under the name of the FRP, before its formal creation.

287. On 17 April 2002, Thomas Lubanga with other political leaders of the emerging UPC/FPLC, signed a declaration criticising the RCD-K/ML for putting in place discriminatory politics, and for failing to properly represent the interests of the Iturians.<sup>727</sup> This document puts in opposition the ‘Iturian people’ or ‘those of Ituri’, with the ‘natives of North Kivu’ or ‘those who came in Ituri’.<sup>728</sup> The citizens of the ‘Kivu Holding’<sup>729</sup> are stated to be over-represented in the RCD-K/ML, and referred to as a ‘mafia’ and a ‘harmful alliance’.<sup>730</sup> Together with ‘Nande people’, Mbusa Nyamwisi, the President of the RCD-K/ML,<sup>731</sup> himself of Nande ethnicity and coming from North-Kivu,<sup>732</sup> is accused of having dominated and exploited Ituri to the benefit of North Kivu.<sup>733</sup> In addition, the document alleges that international humanitarian organisations were, in their great

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exercise his role as leader of the FRP during the time of his detention in Kinshasa (*see* **P-0041**: DRC-OTP-0147-0002, from 0011 to 0012, paras 53 to 57; and DRC-OTP-0113-0117).

<sup>727</sup> DRC-OTP-0127-0110, from 0110 to 0112. *See also* **P-0041**: DRC-OTP-0147-0002, from 0005 to 0006, para. 24; DRC-OTP-0165-0896, from 0896 to 0897; and **P-0014**: DRC-OTP-0165-0999, at 1099, para. 443. It is of note that this declaration of 17 April 2002 was referred to in official UPC documents issued subsequently, together with the UPC constituent act, as well as the declaration of 11 August 2002. *See e.g.* DRC-OTP-0147-0204; DRC-OTP-0113-0055; DRC-OTP-0151-0111; DRC-OTP-0091-0016; DRC-OTP-0092-0466; DRC-OTP-0089-0075; and DRC-OTP-0089-0093. The Chamber notes that Mr Ntaganda testified that he had not seen this document before it was shown to him in court. The Chamber did not rely on his knowledge thereof in the related findings (**D-0300**: T-232, page 15).

<sup>728</sup> DRC-OTP-0127-0110, from 0110 to 0112. The Chamber notes that the terms non-native (*‘non-originaire’*) and *jajambo/jajambu* were used and appear in the evidence as designating, within this context, those who are not considered Iturians. *See* **P-14**: T-138, pages 99-100; DRC-OTP-2054-0429 at 0478-0479; **P-245**: T-142, pages 9-10. *See also* Agreed Fact 38.

<sup>729</sup> For the term ‘Kivu Holding’, *see also* **P-0005**: T-185, pages 28 to 30; T-187, pages 4 to 9; and T-189, pages 44 to 45; and **D-0013**: DRC-D18-0001-6475, at 6481.

<sup>730</sup> DRC-OTP-0127-0110, at 0110. P-0041 explained that there was an English version of this document which was ‘drafted for the Ugandans’, knowing that it would be used in the context of a subsequent meeting. DRC-OTP-2054-5199, at 5284.

<sup>731</sup> Agreed Fact 40.

<sup>732</sup> **D-0300**: T-230, page 54.

<sup>733</sup> DRC-OTP-0127-0110, at 0110.

majority, run by Kivu citizens, to the detriment of Iturians.<sup>734</sup> The declaration calls for the rejection of all political agreements binding Ituri and Kivu within the RCD-K/ML, and demands the immediate departure of ‘all those who came in Ituri within this context of the fore-mentioned agreements’.<sup>735</sup>

288. Thomas Lubanga, some political leaders, and the military leaders of the emerging UPC/FPLC, including Floribert Kisembo, Paul Bagonza, Nduru Tchaligonza, Thomas Kasangaki, Chief Kahwa, and Mr Ntaganda, who were at the time members of the RCD-K/ML, were subsequently involved, in the name of the FRP, in a meeting convened by the Ugandan government, held in Kasese in April 2002.<sup>736</sup> According to a witness who participated at the meeting, the FRP main stated purpose was to give back Ituri to the Iturians, and to seek the departure of the RCD-K/ML from Ituri.<sup>737</sup>

289. On 16 May 2002, the individuals who issued the April 2002 declaration issued another statement reiterating the criticism with regard to the alleged incompetence of the RCD-K/ML delegation, which they said was chosen on an ethnic basis, at the Sun City negotiations.<sup>738</sup> It stated that the management of Ituri under Mbusa Nyamwisi was characterised by chaos and disorganisation, and that Mbusa Nyamwisi was incapable of ensuring security.<sup>739</sup> The statement provides

<sup>734</sup> DRC-OTP-0127-0110, at 0111.

<sup>735</sup> DRC-OTP-0127-0110, at 0112.

<sup>736</sup> **P-0041**: DRC-OTP-0147-0002, from 0008 to 0009, paras 38 to 39; DRC-OTP-2054-5030-R02, from 5108 to 5111; DRC-OTP-2054-5199, at 5200; DRC-OTP-2054-5384, from 5386 to 5387, and from 5387 to 5388; and **D-0300**: T-213, page 48; T-232, pages 23 to 24.

<sup>737</sup> **P-0041**: DRC-OTP-0147-0002, at 0009, para. 41; DRC-OTP-2054-5030 at 5110; DRC-OTP-2054-2199 at 5204. While Mr Ntaganda testified that he heard of the FRP for the first time in court (T-231, page 91), the Chamber notes that, when confronted with the testimony of P-0041, who had a good basis of knowledge about the meeting and declared that the group attended in the name of the FRP, Mr Ntaganda gave an evasive answer (T-232, page 31). Mr Ntaganda also stated that the goal of the delegation was to find a solution to enable the military leaders ‘to reintegrate the APC and to continue working in a peaceful environment’ (T-213, page 48). Noting that P-0041 provided significant details in his answers in relation to the meeting in Kasese, which are also in line with the declaration of 17 April 2002, the Chamber finds that his testimony is reliable and, on this point, did not consider credible Mr Ntaganda’s testimony to the contrary.

<sup>738</sup> DRC-OTP-0194-0328, at 0328. *See also* **P-0005**: T-187, pages 23, 30, and 34. Mr Ntaganda testified that he saw the relevant document for the first time in court (**D-0300**, T-213, page 56).

<sup>739</sup> DRC-OTP-0194-0328, at 0328.

that any accords concluded by Mbusa Nyamwisi in the name of Ituri only engaged him, and that the RCD-K/ML was replaced in Ituri by the FRP.<sup>740</sup>

290. In June 2002, the political leaders of the emerging UPC/FPLC, headed by Thomas Lubanga, attended a meeting with Ugandan authorities in Kampala.<sup>741</sup> In this context, they prepared a number of documents calling for RCD-K/ML to be chased out of Ituri.<sup>742</sup>

291. The documents essentially criticise Mbusa Nyamwisi, as well as the Governor of Ituri, Jean-Pierre Molondo Lompondo, for engaging in ‘mafia-like’ conspiracies.<sup>743</sup> They contrast the Iturians, or ‘native soldiers’, to the ‘negative forces’.<sup>744</sup> Mbusa Nyamwisi is labelled as a ‘tribalist’.<sup>745</sup> The RCD-K/ML and the APC are accused of siding with the Lendu combatants, notably by providing them weapons and support, ‘hunting’ the Hema on their behalf, and favouring the Nande to the detriment of Iturians.<sup>746</sup>

<sup>740</sup> DRC-OTP-0194-0328, at 0329.

<sup>741</sup> The Chamber considers that it can rely on the testimony of P-0014 and P-0041 who provided first-hand evidence about the meeting, P-0014 also having collected related documents. The Chamber therefore considers these two witnesses to have a strong basis of knowledge for the events of the meeting, noting also that their testimony on this issue was rich in details. According to P-0014 and P-0041, participants included: Thomas Lubanga, John Tinanzabo, Richard Lonema, Paul Avochi, and others (**P-0014**: DRC-OTP-0066-0002, at 0014, paras 55 to 65; DRC-OTP-2054-0429, from 0470 to 0471 and 0474; DRC-OTP-2054-0961, from 0997 to 0998; T-137, page 17; and T-138, pages 9 to 10; and **P-0041**: DRC-OTP-0147-0002, from 0010 to 0011, paras 50 to 56; and DRC-OTP-2054-5199, from 5202 to 5203).

<sup>742</sup> **P-0014**: DRC-OTP-0066-0002, from 0014 to 0015, paras 59 to 62.

<sup>743</sup> DRC-OTP-0066-0031, at 0033 (*‘maffieuses’*); DRC-OTP-0066-0039; and DRC-OTP-0066-0048.

<sup>744</sup> DRC-OTP-0066-0039; DRC-OTP-0066-0047; and DRC-OTP-0066-0048. Mr Ntaganda testified about the term ‘negative forces’, stating, when asked in relation to ‘the Lendu fighters, the Interahamwe, the NALU and the ADF’ that: ‘Because of the actions they carried out, that was quite visible, it was clear that they were negative forces because they were fighting for no valid reason. I don’t know what name one can attribute to them, but these were ways of describing them, that is to say, they could be referred to as negative forces.’ He, however, denied knowledge that the ‘Hema community’ shared the UPC’s view that the Lendu were ‘allied with negative forces such as the ADF, NALU, Mai Mai and Interahamwe’. **D-0300**: T-229, page 61.

<sup>745</sup> **P-0014**: DRC-OTP-0165-0999, at 1099, para. 443; and DRC-OTP-0066-0047.

<sup>746</sup> DRC-OTP-0066-0031. *See also* DRC-OTP-0066-0047; and DRC-OTP-0066-0048. The Chamber also notes the testimony of Mr Ntaganda on the general topic of accusations from the Hema community to the effect that Mbusa Nyamwisi or the RCD-K/ML were inciting ethnic hatred between the Lendu and the Hema. Mr Ntaganda testified that he was not a member of the Hema community and therefore it was ‘difficult for [him] to know anything about them’, and had ‘no way’ to receive such information, that the only information sources for him as a commander were in the field, whereas ‘[t]his kind of information cannot be obtained at the battlefield when you are fighting’, and finally, asked whether he had never heard any accusation by the Hema community that Ernest Wamba Dia Wamba and Mbusa Nyamwisi were inciting ethnic hatred between the Lendu and the Hema, he stated that he ‘came by that information through [his] own sources’. **D-0300**: T-229, pages 84-86.



292. Two of these documents indicate that the RCD-K/ML should be chased out of Ituri by force.<sup>747</sup> One specifically states that: (i) Bunia and its surroundings were completely enclaved and must be liberated; (ii) Ituri must be saved, including by shedding 'our' blood.<sup>748</sup>

293. The meeting in Kampala aimed at discussing the reorganisation of Ituri, notably how the emerging UPC/FPLC would take control of the district.<sup>749</sup> Thomas Lubanga explained to his group that they needed to create an organised army in order to fight against the APC,<sup>750</sup> and steps were undertaken to obtain weapons from Rwanda.<sup>751</sup> He repeated the criticism of Mbusa Nyamwisi for 'tribalism'.<sup>752</sup> During these exchanges, it was stated that one of the objectives of the emerging UPC/FPLC was to drive out the non-natives, also known as *jajambus*.<sup>753</sup> The targets were defined as first, the Nande and then, the Lendu.<sup>754</sup> There was a discussion that it was necessary to replace *jajambus* holding important positions with Iturians.<sup>755</sup> In the context of side discussions, reference was also made to using the rape of enemy women as a means of waging war.<sup>756</sup> One witness explained that this was meant to have a psychological impact on the enemy.<sup>757</sup>

<sup>747</sup> DRC-OTP-0066-0031, at 0037; and DRC-OTP-0066-0039, at 0046.

<sup>748</sup> DRC-OTP-0066-0039, at 0046.

<sup>749</sup> **P-0041**: DRC-OTP-0147-0002, at 0011, paras 54 to 55; and DRC-OTP-2054-5199, at 5204. *See also* **P-0014**: DRC-OTP-0066-0002, at 0014, para. 57; and DRC-OTP-2054-0429, at 0473.

<sup>750</sup> **P-0014**: DRC-OTP-2054-0429, at 0473.

<sup>751</sup> **P-0014**: DRC-OTP-2054-0429, from 0474 to 0475. *See also* para. 336 below.

<sup>752</sup> **P-0014**: DRC-OTP-2054-0429, at 0478.

<sup>753</sup> **P-0014**: DRC-OTP-2054-0612, at 0648; and DRC-OTP-2054-0429, from 0478 to 0480. In cross-examination, P-0014 confirmed that part of '[t]he UPC's goal was to mix up issues with a view to dislodging all non-natives of Ituri. That was the political agenda, whereas the reality was that they simply sought to eliminate or subjugate their enemies, and among others, the Lendus' (**P-0014**: T-137, page 37). Noting the witness's explanations concerning his basis of knowledge in relation to this matter (**P-0014**: T-137, page 17, and 38), the Chamber considers that the witness is a primary source of information to establish the emerging UPC/FPLC's objectives as stated at that time.

<sup>754</sup> **P-0014**: DRC-OTP-2054-0612, at 0648.

<sup>755</sup> **P-0014**: DRC-OTP-2054-0429, at 0480.

<sup>756</sup> **P-0014**: T-136, page 57, and 59; and T-138, pages 100 to page 101.

<sup>757</sup> **P-0014**: T-138, pages 101-102. The witness expressed himself as follows: 'Now, according to those who developed the ideas, even as they discussed it in my presence, the idea was to inflict fear on the enemy to begin with. You may also want to understand that in our culture, and I'm telling you this, if my wife is raped, I no longer feel like a man and I can no longer stand tall in front of anybody because I am covered in shame. That's

294. On 11 August 2002, after the military operation on Bunia, Thomas Lubanga, as coordinator of the FPR and leader of the emerging UPC/FPLC, issued a declaration proclaiming that armed dissidents of the RCD-K/ML, led by Thomas Lubanga, had taken control of Bunia and its surroundings on 9 August 2002.<sup>758</sup> The declaration referred to the APC as having committed violence, killings, and crimes against the local population in Ituri, and that due to this behaviour, the FRP, supported by the APC dissidents, had gathered behind Thomas Lubanga to take control of Bunia.<sup>759</sup> It concluded by, *inter alia*, declaring the end of power of the RCD-K/ML in Ituri, declaring the political, economic and military governance of Ituri by the FRP, and demanding the support of the government in Kinshasa, and the international community.<sup>760</sup>

295. The UPC publicly presented itself as an organisation not based on ethnicity.<sup>761</sup> In the weeks following the attack on Bunia, Thomas Lubanga issued several press releases and declarations, first in name of the FRP, then – after the UPC executive had been set up – in name of the UPC, providing an explanation for the military operations, stating that the UPC assembled all ethnic groups, and that its objectives had been misunderstood, as it was not against all *non-originaires*.<sup>762</sup>

296. In one such declaration dated 14 September 2002, Thomas Lubanga stated that the UPC/RP was a political movement gathering all Congolese living in the north-east of the DRC, created following a desire of the north-eastern population to be governed by people devoted to peace and committed to working in favour of the

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the feeling I would have if my wife is raped. So that also amounts to having been vanquished somehow. That is why it becomes impossible for me then to stand and to demonstrate that I am the defender and the protector of my wife, for example. Now, this act has a psychological impact on the enemy.’

<sup>758</sup> In relation to the Defence argument that this statement was an ‘opportunistic exploitation of the situation, and a self-conferral of legitimacy, not a reflection of the events as they actually unfolded’ (Defence Closing Brief, para. 63), the Chamber refers to the specific findings reached below in para. 449.

<sup>759</sup> DRC-OTP-0113-0117.

<sup>760</sup> DRC-OTP-0113-0117.

<sup>761</sup> In addition to the other evidence presented in this section, the Chamber notes: DRC-OTP-0124-0002, from 06.11 to 07.55, translation DRC-OTP-0176-0027, at 0033; and **D-0300**: T-215, pages 58 to page 59.

<sup>762</sup> DRC-OTP-0113-0135, from 0135 to 0140; and DRC-OTP-0124-0002, from 06.11 to 7.55 and from 29.22 to 32.01 (translation DRC-OTP-0176-0027, at 0033 and 0040). See also **D-0300**: T-215, page 59; and DRC-OTP-0147-0212, from 0212 to 0214.

well-being of the population, in light of the bad administration and politics of ‘burnt earth’ of the RCD-K/ML.<sup>763</sup> The declaration stated that there was an inter-ethnic conflict between the Hema and Lendu, but that while political actors with bad intentions focussed on local conflicts, massacres turned into a targeted genocide.<sup>764</sup> According to the declaration, the massacres in Ituri were falsely presented as a result of the Hema-Lendu conflict to distract public opinion, even though they constituted a well-planned genocide.<sup>765</sup>

297. Other official declarations issued on the same day, *inter alia*, listed a number of points to ‘re-create a climate of trust between the peoples of the north-east’<sup>766</sup> and pronounced the movement’s adherence to the spirit of the Luanda accords concerning the setting up of a pacification commission in Ituri, subject to certain conditions.<sup>767</sup>

298. On 2 September 2002, Thomas Lubanga, by decree, appointed a governor and two vice-governors of the ‘Province of Ituri’.<sup>768</sup> On 3 September 2002, Thomas Lubanga issued a decree, as President of the UPC, deciding that the Presidency would retain competence over defence and security, and appointing 20 National Secretaries and eight Deputy National Secretaries, including Yves Zety Kawa Panga, commonly referred to as ‘Chief Kahwa’, as Deputy National Secretary of Defence.<sup>769</sup>

299. An official UPC declaration issued on 22 October 2002 indicated that its main concern in the short term was pacification and reconciliation in Ituri ‘whatever

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<sup>763</sup> DRC-OTP-0037-0264-R02, at 0264.

<sup>764</sup> DRC-OTP-0037-0264-R02, at 0264. References to ‘massacre’ and/or ‘genocide’ against Hema civilians are also contained in documents prepared in 2000 and 2001 on behalf of the Hema community (DRC-OTP-0197-0238; DRC-OTP-0214-0065; DRC-OTP-0214-0091; DRC-OTP-0033-0038-R02; DRC-OTP-0033-0044-R02; DRC-OTP-0033-0058-R02; DRC-OTP-0214-0116, at 0118; and DRC-OTP-0037-0536).

<sup>765</sup> DRC-OTP-0037-0264-R02, from 0264 to 0265.

<sup>766</sup> DRC-OTP-0037-0266-R02.

<sup>767</sup> DRC-OTP-0037-0268-R02.

<sup>768</sup> DRC-OTP-0147-0204.

<sup>769</sup> DRC-OTP-0113-0055. *See also* Agreed Fact 82.

the cost'.<sup>770</sup> Another UPC document of the same day listed as political vision of the UPC/RP peace and reconciliation in Ituri, unification of the DRC, as well as the active participation of the UPC/RP in the transitional government, and indicated that since 9 August 2002, the UPC/RP had taken political, administrative and military control over Ituri.<sup>771</sup>

300. Thomas Lubanga acted as President of the UPC.<sup>772</sup> He required the members of the Executive to inform him of all their correspondence and, in certain cases, to consult him in advance in relation to important decisions engaging the organisation.<sup>773</sup>

301. In addition to members of the Executive, UPC President Thomas Lubanga was assisted by political, diplomatic and security advisors.<sup>774</sup> His security advisor, Rafiki Saba, was in charge of intelligence within the civilian security setup.<sup>775</sup>

302. Members of the Executive were of diverse ethnic origin.<sup>776</sup> However, most non-Hema members were without real or substantive influence.<sup>777</sup> Attendance of some meetings was restricted on an ethnic basis.<sup>778</sup> The posts of defence and finance, which were of a sensitive nature, were held by ethnic Hema.<sup>779</sup> The UPC

<sup>770</sup> DRC-OTP-0164-0452, at 0452.

<sup>771</sup> DRC-OTP-0037-0271-R02.

<sup>772</sup> **P-0005**: T-183, page 16; **P-0016**: DRC-OTP-2054-1447, at 1450; **P-0031**: DRC-OTP-2054-3760, at 3778; **P-0055**: T-70, page 42; **P-0901**: T-28, page 9; **P-0963**: T-78, page 26. The Chamber further refers to the decrees signed by Thomas Lubanga as UPC President referred to in this section.

<sup>773</sup> DRC-OTP-0089-0069.

<sup>774</sup> **P-0005**: T-184, pages 19 to page 20.

<sup>775</sup> **P-0005**: T-184, page 20; **P-0055**: T-70, page 42; and **D-0300**: T-231, pages 78 to 79.

<sup>776</sup> **P-0005**: T-184, page 14; and **P-0041**: DRC-OTP-0147-0002, at 0019, para. 103.

<sup>777</sup> **P-0005**: T-184, page 14; T-185, page 26; **P-0041**: DRC-OTP-0147-0002, at 0019, para. 103; **P-0043**: DRC-OTP-0126-0086, from 0090 to 0091, para. 26; and T-190, pages 31 to 32. The Defence states that 'non-Hema secretaries nationaux were truly empowered by UPC/RP and Thomas Lubanga to accomplish and to rule and to run this effective administration' (T-263, page 76). However, as this argument is not linked to any evidence other than the documents indicating the appointment of non-Hema members of the Executive, the Chamber dismisses it.

<sup>778</sup> **P-0041**: DRC-OTP-0147-0002 at 0026.

<sup>779</sup> **P-0014**: DRC-OTP-2054-0612, from 0667 to 0668; DRC-OTP-2054-0961 from 0984 to 0986. *See also* **P-0012**: DRC-OTP-2054-0073, at 0118.

leadership, and in particular Thomas Lubanga, maintained close ties with influential Hema/Gegere businessmen, who financed the organisation.<sup>780</sup>

303. In a programme issued on 26 September 2002,<sup>781</sup> the UPC set out its reasons for military action. The programme mentioned a ‘terrorist and genocidal’ coalition of APC elements from Mbusa Nywamisi’s RCD-K/ML, ADF, Nalu, Maymay and Interahamwe as an external cause of the Hema-Lendu conflict and hence justification of the military offensive on 9 August 2002.<sup>782</sup>

304. After the UPC had undertaken major military actions, *inter alia*, by seizing control of Mongbwalu in November 2002,<sup>783</sup> it similarly continued to publicly express that the APC, ADF, Nalu or Interahamwe were ‘negative forces’, and the UPC was not a ‘pro-Hema machine’.<sup>784</sup> Moreover, in a statement of early January 2003, in the context of UPC contacts with the RCD-Goma,<sup>785</sup> the UPC claimed that it was fighting to bring peace to the territory under its control and to reconcile the peoples, and that it was a victim of the international community through an

<sup>780</sup> **P-0012**: DRC-OTP-2054-0274, at 0280; and **P-0041**: DRC-OTP-0147-0002, from 0020 to 0021, para. 111. See also **P-0016**: DRC-OTP-0126-0422-R03, from 0439 to 0440, para. 97. P-0043 explained in considerable detail how businesses provided money to the UPC under a so-called ‘pre-financing’ system (**P-0043**: DRC-OTP-2054-5546-R02, from 5628 to 5631, and at 5630).

<sup>781</sup> DRC-OTP-0164-0447. See also DRC-OTP-0092-0436, which seems to include an English version of this document at the beginning.

<sup>782</sup> DRC-OTP-0164-0447, at 0447.

<sup>783</sup> See section IV.B.7.d)(1) Assault on Mongbwalu.

<sup>784</sup> A letter signed by Thomas Lubanga and dated 29 November 2002, sent to the ‘*chef de groupement*’ of Bedu/Ezekere in Zumbe, suggested that the Bbale and Ngiti community was hostage to criminals who had as their sole objective to loot the resources, and were not in any way synonymous to ‘fighters’ and even less to APC, ADF, Nalu or Interahamwe, which were the ‘negative forces’ against which the UPC/RP was fighting. It maintained that the FPLC as army of the UPC/RP was not a ‘pro-Hema machine’, and envisaged, among other things, to proceed ‘with the agreement of the notables and “*forces vives*”’ to proceed to recruit and recuperate deserters and ‘fighters’ with a view to recycling and training (DRC-OTP-0017-0026, at 0027). A New Year’s message from the ‘president of the UPC/RP’ indicated, *inter alia*, that the UPC/RP worked towards realising the objective of pacification and reconciliation no matter how strong the enemy or what the price; that the FPLC was in control of about 80% of the security situation; and that on a national and international level, the UPC/RP does and will not stop fighting to be recognised the right to the place it deserves like other movements for the liberation of the Congo (DRC-OTP-0037-0295). In a video-recorded speech of around January 2003, Thomas Lubanga opined that pacification and reconciliation were the main short term goals of his movement, that ‘the pacification realised for 95 per cent was achieved through weapon force’, and that the UPC/RP would continue to deploy and not tolerate anything which could stand in the way of its mission, namely consolidating peace and reconciliation of peoples and groups in Ituri (DRC-D18-0001-0433, from 00:49:37 to 00:51:25 (transcript DRC-D18-0001-6643, from 6649 to 6650)).

<sup>785</sup> DRC-OTP-0074-0422, at 0480. See also **P-0041**: DRC-OTP-0147-0002, at 0020, para. 107.

unjustified ‘mono-ethnification’ of the movement.<sup>786</sup> It suggested that speaking of an inter-ethnic war in Ituri was only a pretext to justify massacres.<sup>787</sup> Another statement of the same day mentioned that the two movements agreed to work out general principles of cooperation and demanded the complete withdrawal of all foreign forces, the end of the support by the government in Kinshasa for armed groups like the Mai-Mai, the Interahamwe, the ex-FAR, the FDD, and other ‘negative forces’, as well as for the various actors in the peace process to urgently consider the need to integrate the UPC/RP into that process.<sup>788</sup>

305. Chief Kahwa, in a speech given during a visit to Mandro training camp,<sup>789</sup> explained that the UPC/FPLC decided to launch a ‘new revolution’ because armies like the FAC or the APC only harassed the population, whereas the UPC/FPLC army would be one without discrimination, for all Congolese, and that it was not intended to be an ethnic one, but one that protects all ethnicities, people and their belongings, and that there was no ‘tribalism’ in the army.<sup>790</sup>

<sup>786</sup> DRC-OTP-0113-0156 at 0157 to 1058.

<sup>787</sup> DRC-OTP-0113-0156 at 0158 to 0159.

<sup>788</sup> DRC-OTP-0132-0252. *See also* DRC-OTP-0164-0444.

<sup>789</sup> The Chamber notes that according to the Defence, the visit to the camp and speech took place at the end of October 2002, before the troops left for the operation in Mongbwalu (Defence Closing Brief, paras 172, 591 and 779), whereas the Prosecution argues that while it did not take place towards the end of October or before the departure of the troops for Mongbwalu, the exact date is not in evidence and there is no evidence on record indicating that these troops later indeed took part in the operation in Mandro (Prosecution Reply Brief, para. 124). On the basis of the evidence on record, the Chamber is unable to make a finding on the exact timing of this speech, but, concludes, however, that it was during the time Chief Kahwa held the position of UPC national secretary of defence, as he is introduced as such on this occasion (DRC-OTP-0082-0016, from 00:11:30 to 00:11:40, (translation DRC-OTP-0164-0710, at 0718)).

<sup>790</sup> DRC-OTP-0082-0016, from 00:11:30 to 00:18:15 (transcript DRC-OTP-0164-0567; translation DRC-OTP-0164-0710, at 0719). Mr Ntaganda testified that this was the same ideology which was passed on to all soldiers who were deployed, before they were deployed and during training, and that in this case he had discussed with Floribert Kisembo beforehand what should be imparted on the soldiers (**D-0300**: T-216, pages 12 to 13). The Chamber notes that during this speech, Chief Kahwa also told soldiers that any soldier who stole from inhabitants or raped women or girls would be shot (DRC-OTP-0082-0016, from 00:25:17 to 00:26:47 (translation DRC-OTP-0164-0710, at 0723, lines 375 to 387)). Noting, however, the Chamber’s findings on how the operations described below unfolded, including the looting and rapes which occurred without punishment (*see also* para. 332 below), the Chamber does not consider the statements in this speech to reflect the reality of the disciplinary system within the UPC/FPLC as regards looting and rape of civilians associated with the enemy, during UPC/FPLC operations.

306. On 11 December 2002, in his capacity as UPC President, Thomas Lubanga issued a decree,<sup>791</sup> by way of which he reorganised the membership of the Executive, removing and adding some members, as well as changing the areas of competence of certain continuing members. Notably, pursuant to this decree, Chief Kahwa no longer formed part of the UPC Executive.<sup>792</sup>
307. The UPC Executive remained operational until 6 March 2003, when the UPC/FPLC was dislodged from Bunia.<sup>793</sup> Upon the UPC/FPLC's return to Bunia, the UPC Executive was reconstituted on 2 June 2003, by way of decree issued by Thomas Lubanga.<sup>794</sup> Pursuant to this decree, diplomacy came, in addition to defence and security, under the auspices of the Presidency.<sup>795</sup> John Tinanzabo, also previously a member of the Executive, was appointed to the position of Secretary General and Spokesperson of the Movement,<sup>796</sup> and seven persons, some of whom had previously held positions in the UPC Executive, were appointed National Secretaries.<sup>797</sup>
308. On 8 December 2003, Thomas Lubanga issued a decree<sup>798</sup> by which he suspended two members of the UPC Executive as well as the Chief of Staff of the FPLC and two of its officers on account of 'subversion', and nominated six individuals to carry out their functions *ad interim*.<sup>799</sup>

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<sup>791</sup> DRC-OTP-0091-0016.

<sup>792</sup> Prior to the 11 December 2002 decree, Thomas Lubanga had issued a decree on 2 December 2002, removing Chief Kahwa from his position and excluding him from the UPC (DRC-OTP-0089-0057).

<sup>793</sup> DRC-OTP-0089-0093, at 0093. *See also* section IV.B.9 Bunia on 6 March 2003.

<sup>794</sup> DRC-OTP-0089-0093.

<sup>795</sup> DRC-OTP-0089-0093, at 0093.

<sup>796</sup> DRC-OTP-0089-0093, at 0093. According to the decree, the General Secretariat had competence over pacification and reconciliation (DRC-OTP-0089-0093, at 0094). It is noted that in the preceding decrees of 3 September and 11 December 2002, this position is not mentioned. It appears, however, in another document issued by Thomas Lubanga as President of the UPC on 30 November 2002 (DRC-OTP-0089-0069).

<sup>797</sup> DRC-OTP-0089-0093, at 0094. It is noted that according to the testimony of P-0005, at least one member of the UPC Executive did not take up the position to which he was nominated (**P-0005**: T-183, page 24).

<sup>798</sup> DRC-OTP-0132-0237.

<sup>799</sup> DRC-OTP-0132-0237, at 0238. The reason for this reorganisation is apparent from the preamble of the decree, which refers to subversion, and the need to punish it in an exemplary manner. *See also* para 316 below.

## 2. Military apparatus

### a) Origins of the FPLC

309. Around the end of 1999 and the beginning of 2000,<sup>800</sup> the Chui Mobile Force was created, with Mr Ntaganda as its founder and leader.<sup>801</sup> Alongside Mr Ntaganda, its members, who were mainly dissidents of the APC,<sup>802</sup> included Floribert Kisembo, Thomas Kasangaki, Zairois, Prince Mugabo, Paul Bagonza, Nduru Tchaligonza, Olivier Mbavazi, Abelanga, Rwemira, Rafiki Saba, and Mwambutsa Zairwa.<sup>803</sup> Chief Kahwa also supported the Chui Mobile Force.<sup>804</sup> The members of the Chui Mobile Force were mainly Hema and Tutsi.<sup>805</sup>

310. These former APC soldiers, referred to as 'mutineers',<sup>806</sup> claimed that the APC sided with the Lendu and discriminated against the Hema, which is why they decided to come together to protect the interests of the Hema.<sup>807</sup>

311. After some time in the bush,<sup>808</sup> the members of the Chui Mobile Force started to recruit in rural areas.<sup>809</sup> Some individuals joined the Chui Mobile Force

<sup>800</sup> **P-0901**: T-27, page 20.

<sup>801</sup> **P-0901**: T-27, page 25; T-30, page 61; and T-31, page 8; and **D-0300**: T-212, pages 24 to 27; and T-225, pages 12 to 13, 15, 19 to 20. *See also* **D-0300**: T-212, pages 37 to 39; and T-231, pages 62 to 63.

<sup>802</sup> **D-0300**: T-224, page 67; and T-212, page 41. *See also* **P-0901**: T-30, pages 57 to 58.

<sup>803</sup> **P-0901**: T-27, pages 20 to 24, and 37 to 38; and T-30, page 60; and **D-0300**: T-212, pages 69 to 75, also referring to DRC-OTP-0128-0003 and DRC-OTP-0128-0011; and T-225, pages 20 to 21, and page 23. *See also* **P-0901**: T-27, pages 41 to 45, referring to DRC-OTP-0137-0711, and pages 46 to 47, referring to DRC-OTP-0137-0713.

<sup>804</sup> **D-0300**: T-232, pages 28-29.

<sup>805</sup> **P-0012**: DRC-OTP-2054-0073, at 0094; **P-0901**: T-27, pages 24 to 25, and 39; and **D-0300**: T-224, page 66; and T-225, page 12. *See also* **P-0012**: DRC-OTP-2054-0073, at 0093; and **P-0014**: T-137, page 34; and T-138, page 6.

<sup>806</sup> **D-0300**: T-224, page 66.

<sup>807</sup> **P-0055**: T-70, pages 60 to 61; **P-0901**: T-27, pages 25 to 26, and 31. *See also* T-27, page 37; T-30, page 58; and **P-0012**: DRC-OTP-2054-0073, from 0088 to 0089, and at 0091. *See also* the following parts of Mr Ntaganda's testimony for his perception of the situation in the APC, and the perceived exclusion of the Hema, at the relevant time: **D-0300**: T-212, pages 21 to 23, and 34; T-224, pages 66 to 67; and T-225, pages 31, and 33 to 34. *See further* DRC-OTP-0033-0044-R02; DRC-OTP-0033-0058-R02; DRC-OTP-0037-0489; DRC-OTP-0037-0512; DRC-OTP-0197-0238; DRC-OTP-0214-0065; DRC-OTP-0214-0091, referring to an alleged genocide carried out by the Lendu against the Hema around 1999 to 2000.

<sup>808</sup> **P-0901**: T-30, page 57; and **D-0300**: T-212, page 41; T-224, page 66; and T-225, page 22, page 25, and page 34. *See also* **P-0901**: T-30, page 56.

<sup>809</sup> **P-0901**: T-27, page 39. *See also* T-30, pages 56 to 57.



voluntarily.<sup>810</sup> Parents were also asked to provide their children for participation in military training, which some of them did.<sup>811</sup>

312. Subsequently, the members of the Chui Mobile Force underwent military training in Tchankwanzi, Uganda.<sup>812</sup> The training was carried out by the Ugandan military authorities.<sup>813</sup> The number of Chui Mobile Force members increased from about 150 to 200<sup>814</sup> to between 750 and 900 recruits.<sup>815</sup> At the beginning of the training, Mr Ntaganda visited Tchankwanzi, encouraging the recruits.<sup>816</sup> Around the same time, Mr Ntaganda, Floribert Kisembo, Nduru Tchaligonza, Paul Bagonza, Thomas Kasangaki, Zairois, Prince Mugabo, Asimwe and others underwent officer training in Jinja, Uganda.<sup>817</sup> In late 2000, international and non-governmental organisations, including UNICEF, started to investigate the use of individuals under the age of 15 within the military, *inter alia*, by visiting Tchankwanzi, from where they engaged in the demobilisation of a number of individuals under the age of 15 who were trained there.<sup>818</sup>

313. Around two years later, in April 2002, Thomas Lubanga restructured the APC, which involved notably the assignments of Floribert Kisembo, Bosco Ntaganda, Nduru Tchaligonza, Paul Bagonza.<sup>819</sup> However, this restructuring created a conflict within the APC.<sup>820</sup> Thomas Lubanga and Chui Mobile Force leaders,

<sup>810</sup> E.g. **P-0901**: T-30, pages 71 to 72; and **D-0038**: T-249, pages 13 to 14.

<sup>811</sup> **P-0012**: DRC-OTP-2054-0073, from 0094 to 0095; **P-0014**: DRC-OTP-2054-0429, from 0481 to 0482, and from 0484 to 0486; and **P-0116**: T-195, pages 14 to 16.

<sup>812</sup> **P-0901**: T-27, page 20; and **D-0300**: T-213, page 6. See also **P-0012**: DRC-OTP-2054-0073, at 0089; **P-0031**: T-175, page 43; and **P-0116**: DRC-OTP-2054-6975, at 7059.

<sup>813</sup> **P-0014**: T-137, page 34; **P-0901**: T-27, pages 30, 69 to 70; **D-0038**: T-249, page 17; and **D-0300**: T-212, pages 60 to 63, 86; T-231, pages 63 to 66. See also **P-0012**: DRC-OTP-2054-0073, at 0091; **D-0300**: T-231, pages 59, and 64 to 66.

<sup>814</sup> **D-0300**: T-212, pages 39, and 62.

<sup>815</sup> **P-0012**: DRC-OTP-2054-0073, at 0094; and **P-0901**: T-27, page 39. See also **D-0300**: T-212, pages 84 to 85; and T-231, page 29.

<sup>816</sup> **D-0300**: T-213, pages 4 to 5; and **P-0901**: T-27, page 41.

<sup>817</sup> **D-0300**: T-212, pages 85 to 86, and 88; T-213, pages 4, 6, and 19; and T-225, page 50; **P-0012**: DRC-OTP-2054-0073, at 0093; and **P-0901**: T-27, pages 40 to 41. See also **P-0014**: T-138, page 6.

<sup>818</sup> **P-0116**: T-195, pages 41 to 43; DRC-OTP-0174-0025, paras 14, and 19 to 21; and **P-0901**: T-27, pages 52 to 53. See also **P-0012**: DRC-OTP-2054-0073, at 0095; **P-0031**: DRC-OTP-2054-3939, at 3949; **P-0901**: T-27, pages 39 to 40; DRC-OTP-0074-0797, at 0851; and DRC-OTP-2103-0390, at 0390.

<sup>819</sup> **D-0300**: T-213, pages 33-34.

<sup>820</sup> **D-0300**: T-213, page 32 to page 47; DRC-OTP-0064-0474 at 0478.

Mr Ntaganda, Floribert Kisembo, Nduru Tchaligonza, and Paul Bagonza, who were still formally part of the APC, decided to split from this armed group.<sup>821</sup> Mr Ntaganda indicated that they decided to split since the APC troops mistreated Hema commanders and killed members of Hema families.<sup>822</sup> Some other officers who felt in danger within the APC joined gradually.<sup>823</sup>

314. Around May 2002, this emerging military wing of the UPC/FPLC began training military recruits at Mandro,<sup>824</sup> and at the end of July 2002 it obtained weapons by air, enough to arm all of the 1800 to 2000 recruits present at that time at Mandro and to keep some in reserve.<sup>825</sup> From August 2002, the emerging UPC/FPLC controlled Bunia.<sup>826</sup>

315. In early September 2002, this military group was formally established as the FPLC by UPC President Thomas Lubanga,<sup>827</sup> to act as the armed wing of the UPC.<sup>828</sup>

#### **b) Leadership and General Staff**

316. Thomas Lubanga was FPLC Commander-in-Chief.<sup>829</sup> The FPLC only reported to Thomas Lubanga, not to the UPC Executive.<sup>830</sup> The highest military position

<sup>821</sup> Mr Ntaganda explained that he was present with Thomas Lubanga at the latter's compound when other APC officers started joining them (**D-0300**: T-213, pages 34 to 35). He estimated the group with Thomas Lubanga at the time of clashes with the APC in April 2002 at 35 to 40 persons, including himself and Floribert Kisembo (**D-0300**: T-213, page 37). Mr Ntaganda also stated that Thomas Lubanga was 'our leader' (**D-0300**: T-213, page 52). P-0014 explained that 'right from the start Thomas Lubanga [...] referred to the fact that there needed to be an organised army in order to fight against Mbusa's military resistance'. DRC-OTP-2054-0429 at 0473.

<sup>822</sup> **D-0300**: T-213, page 33.

<sup>823</sup> **D-0300**: T-213, page 35.

<sup>824</sup> See para. 365.

<sup>825</sup> **D-0300**: T-214, pages 41 to 44.

<sup>826</sup> See section IV.B.3 Bunia on or about 6 to 9 August 2002. See also section IV.A.1 Political leadership and related activities.

<sup>827</sup> The decree in question is not available as evidence in these proceedings. It is, however, referred to in a subsequent decree issued by UPC President Thomas Lubanga (DRC-OTP-0132-0237, at 0237). See also **D-0300**: T-215, page 35.

<sup>828</sup> Agreed Fact 43.

<sup>829</sup> **P-0768**: T-33, page 29; **D-0300**, T-213, page 52; and T-215, pages 21, and 37. See also **P-0963**: T-78, page 26. See also above.

<sup>830</sup> **P-0005**: T-184, page 16.

within the FPLC was the ‘Chief of General Staff’.<sup>831</sup> In September 2002, Floribert Kisembo was appointed to this position by Thomas Lubanga.<sup>832</sup> On 8 December 2003 Floribert Kisembo was removed as Chief of Staff by decree of the Thomas Lubanga, on account of ‘subversion’.<sup>833</sup>

317. Immediately under the Chief of Staff was a position called the ‘Deputy Chief of Staff in charge of Operations and Organisation’.<sup>834</sup>

318. A position referred to as ‘Deputy Chief of Staff in charge of Administration and Logistics’ also existed at some stage.<sup>835</sup>

319. There was a FPLC ‘General Staff’, subordinate to the Chief of Staff.<sup>836</sup> The General Staff was composed of five specialised units, each headed by a designated officer: a ‘G1’ in charge of administration, a ‘G2’ in charge of military intelligence services, also called ‘Bureau two’,<sup>837</sup> a ‘G3’ in charge of operations, a ‘G4’ in charge of logistics, and a ‘G5’ in charge of ideology/public relations.<sup>838</sup> The members of the General Staff who were not Hema or Tutsis<sup>839</sup> were excluded from discussions concerning operations.<sup>840</sup>

<sup>831</sup> **P-0901**: T-28, page 9.

<sup>832</sup> Floribert Kisembo is referred to as ‘chief of staff’ or ‘chief of general staff’, the terms being used interchangeably, **P-0055**: T-70, page 75; **P-0901**: T-28, page 9; **P-0963**: T-78, page 26, and page 63; and **D-0300**: T-215, page 35, and 37. As to the time of the formal appointment of Floribert Kisembo (and other leadership of the FPLC), see **D-0300**: T-215, page 35; and T-233, pages 13 to 14.

<sup>833</sup> DRC-OTP-0132-0237. See also **P-0901**: T-28, pages 59 to 62; and para. 308 above.

<sup>834</sup> **D-0300**: T-215, pages 36 to 37. See also **P-0012**: DRC-OTP-2054-0073, at 0118.

<sup>835</sup> **P-0901**: T-28, page 9; and **D-0300**: T-215, page 37.

<sup>836</sup> **P-0901**: T-30, page 35; and **D-0300**: T-215, page 40.

<sup>837</sup> **P-0055**: T-72, pages 14 to 15; T-73, pages 7 to 10; and T-74, page 19; **P-0907**: T-91, pages 16 to 17; and DRC-OTP-2082-1832, at 1833. See also **P-0043**: DRC-OTP-0126-0086, at 0097, para. 61.

<sup>838</sup> **P-0016**: DRC-OTP-2054-1447, from 1451 to 1452, 1511 to 1512, and 1520 to 1530; **P-0901**: T-28, pages 7, and 9 to 12; and T-30, pages 33 to 35; **P-0907**: T-89, pages 40 to 41; **P-0963**: T-78, page 64; and **D-0300**: T-215, pages 40 to 44. The Chamber notes that these witnesses provided a general overview of the FPLC General Staff while describing the competence of each specialised unit slightly differently. Nevertheless, the Chamber considers that the witnesses’ statements are consistent in terms of the substantive roles of the units. See also **P-0055**: T-70, page 65.

<sup>839</sup> Witnesses P-0014 and P-0016 stated that UPC/FPLC leadership included ‘Tutsis’. **P-0014**: DRC-OTP-2054-0961 from 0985 to 0986; **P-0016**: DRC-OTP-0126-0422 at 0439-0440. As to the perception of shared interest as reason for this inclusion, P-0014 explained that ‘some officers from Rwanda’ came and worked with the UPC/FPLC ‘given the goals that they had, that the UPC had in the field’ (DRC-OTP-2054-0961 at 0986).

<sup>840</sup> **P-0016**: DRC-OTP-0126-0422 at 0439-0440.

320. The FPLC General Staff was based in Bunia<sup>841</sup> between its formal establishment in September 2002, and the moment the UPDF forced the UPC to retreat from Bunia, and the FPLC leadership left the city.<sup>842</sup> The FPLC returned to Bunia and its leadership re-established itself there in June 2003.<sup>843</sup> Following the deployment of the Artémis force in June 2003, the FPLC withdrew from Bunia again.<sup>844</sup>

### c) Position of Mr Ntaganda

321. Mr Ntaganda was among the leaders that split from the RCD-K/ML (APC) in April 2002.<sup>845</sup> In early September 2002, Thomas Lubanga formally appointed him as Deputy Chief of Staff in charge of Operations and Organisation,<sup>846</sup> a position he held until 8 December 2003.<sup>847</sup>

322. The tasks associated with the role of 'G3' were exercised by Mr Ntaganda when this position was left vacant,<sup>848</sup> and, when this position was filled, the 'G3' reported directly to Mr Ntaganda.<sup>849</sup> Mr Ntaganda was effectively in charge of deployment and operations of the FPLC.<sup>850</sup> He indicated that he did not have

<sup>841</sup> Mr Ntaganda marked the location of 'UPC/FPLC headquarters' on a map of Bunia during his testimony (*see* DRC-REG-0001-0065; and **D-0300**: T-215, page 52). *See also* **P-0055**: T-70, page 66; **P-0768**: T-33, page 33; and **P-0963**: T-78, page 28.

<sup>842</sup> **P-0963**: T-78, page 86.

<sup>843</sup> **D-0300**: T-221, pages 59 to 60.

<sup>844</sup> DRC-OTP-0005-0083.

<sup>845</sup> *See* para. 313 above.

<sup>846</sup> Agreed Fact 78.

<sup>847</sup> Agreed Fact 79. On that date, following the dismissal of Floribert Kisembo, Thomas Lubanga appointed Mr Ntaganda as Chief of Staff *ad interim* (DRC-OTP-0132-0237, at 0238; and **D-0300**: T-226, page 17).

<sup>848</sup> **P-0907**, T-89, page 40. *See also* **P-0017**: T-58, page 23. Mr Ntaganda stated that the G3 officer left in mid-November 2002 for medical reasons, and was subsequently not replaced (**D-0300**: T-215, pages 41 to 42). He explained that he did not himself take up the responsibility of the G3, making reference to the absence of a decree appointing him to such position (**D-0300**: T-226, page 21). Having considered generally Mr Ntaganda's role during UPC/FPLC operations as discussed in the present Judgment, the Chamber finds that his testimony on formal appointments does not directly contradict P-0907's evidence to the effect that Mr Ntaganda *de facto* exercised the tasks associated with the role of G3.

<sup>849</sup> **P-0901**: T-28, page 14.

<sup>850</sup> **P-0014**: T-136, page 41; **P-0055**: T-71, page 82; **P-0768**: T-33, page 29; and T-34, page 52; and **P-0963**: T-78, page 67. *See also* **P-0901**: T-29, page 13; and **D-0207**: T-261, page 29. The Chamber notes that P-0907 referred to Mr Ntaganda as 'chief of general staff' (**P-0907**: T-89, page 21). Elsewhere, P-0907 explains that Kisembo was the 'general chief of staff', and that '[a]fter him, we had the chief of general staff responsible for operations, the person who handled military operations, that was Mzee Bosco, Tango Romeo' (**P-0907**: T-89,

problems exercising his role.<sup>851</sup> The Chamber also finds that his orders were obeyed.<sup>852</sup> Mr Ntaganda was able to plan and lead operations, and the involvement of his hierarchical superior, Floribert Kisembo was not decisive in this respect.<sup>853</sup> As a matter of fact, Floribert Kisembo had been subordinate to Mr Ntaganda before being appointed his superior.<sup>854</sup> P-0901 and P-0907 explained that Floribert Kisembo's role of Chief of Staff was predominately administrative or political, and that therefore Mr Ntaganda, as Deputy Chief of Staff, had control over military planning and operations.<sup>855</sup> Mr Ntaganda inspired fear amongst the troops and the population.<sup>856</sup> He stated that he was a 'highly respected person in the army and within the civilian community'<sup>857</sup> and that 'anybody who broke the law was in fear of [him]'.<sup>858</sup>

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page 40). In the Chamber's assessment, the discrepancy is of terminological nature only, and in substance P-0907's evidence corresponds to other evidence on the issue. *See also* sections IV.B.7 First Operation: Assaults on a number of villages in the Banyali-Kilo collectivité in November/December 2002 and IV.B.8 Second Operation: Assaults on a number of villages in the Walendu-Djatsi collectivité in February 2003. In light of the above, the Chamber also does not consider credible Mr Ntaganda's statement that he did not have the authority to issue orders (**D-0300**: T-215, page 37).

<sup>851</sup> **D-0300**: T-225, page 83.

<sup>852</sup> **P-0963**: T-78, page 67. *See also* T-79, pages 24 to 25. The conclusion of the Chamber is also supported by the specific findings made by the Chamber regarding execution of Mr Ntaganda's orders in the course of UPC/FPLC operations analysed below.

<sup>853</sup> **P-0012**: T-164, page 25 (stating that Mr Ntaganda was predominantly responsible for orders and authorisations during operations in spite of his position as deputy to Kisembo); and **P-0768**: T-33, page 29 (stating that Kisembo was 'in fact, not influential on the field' and Mr Ntaganda 'was more present and influential'). *See also* **P-0016**: DRC-OTP-0126-0422-R03, at 0434, para. 64 (stating that Mr Ntaganda and Floribert Kisembo had a conflictual relationship, and that Mr Ntaganda could contradict decisions taken by Kisembo, which occurred on several occasions).

<sup>854</sup> **D-0300**: T-212, page 26.

<sup>855</sup> **P-0901**: T-28, page 10; and **P-0907**: T-90, page 58. The Chamber notes that several witnesses purported to provide reasons for this arrangement, and, in particular, why Floribert Kisembo, and not Mr Ntaganda, was appointed FPLC Chief of Staff, *see* **P-0055**: T-70, page 76 (referring to Mr Ntaganda having 'more experience when it came to managing an army'); and T-71, pages 4 to 5 (where the witness states that 'Kisembo was a native of Bunia, while Ntaganda was not' and that Floribert Kisembo was appointed Chief of Staff 'so that the UPC should not be perceived to be a Rwandan movement'); and **P-0907**: T-90, page 71 ('[b]ut they said that we had to appoint a native person, a local person, so Kisembo was appointed [...]').

<sup>856</sup> **P-0002**: DRC-OTP-2060-0002-R03, at 0014, para. 105; and DRC-OTP-2058-0251, from 01:52:57 to 01:57:18 (transcript DRC-OTP-2102-3766, from 3822 to 3825); **P-0016**: DRC-OTP-0126-0422-R03, at 0434; **P-0888**: T-105, page 31; *See also* **P-0046**: T-101, page 78; and **D-0300**: T-212, pages 24 to 25.

<sup>857</sup> *See* **D-0300**: T-224, page 9

<sup>858</sup> **D-0300**: T-222, page 71.

323. Within the FPLC, Mr Ntaganda was responsible for military training,<sup>859</sup> and had, as part of his role, the power to order disciplinary measures.<sup>860</sup> Mr Ntaganda also played a role in the deliveries of weapons from Rwanda.<sup>861</sup> He had a heavy weapons unit under his command.<sup>862</sup>

**d) Command structure and effectiveness of the military apparatus**

324. Further down the hierarchy, the organisation of the FPLC replicated that of a conventional modern army.<sup>863</sup> The FPLC included members as a result of the split from the RCD-K/ML (APC) in April 2002, as well as newly recruited and trained members. Ranks were made official in the FPLC in April/May 2003.<sup>864</sup> FPLC members were not paid.<sup>865</sup>

325. Before the First Operation, the UPC/FPLC incorporated new members as a result of an agreement with APC dissidents under the leadership of Jérôme Kakwavu.<sup>866</sup> Under the agreement, there was also an exchange of troops: newly trained UPC/FPLC soldiers reinforced the troops under the command of Jérôme Kakwavu, while the latter's more experienced troops went from Aru to Bunia.<sup>867</sup> The UPC/FPLC also provided weapons and uniforms to the troops under the command of Jérôme Kakwavu when they were integrated into the UPC/FPLC.<sup>868</sup>

<sup>859</sup> **P-0014**: DRC-OTP-2054-0429, at 0491; and T-136, page 32; **P-0768**: T-34, pages 51 to 52; and **P-0963**: T-78, page 67. *See also* **P-0016**: DRC-OTP-2054-1447, at 1463.

<sup>860</sup> **D-0300**: T-211, pages 51 to 52. *See also* **D-0300**: T-227, pages 82 to 83; **P-0017**: T-63, page 6; and DRC-OTP-0018-0170 (French translation: DRC-OTP-0173-0517, at 0518), a letter sent by Mr Ntaganda in his capacity as Deputy Chief of Staff to a subordinate officer, asking to send him any disobedient soldier, adding that he had a central prison.

<sup>861</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0457, para. 202. *See also* para. 336 below.

<sup>862</sup> **P-0012**: T-164, page 31; and **P-0768**: T-33, pages 35 to 36.

<sup>863</sup> **P-0901**: T-30, pages 31 to 32; and **P-0963**: T-78, page 63.

<sup>864</sup> **P-0901**: T-30, pages 24 to 25.

<sup>865</sup> **P-0017**: T-58, pages 55 to 56; **P-0055**: T-74, page 98; **P-0963**: T-82, page 86; and **D-0300**: T-211, pages 19 to 20; and T-234, page 3.

<sup>866</sup> **P-0768**: T-33, pages 20 to 22; and **D-0300**: T-215, pages 22 to 24, and 70 to 72 (stating that slightly above 300 people joined the UPC/FPLC). *See also* **P-0901**: T-28, page 43.

<sup>867</sup> **P-0768**: T-33, page 30. *See also* **D-0300**: T-215, page 71; **P-0055**: T-73, page 92; and **P-0014**: DRC-OTP-2054-0612 from 0697 to 0698.

<sup>868</sup> **P-0768**: T-33, pages 29 to 30; and **D-0300**: T-215, page 73. *See also* **P-0055**: T-70, page 43.

326. In November/December 2002, FPLC units operating in various territories of Ituri were geographically organised in three sectors: the northeast sector around Aru, the southeast sector around Mongbwalu and the south sector around Bunia.<sup>869</sup> These sectors were commanded, respectively, by Jérôme Kakwavu, Salongo Ndekezi and Nduru Tchaligonza.<sup>870</sup>

327. From December 2002/January 2003 to March 2003, the FPLC operated in two sectors: northeast and southeast.<sup>871</sup> Jérôme Kakwavu commanded the northeast sector and Emmanuel Ndungutse, referred to by most witnesses as ‘Commander Manu’, was his second-in-command.<sup>872</sup> Salongo Ndekezi and Nduru Tchaligonza held the same positions respectively in the southeast sector.<sup>873</sup>

328. Apart from the geographical division in sectors, the FPLC was divided into several brigades.<sup>874</sup> The brigades were further divided into battalions and into companies, platoons, and sections.<sup>875</sup> There were also specialised heavy weapons

<sup>869</sup> **P-0055**: T-70, page 80; and **P-0901**: T-28, page 13. The Chamber notes that P-0055 mentioned an additional, fourth, sector around Mahagi, and stated that Mugisa was its commander (**P-0055**: T-70, page 80). P-0901, however, explicitly stated that Mahagi was within the Aru sector (**P-0901**: T-28, page 13).

<sup>870</sup> **P-0055**: T-70, page 80; and **P-0901**: T-28, page 13. The Chamber notes that, in the evidence, Nduru Tchaligonza’s name is sometimes spelt as ‘Kyaligonza’, but understands that this refers to one and the same person.

<sup>871</sup> **D-0300**: T-218, page 6 (referring to Tiger One as being sector commander to the southeast sector), page 16 (describing logbook entry DRC-OTP-2102-3854, at 4032 as the message he sent to Jérôme, the commander of the northeast sector), and page 52 (stating that between December and January 2003, the FPLC started operating from two sectors until it was driven out of Bunia by the UPDF). *See also* logbook entries DRC-OTP-2102-3854, from 4004 to 4006; **P-0016**: DRC-OTP-0126-0422-R03, from 0435 to 0436, paras 76 to 78.

<sup>872</sup> Logbook entries DRC-OTP-2102-3854, at 4006. *See also* **P-0016**: DRC-OTP-0126-0422-R03 at 0435, para. 76 (referring to Kakwavu as northeast sector commander). As explained below, prior to being made second-in-command of the northeast sector, Emmanuel Ndungutse was commander of the 401<sup>st</sup> Brigade. P-0017 referred to Jérôme Kakwavu as brigade commander (**P-0017**: T-58, page 37). In the view of the Chamber, this is a minor discrepancy of no consequence.

<sup>873</sup> Logbook entries DRC-OTP-2102-3854, at 4005; **P-0016**: DRC-OTP-0126-0422-R03, at 0436, para. 78). P-0016 and P-0017 also referred to ‘Kyaligonza’ not as sector second-in-command, but as brigade commander (**P-0016**: DRC-OTP-0126-0422-R03, at 0436, para. 78; and **P-0017**: T-58, page 37). Mr Ntaganda testified that Salongo Ndekezi was generally known also as Tiger One (**D-0300**: T-220, page 19). He also stated that prior to being made second-in-command of the southeast sector, Tchaligonza was commander of the 307<sup>th</sup> Brigade and therefore in command of the area of Bunia, Kasenyi, Katoto, Central, Barrière, Nizi and Mwanga (**D-0300**: T-220, page 20). The Chamber notes the evidence cited above to the effect that Tchaligonza was, before the reorganisation announced in the radio message of 12 February 2003, commander of the south sector. However, in the Chamber’s view, the discrepancy is immaterial as it exists only as to the question whether Tchaligonza was, before the reorganisation, sector commander or (also) brigade commander, considering that the evidence is consistent as to the geographical area under his command.

<sup>874</sup> **P-0014**: DRC-OTP-2054-0429, from 0488 to 0489; and **P-0963**: T-78, page 65.

<sup>875</sup> **P-0901**: T-30, page 32; and **P-0963**: T-78, pages 64 to 65 (further providing estimates of the number of persons in each standard unit).

units.<sup>876</sup> Each unit was headed by a person in charge that was accountable to the hierarchy.<sup>877</sup> For this purpose, a reporting system was in place.<sup>878</sup>

329. In February 2003, Mr Ntaganda announced a '*mise en place*', reorganising five brigades, composed of a total of 13 battalions:<sup>879</sup>

- The brigade located in the northeast sector, referred to as the '401<sup>st</sup> Brigade', commanded by Seyi with Ndahisaba as second-in-command, was composed of the '7<sup>th</sup> Battalion', based in Mongbwalu and led by Eric, and the '13<sup>th</sup> Battalion', based at Ariwara and led by Ricky.<sup>880</sup>
- The unit referred to as the '505<sup>th</sup> Brigade', also in the northeast sector, based in Mahagi, with Paul Mugisa as commander and Odongo as second-in-command, was composed of the 5<sup>th</sup> Battalion in Mahagi, and the 11<sup>th</sup> battalion in Djugu and Fataki, led by Ndeze,<sup>881</sup> and, later, the

<sup>876</sup> See para. 334 below.

<sup>877</sup> **P-0963**: T-78, page 63; and T-79, pages 24 to 25.

<sup>878</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0463, para. 236; **P-0055**: T-70, page 75; and **P-0290**: T-65, page 74 (discussing DRC-OTP-0017-0003). See also DRC-OTP-0017-0025, which is a hand-written FPLC report.

<sup>879</sup> Logbook entry DRC-OTP-2102-3854, from 4004 to 4006, consisting of a message by Mr Ntaganda to all stations announcing a 'new setup' ('*nouvelle mise en place*'). Mr Ntaganda himself acknowledged having sent out this overview of the unit structure (**D-0300**: T-220, pages 12 to 13; see also Defence Closing Brief, para. 1036). According to Mr Ntaganda, Kisembo prepared the reorganisation and merely asked him to disseminate it (**D-0300**: T-220, pages 14 to 15). Irrespective of who prepared the structure, the Chamber finds that it was sent by Mr Ntaganda. Noting the Defence submission that this reorganisation was not fully implemented before the UPC/FPLC's defeat on 6 March 2003 (Defence Closing Brief, para. 1038), the Chamber notes that, when asked whether this structure came to exist in reality, Mr Ntaganda stated, '[w]ell, we prepared for it, but it wasn't implemented. It was our intention to create an army, a professional army, soldiers would be working but we continued to make improvements to have a well-structured army. But this organisational structuring was not concluded. There were soldiers who worked who held the positions, but there were commanders who hadn't taken up their posts of command' (**D-0300**: T-220, page 16). While the structure of the FPLC may not have been completely implemented as envisaged in this reorganisation, the Chamber considers that the formal structure as ordered is indicative of the nature of the FPLC, including as concerns the commanding positions accorded to certain individuals. The Chamber also notes that P-0017 stated that to the best of his knowledge, there were three brigades within the FPLC (**P-0017**: T-58, page 36). Notwithstanding the witness's own statement implying his knowledge may not have been complete, the Chamber considers that such variation in the evidence can be explained by the fact that the composition of the FPLC changed over time, including as concerns the number of brigades. In any event, given that the roles of the relevant commanders during the Second Operation are not disputed, and are moreover corroborated by several insider witnesses and Mr Ntaganda himself, the Chamber does not consider it necessary to make a specific finding on the alleged lack of implementation of this structure in general.

<sup>880</sup> Logbook DRC-OTP-2102-3854, from 4004 to 4006. See also, **D-0300**: T-218, page 49; **P-0016**: DRC-OTP-0126-0422-R03, at 0435, para. 76; and **P-0901**: T-28, page 13.

<sup>881</sup> Logbook DRC-OTP-2102-3854, from 4005 to 4006; and **P-0016**: DRC-OTP-0126-0422-R03, at 0435, para. 76). See also, **P-0901**: T-28, page 13).



12<sup>th</sup> battalion in the Djugu part of the Djugu and Fataki area, led by Lyevin.<sup>882</sup>

- The '307<sup>th</sup> Brigade', in the southeast sector, based in Bunia, with David as commander and Kizito as second-in-command, was composed of the '3<sup>rd</sup> Battalion' in Mwanga, Central, Katoto and Mandro, led by Kareka, the '21<sup>st</sup> Battalion' in Tchomia, Kasenyi and Semliki, led by Mugisa, and the '59<sup>th</sup> Battalion' in Chai, Nyakeruy, Bogoro and Zumbe, led by Germain.<sup>883</sup>
- The '201<sup>st</sup> Brigade', in the southeast sector, based in Marabo/Komanda, with Alex Munyalizi as commander and Innocent as second-in-command, was composed of the '4<sup>th</sup> Battalion' led by Bebwa, and the '9<sup>th</sup> Battalion' led by Nembe Benjamin.<sup>884</sup>
- The '409<sup>th</sup> Brigade', in the southeast sector, based in Kilo, with Salumu Mulenda as commander and Meliange as second-in-command, was composed of the '157<sup>th</sup> Battalion' led by Americain Beiza, the '53<sup>th</sup> Battalion' led by Mateso, the '17<sup>th</sup> Battalion' led by Yuda, and the '19<sup>th</sup> Battalion' led by Kasual.<sup>885</sup>

330. In March 2003, the composition of the FPLC changed, as Jérôme Kakwavu established a rival movement.<sup>886</sup>

<sup>882</sup> Logbook DRC-OTP-2102-3854, at 3986 and 3989. *See also* **D-0300**: T-228, page 61.

<sup>883</sup> Logbook DRC-OTP-2102-3854, from 4005 to 4006.

<sup>884</sup> Logbook DRC-OTP-2102-3854, from 4005 to 4006. *See also* **P-0901**: T-28, page 13; and **D-0300**: T-218, page 51.

<sup>885</sup> Logbook DRC-OTP-2102-3854, at 4004. *See also* **P-0016**: DRC-OTP-0126-0422-R03, at 0435, para. 76; **P-0017**: T-58, pages 22, and 36 to 38; **P-0901**: T-28, page 13; **P-0963**: T-78, page 65; and **D-0300**: T-218, page 50. In the Chamber's assessment, the discrepancy in the witnesses' accounts of the name of the brigade is of no significance.

<sup>886</sup> *See* DRC-OTP-0074-0422, at 0469.

331. The FPLC ensured discipline within its units.<sup>887</sup> Penalties included violent beating; one witness explained that he was beaten to the point where he ‘had no more strength to cry’.<sup>888</sup> Another penalty which was applied was imprisonment.<sup>889</sup>

332. This disciplinary system punished violations such as desertion and failure to execute an order.<sup>890</sup> Soldiers could not refuse to participate in operations.<sup>891</sup> UPC/FPLC soldiers, however, did not consider that rape,<sup>892</sup> the killing of a Lendu, or the looting of Lendu property,<sup>893</sup> were punishable offences. Similarly, rape of Lendu civilians during UPC/FPLC operations was not punished.<sup>894</sup> While the

<sup>887</sup> **D-0300**: T-225, page 49.

<sup>888</sup> **P-0769**: T-121, page 9 and 11 (referring specifically to an incident of flogging as disciplinary punishment).

<sup>889</sup> **P-0769**: T-121, page 8; and **D-0300**: T-214, page 10; T-215, page 75; and T-219, pages 31 to 32.

<sup>890</sup> **P-0769**: T-121, pages 8 to 10. *See also* **P-0016**: DRC-OTP-0126-0422-R03, at 0432, para. 55. For the system of discipline at UPC/FPLC training camps specifically, *see* para. 377 below.

<sup>891</sup> **D-0300**: T-228, pages 2 to 3.

<sup>892</sup> **P-0768**: T-34, page 56; and **P-0963**: T-79, page 36; and T-82, page 19. *See also* **P-0017**: T-59, pages 33 to 34; and **P-0907**: T-90, page 52 (testifying that they were not aware of any instances when the UPC/FPLC soldiers were punished for ‘raping’ women in Mongbwalu or Sayo). The Chamber also refers to its finding that sexual violence against PMFs was left largely unpunished in para. 412 below.

<sup>893</sup> **P-0907**: T-89, page 48; and T-90, pages 51 to 52; and **P-0963**: T-79, page 22. *See also* **P-0016**: DRC-OTP-0126-0422, at 0461. The Chamber also received evidence that members of the UPC/FPLC were not punished for looting and for killing Lendu persons during the First Operation (**P-0017**: T-63, page 43, and 54; **P-0768**: T-34, page 16; **P-0888**: T-105, page 81). Regarding the execution of a UPC/FPLC soldier called Liripa after the First Operation, the Chamber notes: (i) the reasons why the victim could apparently return to Mongbwalu (T-51, pages 25 to 26); and (ii) that this execution was based on a number of reasons, *inter alia*, non-authorised exit, premeditation, failure to observe instructions, abusive use of weapon, waste of war ammunitions, public drunkenness, in addition to killings (logbook DRC-OTP-2102-3854, from 3919 to 3920; *see also* **P-0859**: T-51, page 43). Further, and having had regard to the way the First Operation was found to have unfolded, the Chamber considers that Mr Ntaganda’s testimony on this point (**D-0300**: T-222, pages 62 to 64) lacks in credibility. In addition, the Chamber notes that the Defence refers to the burning of looted goods by Mr Ntaganda on one instance in August 2002, as well as an execution in Ndromo meant to serve as an example (Defence Closing Brief paras 759 to 764), and detention of Abelanga, Pigwa and Thomas Kasangaki for stealing (Defence Closing Brief, para. 175; **D-0300**: T-217, pages 57 to 58; T-222, page 66 to 69; T-237, pages 9 to 10). The Chamber lastly notes the isolated character of these incidents and, having further considered (i) the fact that looted items of high value were usually given to the commanders (*See* para 515 below); and (ii) the nature of the orders given to the troops before combat (*See* para. 415 below), the Chamber finds that these examples of punishment do not affect its finding that some offenses were not considered punishable within the UPC/FPLC. In relation to P-0886’s testimony that soldiers did not intimidate or disturb he and others who returned to Sayo after the First Operation, and that ‘we lived in harmony [...] [w]hen one of their soldiers committed abuses, that person was punished’, the Chamber does not consider this to affect its aforementioned finding, noting that the inhabitants of Sayo who returned there after the First Operation did not include Lendu (*see* para. 536 below). In relation to Chief Kahwa’s speech at Mandro regarding looting, *see* footnote 790 above.

<sup>894</sup> **P-0017**: T-59, pages 33 to 34; and **P-0907**: T-90, page 52 (testifying that they were not aware of any instances when the UPC/FPLC soldiers were punished for raping women in Mongbwalu or Sayo); and **P-0963**: T-79, pages 74 to 77 (testifying that as far as he knew, no one was punished for rapes in Kobu). *See also* **P-0963**: T-79, page 36; and T-82, page 19. The Chamber notes Mr Ntaganda’s evidence that it was the UPC/FPLC objective to protect the population, and that ‘you can’t rape women or young girls’ (**D-0300**: T-213, page 9), and that it was the responsibility of each commander to ensure discipline for his troops in relation to allegations of reported crimes (**D-0300**: T-233, page 42). He further testified that ‘[i]f it was a situation of rape,

Chamber heard evidence on specific cases of sexual violence against civilians being punished,<sup>895</sup> these cases must be distinguished,<sup>896</sup> and, in the view of the Chamber, do not have a bearing on the preceding conclusion.

**e) Hema civilian supporters**

333. During military operations, including some directly relevant to the charges, the UPC/FPLC relied on Hema civilians who were not formally part of it to carry out tasks such as transportation of weapons and ammunition, transportation of looted goods, and burying the dead.<sup>897</sup> In specific cases, these civilians also engaged in acts of violence, along with the FPLC.<sup>898</sup> Hema civilians participated in such operations under the direction of the FPLC military commanders.<sup>899</sup> They

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I would have sent a clear message. [...] the person responsible for that offence be arrested and put in prison' (**D-0300**: T-238, page 78. *See also* T-211, page 49, lines 17 to 24). Noting however, the Chamber's other findings on rapes that occurred in connection with the First and Second Operation, and other operations (*see* below), and the aforementioned evidence from P-0963, P-0017 and P-0907, the Chamber considers that Mr Ntaganda's general assertions about rape do not affect its finding that rape and sexual violence went unpunished. In relation to Chief Kahwa's speech at Mandro regarding rape, *see* footnote 790 above. In this respect, the Chamber further notes that P-0365 testified that the speech did not impact sexual violence towards women by UPC/FPLC soldiers (**P-0365**: T-148, pages 17 to 18).

<sup>895</sup> Mr Ntaganda ordered, in December 2002, the imprisonment of three UPC/FPLC commanders who were suspected of raping wives of civilians in Mahagi (logbook entries DRC-OTP-2102-3854, at 3888 and 4025; and **D-0300**: T-228, pages 74 to 80). On whether or not one of the alleged rapists was later promoted within the UPC/FPLC (*see* Prosecution Closing Brief, para. 1107, and Defence Closing Brief, para. 814), the Chamber does not have sufficient evidence and draws no conclusion on this issue. In addition, P-0017 testified about one case of punishment for rape, involving a Nyali woman in Kilo (**P-0017**: T-59, pages 34, and 42 to 43).

<sup>896</sup> As concerns the imprisonment of suspects of attempted rape in Mahagi, the Chamber notes that the evidence does not indicate that the victims were Lendu or otherwise considered associated with the enemy during UPC/FPLC operations. As to the punishment for rape of a Nyali woman in Kilo, P-0017 explains that the punishment was possible specifically because of the intervention of Floribert Kisembo, whose mother is of Nyali ethnicity (**P-0017**: T-59, page 42). P-0017 further testified that whether or not a commander would react to a complaint from the population of rape by UPC/FPLC soldiers would depend on the commander, and that Nyali, Hema, Bira and Alur members of the population could make such complaints (**P-0017**: T-59, pages 34 to 35).

<sup>897</sup> **P-0017**: T-59, page 9; **P-0758**: T-161, pages 42 to 43; **P-0768**: T-33, page 34; **P-0907**: T-89, page 80 (stating that the FPLC was helped by civilians in the transport of weapons for the First Operation); and **P-0963**: T-78, page 86. *See also* **P-0790**: T-53, pages 35 to 36; **P-0887**: T-93, pages 48 to 50; **P-0892**: T-83, pages 31, 36, and 38; **P-0002**: T-170, page 63; **P-0976**: DRC-OTP-2054-2599, from 2668 to 2672, as well as the evidence referred to in the following footnote.

<sup>898</sup> **P-0768**: T-33, pages 41 to 42; and **P-0898**: T-154, pages 13 and 20.

<sup>899</sup> **P-0768**: T-33, page 42; **P-0898**: T-154, pages 13 to 14; and **P-0963**: T-78, page 86.

were mobilised specifically for the purpose of assisting during FPLC operations.<sup>900</sup>

**f) Weapons, ammunition, and other material**

334. Members of the UPC/FPLC had personal weapons, such as AK-47 assault rifles (Kalashnikovs),<sup>901</sup> as well as bladed weapons, such as machetes.<sup>902</sup> The UPC/FPLC also had various heavy weapons at its disposal,<sup>903</sup> such as artillery, heavy machine guns, and grenade and rocket launchers.<sup>904</sup> Several members of the UPC/FPLC were trained in the use of heavy weapons, and subsequently placed in so-called 'heavy weapon units'.<sup>905</sup> The UPC/FPLC also had anti-personnel and anti-tank mines in its possession.<sup>906</sup>

335. The UPC/FPLC further had in its possession a mobile rocket launcher, referred to as '*saba saba*', which was later seized by the Lendu in early 2003.<sup>907</sup>

336. Part of the weapons in the UPC/FPLC's possession had first brought in by members who first belonged to another armed group, such as the APC, and

<sup>900</sup> **P-0017**: T-59, page 8 (stating that it was 'Bureau Five who was responsible for relations between the army and the population' to mobilise the civilians); and **P-0055**: T-71, page 47 (stating that 'UPC executives or leaders were ensuring mobilisation'). Civilian participation was not necessarily voluntary, as demonstrated by the testimony of P-0887 (**P-0887**: T-93, page 49).

<sup>901</sup> **P-0901**: T-28, page 5.

<sup>902</sup> **P-0963**: T-79, page 73; **P-0127**: T-139, page 32; and T-141, page 11; and **P-0863**: T-181, page 18.

<sup>903</sup> The Chamber notes that the Defence does not dispute that the UPC/FPLC had heavy weapons at its disposal, see Defence Closing Brief, paras 165 to 166, and 732.

<sup>904</sup> **P-0901**: T-28, page 31; **P-0963**: T-78, page 69; and T-81, pages 82 to 83; and **D-0300**: T-214, pages 44, and 46. See also **D-0300**: T-214, page 48.

<sup>905</sup> See para. 328 above. See also **P-0017**: T-58, pages 17, and 32; and **P-0963**: T-78, pages 60 to 61, and 74.

<sup>906</sup> **P-0012**: T-164, pages 29 to 30; **P-0768**: T-33, pages 59, 66 to 67; and T-35, pages 73 to 76; and **P-0769**: T-120, page 69. In relation to the Defence argument that P-0769's credibility about training is undermined by his assertion that 'RCD' controlled Bunia when he joined the UPC/FPLC, but that the latter was in control of Camp Ndromo (Defence Closing Brief, para. 1468), the Chamber notes that while stating that 'first of all it was the RCD which was in control of Bunia town' (T-120, page 11), P-0769 confirmed that when he joined the UPC/FPLC, it had already taken control of Bunia (T-120, page 12). The Chamber further notes that Mr Ntaganda testified that the UPC/FPLC had anti-tank mines, and also received a box of anti-personnel mines from Goma, but that it was forbidden to use such mines (**D-0300**: T-218, page 40; and T-226, page 90). However, in light of the evidence just cited, as well as a logbook entry in which Salumu Mulenda requests mines and in response it is asked by Mr Ntaganda whether he wishes to receive anti-personnel or anti-tank mines (logbook entries DRC-OTP-2102-3854 at 3863, and 4031), the Chamber does not consider credible Mr Ntaganda's statement that the use of such mines was forbidden.

<sup>907</sup> **P-0105**: T-135, page 13; **P-0127**: T-139, pages 11, and 80; **P-0963**: T-79, page 42; and **P-0017**: T-59, page 46.

another part was obtained by the emerging UPC/FPLC prior to the temporal scope of the charges, including from Uganda.<sup>908</sup> From mid-2002 onwards, many of its weapons were provided by Rwanda.<sup>909</sup> Airplanes, referred to as being Rwandan, dropped ammunition at or near Mandro,<sup>910</sup> and later, after Mongbwalu had come under UPC/FPLC control and the airstrip near Mongbwalu was secured, weapon and ammunition supplies were delivered there.<sup>911</sup> Mr Ntaganda was informed by Rwanda when the weapon deliveries would take place.<sup>912</sup> The UPC/FPLC also obtained weapons in the course of its military operations, such as weapons that had been abandoned by the enemy.<sup>913</sup>

337. The UPC/FPLC stored its weapons and ammunition at various depots. At the Mandro training centre, there was a weapon and ammunition depot, called ‘Amra’.<sup>914</sup> In Bunia, the UPC/FPLC had a ‘warehouse’<sup>915</sup> and at Mr Ntaganda’s

<sup>908</sup> **P-0041**: DRC-OTP-2054-5199, at 5267; **P-0043**: DRC-OTP-0126-0086, at 0096, para. 58; and **P-0055**: T-71, page 7.

<sup>909</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0457, paras 201 and 202; **P-0014**: DRC-OTP-2054-0612, page 0701; and **P-0901**: T-27, page 70; T-28, pages 4 to 5. *See also* **P-0012**: DRC-OTP-2054-0073, page 0116; **P-0014**: DRC-OTP-2054-0429, from 0474 to 0475; and DRC-OTP-2054-0612, from page 0620 to page 0621; and DRC-OTP-2054-0816, at 0828; **P-0055**: T-71, page 7; DRC-OTP-0074-0628, at 0662; and DRC-OTP-2105-8189, at 8194. The Chamber notes that Mr Ntaganda maintained during his testimony that the weapons (which he stated were dropped in July 2002) came from RCD-Goma rather than from Rwanda (**D-0300**: T-232, pages 49 to 52. *See also* **D-0300**: T-214, pages 44 to 46).

<sup>910</sup> **P-0014**: DRC-OTP-2054-0612, from 0699 to 0700, and at 0701; **P-0043**: DRC-OTP-0126-0086, at 0096; and **P-0907**: T-90, pages 47 to 49; **P-0888**: T-105, pages 44 to 45; **P-0898**: T-155, pages 39 to 41; and **P-0907**: T-91, pages 76 to 77). The Defence suggests that P-0907 did not identify the correct drop-off location (**P-0907**, T-92, pages 8 to 10), but the Chamber notes the consistency of P-0907’s and P-0898’s testimony in this regard, as well as Mr Ntaganda’s acceptance that a weapon delivery took place along the Kudja river (**D-0300**: T-214, page 42), and his testimony that recruits lit fires along the Kudja river for the plane to see through the fog where to drop the weapons (**D-0300**: T-232, page 62). *See also* **P-0012**: T-164, page 27; **P-0043**: DRC-OTP-0126-0086, at 0096, para. 58. A MONUC daily report refers to an airdrop of weapons in Mandro from a Rwandan plane on 18 September 2002 (DRC-OTP-0208-0272, at 0275, para. 12; *see also* DRC-OTP-0074-0797, at 0814, referring to the same information). Mr Ntaganda indicated that the weapons delivery in fact occurred during July 2002 (**D-0300**: T-214, page 41). For the purpose of the present finding, the Chamber considers that the precise date of the weapon deliveries does not need to be established.

<sup>911</sup> **P-0901**: T-28, pages 20, and 39; **P-0907**: T-90, pages 47 to 49; and **P-0963**: T-78, page 72; T-79, pages 25 to 26; T-82, page 47. *See also* **P-0055**: T-71, pages 8 to 9. *See also* para. 441 below. The delivery of weapons by Rwanda was coordinated by Célestin Senkoko, also known as Safari, who accompanied the weapon transports and was in contact with the UPC/FPLC about the delivery. **P-0055**: T-71, pages 7 to 8; **P-0768**: T-34, pages 8 to 9; and **P-0901**: T-28, pages 20 to 21. *See also* **P-0907**: T-90, pages 47 to 49. The Chamber further notes Mr Ntaganda’s testimony that he was not aware that Safari, who spoke Kinyarwanda, was a Rwandan, but that Safari coordinated the weapon deliveries (**D-0300**: T-232, pages 62 to 64).

<sup>912</sup> **P-0055**: T-71, page 8; **P-0768**: T-34, pages 8, and 10, testifying that Mr Ntaganda was the first person to indicate to them that weapons would arrive from Kigali, and was in contact with Kigali at all times.

<sup>913</sup> **P-0898**: T-154, page 26. *See also* **D-0300**: T-215, page 9; and T-234, page 6.

<sup>914</sup> **P-0888**: T-105, page 44; **P-0901**: T-28, pages 5 to 6.

residence in Bunia a weapon depot was located.<sup>916</sup> Following the taking of control of other areas, the UPC/FPLC used additional depots, or ‘armouries’.<sup>917</sup>

338. From the various depots, on orders of Mr Ntaganda or Floribert Kisembo, the weapons or ammunition were transported to the units of the UPC/FPLC that required them.<sup>918</sup>

339. Initially, the armed members of the emerging UPC/FPLC did not wear full camouflage (*‘tache tache’*) uniforms,<sup>919</sup> but shortly after the UPC was formally established, and around the time the FPLC was formed, in September 2002, uniforms were supplied by Rwanda.<sup>920</sup> The Chamber heard evidence about financial assistance<sup>921</sup> and general supplies being provided to the emerging UPC/FPLC.<sup>922</sup>

340. At the training centres, recruits were instructed in the use of both light and heavy weapons; with regard to heavy weapons, recruits and soldiers of the

<sup>915</sup> **P-0901**: T-28, pages 53 to 54; T-32, page 20.

<sup>916</sup> **P-0017**: T-58, pages 33 to 35; **P-0055**: T-71, pages 9 to 12; and T-72, pages 68 to 70, and 84; and **P-0888**: T-105, pages 70 to 71. *See also* **P-0901**: T-28, pages 18, 27 to 28, and 30 to 31. Mr Ntaganda testified that there were two shooters at this residence, who had ‘the B-10s and the 12’ (**D-0300**: T-226, page 76, *see also* page 77; and T-215, pages 84 to 85).

<sup>917</sup> **P-0055**: T-71, pages 9 to 10; **P-0768**: T-34, page 10; **P-0790**: T-53, pages 55 to 57; and T-54, page 71, in combination with DRC-OTP-2078-2407; and **P-0887**: T-93, pages 42 to 43. The Chamber notes in this regard that Mr Ntaganda similarly referred to a weapon stock at Kisembo’s residence (**D-0300**: T-227, page 11). *See also* **P-0907**: T-89, pages 21 to 22; and **P-0963**: T-79, page 26.

<sup>918</sup> **P-0055**: T-71, pages 6 to 7; T-72, page 57); **P-0901**: T-28, page 32; **P-0907**: T-89, pages 71 to 72, and 75; and **D-0300**: T-213, page 11. The Chamber notes in this regard that the G3 reported to Mr Ntaganda *see* para. 322 above. The Chamber notes that Mr Ntaganda, when cross-examined about his role in relation to orders related to weapons, distribution of weapons, and oversight to ensure weapons were not lost or destroyed, maintained that all weapons fell under Kisembo’s responsibility (**D-0300**: T-226, pages 64 to 65). However, in light of the other evidence cited, including Mr Ntaganda’s own testimony in direct examination, the Chamber attributes limited weight to this statement for the purpose of the present finding.

<sup>919</sup> **P-0030**: T-145, pages 18 to 19. *See also* **P-0888**: T-105, page 21; and **D-0300**: T-215, pages 67 to 68.

<sup>920</sup> **P-0041**: DRC-OTP-0147-0002, at 0024, para. 131; DRC-OTP-0208-0272, at 0275, para. 12, referring to an airdrop of uniforms in Mandro by a plane from Rwanda in September 2002; and DRC-OTP-0074-0797, at 0814 (in which MONUC refers to the same information, and indicates that UPC/FPLC soldiers are now seen wearing new camouflage uniforms and new weapons) from MONUC). *See also* **V-3**: T-203, page 14. The Chamber notes that Mr Ntaganda testified that the UPC/FPLC received military uniforms (after first having received weapons), but did not indicate who provided the uniforms (**D-0300**: T-214, page 49; and T-226, page 79).

<sup>921</sup> **P-0055**: T-70, page 56 (stating, ‘[a]t the time it was Rwanda that was providing the UPC with whatever they needed such as money, food and weapons provided money to the UPC’). *See also* section IV.A.2 Military apparatus.

<sup>922</sup> **P-0317**: T-192, pages 14 to 15, referring to DRC-OTP-0074-0422, at 0433, para. 24, in which supplies provided by Uganda and Rwanda are mentioned.

UPC/FPLC also received training in Rwanda.<sup>923</sup> Towards the end of their training at the training centres or camps, the recruits were provided with a personal weapon.<sup>924</sup> The armed members of the UPC/FPLC kept their personal weapons on themselves.<sup>925</sup>

#### g) Communication system

341. The UPC/FPLC made use of several technical means of communication, including two separate radio networks, a satellite communication system, and mobile telephony.<sup>926</sup> One radio communication system used and operated by the UPC was referred to as '*radiophonie*'.<sup>927</sup> It consisted of fixed base stations and portable units known as manpacks.<sup>928</sup> The system was operated by a network of signallers operating from commanders' bases,<sup>929</sup> including Mr Ntaganda's residence in Bunia.<sup>930</sup> The operator based at Mr Ntaganda's residence was in

<sup>923</sup> **P-0769**: T-120, page 41; **P-0888**: T-105, pages 24 to 25; and **P-0898**: T-154, page 6. *See also* **P-0055**: T-71, page 77; and **D-0300**: T-214, pages 11 to 12. **P-0888**: T-105, pages 25 to 26. *See also* **P-0017**: T-58, page 31, referring to training in heavy weapons in Rwanda; and **P-0963**: T-78, pages 60 to 61, and 74. *See also* **P-0014**: DRC-OTP-2054-0612, page 0701. The Chamber also notes that heavy weapons are visible in a video recording of Mandro training camp (DRC-OTP-0082-0016, from 00:36:35 to 00:37:27, and 00:38:30 to 00:38:35). *See also* section IV.A.3.b) Training.

<sup>924</sup> **P-0769**: T-120, page 72; **P-0888**: T-105, pages 24, and 26; and **P-0963**: T-78, pages 52, and 55; and T-81, pages 17 to 24, and 30. *See also* **P-0017**: T-58, page 53; **P-0055**: T-71, pages 80 to 82; **P-0907**: T-90, page 11; and **D-0300**: T-214, pages 41 to 44; and T-226, page 79. The Chamber notes that the evidence on the record indicates that not all persons necessarily received a weapon in relation to the journey between Mandro and Tchomia (*see* **P-0907**: T-92, page 13; and **P-0963**: T-81, pages 13, and 17).

<sup>925</sup> In addition to the evidence mentioned in the previous footnote, *see also* **P-0041**: DRC-OTP-2054-5384, page 5436; **P-0769**: T-121, page 7; **P-0907**: T-90, pages 11 to 12; and **D-0300**: T-215, page 25.

<sup>926</sup> **P-0017**: T-58, page 40; **P-0055**: T-70, page 91; **P-0901**: T-28, page 15; **P-0963**: T-78, page 66; and **D-0300**: T-222, pages 32 to 33.

<sup>927</sup> **P-0017**: T-58, page 40; **P-0055** referred to this network as 'Manpack': **P-0055**: T-70, pages 66 to 67. **P-0290**: T-65, page 46 (explaining that this was a high-frequency (HF) radio, which allows communication over long distances); and **P-0901**: T-27, page 54; and T-28, pages 15 to 16.

<sup>928</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0467, paras 263 to 264; and **P-0768**: T-35, page 20. *See also* **P-0016**: DRC-OTP-0126-0422-R03, at 0467, para. 263.

<sup>929</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0476, para. 264; DRC-OTP-2054-1625, at 1647; **P-0055**: T-70, pages 83, and 84 to 85; and **P-0768**: T-35, page 20.

<sup>930</sup> **P-0290**: T-65, pages 33, and 47 to 49; **P-0901**: T-28, page 16. *See also* **P-0055**: T-70, page 89.

charge of all other operators.<sup>931</sup> The range of the network extended to Aru and Mahagi.<sup>932</sup>

342. The *radiophonie* network allowed for encryption of messages.<sup>933</sup> Call signs were also used.<sup>934</sup> Logbooks were kept, recording the messages passed over the network.<sup>935</sup> The Chamber has admitted into evidence two sets of written records of radio communications within the UPC/FPLC.<sup>936</sup> In addition to this formal way of communication, the *radiophonie* network could also be used to speak informally.<sup>937</sup>

343. The second radio communication system operated by the UPC was referred to as ‘Motorola’.<sup>938</sup> The Motorola and *radiophonie* networks were separate and it was not possible to transmit messages from one to the other.<sup>939</sup> Chief Kahwa introduced the Motorola communication equipment to the UPC.<sup>940</sup> In addition to portable sets, this network also made use of a base station, located in Bunia.<sup>941</sup> The normal range was 15 to 20 kilometres,<sup>942</sup> but this was sometimes extended

<sup>931</sup> **P-0016**: DRC-OTP-2054-1625, at 1647 to 1648; and **P-0901**: T-28, page 16. *See also* **D-0300**, T-215, pages 85 to 86, where Mr Ntaganda explained that he had a signaller who could use encoded military systems, who was engaged ‘in order to be able to build up a well-structured army’.

<sup>932</sup> **P-0901**: T-28, page 16.

<sup>933</sup> **P-0017**: T-58, pages 41 to page 42; and **P-0901**: T-27, page 55.

<sup>934</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0467, para. 265; and **P-0290**: T-66, page 30.

<sup>935</sup> **P-0016**: DRC-OTP-2054-1625, at 1648; **P-0017**: T-58, pages 41 to 42; **P-0055**: T-70, page 89; and **P-0290**: T-65, page 54. P-0290 recognised document DRC-OTP-0017-0033 (French translation DRC-OTP-2102-3854) as the logbook kept at Mr Ntaganda’s residence (**P-0290**: T-65, pages 70 to 71). The witness also authenticated DRC-OTP-0017-0003 (French translation DRC-OTP-2102-3828) (**P-0290**: T-65, page 74). *See also* **P-0901**: T-27, page 55.

<sup>936</sup> DRC-OTP-0017-0003 (French translation DRC-OTP-2102-3828), and DRC-OTP-0017-0033 (French translation DRC-OTP-2102-3854). *See also* section III.C.2.b)(2) Logbooks.

<sup>937</sup> **P-0907**: T-92, page 64.

<sup>938</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0467, para. 260; **P-0055**: T-70, pages 66 to 67; **P-0290**: T-65, page 62; **P-0768**: T-35, page 19; and **P-0901**: T-28, page 18. Based on the testimony of the witnesses who appeared before it, the Chamber observes that this communication system was commonly referred to in the UPC/FPLC as ‘Motorola’, but the actual devices could be of another brand, in particular Kenwood, as explained by P-0768.

<sup>939</sup> P-0290 explained that this was because each of the two types of radios used a different frequency bandwidth (**P-0290**: T-65, page 62). *See also* **P-0901**: T-28, page 16.

<sup>940</sup> **D-0300**: T-212, page 46.

<sup>941</sup> D-0243 explained that this base station was situated ‘in sous-région [...] near the military governor Lompondo’s residence’ (**D-0243**: T-257, page 31).

<sup>942</sup> **P-0901**: T-28, page 15. Mr Ntaganda testified that the range of Motorolas was much lower, 4 to 5 kilometres (**D-0300**: T-222, page 37). The Chamber notes that both P-0901 and Mr Ntaganda only provided estimates. However, it considers P-0901’s informed evidence relevant (*see* **P-0901**: T-27, pages 54 to 55), and the



through modification of the antenna.<sup>943</sup> Many commanders had Motorola devices at their disposal.<sup>944</sup> The Motorola network was used during UPC/FPLC operations to transmit orders and reports.<sup>945</sup> Mr Ntaganda also personally used the Motorola network, including for the issuing of orders during operations.<sup>946</sup>

344. A single frequency was normally used for all communications,<sup>947</sup> but could be changed to restrict the audience.<sup>948</sup> Changed frequencies were also used during operations in order to prevent communications from being disrupted,<sup>949</sup> but it was not possible to encrypt communication over the Motorola network.<sup>950</sup> Communications over this network were not logged.<sup>951</sup> Call signs were used to identify speakers over the Motorola network.<sup>952</sup> Notable call signs were Tango Romeo (Mr Ntaganda),<sup>953</sup> Number One (Thomas Lubanga),<sup>954</sup> and Zulu Mike (Floribert Kisembo).<sup>955</sup>

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Chamber further observes that he provided the context and basis for his estimate, as well as an explanation about three different types of Motorolas being used, including with modified antennas. The Chamber therefore considers his evidence to be reliable on this point.

<sup>943</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0467, para. 260 (stating the maximum range as 100 kilometres); **P-0901**: T-28, pages 15, and 38 (stating the maximum range as 80 kilometres). D-0243 testified specifically on the locations which could be reached from Bunia. He stated that communication was possible with Mandro and Centrale, even without going through the base station (**D-0243**: T-257, pages 35 to 36, and 39), that it was possible to speak to people 'on the hills of Sayo', near Mongbwalu, but not to hear any messages transmitted in return (**D-0243**: T-257, page 41), that it was not possible to reach Kilo due to the relief (**D-0243**: T-257, page 41), nor Fataki or Mahagi due to the distance and the relief (**D-0243**: T-257, pages 41 to 42), and that it was possible to speak to Komanda, which is 75 kilometres away by road, due to the favourable relief and the absence of forests (**D-0243**: T-257, pages 42 to 43). During cross-examination, the witness additionally stated that it was possible to speak to Kobu (**D-0243**: T-259, page 23).

<sup>944</sup> **P-0963**: T-79, page 90; and **D-0300**: T-222, page 35.

<sup>945</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0467, paras 259 to 261; **P-0018**: T-110, page 80; and T-111, pages 3 to 4; and **D-0243**: T-257, pages 48 to 49.

<sup>946</sup> **P-0888**: T-105, pages 51, 56, and 68; and **P-0901**: T-28, page 18. *See also* **P-0017**: T-58, page 26. *See also* paras 454, and 491 below.

<sup>947</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0467, para. 261; **P-0901**: T-28, page 18; and **D-0243**: T-257, page 44 (referring to this frequency as 'boulevard').

<sup>948</sup> **P-0901**: T-28, pages 18 to 19; and **D-0243**: T-257, page 44.

<sup>949</sup> **D-0243**: T-257, pages 44 to 45.

<sup>950</sup> **P-0055**: T-70, page 86. *See also* **D-0300**: T-222, pages 35 to 36.

<sup>951</sup> **P-0901**: T-28, page 36; and **D-0243**: T-257, page 48.

<sup>952</sup> **P-0901**: T-28, pages 21 to 22. *See also* **P-0016**: DRC-OTP-0126-0422-R03, at 0467, para. 265; and **P-0017**: T-58, page 45.

<sup>953</sup> **P-0055**: T-70, page 81; **P-888**: T-105, page 70; and **P-0901**: T-28, page 24.

<sup>954</sup> **P-0901**: T-28, page 24.

<sup>955</sup> **P-0017**: T-58, page 45; **P-0055**: T-70, page 81; **P-888**: T-105, page 70; and **P-0901**: T-28, page 24.

345. The UPC/FPLC also used Thuraya satellite phones.<sup>956</sup> These were available only to the highest ranking individuals,<sup>957</sup> including Thomas Lubanga,<sup>958</sup> Floribert Kisembo,<sup>959</sup> and Mr Ntaganda.<sup>960</sup> Sometime in or shortly before June 2003, mobile phone coverage was introduced in Bunia, and the UPC began using it for its communications.<sup>961</sup>

346. Mr Ntaganda had personal access to all of the communication systems referred to above.<sup>962</sup> Sometimes, his communication equipment was carried by his escorts.<sup>963</sup>

### 3. Recruitment, training, and assignments of UPC/FPLC soldiers

#### a) Recruitment

347. In June 2002, during the meeting held in Kampala,<sup>964</sup> the political leaders of the emerging UPC/FPLC gave a clear message that each person present at the meeting should mobilise the children in their community in order to join the UPC.<sup>965</sup> As detailed in the following paragraphs, the UPC/FPLC extensively recruited individuals of all ages, in particular ‘young people’, including individuals under the age of 15,<sup>966</sup> in various locations throughout Ituri, including

<sup>956</sup> **P-0055**: T-70, page 91; **P-0901**: T-28, page 20; **P-0963**: T-78, page 66; and **D-0300**: T-222, pages 32 to 33. Mr Ntaganda also explained that credit for the use of Thuraya phones was managed and distributed by a secretary of Thomas Lubanga (**D-0300**: T-222, page 34).

<sup>957</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0467, para. 264; **P-0017**: T-58, page 40; **P-0901**: T-28, page 20; **P-0963**: T-78, page 67; and **D-0300**: T-222, page 33.

<sup>958</sup> **P-0901**: T-28, page 20; **P-0963**: T-78, page 67; and **D-0300**: T-222, page 33.

<sup>959</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0467, para. 264; **P-0901**: T-28, page 20; **P-0963**: T-78, page 67; and **D-0300**: T-222, page 33.

<sup>960</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0467, para. 264; **P-888**: T-105, page 68; **P-0901**: T-28, page 20; **P-0963**: T-78, page 67; and **D-0300**: T-222, page 33.

<sup>961</sup> **P-0901**: T-28, page 34; and **D-0300**: T-222, page 35 (stating that from June 2003, after mobile phones had been introduced, mobile phones became the most used communication device).

<sup>962</sup> **D-0300**: T-226, page 21.

<sup>963</sup> **P-0017**: T-58, page 26; and **P-0888**: T-105, page 69.

<sup>964</sup> See para. 290 above.

<sup>965</sup> **P-0014**: T-137, pages 4 to 6. As explained above, the Chamber considers P-0014’s testimony on this aspect credible and reliable, and that the witness had a good basis of knowledge for his statement.

<sup>966</sup> The Chamber recalls its finding that both P-0883 and P-0898 were under 15 when they joined the UPC/FPLC (see sections III.D.2.h) P-0883, and III.D.2.j) P-0898). In addition, the Chamber bases this finding on the presence of individuals under 15 years of age in UPC/FPLC training camps, see section IV.A.3.b) Training. In this context, the Chamber notes D-0210’s testimony that he and two other individuals of the same age tried to

Bunia and the rural areas, from at least June 2002.<sup>967</sup> The UPC/FPLC mobilised primarily Hema,<sup>968</sup> but also Bira, Alur, Lugbara, and Nyali.<sup>969</sup>

348. The UPC/FPLC used several forms of recruitment. The UPC/FPLC organised awareness raising campaigns and rallies in different villages and communities, except Lendu ones.<sup>970</sup> Members of the UPC/FPLC communicated with elders, community leaders, and other individuals of influence in Ituri in order to mobilise ‘children’ and ‘young people’, for recruitment into the ranks of the UPC/FPLC, so that they could defend their villages.<sup>971</sup>

349. The UPC/FPLC also imposed an obligation on families to provide one or several ‘children’ to the UPC/FPLC for military service, including by threatening them.<sup>972</sup> Some parents paid a fee or otherwise contributed to the UPC/FPLC in order to exempt their children from having to join the UPC/FPLC.<sup>973</sup>

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join the UPC/FPLC at the training camp in Mandro, and were turned away by Mugisa who told them that they are not training ‘little children’. The witness indicated that Mr Ntaganda was 15 to 20 metres away from them at that time (**D-0210**: T-206, pages 44 to 48; and T-207, page 19) The Chamber notes that the witness estimated this took place in 2000 or 2001, at the beginning of the school holidays in July (**D-0210**: T-206, page 44), but, in light of its finding that the UPC/FPLC only operated a training centre at Mandro during the course of 2002 (*see* para. 365 below), it considers that the events as described by D-0210 took place in 2002, when the witness was, according to his testimony 14 years old (**D-0210**: T-206, page 42). The Chamber considers, however, that D-0210’s evidence does not affect its finding, considering that the witness did not state that he was asked about his age, but instead only referred to size as a reason for being rejected. This is consistent with the Chamber’s finding in relation to the ‘screening process’ of new recruits, *see below* para. 361.

<sup>967</sup> **P-0055**: T-71, pages 65 to 66; **P-0901**: T-32, pages 55 to 56; **P-0014**: T-137, pages 4 to 5; and DRC-OTP-2054-0429; **P-0768**: T-34, page 49; **P-0907**: T-89, page 13; **P-0017**: T-27, page 61; DRC-OTP-0074-0422 at 0462, para. 143 (*see also* **P-0046**: T-100, pages 94 to 95); DRC-OTP-0074-0797, at 0850 and 0851; and DRC-OTP-0152-0286, at 0310.

<sup>968</sup> **P-0901**: T-27, page 67; **P-0907**: T-89, page 66; **P-0976**: DRC-OTP-2054-2599, at 2686; **P-0769**: T-120, pages 13, and 15. *See also* **P-0055**: T-70, pages 60 to 61; and DRC-OTP-0074-0797, at 0851.

<sup>969</sup> **P-0014**: DRC-OTP-2054-0816, from 0830; **P-0017**: T-59, page 42, and T-59-FRA, page 43; and **P-0907**: T-89, page 66.

<sup>970</sup> **P-0768**: T-34, pages 56 and 57; **P-0041**: DRC-OTP-0147-0002 at 0027, para. 161; **P-0014**: DRC-OTP-2054-0429 at 0479 and 0481; T-137, page 4; **P-0901**: T-27, page 61; **P-0116**: DRC-OTP-2054-4494, at 4589, and 4590 to 4591; **P-0031**: DRC-OTP-2054-3760, at 3787; and DRC-OTP-2054-4308, at 4309; and **P-0963**: T-78, pages 29 to 31, and 35 to 36; and DRC-OTP-0152-0286, para. 90.

<sup>971</sup> **P-0055**: T-71, pages 63 to 64; **P-0901**: T-27, pages 66 to 69; **P-0769**: T-120, pages 13 to 14; **P-0014**: DRC-OTP-2054-0816, at 0830 to 0833; **P-0017**: T-59, page 44; **P-0046**: T-100, pages 50 to 51; **P-0041**: DRC-OTP-0147-0002, para. 161; and **P-0116**: T-196, pages 11 to 12.

<sup>972</sup> **P-0041**: DRC-OTP-0147-0002, at 0028, paras 162 to 164; **P-0976**: DRC-OTP-2054-2599, from 2686 to 2687; and **P-0031**: DRC-OTP-2054-3760, at 3788. *See also* **P-0055**: T-71, pages 67 to 68. The Chamber notes that Mr Ntaganda testified that the recruits at Mandro had the support of their parents, because ‘the *comité de paix*, the peace committee which is a local organisation at village level in the *groupement*, in the locality would bring them by vehicle. They were the representative of the parents, they brought them themselves. That showed us and demonstrated to us that their parents were in agreement. [...]’ (**D-0300**: T-240, pages 31 to 32).

350. As a result of these different forms of recruitment, some individuals joined the UPC/FPLC voluntarily, and others were recruited forcibly.<sup>974</sup> The motives of those who joined voluntarily included the loss of their parents and the need to seek refuge for lack of other options, as well as a desire to avenge family members' deaths.<sup>975</sup>

351. The Chamber heard the personal experiences of P-0907, P-0898, and P-0016, who explained the circumstances in which they became involved with the UPC/FPLC after June 2002.<sup>976</sup>

352. P-0907 stated that he joined the UPC in July 2002, when he fled from Mongbwalu to Bunia, where Paul Mugisa informed him that as a young person, he had no choice other than going to Mandro training camp, which is how he decided to enter military service.<sup>977</sup>

353. P-0898 testified that in August 2002, when he was 13 years old,<sup>978</sup> and at a time when the Lendu and the APC attacked Hema villages, killing people, including his uncle, he decided to join the UPC to protect the Hema civilian population.<sup>979</sup> For that purpose, he told the soldiers who were already being trained that he wanted 'to become like them'.<sup>980</sup> The soldiers informed him that he needed to

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In light of the other evidence showing that some recruits did not join voluntarily, the Chamber does not find Mr Ntaganda's testimony credible in this regard.

<sup>973</sup> **P-0014**: T-137, pages 4 to 5; **P-0055**: T-71, pages 67 to 68; **P-0031**: DRC-OTP-2054-4308, at 4309; and **P-0041**: DRC-OTP-0147-0002, para. 167.

<sup>974</sup> **P-0014**: T-136, pages 42 to 43; and T-137, pages 4 to 5; **P-0041**: DRC-OTP-0147-0002, para. 161; **V-2**: T-202, pages 20 to 21 (force); **P-0055**: T-71, pages 66 to 68; and **P-0017**: T-59, page 44. *See also* DRC-OTP-0074-0422, para. 143. The Chamber addresses the Defence challenges to V-2's testimony in footnote 1390 below; **P-0976**: DRC-OTP-2054-2599, at 2668 to 2672; and T-152, pages 14 to page 15; **P-0031**: DRC-OTP-2054-3760, at 3787. Noting that the Chamber has not made a finding in relation to the alleged abduction of individuals from Mudzipela primary school (*see* findings in relation to the credibility of P-0190 in section III.D.2.d) P-0190), the Chamber does not consider it necessary to further address the Defence challenges made in the Defence Closing Brief, para. 1531.

<sup>975</sup> **P-0907**: T-89, pages 24 to 25; **P-0898**: T-153, pages 51 to 52; and **P-0046**: T-102, page 63. *See also* **P-0016**: DRC-OTP-2054-1447, from 1461 to 1462, and at 1527; and **P-0365**: T-148, page 4.

<sup>976</sup> In relation to P-0898 and P-0907, whose credibility has been challenged by the Defence, the Chamber recalls its conclusion in the respective credibility assessments that it finds the witnesses credible and that their testimony can be relied upon.

<sup>977</sup> **P-0907**: T-89, page 13.

<sup>978</sup> For the finding on his age, *see* para. 202 above.

<sup>979</sup> **P-0898**: T-153, pages 30, and 51.

<sup>980</sup> **P-0898**: T-153, page 51.

follow military training, whereupon he went to the training centre at the UPC HQ.<sup>981</sup> He arrived at the centre with other people from the neighbourhood, some of whom were older than him and some of whom were of his age.<sup>982</sup>

354. P-0016, a former APC soldier, testified to having been arrested after the defeat of Governor Lompondo, and brought, together with 63 other APC soldiers, to Mandro.<sup>983</sup> According to P-0016, Floribert Kisembo wanted him and the other 63 former APC soldiers to be killed, but Mr Ntaganda convinced him that they should be trained to become real soldiers to integrate the new UPC/FPLC because the UPC/FPLC did not have trained soldiers at that time.<sup>984</sup>

355. Community leaders and parents were told that the UPC/FPLC needed 'children' to join in order to protect their communities.<sup>985</sup> While Mr Ntaganda denied having attended recruitment drives or campaigns,<sup>986</sup> the evidence shows that he was involved in the recruitment process.<sup>987</sup> Mr Ntaganda asked community leaders to assist in UPC/FPLC recruitment.<sup>988</sup>

356. As set out with more specificity below, Mr Ntaganda also made at least three specific calls for young people and children to join UPC/FPLC ranks.

357. At a rally in August 2002 in Mudzipela, Mr Ntaganda told those present that 'young people' needed to follow military training and that parents should send

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<sup>981</sup> **P-0898**: T-153, page 52.

<sup>982</sup> **P-0898**: T-153, pages 52 to 53.

<sup>983</sup> **P-0016**: DRC-OTP-026-0422-R03, at 0430, para. 47.

<sup>984</sup> **P-0016**: DRC-OTP-026-0422-R03, from 0430 to 0431, para. 47.

<sup>985</sup> **P-0901**: T-27, page 61; **P-0963**: T-78, page 36; **P-0017**: T-59, page 42; **P-0014**: DRC-OTP-2054-0816, at 0831; **P-0116**: DRC-OTP-2054-4494, at 4589 to 4590; and **P-0918**: T-155, pages 79 to 81. *See also* **P-0898**: T-155, page 59.

<sup>986</sup> **D-0300**: T-239, page 81; T-240, page 28. *See also* DRC-OTP-2062-0363, at 0363, a HRW interview with Mr Ntaganda, where Mr Ntaganda is recorded as having said that he was not in charge of recruitment (when confronted with this document, Mr Ntaganda stated that it was not read back to him, and denied having provided part of the information contained therein (**D-0300**: T-239, pages 22 to 23).

<sup>987</sup> **P-0014**: T-136, pages 32 to 33 (stating that Mr Ntaganda was involved in, *inter alia*, supervising recruitment); **P-0041**: DRC-OTP-0147-0002, at 0028, para. 166 (stating that Mr Ntaganda was responsible for recruitment); **P-0055**: T-70, pages 60 to 61, T-71, page 63 (stating that Mr Ntaganda started recruiting young people from Mandro into the UPC movement). *See also* **P-0031**: T-174, pages 26 to 27; **P-0901**: T-27, page 68; T-32, page 56 and logbook entry DRC-OTP-0171-0926, at 1088.

<sup>988</sup> **P-0901**: T-27, pages 68 to 69; and T-32, pages 56 to 57; **P-0055**: T-71, pages 63 to 64.

their children to the UPC/FPLC in order to be able to defend themselves against the Lendu.<sup>989</sup>

358. On another occasion in Mudzipela, Mr Ntaganda told students that the UPC/FPLC needed 'intellectual *cadre* to support the movement', and that the UPC/FPLC would send recruits to study for this purpose.<sup>990</sup> Mr Ntaganda compared the conflict in Ituri to the one in Rwanda, and urged the students to get involved 'heavily in the militia and in the political *cadre*'.<sup>991</sup> Mr Ntaganda also said that all families should give young people to bolster the UPC.<sup>992</sup>

359. On a later occasion in Mabanga, Mr Ntaganda called upon people to enrol in the UPC/FPLC and undergo training to fight for their country, including 'children' and 'kados'.'<sup>993</sup> In light of the consistent testimony of witnesses to the effect that the term kadogo was used to refer to 'children' or very young soldiers, and unconvinced by Mr Ntaganda's explanations in relation to the use of the term,<sup>994</sup> the Chamber considers this term to refer to the youngest soldiers, by their appearance, including individuals under 15.<sup>995</sup>

<sup>989</sup> **P-0918:** T-155, pages 79 to 81. Noting the witness's statement that she personally saw Mr Ntaganda giving his speech, described the context of her presence at the rally, and was able to provide certain details concerning the vehicle in which Mr Ntaganda arrived, and the content of this speech, and further distinguished between information she had on the day of the rally and information she only learnt later, the Chamber is satisfied that P-0918 was present at the rally and that her testimony on this issue was credible and can be fully relied upon.

<sup>990</sup> **P-0769:** T-120, pages 15 to 16. From the sequence of events described by the witness, it can be established that the event took place sometime after the UPC/FPLC takeover of Bunia in August 2002 (*see* **P-0769:** T-120, pages 12 to 15). The Chamber does not consider D-0201's general testimony that he did not see armed groups recruiting at the school (**D-0201:** T-246, page 76), to necessarily contradict P-0769's testimony, which was moreover rich in detail and, in the Chamber's view, credible.

<sup>991</sup> **P-0769:** T-120, page 16.

<sup>992</sup> **P-0769:** T-120, page 16.

<sup>993</sup> **P-0010:** T-47, pages 51 to 52; T-47-FRA, page 51. Considering that the witness stated to have passed through Mabanga with Mr Ntaganda when setting out for the First Operation, the Chamber understands her testimony to be that Mr Ntaganda addressed the population of Mabanga at that time, *see* T-47, pages 9 to 10.

<sup>994</sup> Mr Ntaganda stated that the use of the term kadogo within the UPC/FPLC was not related to an individual's age, but rather referred to a person's size (**D-0300:** T-209, pages 34 to 35; and T-224, pages 73 to 74). However, in light of the consistent and credible evidence discussed hereinafter, the Chamber does not consider credible Mr Ntaganda's testimony in this regard.

<sup>995</sup> **P-0010:** T-46, page 40 (stating that kadogo is the term for 'smaller boys [...] shorter ones'); **P-0014:** T-136, page 38 (testifying that, '[g]iven the etymology of the word, "kadogo," basically means small or, in fact, smaller, to be more specific [...]. So, to answer your question, they were referring to those young soldiers who were young in age. To our minds, anybody who is aged 18 or under is a child'); **P-0017:** T-59, page 43 (testifying that '[t]he young soldiers, the underage soldiers were known as kadogo'); **P-0030:** T-146, pages 62 to 63 (stating that '[t]he word "kadogo" refers to child soldier, namely, someone who is less than 15 years

## b) Training

360. The training of recruits was under the responsibility of Mr Ntaganda,<sup>996</sup> who regularly paid visits to the various training camps in order to inspect the training process.<sup>997</sup>

361. On arrival at a training location, recruits were screened based on their physical ability, and age as such was not a bar for them to receive training.<sup>998</sup>

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old'). The witness did not agree with the Defence suggestion that where the witness comes from, the word refers to a person of small size, stating that '[k]adogo means a child soldier, a soldier who is a child, who is less than 15 years old, a child soldier who may be as old as 15 years'; **P-0055**: T-71, page 68 (testifying that kadogo means a soldier under 18 years of age, 'in other words, someone who is not yet an adult'); **P-0768**: T-34, page 49 (testifying, when asked whether there were any particular terms that were used to describe 'child soldiers' in the UPC, that they 'used the Swahili language in that army, and they were referred to as "kadogo," which means the smallest ones'); **P-0769**: T-120, page 24 (testifying that '[w]hen I speak about kadogo, they are under the age of 18'); **P-0886**: T-40, page 44 (stating that '[w]hat I observed was that those who were referred to as the kadogo were children 14 and a little above, but anyone who was above 18 was not referred to as kadogo. So the kadogo were young people who were 15 to 14 years - or, rather, 14 to 15 years old. They are the ones who are referred to as the kadogo'); **P-0888**: T-105, page 63 (stating that those escorts who were of his age at the time of the events, which he asserted as 14 years, were referred to as kadogo); **P-0901**: T-29, page 52 (testifying that the term kadogo referred to 'childhood'); **P-0963**: T-80, page 10 (stating that kadogos were '[l]ess than 15 years of age'). Contrary to the Defence assertion regarding P-0963's definition of kadogo (*see* Defence Closing Brief, para. 1449), the Chamber notes the consistency between his testimony and that of others referring to kadogos as 15 or under (*inter alia*, P-0030, P-0886, and P-0888); and **P-0976**: DRC-OTP-2054-2599, at 2674 (testifying that '[w]hen you talk about kadogos, it's generally under 18. So going down from 18 right down to the lower end of the scale').

<sup>996</sup> **P-0017**: T-60, page 37; **P-0768**: T-34, pages 51 to 52; **P-0014**: DRC-OTP-2054-0429, at 0491; and T-136, page 32; and **P-0963**: T-78, page 67. *See also* **P-0031**: T-174, pages 26 to 27.

<sup>997</sup> **P-0055**: T-71, page 77. *See also* section IV.A.3.b)(1) Training camps.

<sup>998</sup> **D-0300**: T-213, pages 72 to 73; **P-0768**: T-34, page 49 (testifying that to his knowledge 'there was no age limit. There was no particular criterion for the recruitment of children. There were young people, old people. Anyone who came to the training camp was welcome in our different units'). The Chamber observes certain inconsistencies in Mr Ntaganda's evidence on the screening process. While testifying at first that new recruits were not asked about their age, as they had no identity documents and could lie about their age (**D-0300**: T-213, page 74), Mr Ntaganda testified during cross-examination that new recruits *were* asked about their age, and that those under 18 were sent away (**D-0300**: T-239, page 12; *see also* T-240, page 21). However, Mr Ntaganda maintained that asking about age was not reliable and that an assessment of the recruit's physical ability was relied upon (**D-0300**: T-239, pages 12 to 13). The Chamber further notes that earlier during direct examination, when asked if there was a link between 'being above 18 and the criteria of the ability to carry ammunitions or any other objects', Mr Ntaganda testified that 'a person who would be able to carry a weapon and a box of ammunition or one of their comrades who is injured at the battlefield would be somebody who cannot be less than 18' (**D-0300**: T-214, page 33). Based on this reading of Mr Ntaganda's evidence, and noting that the screening procedure based on physical abilities was confirmed by D-0080 (**D-0080**: DRC-D18-0001-6163 at 6169), noting the evidence of P-0768, as well as the fact that it was established that individuals under the age of 15 were in fact recruited into the UPC/FPLC, the Chamber, contrary to the submissions of the Defence (Defence Closing Brief, paras 1503 to 1513), considers that the screening was exclusively based on physical abilities, as opposed to age. As a result of the above analysis, the Chamber also does not rely on D-0038's statement that people were asked about their age, and that those under 18 years old were sent away (**D-0038**: T-249, pages 54 to 56, and 61 to 63). Moreover, having assessed that his evidence does not indicate that age was in fact the reason he was turned away, the Chamber did not rely on D-0210's testimony that he and

362. Many young recruits, including individuals under the age of 15 years, among them P-0883 and P-0898,<sup>999</sup> were trained in UPC/FPLC training camps, notably in Mandro, Rwampara, and Bule.<sup>1000</sup> Individuals under the age of 15 undertook military training jointly with recruits over the age of 15 years.<sup>1001</sup>
363. Male and female recruits participated in the same training.<sup>1002</sup> However, female recruits were housed in separate areas within the training camps.<sup>1003</sup>

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others were turned away at Mandro when attempting to enrol in training at aged 14 (**D-0210**: T-206, pages 42, and 45 to 48, see also page 59).

<sup>999</sup> Both witnesses have been found by the Chamber to be under 15 at the relevant time and both testified about others under 15, **P-0883**: T-168, pages 26 to 27 (also testifying that there were other recruits who ‘said they were between 12, 13, up to 17 years old’ present at the Bule training camp. Relative to the witness’s physical size at the time, the witness testified that ‘[s]ome were smaller. Others were the same size’); **P-0898**: T-153, pages 57 to 58 (also testifying that at the time of his recruitment at Mandro in August 2002 ‘[t]he kadogos of my age who were part of the recruits may have been 30, 40, or 50 in number’. The witness also testified that in the group ‘before [him]’ which had already completed their training, there were also ‘age mates’).

<sup>1000</sup> **P-0016**: DRC-OTP-2054-1447, from 1461 to 1463. Noting that the witness assessed the age of those whom he considered 13 based on their size and behaviour, and in light of the fact that he had regular contact with the individual called Bahati, the Chamber considers that his testimony in this regard is reliable; **P-0017**: T-58, pages 24 to 25 (testifying that in Mandro, he spent the night in the same house as four recruits whom he assessed as being about 10 or 11 years old). He made this assessment on the basis that they looked small, they ‘spent the day playing as children do’, they ‘didn’t behave properly; they were playing’ and that the commander did not give them any tasks which the witness took to mean that he recognised them as ‘weak and small people’); and T-59, page 44 (testifying that he saw a 12-year old recruit in Kilo at a training camp, noting that he learnt from the mother that her son was ‘only 12 years old’). In light of the factors underlying the witness’s estimates of age, including appearance and behaviour, or, on the latter example, information he obtained from the mother of the child, the Chamber considers the witness’s age assessments to be reliable; **P-0901**: T-29, pages 51 to 52 (testifying that he observed children under the age of 15 during his visit to Rwampara camp. The Chamber notes that the witness based his assessment of their age on their appearance and behaviour, stating ‘I saw them. And even after the training there was an opportunity to meet them.[...] somebody who is not particularly advanced in age, well, you can see, you can see that by virtue of their physical traits. [...] Even after the training when you came across the individual, their activities, their behaviour and their way of living showed that that individual was younger, and that enabled me to ascertain how old the person was. When one is a child, even if you hide your age, it is possible to calculate how old you are by your behaviour’), and accordingly considers the witness’s assessment reliable. See also **P-0907**: T-89, page 25 (testifying that ‘[t]here were lots of different children, different types. Some of them were 10, 12, 17, 16. They were all mixed up. I didn’t ask each child what their age was, but if you looked at these children, some were very young. There were children who were maybe in fourth grade fifth, sixth grade in primary. You also had some who were 16 and 14 years old’). Although not providing the basis for his assessment, the Chamber notes the consistency of his evidence with other evidence indicating the presence of individuals under the age of 15 in training camps; **P-0768**: T-34, pages 51 to 52 (testifying that when he visited the Mandro camp, he saw ‘even children who were 12 or 11 years old, 15 et cetera’ and that many were below the age of 15. The Chamber notes that elsewhere, the witness explained that he assessed the age of soldiers under 15 based on their appearance and behaviour (T-34, page 47) and recalls that the witness’s assessment of the age of the individual depicted in DRC-OTP-2058-0251, from 00:48:19 to 00:48:34, does not generally affect his capacities in terms of age assessments. The Chamber considers P-0768’s evidence reliable to be considered as corroboration together with other evidence underlying its finding.

<sup>1001</sup> **P-0907**: T-89, page 26; **P-0016**: DRC-OTP-0126-0422-R03, at 0465-0466, para. 253; and **P-0963**: T-80, pages 12 to 13, and 24.

<sup>1002</sup> **P-0758**: T-161, page 13; **P-0768**: T-34, page 51; **P-0963**: T-80, page 24; and **D-0300**: T-213, pages 73 to 74.

<sup>1003</sup> **P-0898**: T-153, pages 71 to 72; **P-0963**: T-80, page 27; and **D-0300**: T-213, page 74.



## (1) Training camps

364. There was a UPC/FPLC training camp at Mandro,<sup>1004</sup> which was the seat of the Bahema-Banywagi *collectivité*.<sup>1005</sup> Chief Kahwa, who was the traditional chief of the collectivity and controlled the ‘entire Mandro’, provided the UPC/FPLC with the land to be used for training.<sup>1006</sup> Mr Ntaganda also based himself in Mandro.<sup>1007</sup>
365. The Mandro training centre was made operational for the emerging UPC/FPLC by Mr Ntaganda.<sup>1008</sup> It became functional in May 2002,<sup>1009</sup> and was closed by the end of December 2002/beginning of January 2003.<sup>1010</sup> By the end of July 2002, there were more than 1800 recruits at the Mandro training camp.<sup>1011</sup> Mugisa Muleke supervised the training centre and reported to Mr Ntaganda.<sup>1012</sup> Mr Ntaganda regularly visited the training centre at Mandro.<sup>1013</sup>
366. The Mandro training centre consisted of several locations. The residence of Chief Kahwa was where recruits who were finishing their training were present.<sup>1014</sup> The first training location was established at Saikpa.<sup>1015</sup> After Mandro

<sup>1004</sup> **P-0898**: T-153, pages 55 to 56; **P-0963**: T-78, page 29; **P-0768**: T-34, page 50; **P-0901**: T-27, page 60; **P-0017**: T-58, page 24; **P-0014**: DRC-OTP-2054-0816, at 0834; and T-137, pages 86 to 87; **P-0016**: DRC-OTP-2054-1447, at 1459; **D-0038**: T-249, pages 50 to 52; and **P-0888**: T-105, page 16.

<sup>1005</sup> **D-0300**: T-214, page 37.

<sup>1006</sup> **P-0963**: T-78, page 31; T-80, page 91; and **D-0300**: T-213, pages 59, and 61.

<sup>1007</sup> **P-0014**: DRC-OTP-2054-0816 at 0834; and **D-0300**: T-213, page 70.

<sup>1008</sup> **D-0300**: T-213, page 59.

<sup>1009</sup> **D-0300**: T-231, page 84 (testifying that he went to Mandro in early May 2002).

<sup>1010</sup> **D-0300**: T-220, page 25. *See also* T-227, pages 63 to 64.

<sup>1011</sup> **D-0300**: T-214, pages 41, and 43 (stating that in July 2002 there were between 1800 and 2000 recruits at Mandro). *See also* **P-0963**: T-78, page 39 (stating that there were between 2500 and 3000 individuals at Mandro when he was there); **P-0907**: T-89, pages 19 to 20 (stating that there were ‘thousands of us’); and **P-0898**: T-153, page 57. The Chamber addresses the Defence general challenges to P-0963 and P-0907’s evidence regarding training in its relevant credibility assessments. The Chamber notes that the numbers indicated by the witnesses represent estimates. Noting that the set-out of the Mandro camp as described by the witnesses suggests that recruits were trained in different areas at Mandro, in addition to the high frequency of incoming and outgoing recruits over time, the Chamber considers the numbers indicated by Mr Ntaganda and the witnesses to be compatible.

<sup>1012</sup> **P-0907**: T-89, pages 15, and 17; **P-0888**: T-105, page 31; **P-0901**: T-31, page 34; **P-0768**: T-34, page 51; and **D-0300**: T-213, pages 59, and 62. *See also* **D-0210**: T-206, pages 45 to 48.

<sup>1013</sup> **P-0898**: T-153, pages 56 to 57; and T-154, pages 7 to 8; **P-0888**: T-105, page 32; **P-0907**: T-89, pages 17 to 18; **P-0016**: DRC-OTP-2054-1447, at 1466; **P-0963**: T-78, pages 38 to 39; **D-0210**: T-206, pages 47 to 48; and **D-0300**: T-214, pages 4 to 5; and T-227, page 64.

<sup>1014</sup> **P-0907**: T-89, page 18.

<sup>1015</sup> **D-0300**: T-213, page 61. *See also* **P-0963**: T-78, pages 31 to 32; and **P-0769**: T-120, page 46.

was attacked in early June 2002, the recruits were briefly moved to Katoto,<sup>1016</sup> and finally to Kudja.<sup>1017</sup> In addition, recruits were present or transited through other locations in or near Mandro.<sup>1018</sup> There was also an arms and ammunition depot at Mandro.<sup>1019</sup>

367. After the Mandro training camp was closed, the UPC/FPLC started using a training camp at Rwampara.<sup>1020</sup>

368. Zimulinda was the commander of the Rwampara training camp.<sup>1021</sup> The camp was located about two kilometres outside the village of Rwampara, separated from the village by a hill.<sup>1022</sup> A register was kept at this camp where the names of arriving recruits were recorded.<sup>1023</sup>

369. On 12 February 2003, Mr Ntaganda visited this training camp, together with Thomas Lubanga and other commanders,<sup>1024</sup> and spoke to the recruits.<sup>1025</sup>

370. The UPC/FPLC operated other training camps, including in Bule, Fataki, Largu, Bunia, and Lingo.<sup>1026</sup> On at least one occasion, Mr Ntaganda visited the camp in Bule.<sup>1027</sup>

<sup>1016</sup> **D-0300**: T-214, pages 12 to 13; and T-239, pages 19, and 51.

<sup>1017</sup> **D-0300**: T-214, pages 20, and 29. *See also* **P-0898**: T-155, pages 34 to 35; and **P-0907**: T-89, page 19.

<sup>1018</sup> **P-0769**: T-120, page 46; and **D-0300**: T-213, page 71.

<sup>1019</sup> **P-0888**: T-105, page 44; and **P-0907**: T-89, page 21.

<sup>1020</sup> **D-0300**: T-220, pages 24 to 25. *See also* **P-0901**: T-29, pages 50 to 51; **P-0030**: DRC-OTP-2054-2951, at 2974 to 2981, and 2987; DRC-OTP-0120-0293; **P-0046**: T-100, page 67; **P-0055**: T-71, pages 68 to 69; and **P-0017**: T-58, page 36. Concerning the timing of the opening of the camp, the Chamber notes that Mr Ntaganda stated that he believes that the centre opened in January 2003, P-0901 testified that he went to Rwampara in January 2003, P-0030 stated that on 12 February 2003, Lubanga visited the centre for the first time after his opening, and P-0046 stated that he visited on 25 March 2003. P-0898, on the other hand, testified that around August 2002, among his group of recruits some were sent to Rwampara (**P-0898**: T-155, pages 7 to 8). In these circumstances, the Chamber considers that on the basis of the evidence, the precise timing of the opening of the training camp in Rwampara cannot be conclusively established.

<sup>1021</sup> **P-0055**: T-71, pages 77 to 78; **D-0080**: DRC-D18-0001-6163, at 6165, para. 23 and at 6167, paras 37 to 39; and **D-0300**: T-220, page 25.

<sup>1022</sup> **P-0030**: DRC-OTP-2054-2951, at 2980.

<sup>1023</sup> **P-0055**: T-71, page 76.

<sup>1024</sup> **P-0010**: T-47, page 53.

<sup>1025</sup> **D-0300**: T-220, pages 24 to 25, and 31 to 32; and T-240, pages 34 to 35; **P-0010**: T-47, pages 52 to 53; and T-48, page 51; **P-0030**: DRC-OTP-2054-2951, at 2981, and 2987; DRC-OTP-0120-0293; and **P-0055**: T-71, page 69. *See also* **D-0080**: DRC-D18-0001-6163, at 6170, paras 57 to 58.

<sup>1026</sup> **P-0014**: T-137, pages 86 to 88 (Mandro, Bunia, Fataki, Largu, Lopa, Bule); **P-0017**: T-58, page 36 (Bule and Mongbwalu); **P-0055**: T-71, page 65; and T-74, pages 33 to 34 (Fataki, Aru and Mahagi); **P-0768**: T-34, page 53 (training centre at Mont Awa); **P-0963**: T-78, page 55 (testifying recruits were trained in Mongbwalu); and

## (2) Contents of the training

371. Mr Ntaganda set up the structure for the training and determined the topics for instruction at Mandro camp.<sup>1028</sup> In the various UPC/FPLC training camps, recruits undertook structured training,<sup>1029</sup> and were trained in groups.<sup>1030</sup> For example, they participated in physical exercise,<sup>1031</sup> were taught basic military skills such as the use of weapons,<sup>1032</sup> marching,<sup>1033</sup> crawling<sup>1034</sup> and saluting,<sup>1035</sup> as well as military discipline.<sup>1036</sup> Mock firearms, made of wood, were used for training recruits.<sup>1037</sup> However, specific weapon handling skills, including shooting, were taught using real firearms.<sup>1038</sup> Some recruits were also trained in the use of rocket launchers.<sup>1039</sup> In Bunia, five ‘young soldiers’, including two individuals under the age of 15, were trained at Mr Ntaganda’s residence as radio operators.<sup>1040</sup> The two who were under 15 were sent away before completion of

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T-80, pages 12, and 37; **P-0907**: T-89, page 54 (training centre located at Camp Goli in Mongbwalu); **D-0300**: T-239, page 51 (Boga, Bule, Fataki, Largu, Joo, Katoto and Mont Awa); and T-239, page 51 (Lingo); **P-0014**: DRC-OTP-2054-0429, at 0490 and 0494 to 0495 (stating that he saw training at several locations within Bunia); **P-0769**: T-120, pages 28 to 29 (Camp Ndromo in Bunia); **D-0080**: DRC-D18-0001-6163, at 6174, paras 80 to 82 (Lingo); **P-0758**: T-160, pages 88, and 93 to 94; and T-161, page 9 (Lingo); **P-0883**: T-168, page 15 (Bule); **P-0901**: T-29, page 50 (Bule).

<sup>1027</sup> **P-0883**: T-168, page 18; and **P-0963**: T-80, pages 36 to 37.

<sup>1028</sup> **D-0300**: T-213, page 64; and T-214, page 11.

<sup>1029</sup> **P-0758**: T-161, page 10.; **P-0769**: T-120, pages 40 to 41; **P-0883**: T-168, pages 15 to 16; **P-0898**: T-153, page 76; **D-0300**: T-214, page 11.

<sup>1030</sup> **P-0888**: T-105, page 27; and **D-0300**: T-214, page 12.

<sup>1031</sup> **P-0055**: T-71, page 77; **P-0758**: T-161, page 10; **P-0769**: T-120, page 30; **P-0898**: T-153, page 53.

<sup>1032</sup> **P-0963**: T-78, page 39; **P-0055**: T-71, page 77; **D-0300**: T-213, page 64. *See also* the other evidence cited in this paragraph.

<sup>1033</sup> **P-0898**: T-153, page 52; **P-0907**: T-89, page 26.

<sup>1034</sup> **P-0758**: T-161, page 11; **P-0907**: T-89, page 27. *See also* **P-0898**: T-154, page 7; **P-0888**: T-105, page 24.

<sup>1035</sup> **P-0888**: T-105, page 24.

<sup>1036</sup> **D-0300**: T-213, page 81. *See also* the findings made below in relation to discipline.

<sup>1037</sup> **P-0758**: T-161, pages 10 to 11; **P-0883**: T-168, pages 15 to 16; **P-0907**: T-89, page 27; **P-0055**: T-71, page 82; and DRC-OTP-0120-0293 at 00:04:06.

<sup>1038</sup> **P-0055**: T-71, page 82; **P-0769**: T-120, page 30; **P-0888**: T-105, pages 24 to 26; **P-0898**: T-154, page 6; **P-0907**: T-89, page 27; and **D-0300**: T-214, page 12.

<sup>1039</sup> **P-0888**: T-105, pages 25 to 26.

<sup>1040</sup> **P-0290**: T-65, pages 32 to 33, and 38 to 39. The witness testified that two trainees were ‘very young, they were too young. They were not yet adults. They had not reached the age of adulthood’ (**P-0290**: T-65, page 38), and that they were sent away because they had no interest in training and were involved in ‘useless activities’ (**P-0290**: T-65, pages 38 to 39). **P-0290** estimated them to be ‘15 or so’ and ‘[a]bout 15’ (**P-0290**: T-65, page 41). While noting that in his previous statement **P-0290** stated that the two trainees were younger than 15 (**P-0290**: T-65, page 60, referring to DRC-OTP-0172-0305, at 0309, para. 18), the Chamber does not consider this to affect his credibility, in particular in relation to the descriptions of these two individuals as described above, noting that when confronted with his previous statement, the witness emphasised that the two persons were not old enough to ‘easily understand’, and that while he ‘cannot be specific as to their age,

the training on the ground that they had no interest in training and were involved in ‘useless activities’.<sup>1041</sup> Some recruits also received training set aside for officers.<sup>1042</sup> Some recruits were trained in intelligence.<sup>1043</sup>

372. UPC/FPLC Chief of Staff Floribert Kisembo, Mr Ntaganda, and G5 Eric Mbabazi personally taught recruits at Mandro.<sup>1044</sup> Mr Ntaganda also attended *kitamaduni* sessions at Mandro from time to time,<sup>1045</sup> which were nightly sessions during which songs were sung in particular.<sup>1046</sup>

373. Songs were taught to recruits as part of their training.<sup>1047</sup> This included ‘revolutionary songs’ which were sung to boost morale.<sup>1048</sup> Other songs incited soldiers to attack or kill the Lendu,<sup>1049</sup> and others disparaged Ernest Wamba Dia Wamba,<sup>1050</sup> President Kabila or the Ugandans, including President Museveni.<sup>1051</sup> The lyrics in another song suggested that soldiers would ‘get’ everything,

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whether it’s 16 or 17 years [...], he testified that ‘they were minors [...] [t]hose young people were less than 15 years old. That is true. And I said this loudly before God and before the nation. These people were not of age. Maybe 15, 16, or 17, as I said. They were –they were too young. Too young, less than 15 years old. They were too young. I repeat that they were too young. Maybe not 15, 16 or 17, no, no’ (**P-0290**: T-65, pages 60 to 61).

<sup>1041</sup> **P-0290**: T-65, pages 38 to 39.

<sup>1042</sup> **P-0055**: T-71, page 83.

<sup>1043</sup> **P-0014**: T-136, pages 32 to 33; and DRC-OTP-2054-0816, from 0835 to 0836.

<sup>1044</sup> **D-0300**: T-214, pages 4 to 5; and **P-0888**: T-105, pages 37 to 38.

<sup>1045</sup> **D-0300**: T-213, page 65.

<sup>1046</sup> **P-0901**: T-30, page 74; **D-0080**: DRC-D18-0001-6163, at 6168, para. 42; and **D-0300**: T-213, pages 64 to 65.

<sup>1047</sup> **P-0888**: T-105, pages 38 to 39; **P-0769**: T-120, page 40; **P-0758**: T-161, pages 10 to 11; **P-0898**: T-153, page 76; and DRC-OTP-0120-0293 from 00:00:00 to 00:08:21. *See also* **P-0963**: T-80, page 15.

<sup>1048</sup> **P-0888**: T-105, pages 38 to 39; **P-0769**: T-120, page 31; and **D-0300**: T-213, pages 66 to 67.

<sup>1049</sup> P-0769, who was recruited and trained within the UPC/FPLC, sang in the courtroom, and provided the text of, a song he was taught during his training: ‘Micheline, give me a knife with a basin so that I can slit the throat of a Lendu’. **P-0769**: T-120, pages 31 to 32. P-0016, who received UPC/FPLC training at Mandro (see DRC-OTP-0126-0422 at 0430-0432), stated that recruits sang songs saying that Lendu had to be exterminated, and gave an example of such a song (**P-0016**: DRC-OTP-0126-0422-R03, from 0432, para. 56 to 0433, para. 57; and DRC-OTP-2054-1447, at 1465 to 1466). While noting Mr Ntaganda’s denial that any derogatory songs pertaining to any ethnic group were sung (**D-0300**: T-213, page 66), the Chamber finds that such songs were taught in UPC/FPLC trainings, in light of P-0769 and P-0016’s evidence, as well as its finding that recruits were taught that the Lendu were the enemy.

<sup>1050</sup> **P-0769**: T-120, page 32.

<sup>1051</sup> **P-0769**: T-120, page 33.

including women, ‘for free’ in the UPC/FPLC.<sup>1052</sup> During their training, recruits were taught that the Lendu and the Ngiti were the enemy.<sup>1053</sup>

### (3) Conditions, rules, and discipline

374. Recruits wore civilian clothing.<sup>1054</sup> The Chamber found that in at least one instance at Mandro, recruits were stripped of their own clothes and provided instead with other clothes which were dirty.<sup>1055</sup>

375. Recruits described the living conditions in the training camps as being very harsh.<sup>1056</sup> The recruits normally had the possibility to eat only once a day,<sup>1057</sup> the meal consisting of a mixture of maize and beans,<sup>1058</sup> sometimes spooned directly into their clothes,<sup>1059</sup> or hands – if they dropped it from their hands, ‘then it was finished for you, you were going to be hungry all day’.<sup>1060</sup> In Mandro, the food

<sup>1052</sup> **P-0963**: T-80, pages 15, and 16 to 18. P-0963 referred to this song in the context of his evidence on the training of recruits in Mongbwalu in February 2003 (T-80, pages 11 to 12). As such, and having considered its general assessment of this witness’s credibility, the Chamber finds that P-0963 had a good opportunity to become aware of the songs sung during training. In these circumstances, the Chamber considers that P-0963’s testimony in this regard is not affected by Mr Ntaganda’s general denial that ‘songs that could be said to be derogatory towards women or towards any gender’ were sung, on the basis that they were incompatible with the revolutionary ideology (**D-0300**: T-213, page 67), which the Chamber does not consider to be credible.

<sup>1053</sup> **P-0963**: T-78, page 74; **P-0888**: T-105, page 37; **P-0907**: T-90, pages 36, and 51; and **P-0758**: T-161, page 11. The Chamber notes that P-0769 testified that he was told during his training that ‘the UPC was not a tribal militia’, that its aim was ‘to take over Congo in its entirety’, and that they weren’t just fighting ‘enemies, be they Bahema or Balendu’ but ‘the government’. **P-0769**: T-120, page 31. The Chamber considers that this testimony, also in light of the fact that just after, P-0769 testified that songs calling for violence against the Lendu were sung (*see* T-120, pages 31-32, *see also* below), that P-0769 evidence in itself does not contradict the evidence provided by the aforementioned witnesses. *See also* **P-0116**: DRC-OTP-2054-4494, at 4537.

<sup>1054</sup> **P-0888**: T-105, page 16.

<sup>1055</sup> **P-0888**: T-105, page 16; **P-0898**: T-153, page 71; and **P-0907**: T-89, pages 14, and 26.

<sup>1056</sup> **P-0883**: T-168, page 25; **P-0888**: T-105, pages 22 to 23; and **P-0907**: T-90, page 76. As regards D-0080’s statement that the Rwampara training centre was ‘une grande famille’, and that the living conditions were good (**D-0080**: DRC-D18-0001-6163, at 6168, para. 43), the Chamber considers that the witness’s testimony in this regard appears to aim at mitigating the conditions of the Rwampara camp. Also noting the contradicting experiences described by P-0883, P-0888 and P-0907 for other camps, the Chamber concludes that similar harsh conditions existed at Rwampara camp and finds D-0080’s evidence on this point not credible.

<sup>1057</sup> **P-0883**: T-168, page 28; **P-0888**: T-105, page 33; and **P-0898**: T-153, page 71. The Chamber notes that Mr Ntaganda testified that the recruits would have a second meal in the morning and that food supply at Mandro was organized in a way that ensured that ‘recruits never went to bed hungry’ (**D-0300**: T-213, pages 67 to 68). However, in light of the consistent, first hand evidence of the abovementioned witnesses in relation to different camps, the Chamber considers Mr Ntaganda’s evidence not credible in this instance. In relation to D-0017’s evidence on this aspect (**D-0017**: T-252, page 63), the Chamber recalls that it finds the witness to be generally not credible and thus does not consider his testimony in this regard.

<sup>1058</sup> **P-0883**: T-168, page 28; **P-0888**: T-105, page 22; **P-0898**: T-153, page 71; and **D-0300**: T-240, page 15.

<sup>1059</sup> **P-0888**: T-105, page 22; and **P-0898**: T-153, page 71.

<sup>1060</sup> **P-0883**: T-168, page 28.

was at times rotten or not edible.<sup>1061</sup> Recruits had to sleep outside or in huts.<sup>1062</sup> In Bunia, some recruits slept in a drink shop while others slept outside.<sup>1063</sup>

376. At the training camps, recruits were told that they would be killed if they tried to flee.<sup>1064</sup> Recruits at Mandro camp who attempted to escape were brought back, beaten, put in an underground prison called the 'go down', or, in at least one instance, shot.<sup>1065</sup> A recruit explained that those who tried to escape and were caught were brought back to face other recruits before being seriously beaten up.<sup>1066</sup>

377. If recruits did not obey orders, they were beaten, sometimes very severely.<sup>1067</sup> Other forms of punishment included physical exercises such as push-ups, maintaining standing positions for a long time, fetching water or cooking, rolling in mud, submersion in water, and deprivation of food.<sup>1068</sup> Recruits were punished for losing weapons, and at least in one instance at Mandro, a person was executed for losing his weapon.<sup>1069</sup> Sometimes, recruits were beaten by the instructors

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<sup>1061</sup> **P-0907**: T-90, page 76.

<sup>1062</sup> **P-0888**: T-105, page 22; **P-0898**: T-153, page 71; and **D-0300**: T-214, page 8.

<sup>1063</sup> **P-0898**: T-153, page 53.

<sup>1064</sup> **P-0883**: T-168, pages 25 to 26; **P-0907**: T-89, pages 28 to 29. The Chamber recalls its finding in the relevant witnesses' credibility assessments, including as regards their testimony on training, and finds that their testimony on this matter is credible and can be relied upon.

<sup>1065</sup> **P-0888**: T-105, pages 40 to 41; **P-0898**: T-154, page 7; **P-0963**: T-80, page 26; and **P-0907**: T-90, page 78; and T-91, pages 45 and 51. As regards Mr Ntaganda's testimony that while 'soldiers' were severely punished for desertion, recruits 'were given permission to return to their homes' if they were 'unwell', and that he was not aware of any cases of desertion at Mandro (**D-0300**: T-214, pages 6 to 7; and T-227, pages 42 to 43), the Chamber considers it to be not credible, in light of the credible evidence given by the abovementioned witnesses in this regard, and therefore considers that desertion was punished at UPC/FPLC training camps in the manner described.

<sup>1066</sup> **P-0888**: T-105, pages 40 to 41.

<sup>1067</sup> **P-0016**: DRC-OTP-2054-1447 at 1490-1492; **P-0758**: T-161, page 18; **P-0888**: T-105, page 23; **P-0963**: T-80, pages 26 to 27; **P-0907**: T-90, page 78; and **D-0300**: T-213, page 82. While noting that Mr Ntaganda, in cross-examination, denied hearing of any case of a recruit having been beaten, and that push-ups and rollovers were instead used as punishment during training (**D-0300**: T-227, pages 45 to 24.), the Chamber considers that this evidence does not undermine the credibility of the other aforementioned witnesses' testimony.

<sup>1068</sup> **P-0907**: T-90, page 78; **P-0014**: T-137, pages 7 to 8; and **D-0300**: T-213, page 82.

<sup>1069</sup> **P-0888**: T-105, pages 41 to 43. While noting that the witness did not personally observe the execution, the Chamber considers his evidence credible, noting the context he provided and noting his role in the event.

without any apparent reason.<sup>1070</sup> Recruits were punished in the same way, regardless of their age.<sup>1071</sup>

#### (4) Completion of training

378. The training of recruits usually lasted from several weeks to up to two months.<sup>1072</sup> Completion of this training was marked by graduation ceremonies,<sup>1073</sup> which were attended by, *inter alios*, Mr Ntaganda, notably at Mandro and Lingo.<sup>1074</sup> Mr Ntaganda also decided on the deployment of soldiers after training.<sup>1075</sup>

379. At the completion of their training, recruits were issued with weapons and uniforms.<sup>1076</sup> Occasionally, if there was an assault by the enemy, recruits were deployed before the end of their training.<sup>1077</sup>

#### c) Escorts, bodyguards, and other assignments

380. Upon completion of their training, some of the newly formed soldiers were selected as bodyguards for UPC/FPLC commanders.<sup>1078</sup> Amongst the bodyguards,

<sup>1070</sup> **P-0907**: T-90, page 76.

<sup>1071</sup> **P-0963**: T-80, pages 26 to 27; and **P-0014**: T-137, pages 7 to 8.

<sup>1072</sup> **P-0055**: T-71, page 78; and **D-0300**: T-240, page 11. *See also* **D-0080**: DRC-D18-0001-6163, at 6169, para. 52; and **P-0963**: T-78, page 52.

<sup>1073</sup> **P-0055**: T-71, page 80; and **P-0901**: T-29, pages 50 to 51.

<sup>1074</sup> **P-0907**: T-89, pages 17 to 18; **P-0758**: T-161, page 15; and **P-0055**: T-71, page 80.

<sup>1075</sup> **P-0055**: T-71, page 82 (stating that ‘it was the chief of staff in charge of operations, namely Mr Ntaganda’ who was responsible for determining where recruits would be deployed); **P-0768**: T-34, page 52 (stating that ‘it was Bosco Ntaganda who was responsible for operations and the training. He was the person who was responsible for everything, and deployments and operations’); **P-0907**: T-89, pages 17 to 18, and 27 to 28 (stating that ‘Bosco’ came to send off the soldiers in Mandro and tell where to go); and **P-0901**: T-29, page 53 (stating that it was Floribert Kisembo and Mr Ntaganda who had the power to decide where recruits would be deployed). The Chamber does not consider P-0901’s evidence to represent a contradiction to the evidence provided by the other witnesses, and makes reference to its findings above on the relationship between Mr Ntaganda and Kisembo *see* section IV.A.2.c) Position of Mr Ntaganda.

<sup>1076</sup> **P-0016**: DRC-OTP-2054-1447, at 1503; **P-0055**: T-71, page 80; **P-0758**: T-161, pages 30 to 31; **P-0888**: T-105, page 26; **P-0907**: T-89, page 27; **P-0963**: T-78, page 52; and T-80, pages 10 to 11; and **D-0080**: DRC-D18-0001-6163, at 6169, para. 53. The Chamber notes that uniforms were not available initially, but were obtained around the time that the FPLC was formally created, *see* IV.A.2.f) Weapons, ammunition, and other material Weapons, ammunition, and other, in particular para. 339 above.

<sup>1077</sup> **P-0907**: T-89, page 28.

<sup>1078</sup> **P-0010**: T-46, page 44; T-47, pages 20 to 21; and T-48, page 21; **P-0014**: T-136, pages 32 to 33; **P-0055**: T-71, page 85; **P-0888**: T-105, page 62; **P-0901**: T-29, page 53; and **D-0251**: T-260, page 9, and 11.

there were soldiers of various ranks and ages, and sometimes, commanders chose kadogos as their bodyguards.<sup>1079</sup> The Chamber notes that a number of witnesses, including Mr Ntaganda, refer to both ‘escorts’ and ‘bodyguards’ in their testimony, and appear to make, for the most part, no distinction between the two terms. Accordingly, in this Judgment the terms are used interchangeably.

# (1) Mr Ntaganda’s escort

## (a) Organisation of Mr Ntaganda’s escort

381. At the time of the delivery of weapons in Mandro,<sup>1080</sup> Mr Ntaganda set up a company of bodyguards for himself.<sup>1081</sup>

382. Initially, Claude Uzauakiliho was chief escort.<sup>1082</sup> In January 2003, Mr Ntaganda took another chief escort,<sup>1083</sup> Gasana Martin, known under call sign ‘61 Sierra’,<sup>1084</sup> and Claude Uzauakiliho was relieved of some of the functions he had before.<sup>1085</sup>

<sup>1079</sup> **P-0055**: T-71, pages 84 to 85; **P-0901**: T-29, pages 53 to 54; and **P-0963**: T-80, page 31. *See also* **P-0005**: T-189, page 22; and **P-0886**: T-37, pages 64 to 65; and T-38, page 6 (stating that he saw with his own eyes kadogos in the UPC/FPLC camp in Sayo and elsewhere as bodyguards to protect the authorities, they were called escorts and were in charge of protecting their superiors when they travelled). While stating that ‘no one dared to get close to them’ because they threatened others (T-38, page 7) and admitting that he could not talk to them (T-40, pages 44 to 45), the witness stated that when he saw them, he knew they were children because they were of the same age as his children who were in the sixth year of primary school at the relevant time (T-40, page 45). In these circumstances, and absent any finding on the specific age of the relevant individuals, the Chamber considers that P-0886’s age assessment can be relied upon, as corroboration, for a finding that kadogos served as bodyguards for UPC/FPLC commanders (*see* Defence Closing Brief, para. 1487).

<sup>1080</sup> **D-0300**: T-214, page 41. *See also* para. 336.

<sup>1081</sup> **D-0300**: T-214, page 30.

<sup>1082</sup> **P-0010**: T-48, page 49; **D-0300**: T-214, page 49. Other witnesses identified other persons as chief escort: **P-0888**: T-105, page 64 (testifying that the chief escort was called Brown); and **P-0901**: T-29, page 56 (testifying that Mr Ntaganda had a number of chief escorts, including Bahati, Museveni, Gasana and Bataga). In view of Mr Ntaganda’s statement that Brown was one of the two close protection bodyguards, and that Gasana partly replaced Claude in January 2003, and considering that Mr Ntaganda is best placed to make a precise distinction between the functions of chief escorts and other close protection guards, the Chamber does not consider this testimony to affect the reliability of Mr Ntaganda’s statements concerning the organisation of his bodyguard in this respect.

<sup>1083</sup> **D-0300**: T-214, page 51. *See also* **P-0010**: T-48, page 50.

<sup>1084</sup> **D-0300**: T-214, page 51.

<sup>1085</sup> **D-0300**: T-214, page 51.



383. Mr Ntaganda also had two close protection bodyguards,<sup>1086</sup> called Brown and Kiza.<sup>1087</sup> Mr Ntaganda's escort company further included an IS, called Asimwe.<sup>1088</sup> The IS had two functions: (i) to collect information from the outside; and (ii) to gather information from bodyguards which was then reported to Claude Uzauakiliho.<sup>1089</sup>
384. In Bunia, Mr Ntaganda's bodyguards lived at his residence, but in a separate house,<sup>1090</sup> close to the large market called Supermatch.<sup>1091</sup> In Mongbwalu, all of Mr Ntaganda's bodyguards stayed at the same place, in a separate house close to Mr Ntaganda's.<sup>1092</sup>
385. The bodyguards were armed,<sup>1093</sup> and, on some occasions, they wore military uniforms.<sup>1094</sup> Mr Ntaganda's bodyguard included male and female soldiers.<sup>1095</sup> Mr Ntaganda's escorts were of various ages.<sup>1096</sup>

**(b) Presence of individuals under the age of 15 within Mr Ntaganda's bodyguard**

386. The Chamber recalls, at the outset, its finding that it cannot be established that P-0010 and P-0888, who served as escorts for Mr Ntaganda, were under the age of 15 at the time of the events discussed in their respective testimony. As a result, P-0888's testimony that there were many escorts of his age within Mr Ntaganda's bodyguard,<sup>1097</sup> and P-0010's statement that certain escorts of Mr Ntaganda were

<sup>1086</sup> **D-0300**: T-214, pages 49 to 50.

<sup>1087</sup> **D-0300**: T-214, page 50.

<sup>1088</sup> **D-0300**: T-214, page 50.

<sup>1089</sup> **D-0300**: T-214, page 50.

<sup>1090</sup> **P-0010**: T-48, page 47; and **D-0300**: T-214, page 30. P-0901 believed that Mr Ntaganda had approximately 40 bodyguards at his residence (**P-0901**: T-29, page 54).

<sup>1091</sup> **P-0010**: T-47, page 8; and T-48, page 47.

<sup>1092</sup> **P-0010**: T-47, page 12 to 13.

<sup>1093</sup> **P-0010**: T-47, page 8; **P-0888**: T-105, page 68; and **D-0300**: T-214, page 31; and T-239, page 37.

<sup>1094</sup> **D-0300**: T-239, page 37.

<sup>1095</sup> **P-0010**: T-46, page 48; **P-0055**: T-71, page 84; **P-0888**: T-105, page 63; **P-0901**: T-29, page 56; **D-0251**: T-260, pages 9, 14, and 18; and **D-0300**: T-214, pages 30 to 31; and T-243, page 27.

<sup>1096</sup> **P-0010**: T-47, page 6; **P-0290**: T-67, pages 3 to 4; and **P-0901**: T-29, page 54.

<sup>1097</sup> **P-0888**: T-105, page 63 (testifying that those of Mr Ntaganda's escorts who were of his age were referred to as kadogo and that there were 'many of us', and that that the youngest escort was 14 years old).

younger than her<sup>1098</sup> cannot, alone, support a finding that Mr Ntaganda's escort included individuals under 15.

387. However, on the basis of three video extracts discussed in the context of P-0010's testimony, and recalling its finding that P-0010's testimony on her experiences in Mr Ntaganda's escort is credible, the Chamber, while allowing for a large margin of error, is satisfied beyond reasonable doubt that one individual identified by P-0010 as Lamama<sup>1099</sup> and one individual she identified as 'one of our kadogos', while not remembering the person's name,<sup>1100</sup> who had both, according to P-0010, worked as escorts for Mr Ntaganda, were manifestly under

<sup>1098</sup> **P-0010:** T-47, page 6 (stating that some bodyguards were older and some younger than her, and identifying two individuals called Lamama and Kisémba as having been younger than her); and T-48, page 15 (in answer to the question of whether, in DRC-OTP-0120-0293, at 37:25, depicting the return of UPC/FPLC commanders and soldiers to a vehicle after a visit to Rwampara training camp, she recognised a specific person who was in uniform, towards the left of the screen and as not as tall as the people next to him, testifying that this person was 'one of our kadogos [...] a member of [...] Mr Bosco's bodyguard', who was younger than her).

<sup>1099</sup> **P-0010:** T-47, pages 59 and 62, referring to DRC-OTP-0120-0293, from 00:22:49 to 00:23:22 and identifying as Lamama the person with a bigger hat, and a visor, and arms folded; and T-48, page 11, referring to DRC-OTP-0120-0293, at 00:06:44, and stating that Lamama is the person in military uniform and hat, holding an SMG. In light of the size and physical features of this person, and having considered credible and reliable the related statements of P-0010, the Chamber is satisfied that the individual identified by P-0010 as Lamama was manifestly under 15 at the time the video was recorded. In light of its own assessment, its conclusions on the credibility of D-0017 in general, and noting Mr Ntaganda's statement that his escort did not include any individuals under 18 in particular and D-0251's categorical denial of the presence of people under the age of 15 in Mr Ntaganda's compound (*see below*), and noting further that D-0251 stated that she did not know how old Lamama was, or whether Lamama was older or younger than her (**D-0251:** T-260, page 20), the Chamber considers that this finding is not affected by the testimony of these witnesses (*see* Defence Closing Brief, paras 1306, 1327, and 1529). As for P-0017's assessment of the individual depicted in DRC-OTP-2058-0251, at 00:48:22, the Chamber notes that there is no evidence to the effect that this person is the same person as the person identified by P-0010 as Lamama, and further notes that P-0017 stated that 'given the person's height or size and looks, that person must be 15 years or above', but later stated that 'based on the person's size, his height and the facial looks, the person could be 14, 15 or more' (**P-0017:** T-62, pages 52 to 53).

<sup>1100</sup> **P-0010:** T-48, page 15, referring to DRC-OTP-0120-0293, at 00:37:25, depicting the return of UPC commanders and soldiers to the vehicle after the visit to Rwampara training camp, and stating that she recognised a specific person, who was in uniform, towards the left of the screen, and not as tall as the people next to him, as 'one of our kadogos [...] a member of [...] Mr Bosco's bodyguard', who was younger than her. Noting the size of the individual who was significantly smaller than the soldiers around him and barely taller than the wheel of the vehicle on which he can be seen loading his weapon, the Chamber is satisfied that this child was manifestly under 15 at the time of the events when the video was recorded. Concerning the Defence's argument that the individual was in fact a named soldier, who, despite his small size, was 20 years old at the relevant time, the Chamber notes that P-0010 did not agree with the Defence's suggestion (T-50, pages 3 to 5), and that no evidence has been adduced to support the Defence's contention.

the age of 15 at the time the relevant extracts were recorded, around February 2003.<sup>1101</sup>

388. In a further video extract discussed in the context of the testimony of P-0898, whom the Chamber finds credible, including in relation to his statement that he was under 15 at the time of the events, as well as his age assessments of other individuals, P-0898 identified an individual as one of Mr Ntaganda's escorts called Tipe, whom he considered to be of his age.<sup>1102</sup> Considering, in particular, the facial features of the relevant individual, and while allowing for a wide margin of error, the Chamber is satisfied beyond reasonable doubt that this individual was manifestly under 15 years of age around May 2003, the time when the video extract was recorded.<sup>1103</sup> As for the fact that the individual is wearing civilian clothing, the Chamber recalls P-0898's explanations concerning the circumstances of the filming of the video,<sup>1104</sup> and further notes that the individual is depicted holding a weapon. The Chamber therefore considers that the individual's clothing does not affect its finding on his role at the time of the events.

389. Other evidence provided by witnesses who were in regular contact with, or had sufficient opportunities to observe, individuals serving within Mr Ntaganda's escort also demonstrates that Mr Ntaganda's escort comprised kadogos, including individuals under 15 years of age.

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<sup>1101</sup> See **P-0010**: T-48, page 15, stating that the scene depicted in DRC-OTP-0120-0293, at 00:37:25, shows the return of UPC commanders and soldiers to the vehicle after the visit to Rwampara training camp and the Chamber's above finding in para. 369 that Mr Ntaganda visited this camp on 12 February 2003.

<sup>1102</sup> **P-0898**: T-154, pages 5 to 6, 23, and 34 (testifying about Mr Ntaganda's bodyguards called Claude, Rambo and Tipe, who he says were kadogos and who he thought were around his age because of their size), page 23 (stating that after Mongbwalu, Tipe kept Mr Ntaganda's cows) and page 33 (referring to DRC-OTP-0103-0008, at 00:32:20 and 00:32:27).

<sup>1103</sup> **P-0898**: T-154, page 29.

<sup>1104</sup> **P-0898**: T-154, pages 29, and 31 to 33 (stating that the video was filmed in May 2003, after Floribert Kisembo had asked for children to be demobilised, but that subsequently, there was an attack by the Lendu, which is why he was wearing civilian clothing). While noting that P-0898's explanation relates to a different excerpt, the Chamber considers that the same explanation is equally applicable to the extract depicting the individual identified as Tipe.

390. These witnesses include P-0014, who stated that he saw three bodyguards of Mr Ntaganda whom he assessed to be aged between 13 and 15;<sup>1105</sup> P-0017, who testified that in Mandro, he saw two male bodyguards of Mr Ntaganda whom he estimated to be under 15;<sup>1106</sup> P-0030, who stated that he saw Mr Ntaganda and Floribert Kisembo coming with their bodyguards when they visited Thomas Lubanga at his residence, that they were of various ages, including some that were 12, 13, 14 and 15 years old, and that their task was to guard Mr Ntaganda;<sup>1107</sup> and P-0290, who testified that among the individuals guarding Mr Ntaganda's compound, there were 'children', and that the youngest 'may have been 13 years old'.<sup>1108</sup> This finding is further supported by the evidence of P-0768,<sup>1109</sup> P-0055,<sup>1110</sup> P-0901,<sup>1111</sup> and P-0041.<sup>1112</sup>

<sup>1105</sup> **P-0014:** T-136, pages 34 to 36, and 39. He based this assessment on his other experiences with children between 11 and 18, and the faces and clothes of the bodyguards, and the fact that their weapons 'were hanging' (T-136, pages 38 to 39). Recalling its previous observations on the testimony relied upon the Defence to contradict P-0014's statement, and noting the factors provided by the witness as a basis for his assessment, the Chamber considers that P-0014's testimony on the age of individuals in Mr Ntaganda's escort is reliable and not undermined by his claim, which is not relied upon by the Chamber, that there were child soldiers as young as five at the UPC headquarters (*see* Defence Closing Brief, paras 1461, 1463 and 1466, referring to DRC-OTP-2054-0429, at 0478).

<sup>1106</sup> **P-0017:** T-58, pages 25 to 26. Although the witness did not expressly state the basis for his assessment for those two boys, the Chamber notes that the witness stated that he saw these boys again later, and that in his previous answer, he based his assessment of the age of four other recruits, with whom he stayed in the same house in Mandro for a night, as being 10 or 11 years old, on the observation that they looked small, 'spent the day playing as children do', 'didn't behave properly', and that the commander did not give them any tasks because they were 'weak and small people' (T-58, pages 24 to 25); and T-58, pages 32 to 33 (testifying that when he travelled to Mr Ntaganda's compound in Bunia, he saw his escorts, including Borufu and a girl who were about 18 years old, and other boys whom he estimated to be 12 to 13). The witness estimated the age of the boys who he said were 12 to 13 on the basis of their 'facial looks', although he acknowledged that he was only able to observe one of them who came close-by (T-58, page 34). In light of the witness's explanations concerning the factors underlying the estimates of age he provided in relation to several children, the Chamber considers the witness's age assessments to be generally reliable (*see also* Defence Closing Brief, para. 301).

<sup>1107</sup> **P-0030:** T-144, pages 28, and 34; and DRC-OTP-2054-2951, at 2974. He based the assessment of those who were 12, 13, and 14 on their physical appearance (T-144, pages 34 to 35) and behaviour (T-144, pages 35 to 36). The Chamber considers the witness's responses to be clear on their face and therefore not affected by the Defence argument that the witness never explained whether he meant to exclude that they were actually as old as 15 (*see* Defence Closing Brief, paras 1473 to 1474). Noting the factors provided by the witness as a basis for his assessment, the Chamber further considers that the witness's acknowledgement that it is difficult to evaluate age does not undermine his testimony (*see* Defence Closing Brief, paras 1473 to 1474), and considers the witness's assessment reliable.

<sup>1108</sup> **P-0290:** T-67, pages 3 to 4. This assessment was based on the faces and physiognomy of the relevant persons, which were similar to that of those who were to be trained as radio operators (T-67, pages 9 to 10) and who, in turn, were not mature because they had no interest in what they were taught, but were playing instead (T-67, pages 4 and 7). The Chamber further notes the witness's statement that the reason for the assessment was based on the physical aspect, the witness being a father of a large family (T-67, page 12), and that he had

391. One of these individuals under 15 was reported to be called Bahati.<sup>1113</sup> Two other individuals observed by P-0898 were reported to be called Claude and Rambo and considered to be of his age.<sup>1114</sup> One individual observed by P-0010 was described as being so small ‘that he had to roll his sleeves up twice’.<sup>1115</sup>

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the opportunity to observe these individuals for a prolonged period of time, and accordingly considers his assessment of these individuals to be reliable.

<sup>1109</sup> **P-0768:** T-34, pages 48 to 49, and 54 (testifying that there were a number of children under 15 among Mr Ntaganda’s escorts and that they were ‘numerous’). In a video recording of Mongbwalu (DRC-OTP-2058-0251, from 00:48:19 to 00:48:34), P-0768 further identified a soldier to be Mr Ntaganda’s bodyguard, a boy, and under 15. He based this age assessment on the individual’s appearance and behaviour (T-34, page 47). With regard to the Defence arguments concerning this identification, the Chamber recalls its observations on the testimony of P-0017 and its finding that there is no evidence to the effect that this person is the same person as the person identified by P-0010 as Lamama, or the Lamama described by other witnesses as being between 16 and 20. While, on the basis of the video excerpt, the Chamber is not able to determine that the individual was manifestly under 15, it also notes that P-0768 further based his assessment on the relevant individual’s behaviour, and therefore does not consider that this testimony generally undermines P-0768’s ability to assess ages and therefore his statement that Mr Ntaganda’s bodyguard included individuals under 15 (*see* Defence Closing Brief, paras 295 and 1452), which the Chamber considers reliable and to be considered as corroboration together with other evidence underlying its finding.

<sup>1110</sup> **P-0055:** T-71, page 84 (stating that there were ‘some kadogo’ among Mr Ntaganda’s escorts, ‘a dozen or so, dozens of them. Some may have been 14 or 15 years old’). The witness elsewhere stated that for him, kadogo referred to someone under 18 years of age (T-71, page 68), but stated that by looking at someone, it was possible to distinguish between someone who is a small adult and someone who is still a ‘child’ (T-71, page 70).

<sup>1111</sup> **P-0901:** T-29, pages 55 to 56 (testifying that there were kadogos within Mr Ntaganda’s bodyguard unit, including persons whom he estimated to be approximately 14 or 15). In relation to the Defence argument that the evidence from P-0055 and P-0901 is ‘inconclusive’ (Defence Closing Brief, para. 1528. *See also* paras 1453 and 1475), the Chamber notes the consistency of their evidence with other evidence indicating the presence of individuals under the age of 15 in Mr Ntaganda’s bodyguard.

<sup>1112</sup> **P-0041:** DRC-OTP-0147-0002, at 0029, para. 173; and DRC-OTP-2054-5199, from 5261 to 5262 (stating that Mr Ntaganda, where he lived, had many more girls than boys among his bodyguards, and that certain girls were younger than 15, and estimating the age range of Floribert Kisembo’s and Mr Ntaganda’s bodyguards as being between 13, 17 and up to 22). While noting the consistency of P-0041’s evidence with other evidence on the presence of individuals under 15 in Mr Ntaganda’s bodyguard, the Chamber observes the lack of detail surrounding P-0041’s evidence on this point, as well as the witness’s acknowledgment of his difficulties with assessing age, and therefore does not afford much weight to P-0041’s evidence on this particular point (*see* Defence Closing Brief, paras 1484 to 1485).

<sup>1113</sup> **P-0016:** DRC-OTP-0126-0422-R03, at 0466, para. 256 (stating that Mr Ntaganda had more than ten ‘*enfants soldats*’ with him); and DRC-OTP-2054-1447, from 1462 to 1463, and at 1478 (testifying that Mr Ntaganda had a bodyguard Bahati who was 12/13 years old, and whom P-0016 used to send on errands, as a sort of an assistant, and that he initially served Mr Ntaganda, then Floribert Kisembo, and then went to the Presidency via the PPU). Noting that the witness assessed the age of those who he considered 13 based on their size (DRC-OTP-2054-1447, at 1462) and behaviour, the fact that he had regular contact with the individual called Bahati, and the statement that this individual successively served as a bodyguard for different commanders, the Chamber considers that his testimony in this regard is reliable and not affected by the Defence argument that this name is not consistent with any other testimony on the name of Mr Ntaganda’s bodyguards (*see* Defence Closing Brief, para. 1478).

<sup>1114</sup> **P-0898:** T-154, pages 5 to 6, 23, and 34 (testifying, in addition to his testimony about Tipe considered above, that Mr Ntaganda’s bodyguards called Claude and Rambo were kadogos and who he thought were around his age because of their size). The Chamber recalls that it finds P-0898 reliable on his age assessments of other individuals.

<sup>1115</sup> **P-0010:** T-47, page 6 (stating that the youngest bodyguard in Mr Ntaganda’s unit had to roll his sleeves up twice and that he was ‘really very young, around 9 years old’). Noting the specific details underlying P-0010’s

(c) Tasks assigned to Mr Ntaganda's escorts

392. As set out in detail below, Mr Ntaganda's escorts, regardless of their age, performed various tasks, and individuals under 15 generally carried out the same tasks as the older ones.<sup>1116</sup>
393. Escorts guarded Mr Ntaganda's residence and compound,<sup>1117</sup> some inside and some outside the residence, and some at the gate,<sup>1118</sup> and accompanied him on his travels outside his residence,<sup>1119</sup> in order to provide for his security.<sup>1120</sup> Sometimes, they took turns.<sup>1121</sup> They accompanied Mr Ntaganda to different places,<sup>1122</sup> including to meetings at the places of other commanders, such as Thomas Lubanga, Rafiki, and Floribert Kisembo.<sup>1123</sup>
394. Mr Ntaganda's escorts also accompanied him for his visits to training camps. On his 12 February 2003 visit to the Rwampara training camp,<sup>1124</sup> he was accompanied by a number of bodyguards,<sup>1125</sup> including at least two individuals who were under 15.<sup>1126</sup> In Mandro, P-0017 saw two male individuals under 15 who were not recruits but Mr Ntaganda's bodyguards.<sup>1127</sup>

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assessment, the Chamber considers that this portion of P-0010's testimony is unaffected by its conclusions concerning P-0010's own age.

<sup>1116</sup> **P-0010**: T-47, page 7. *See also* **P-0016**: DRC-OTP-0126-0422-R03, from 0465 to 0466, para. 253 (testifying generally that '*les enfants*' had the same responsibilities as the other soldiers in their units); and **P-0768**: T-34, pages 54 to 55 (testifying that during the Mongbwalu operation, 'children' under the age of 15 'were soldiers as others [...] operated at the same level as all soldiers who were in operations [...] didn't have a particular role').

<sup>1117</sup> **P-0010**: T-47, pages 7 to 8; and T-48, page 50; and **P-0888**: T-105, pages 62, and 70). *See also* **P-0055**: T-71, page 86; and **P-0290**: T-67, page 3.

<sup>1118</sup> **P-0888**: T-105, page 70.

<sup>1119</sup> **P-0010**: T-48, page 50; **P-0290**: T-67, pages 12 to 14; **P-0898**: T-154, page 5; and **D-0300**: T-214, page 50.

<sup>1120</sup> **P-0888**: T-105, page 62, and page 64; and **D-0300**: T-214, page 50. *See also* **P-0055**: T-71, page 86.

<sup>1121</sup> **P-0010**: T-48, page 50; and **P-0888**: T-105, pages 64 to 65.

<sup>1122</sup> **P-0888**: T-105, pages 64 to 65, and 71.

<sup>1123</sup> **P-0010**: T-47, page 22; and **P-0888**: T-105, pages 65 to 66, and 71.

<sup>1124</sup> *See* para. 369 above. **P-0010**: T-47, pages 52 to 53; and T-48, page 51.

<sup>1125</sup> **P-0010**: T-47, pages 53 to 54.

<sup>1126</sup> The Chamber refers to its prior findings on two bodyguards identified by P-0010 and found by the Chamber to be under 15 years of age in para. 387. *See also* **P-0010**: T-47, pages 6, and 54.

<sup>1127</sup> **P-0017**: T-58, pages 25 to 26. The Chamber recalls its above observations at para. 390 concerning the basis for P-0017's assessment of the age of these two males as under 15. *See also* **P-0898**: T-154, page 5.

395. When accompanying Mr Ntaganda, his escorts carried his arms and communication equipment.<sup>1128</sup>

396. Mr Ntaganda's escorts also accompanied him to the front in the context of the operations in Mongbwalu and Sayo in November 2002.<sup>1129</sup>

397. Mr Ntaganda's escorts were not free to leave,<sup>1130</sup> and could not go and see their families without authorisation.<sup>1131</sup>

## (2) Escorts of other UPC/FPLC commanders and leaders

398. A number of other UPC/FPLC commanders, leaders, and lower level soldiers also used kadogos, including individuals under 15 years of age, to serve as their bodyguards.<sup>1132</sup>

399. These included, Thomas Lubanga,<sup>1133</sup> who also had individuals under the age of 15 responsible for his protection among the soldiers within the PPU,<sup>1134</sup> and Floribert Kisembo.<sup>1135</sup>

<sup>1128</sup> **P-0888**: T-105, pages 68 to 69; **P-0017**: T-58, page 26; **P-0963**: T-80, page 32.

<sup>1129</sup> See e.g. para. 489 above. See also **P-0010**: T-47, page 7. P-0010 further testified that during the Mongbwalu operation, the bodyguards also followed Mr Ntaganda wherever he went (T-47, page 13); **P-0898**: T-154, page 23 (testifying that he saw Mr Ntaganda being accompanied by his bodyguards in Mongbwalu, including Tipe, Rambo and Claude (on its assessment of this evidence, the Chamber recalls its observations above); **P-0768**: T-34, pages 43, and 47, referring to DRC-OTP-2058-0251 at 00:48:19 to 00:48:34 (identifying a male soldier who, according to him, was Mr Ntaganda's bodyguard in Mongbwalu). Recalling its aforementioned observations on P-0768's testimony on this extract, the Chamber does not rely on P-0768's testimony on this point to establish this individual's age, without considering that it affects the reliability of the witness's general capacities in terms of age assessments.

<sup>1130</sup> **P-0010**: T-47, page 31; and **P-0888**: T-105, pages 72 to 73.

<sup>1131</sup> **P-0888**: T-105, page 73.

<sup>1132</sup> See the following evidence relating to specific commanders, and generally **P-0014**: T-136, page 38; and **P-0963**: T-80, pages 10, and 31.

<sup>1133</sup> **P-0030**: DRC-OTP-2054-2951, from 2970 to 2971 (testifying that the youngest bodyguards he saw at Thomas Lubanga's residence were nine or 10 years old). The Chamber notes that when confronted with his prior statement that the kadogos seemed to be aged between 14 and 15, the witness answered that there was a certain variation among the bodyguards (DRC-OTP-2054-3469, at 3476), which the Chamber does not consider to affect his other evidence (see Defence Closing Brief, para. 1472). The Chamber considers the witness's assessment reliable, noting that it was based on appearance (DRC-OTP-2054-3469, from 3476 to 3477), and that he visited the residence frequently (DRC-OTP-2054-2951, from 2969, line 25 to 2970). The Chamber also notes the evidence provided by Anneke van Woudenberg, who has been working for the NGO Human Rights Watch since December 2002, with a specialisation in the DRC. See **P-0315**: DRC-OTP-2058-0990, at 1007, para. 104 (stating that among the armed guards she saw at Thomas Lubanga's residence four or five looked like they were between 12 and 15 years old). The Chamber considers the witness's assessment reliable, noting that she based it on her observation of the guards, including watching them for 45 minutes to an

400. The Chamber also heard evidence on the creation and existence of a so-called ‘kadogo unit’ in Mamedì which was said to include only young people and to have comprised around 30 kadogos,<sup>1136</sup> most of them being boys, but also a few girls,<sup>1137</sup> with the youngest soldiers aged between 11 and 12<sup>1138</sup> and all of them under 15.<sup>1139</sup> However, noting a number of discrepancies in the evidence

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hour, her work experience, her conferral with her colleague, who also ‘felt that the children looked extremely young’, and her discussion with her driver, who she said was a Congolese adult male and who told her that in his view ‘these are very young children’ (T-107, pages 88 to 89). She added that Thomas Lubanga, when being confronted with her observations, declared that all the guards were over 18, which in her view, ‘was clearly not the case’ (*see* DRC-OTP-0074-0797, at 0850). *See also* **P-0041**: DRC-OTP-0147-0002, at 0029; **P-0046**: T-101, pages 16 to 17; **P-0055**: T-71, page 85; and **P-0888**: T-105, pages 66 to 67. D-0013, on the other hand, testified that there were no ‘child soldiers’ among Thomas Lubanga’s bodyguards while he was at Thomas Lubanga’s side between September 2002 and March 2003, and from May 2003 until his departure for Kinshasa (**D-0013**: DRC-D18-0001-6475, from 6517 to 1618, at 6523, and 6557). However, in light of the aforementioned consistent testimony from witnesses on having seen individuals under 15 among the bodyguards at Thomas Lubanga’s residence, the Chamber considers D-0013 not credible on this point.

<sup>1134</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0466, para. 255; and DRC-OTP-2054-1447, at 1478, and from 1480 to 1482. The Chamber notes that the witness had a good opportunity to observe the group (*see* DRC-OTP-2054-1447, from 1469 to 1470). P-0016 further testified about a boy called Bahati, who he said was 12/13 years old, and initially served with Mr Ntaganda, then Floribert Kisembo, and then went to the Presidency via the PPU (DRC-OTP-0126-0422-R03, at 0466, para. 256; DRC-OTP-2054-1447, from 1462 to 1463, and at 1478). The Chamber recalls its aforementioned considerations as for the basis of P-0016’s assessment of age.

<sup>1135</sup> **P-0901**: T-29, page 54 (testifying that the youngest amongst Floribert Kisembo’s bodyguards ‘might be aged 13, 14, or 15 years’). The witness further provided evidence regarding a bodyguard named Byaruhanga who was under 15 (T-29, pages 54 to 55). Noting P-0901’s statement to have interacted with this person over a period of a few weeks, the Chamber considers that the witness was in a good position to assess this individual’s age (*see* Defence Closing Brief, para. 1475). *See also* T-31, pages 44 to 45; **P-0907**: T-89, pages 52, and 55 (stating that Floribert Kisembo had an escort named Mave, and that she was a PMF of about 12 years old). He specified that he knew that Mave was very young because of the way she played with other children, and from the look of her face, and also testified that he was present when Kisembo gave a speech to a gathering of soldiers prohibiting the further rape of Mave, during which Kisembo referred to her as ‘a child’, ‘no more than 12 years old’, and ‘not even a teenage girl’ (T-89, page 57). P-0887 testified that Mave’s ‘breasts hadn’t even started to develop. She was very young’ (**P-0887**: T-93, pages 39 to 40). P-0901 also identified Mave as one of Floribert Kisembo’s bodyguards (**P-0901**: T-29, page 58). Considering that P-0887 and P-0907 had a good opportunity to observe Mave, and therefore also to assess her age, the Chamber finds that the evidence, as a whole, establishes that the escort called Mave was under 15 years of age (*see* Defence Closing Brief, para. 1553). *See also* **P-0768**: T-34, pages 48 to 49. The Chamber notes that elsewhere, the witness explained that he assessed the age of soldiers under 15 based on their appearance and behaviour (T-34, page 47) and recalls that the witness’s assessment of the age of the individual depicted in DRC-OTP-2058-0251, at 00:48:19 to 00:48:34, does not generally affect his capacities in terms of age assessments; **P-0010**: T-47, page 25. Noting that the witness provided estimates with reference to her own age, and recalling its conclusion that it cannot be established that P-0010 was under 15 at the time of the events, the Chamber attaches little weight to P-0010’s testimony on this point although it notes its consistency with the aforementioned evidence; **P-0041**: DRC-OTP-0147-0002, at 0029, para. 173; and DRC-OTP-2054-5199, from 5261, line 22 to 5262, line 2; **P-0055**: T-71, page 85; and **P-0888**: T-105, page 67.

<sup>1136</sup> **P-0017**: T-60, pages 31 to 32. *See also* **P-0907**: T-89, page 29; **P-0963**: T-80, page 31.

<sup>1137</sup> **P-0017**: T-60, page 32.

<sup>1138</sup> **P-0017**: T-60, page 31.

<sup>1139</sup> **P-0017**: T-60, page 31.



concerning the timing and context of the unit's alleged creation,<sup>1140</sup> the Chamber does not rely on the evidence on the presence of individuals under 15 within the 'kadogo unit'.

401. Other commanders who had bodyguards under the age of 15 included Abelanga, Karwakarwa, Roger/Roy, Jean-Pascal Ndukute Mangili, Innocent Lusigo, Emmanuel Ndungutse, Ali Mbuyi Uwangabo.<sup>1141</sup>

<sup>1140</sup> See Defence Closing Brief, para. 1501, referring to the testimony of P-0907, P-0963, and P-0017.

<sup>1141</sup> **P-0017**: T-58, pages 50 to 52. In light of the factors underlying the witness's estimates of age, including appearance and behaviour, the Chamber considers the witness's age assessments to be reliable; **P-0769**: T-120, pages 24 to 25. Noting the factors provided by the witness as a basis for his assessment, including size and behaviour, and the consistency with the evidence provided by P-0017, the Chamber considers that P-0769's testimony can be relied upon for a finding that UPC/FPLC commanders used individuals under 15 as bodyguards (*see* Defence Closing Brief, para. 1471); **P-0041**: DRC-OTP-0147-0002, at 0027, paras 159 to 160, and at 0029, para. 171; DRC-OTP-2054-5199, at 5248 and 5251; and DRC-OTP-2054-5384, from 5438 to 5442. The Chamber notes that the witness provided further information about one of the bodyguards, who he says was aged 14 (DRC-OTP-0147-0002, at 0027, para. 159; and DRC-OTP-2054-5199, from 5246 to 5247, and at 5249), but also says this person was 'aged about 14 or 15' (DRC-OTP-2054-5199, at 5254; and DRC-OTP-2054-5384, at 5439). The Chamber notes that although the witness himself admitted how difficult it is to assess age, he also said that it was possible to determine whether a 'child' is young or has attained a certain age by considering the person's physique and school class (DRC-OTP-2054-5199, at 5246; and DRC-OTP-2054-5384, from 5438 to 5439). The witness testified to having close interaction with the individual he identified as being 14 for over a period of two months, to knowing the person's family and details about his schooling, and also that this person told the witness that he was 14 years old. Having regard to all these factors, the Chamber considers that P-0041's age assessments can be relied upon (*see* Defence Closing Brief, paras 1484 to 1485); **P-0055**: T-71, pages 85 to 86. In relation to the Defence argument that the witness was unable to provide the name or any other identifying information in relation to the 12 or 13 year old individual, and did not provide any justification for his assessment (*see* Defence Closing Brief, para. 1454), the Chamber notes that the witness identified the individual's place of recruitment and his ethnicity (T-71, pages 85 to 86), and stated elsewhere that by looking at someone, it was possible to distinguish between someone who is a small adult and someone who is still a child (T-71, page 70). The Chamber also considers that the witness was in a good position to observe this individual (T-71, page 85). Having regard to all these factors, the Chamber considers that P-0055's age assessments can be relied upon in this instance; **P-0768**: T-34, pages 48 to 49. The Chamber notes that elsewhere, the witness explained that he assessed the age of soldiers under 15 based on their appearance and behaviour (T-34, page 47), considers that this witness was in a good position to observe the bodyguards, and recalls that the witness's assessment of the age of the individual depicted in DRC-OTP-2058-0251, at 00:48:19 to 00:48:34, does not generally affect his capacities in terms of age assessments. Having regard to all these factors, the Chamber considers that P-0768's age assessments can be relied upon in this instance; **P-0887**: T-93, pages 37 to 39. Rather than providing no explanation concerning her assessment of the bodyguards' ages (*see* Defence Closing Brief, para. 1541), the Chamber notes that P-0887 determined the age of both bodyguards on the basis of the appearance of their bodies (T-93, page 37), and also considers the witness to have been in a good position to observe the bodyguard called Fiston, noting that she testified that she would see him quite often, and that she was in the habit of speaking to him (T-93, pages 11, and 38). Having regard to these factors, the Chamber considers P-0887's assessment of Fiston's age to be reliable. P-0887 also testified about a bodyguard, called Hérítier, who she said was 'about 14 or 15', 'a bit older than Fiston'. P-0907 also identifies a bodyguard called Hérítier, whom he said was under 15 (**P-0907**: T-89, page 52), although he was not asked about the basis for his assessment of this person's age. He also identified a second bodyguard of a specific commander as being under 15, whom he called Bukama. Noting the lack of detail about the basis for P-0907's assessment of Hérítier's age, and that P-0887 testified to him being 'about 14 or 15', the Chamber does not rely on this part of their testimony to establish that a specific commander's bodyguards were under 15. Noting also the lack of detail on the individual identified by P-0907 as Bukama, the

402. Other individuals identified as having used kadogos, including individuals under 15, as bodyguards, include Salumu Mulenda,<sup>1142</sup> Thomas Kasangaki,<sup>1143</sup> Lieven, identified as Thomas Lubanga's brother,<sup>1144</sup> as well as another lower level soldier.<sup>1145</sup>

### (3) Other assignments

#### (a) Patrolling

403. Another task assigned to kadogos after their training, including individuals under the age of 15, was to go on patrols,<sup>1146</sup> some of which took place at night.<sup>1147</sup>

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Chamber similarly does not rely on this part of P-0907 testimony for the purpose of this finding; **P-0898**: T-154, pages 25 to 26. *See also* **P-0918**: T-155, pages 90 to 91; **P-0907**: T-89, page 52 (identifying a 10 year old boy called Sambura as the escort of a specific commander). Although the witness was not asked about the basis for his assessment of this person's age, the Chamber notes that he elsewhere assessed the age of two other individuals as under 15, based on the shape of their bodies, their size in general, their voice and their behaviour, and the fact that their uniforms were too big for them and that they had difficulty carrying weapons (T-89, page 53). *See also* **P-0030**: DRC-OTP-2054-2951, from 3012 to 3013 with DRC-OTP-0127-0058 at 00:00:50.

<sup>1142</sup> **P-0790**: T-53, page 56. In relation to the Defence challenge that the witness's formulation 'younger than 15', is suggestive of coaching (Defence Closing Brief, para. 1491), the Chamber recalls its dismissal of allegations of coaching in relation to the Second Operation (*see* section III.D.3.c) Allegation of collusion related to the 'Kobu massacre' and related events), and also notes that it has already assessed P-0790's evidence on his visit to Kobu on this occasion as being credible. *See also* **P-0113**: T-118, page 57; and T-119, page 54.

<sup>1143</sup> **P-0768**: T-34, pages 48 to 49 (testifying that Thomas Kasangaki had some individuals under 15 as bodyguards). The Chamber notes that elsewhere, the witness explained that he assessed the age of soldiers under 15 based on their appearance and behaviour (T-34, page 47) and recalls that the witness's assessment of the age of the individual depicted in DRC-OTP-2058-0251, at 00:48:19 to 00:48:34, does not generally affect his capacities in terms of age assessments, however notes the lack of detail provided in respect of Thomas Kasangaki's bodyguards.

<sup>1144</sup> **P-0963**: T-78, page 66; and T-80, page 35 (testifying that Thomas Lubanga's junior brother Liéven/Liévin, 'had a kadogo, had some kadogos, maybe 10, 11, 12, and these were the youngest of all kadogos'. The Chamber notes that it appears unclear from the witness's testimony whether Liéven is reported to have had one or several 10, 11, 12 year old kadogos as bodyguards. For the identification of 'Lieven' as being the brother of Thomas Lubanga, *see also* **P-0769**: T-120, page 43; **D-0300**: T-215, page 25. However, noting that P-0963 does not provide any explanation concerning the factors underlying his age assessment, the Chamber will not rely on his evidence on Liéven's bodyguards for an assessment that UPC/FPLC commanders and officials had bodyguards under 15.

<sup>1145</sup> **P-0907**: T-89, pages 52 to 54. P-0907 determined that two named individuals were under 15 on the basis of their size, shape, face, voice and behaviour, noting that when they were given a task, they would be found playing instead. The Chamber considers that the witness was in a good position to observe these two individuals and accordingly, having regard to the aforementioned factors, considers his assessment of age reliable in this instance.

<sup>1146</sup> **P-0883**: T-168, page 29. *See also* in relation to patrolling generally **P-0010**: T-47, pages 7 and 17.

<sup>1147</sup> **P-0883**: T-168, page 29. Concerning the testimony provided by P-0883, the Chamber notes that it refers to the period after her training, which the Chamber finds credible. Noting further the level of detail provided by P-0883 in this regard, the Chamber considers that P-0883's evidence is sufficient for a finding that kadogos, including individuals under 15, were used for patrols during their time with the UPC/FPLC. The Chamber notes that similar experiences were described during the testimony of P-0758 (*see* **P-0758**: T-161, page 53).

Some of these patrols involved intercepting people who were either escorted to their homes, or, in case they were found to have committed theft, taken to the camp, whereupon a report was filed to the chiefs.<sup>1148</sup>

**(b) Information gathering**

404. Kadogos, including P-0898, who was under 15 years of age at the time, were further used as IS girls or boys to gather information – they were sent on reconnaissance missions, to ascertain the position of opposing forces, and the kinds of weapon they were using, and also observe MONUC personnel.<sup>1149</sup> During one such mission, a female soldier part of Mr Ntaganda's escort was ordered by his chief escort to 'act as if [she] were a prostitute' and, in accordance with this order, performed sexual activity with the 'enemy'.<sup>1150</sup>

**(c) Other tasks**

405. Kadogos, including individuals under 15, were used as guards to hold detained persons.<sup>1151</sup>

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but, recalling its credibility assessment of this witness, and in the absence of any information to determine the timing of this part of her narrative, the Chamber will not rely on P-0758's evidence on patrolling.

<sup>1148</sup> **P-0883**: T-168, page 29.

<sup>1149</sup> **P-0010**: T-47, pages 46 to 47; **P-0055**: T-71, pages 89 to 90; **P-0898**: T-154, pages 25, and 27. *See also* **P-0014**: DRC-OTP-2054-0816, from 0835 to 0839.

<sup>1150</sup> **P-0010**: T-47, pages 48 to 49.

<sup>1151</sup> **P-0976**: DRC-OTP-2054-2599, from 2672 to 2677; and T-153, pages 5 to 6 (testifying that he was guarded by two armed 'child soldiers', aged 10 to 12, while he was detained by the UPC/FPLC in Bunia in October 2002, following a meeting at MONUC, because they had received an order to that effect). The witness based his assessment of the age of the two guards on their appearance and height, and a comparison with other soldiers who were in the courtyard. While the Chamber notes certain discrepancies between the witness's testimony concerning his estimate of the precise age of these individuals, the Chamber also notes that the witness consistently described the individuals as being under 15. In these circumstances, the Chamber does not consider the aforementioned variations in the age estimate to affect the reliability of the witness's account (*see* Defence Closing Brief, para. 141). *See also* **P-0057**: DRC-OTP-0150-0354, at 0368, para. 64 (testifying that when he was detained by the UPC/FPLC in August 2002, the land was protected and surrounded by soldiers, including '*des enfants soldats*' and that the younger ones were more or less 14-15 years); DRC-OTP-0074-0797, at 0851, according to which an individual interviewed by HRW in Bunia in 2003 reported having been guarded in a cell by four 'children' under 13 when he was arrested by the UPC/FPLC in Bunia. The Chamber also heard evidence to the effect that kadogos were used to work at roadblocks (**P-0758**: T-161, pages 56 to 57; and **P-0365**: T-147, pages 45 to 46 and 48 to 50). However, recalling its conclusion that it was not established that P-0758 was under 15 years old when she joined the UPC/FPLC, and noting that P-0365's related evidence is partly outside the scope of the charges (**P-0365**: T-147, pages 45 to 46 and 48 to 49) and partly characterised

#### d) Treatment of female recruits and soldiers

406. Female members within the UPC/FPLC ranks were referred to as PMF, '*personnel militaire féminin*'.<sup>1152</sup> They were recruited, trained, and fought in battle in the same manner as male recruits, and certain female recruits were selected to serve as bodyguards to UPC/FPLC commanders; to this extent, there was no difference in treatment between the various soldiers of the UPC/FPLC on the basis of gender.<sup>1153</sup>

407. Female members of the UPC/FPLC were regularly raped<sup>1154</sup> and subjected to sexual violence<sup>1155</sup> – including at Mandro camp<sup>1156</sup> – by male UPC/FPLC soldiers and commanders, including Mr Ntaganda's chief escort Claude Uzauakiliho,<sup>1157</sup>

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by a lack of detail concerning the witness's age assessments, the Chamber does not rely on this evidence for the purpose of its findings (*See also* Defence Closing Brief, para. 1480).

<sup>1152</sup> **P-0010**: T-46, page 40; **P-0016**: DRC-OTP-2054-1447, at 1480; **P-0901**: T-29, page 57; and **D-0300**: T-214, page 7. *See also* **P-0017**: T-59-FRA, page 48; **P-0030**: T-144, page 37; **P-0055**: T-70, pages 46 to 47; **P-0907**: T-89, page 55; **P-0963**: pages 9 to 10; and **P-0758**: T-161, pages 31 to 32. The Chamber does not consider minor discrepancies concerning the precise meaning of the acronym to affect its finding that the term PMF referred to female soldiers.

<sup>1153</sup> **P-0055**: T-71, page 90; **P-0768**: T-34, page 55; **P-0888**: T-105, page 73; **P-0907**: T-89, page 61; **D-0300**: T-214, pages 31 to 32. *See also* section IV.A.3.IV.A.3.a) Recruitment, and IV.A.3.c) Escorts, bodyguards, and other assignments.

<sup>1154</sup> The Chamber clarifies that the use of the word 'rape' within the factual findings is intended to have a purely factual meaning, as it transpires from the evidence before the Chamber, and is not intended to pre-suppose legal findings, which are addressed subsequently.

<sup>1155</sup> **P-0901**: T-29, pages 57 to 58; **P-0907**: T-89, pages 61 and 64. The Chamber also finds that, in the context, the term 'wife' is commonly used to refer to coerced sexual relationships (*see e.g.* **P-0365**: T-147, page 31, line 14 to page 33, line 11; **P-0887**: T-93, page 40; **P-0901**: T-29, pages 57 to 58; and UN report DRC-OTP-0074-0422, at 0464, paras 152 and 153).

<sup>1156</sup> **P-0898**: T-153, pages 72 to 75; and T-155, page 57 (testifying that young girls would serve as 'wives' to the commanders at Mandro, which implied sexual relations, that he observed young girls going towards the huts of commanders at Mandro at night, including on one occasion where he and others followed a girl who had been called by Abelanga to a hut, and saw legs sticking out of the hut and heard voices and said that he 'knew that they were doing something bad', and that he often heard PMFs being described as the 'woman or wife of such-and-such a commander, and said that while he was not in a position to know what the girls were thinking about, 'I believe that if a commander wants your favours it's very difficult to turn them down. Those girls were not in a position to do so'); **P-0888**: T-105, pages 39 to 40 (testifying that in Mandro, 'many girls' said that they had been raped; while the witness did not know precisely how old they were, he believed that they were between 16 and 17); and **P-0963**: T-80, pages 27 to 29 (testifying that at Mandro, girls were 'taken by the trainers' into their houses at night, that they were 'making love', and that to his mind, the girls did not have a choice because of the terms often used by the trainers). *See also* **P-0010**: T-48, pages 20 to 24 **P-0016**: DRC-OTP-2054-1781-R02, at 1795 to 1797, and 1809 to 1811. On the basis of this evidence, also noting the direct evidence heard by the Chamber concerning repeated rapes committed against female UPC/FPLC members at other UPC/FPLC camps, the Chamber is satisfied beyond reasonable doubt that some female members of the UPC/FPLC were also raped at Mandro camp.

<sup>1157</sup> **P-0010**: T-47, pages 35 to 36 (testifying that chief escort Claude 'slept' with security guards on a daily basis, and that they could not complain to Mr Ntaganda because it was a 'habit', that other commanders also raped

and, in relation to his female bodyguards, by Mr Ntaganda himself.<sup>1158</sup> This common practice was generally known and discussed within the UPC/FPLC.<sup>1159</sup> A

PMFs, including Bagonza who she heard might even shoot at a girl if she tried to resist, and that rape of PMFs - and civilian women - was 'common practice' by UPC/FPLC commanders and soldiers); **P-0758**: T-161, pages 6, and 20 (testifying that 'all' girls at Lingo training camp were raped and giving the names of several other girls who were raped), page 34 (stating that Commander Innocent raped escorts while they were assigned to him). The Chamber recalls its observations on the details provided by P-0758 in the context of her testimony concerning sexual violence witnessed at Lingo training camp, and therefore considers that her evidence in this regard can be relied upon; **P-0883**: T-168, pages 31 to 32, and 39 (stating that in Bule, PMFs were raped at will, anywhere in the camp, and threatened that they would be shot if they refused). *See also* **P-0017**: T-58, page 52; **P-0963**: T-80, pages 32 to 33; **P-0031**: T-174, pages 27 to 29; DRC-OTP-2054-3760, from 3788 to 3782; DRC-OTP-2054-3939, from 3947 to 3948; and DRC-OTP-2054-4308, from 4317 to 4318 (testifying that he received 12 girls in his centre who he said were between 13 and 14 years, who reported having been with the UPC/FPLC, and having been raped, and that they came with sexually transmitted diseases and children). He further testified that '[g]irls are [...] the most vulnerable amongst the child soldiers. [...] They were taken as concubines, used as the wives of their commanders [...] most of the girls were raped'); and **P-0046**: T-101, page 68 (testifying that girls she interviewed who said they were in the UPC/FPLC reported being raped, mostly by commanders but also male soldiers, and being considered as a 'wife' of a commander, and being 'given to' other commanders, and that one reported having an abortion because of ill treatment). In light of the wealth of credible and reliable evidence on the pattern of rape and sexual violence committed against PMFs within the UPC/FPLC, the Chamber considers that its finding remains unaffected by P-0055's statement that he only heard of one case of rape - for which the commander was arrested, and that there were no complaints, and that if there were, he would have been aware of it (**P-0055**: T-71, pages 92 to 97). As for D-0251's statement that Mr Ntaganda treated the PMFs well and was considered as a father, and that she never heard anyone speak about rape committed by UPC/FPLC soldiers, the Chamber recalls its finding in P-0010's credibility assessment that D-0251's categorical statements on this issue is not credible, notably in light of the other evidence on the record (*see* Defence Closing Brief, paras 704 to 705). In this regard, the Chamber also finds D-0080's evidence that sexual relations among recruits or instructors were prohibited, and that he had no knowledge of any failure to respect this policy (**D-0080**: DRC-D18-0001-6163, at 6168, para. 44) to be not credible.

<sup>1158</sup> P-0010 testified that Mr Ntaganda had sexual intercourse with many female members of his own bodyguard, (**P-0010**: T-47, pages 32 to 33; T-50, pages 38 to 42 and 62 to 63). She said that 'nobody did it of their own volition [...] it was an order [...] and you are obliged to execute this order'. The Chamber recalls that it finds P-0010's accounts concerning sexual violence in Mr Ntaganda's escort credible, and further notes that her account on sexual violence by Mr Ntaganda is consistent between her 2015 statement, and direct and cross-examination, with the exception of the detail on the precise timing of the incident in Mabanga, which the Chamber does not consider to meaningfully affect the credibility of her account (*see* paras 102 to 103 above), and on whether one particular individual was amongst those subjected to the sexual violence (*see* **P-0010**: T-47, pages 32 to 33; and T-50, pages 42 to 43), which the Chamber does not consider to meaningfully affect the credibility of her account noting her consistency on other names. The Chamber further recalls that it considers P-0010's credibility on this issue to be unaffected by D-0251's contradictory evidence on this subject, or the timing or manner of P-0010's reporting on the matter. In relation to related challenges raised by the Defence (*see* Defence Closing Brief, paras 1272 and 1276, relating to **P-0010**: T-47, pages 31 and 34; T-48, page 22; T-49, pages 25 to 26, and 29 to 33; and T-50, pages 45 to 46), the Chamber considers that this private issue is not determinative in assessing Mr Ntaganda's conduct, and therefore considers that the identified discrepancies in the witness's narrative on this point do not materially affect the credibility of her account. Mr Ntaganda denied raping or having sexual relationships with any of his female bodyguards (**D-0300**: T-223, pages 34 to 35; T-239, pages 41 to 43). The Chamber finds Mr Ntaganda's denials not credible, noting that, relatedly, Mr Ntaganda categorically stated that rape was not accepted within the army (**D-0300**: T-214, page 9; and T-239, pages 46 to 47), that he gave instructions at assemblies, forbidding the 'sleep[ing] with' of female recruits, which were followed 'to the letter' (**D-0300**: T-214, pages 8 to 9; T-239, pages 46 to 47), which the Chamber considers not credible in light of the credible evidence to the contrary as indicated in this section. Further, Mr Ntaganda denied that P-0010 was ever in his bodyguard, which the Chamber finds not credible. In light of all of the above, the Chamber accepts P-0010's account as credible.

<sup>1159</sup> **P-0888**: T-105, page 39 to 40; and **P-0768**: T-34, page 56.

number of these female members of the UPC/FPLC became pregnant during their time in the UPC/FPLC.<sup>1160</sup>

408. As set out with more specificity in the cases discussed below, PMFs who suffered acts of sexual violence as just described included girls under 15 years of age.<sup>1161</sup>

409. P-0883, who was under 15 years old at the relevant time,<sup>1162</sup> was transported in a car with armed soldiers to Bule training camp,<sup>1163</sup> where she stayed for several months.<sup>1164</sup> She explained that she was followed at all times within the camp, that the UPC/FPLC soldiers were behind the recruits with weapons, and that she had been threatened to be killed in case she tried to flee.<sup>1165</sup> During her time at Bule camp, P-0883 was raped by ‘many soldiers’.<sup>1166</sup> She was not able to state how often she was raped, and indicated that ‘whether you were sitting down or sleeping, anyone who wanted to do so could rape you’.<sup>1167</sup> Soldiers would come

<sup>1160</sup> **P-0010**: T-47, page 34; **P-0055**: T-71, pages 94 to 96; **P-0883**: *see below*; and **P-0901**: T-29, page 57. *See also* **P-0031**: DRC-OTP-2054-3760, at 3782; **P-0046**: T-101, page 68. The Chamber notes that Mr Ntaganda testified that no one became pregnant at UPC/FPLC training camps, and that he told recruits when they arrived not to become pregnant (**D-0300**: T-239, pages 8 to 9, and 46). However, in light of the consistent and credible evidence of PMFs becoming pregnant during their time with the UPC/FPLC at training camps, the Chamber does not find Mr Ntaganda’s categorical denial credible.

<sup>1161</sup> In addition to the specific examples discussed hereinafter, the Chamber also heard other evidence about rape of PMFs under 15 by UPC/FPLC soldiers or commanders: **P-0031** reported that he was in contact with some young girls between 13 and 14 who reported having been raped within the UPC/FPLC; some of them had contracted sexually transmitted illnesses and others had a child (T-174, pages 27 to 29; DRC-OTP-2054-3760, from 3778 to 3782; DRC-OTP-2054-3939, from 3947 to 3948; and DRC-OTP-2054-4308, from 4317 to 4318). **P-0046** recalled having interviewed girls, including some under 15, who were sexually abused and taken as wife of the commanders and other soldiers (T-101, pages 68 to 69). **P-0017** stated that he was told that Abelanga raped two bodyguards who were 12 to 13 years old (T-58, pages 51 to 52). The witness provided a reasonable explanation for his age assessment, referring to the girls’ ‘physiognomy’, ‘their sizes’, and the fact that they played, and that ‘they looked more like young boys because they didn’t have any breasts. **P-0898** described how he knew and observed Abelanga engaging in sexual acts with recruits after training sessions in Mandro and that Abelanga was the one who was most often engaging in such acts (T-153, pages 73 to 75). However, noting that P-0898 was not in a position to provide the age of the recruits who were raped, and that he further stated that they were ‘already quite big’, the Chamber is not satisfied that PMFs his observations relate to individuals under 15.

<sup>1162</sup> *See* credibility assessment of P-0883.

<sup>1163</sup> **P-0883**: T-168, pages 16 to 17.

<sup>1164</sup> **P-0883**: T-168, page 26.

<sup>1165</sup> **P-0883**: T-168, pages 25 to 26.

<sup>1166</sup> **P-0883**: T-168, pages 31 to 32. The Chamber recalls its conclusion that it cannot rely on the witness’s accounts concerning her abduction and the period immediately following the abduction (*see* credibility assessment of P-0883). As such, only the sexual violence endured during the time period for which the Chamber is satisfied that the witness had already joined the UPC/FPLC is considered here.

<sup>1167</sup> **P-0883**: T-168, page 32.

and take her and other girls ‘whenever they wanted’, whether they were inside or at the place of work of the soldier, sometimes saying that they would shoot them if they did not accept.<sup>1168</sup> Later, after having been injured during a battle, P-0883 was sent to Camp Baudouin for treatment, where she found out that she was pregnant, without knowing ‘who was responsible for that pregnancy’.<sup>1169</sup>

410. A girl named Nadège, who was around nine years old at the time, and who was taken to training at Lingo camp, was raped; P-0758 explained that there was pus coming out of Nadège’s vagina and that, as a result, she died.<sup>1170</sup>

411. A girl by the name Mave, who was under 15 years of age,<sup>1171</sup> and who was assigned as an escort to Floribert Kisembo, was raped by many different soldiers on a regular basis, including at the *Appartements* camp in Mongbwalu.<sup>1172</sup> At the time, P-0887, who ‘felt sorry for’ and had conversations with Mave, stated that ‘[s]he looked like someone who had been traumatised’.<sup>1173</sup> It was only in March 2003, once the victim had developed health problems following her repeated rapes, that Floribert Kisembo instructed the soldiers that no one was to touch

<sup>1168</sup> **P-0883**: T-168, page 32. *See also* **P-0010**: page 36; and **P-0907**: T-89, page 64.

<sup>1169</sup> **P-0883**: T-168, pages 34, 36 to 37, and 42 to 44.

<sup>1170</sup> **P-0758**: T-160, page 89. The Chamber recalls its observations concerning the details provided by P-0758 in the context of her testimony concerning sexual violence witnessed at Lingo training camp, and therefore considers that her evidence in this regard can be relied upon. The Chamber further notes that, when asked if the girl participated in the training, P-0758 responded that ‘[s]he died before we were taught to handle weapons’ (T-161, page 10). In light of the details provided by P-0758, and having considered related findings on the conditions in the camps, the Chamber finds that the only reasonable conclusion to be drawn is that Nadège suffered a forceful vaginal penetration.

<sup>1171</sup> The Chamber recalls its earlier finding on Mave’s age (*see* footnote 1135 above).

<sup>1172</sup> **P-0887**: T-93, pages 39 to 41, and 50 (testifying that many soldiers ‘slept with’ Mave, ‘treated her as a [...] soldier’s woman’, had sexual relations with her. The witness said she knew this because soldiers were talking about it amongst themselves, and she also spoke to Mave). The Chamber notes that P-0887 readily admitted that she was not in position to know whether Mave agreed to have sexual relations with the soldiers (T-168, page 40). However, as explained below, this is in itself an irrelevant circumstance (para. 934 below); **P-0907**: T-89, pages 52, 55 to 57, and 63 to 64 (testifying that it was ‘common knowledge’ that Mave had been raped several times by soldiers and she began to suffer from fistula, and that he was present when Kisembo gave a speech to a gathering of soldiers in March 2003, where he told the soldiers that Mave had a fistula and prohibited the further rape of Mave). While it is noted that the evidence provided by P-0907 and P-0887 of actual acts of rape is not based on direct observations, the Chamber observes that P-0907 has explained the source of his knowledge as being a speech by Floribert Kisembo, which he personally witnessed, and which also supports his statement that the rapes of Mave were ‘common knowledge’, as well as P-0887’s testimony about the statements made by UPC/FPLC soldiers (*see* Defence Closing Brief, para. 1554).

<sup>1173</sup> **P-0887**: T-93, page 41.

Mave anymore; he did not, however, punish any of them for this conduct.<sup>1174</sup>

P-0768 testified that he found a young girl from Mr Ntaganda's bodyguard, whom he estimated to be under 15, crying in Mr Ntaganda's apartment, and others were saying that she had been 'abused' by one of Mr Ntaganda's escorts.<sup>1175</sup>

412. Although the Chamber heard evidence on specific cases of rape or sexual violence being punished,<sup>1176</sup> sexual violence against PMFs, including by members of Mr Ntaganda's escort, was left largely unpunished.<sup>1177</sup>

413. In addition to the above, some PMFs were tasked to perform domestic tasks, such as cooking, cleaning, fetching water, and doing laundry in training camps

<sup>1174</sup> **P-0907**: T-89, pages 55 to 57, and 63 to 64.

<sup>1175</sup> **P-0768**: T-34, pages 55 to 56.

<sup>1176</sup> **P-0883**: T-168, page 33 (testifying that one individual was punished for the fact that he raped her). She testified, however, that in spite of this punishment, this person came back and did the same thing several times (T-168, pages 33 to 34); and **D-0300**: T-214, pages 9 to 10 (stating that a young man called Brandon who had attempted to rape a woman in Mandro was arrested). Mr Ntaganda also testified that when his own escort reported to him that a person called Sopick had tried to rape her, he arrested Sopick and flogged him in front of all his troops and bodyguards (**D-0300**: T-214, pages 9 to 10). In relation to this, the Chamber notes that P-0010 testified that 'Sopik' had been flogged and jailed because he went drinking with a support weapon on him, and stated that she had never heard of the Defence's suggestion that 'Sopik' had been whipped for stealing a goat, and been whipped in front of the entire escort for 'putting the moves' on the escort (**P-0010**: T-50, pages 21 to 22). The Chamber therefore does not place weight on this as an example of punishment, noting the possibility that Sopick may have been punished for reasons other than rape. Similarly, P-0055 testified that he heard of a case involving a commander John who raped a member of his escort and shot her dead to make the case 'disappear', and was arrested accordingly (**P-0055**: T-71, page 94). Noting that it is unclear whether John was arrested for the alleged rape or the killing, the Chamber also does not place weight on this example, and considers the Defence's connection between this story and the proposition that soldiers feared rape allegations because of the serious consequential punishments (Defence Closing Brief, para. 1560), to be speculative.

<sup>1177</sup> **P-0010**: T-47, page 36 (stating that she never witnessed any commander or bodyguard being disciplined or punished for raping any of the girl soldiers); **P-0768**: T-34, pages 55 to 56 (stating that it was his assumption that Mr Ntaganda was for informed of the alleged rape of the abovementioned young bodyguard by his escort Museveni, but did not do anything). *See also* the finding above concerning an intervention by Floribert Kisenbo to stop soldiers from touching his escort without punishing any of them for this conduct in para. 411; **P-0758**: T-161, page 8 (responding to the question if she reported the rapes to anyone senior as follows: 'Even the high-ranking officers raped. Even if they were accused of such, it didn't mean anything to them, because they themselves raped'); **P-0907**: T-90, page 52 (stating that he never heard mention of a soldier being punished for having raped a woman). The Chamber recalls that it finds Mr Ntaganda's categorical statement that rape was not accepted within the army and that he gave instructions at assemblies, forbidding the 'sleep[ing] with' of female recruits, which were followed 'to the letter' not credible in light of the consistent and credible evidence to the contrary (*see above*).



and also when acting as bodyguards for UPC/FPLC soldiers and commanders.<sup>1178</sup>

Mr Ntaganda had four PMFs to assist his wife with household duties.<sup>1179</sup>

#### e) Participation in military operations

414. Upon completion of their training, recruits were considered UPC/FPLC soldiers and deployed to the battlefields,<sup>1180</sup> some of them in addition to being bodyguards.<sup>1181</sup> There was no age threshold for deployment,<sup>1182</sup> and kadogos, including individuals under the age of 15, were deployed as any other soldiers in various UPC/FPLC units.<sup>1183</sup> According to a witness, kadogos were used frequently because of their ‘bellicose’ attitude on the battlefield.<sup>1184</sup>

<sup>1178</sup> **P-0898**: T-153, pages 72 to 73, and 75 (testifying that some recruits at Mandro served as ‘wives’ to the commanders, which involved cooking for them, fetching water, and doing their laundry and having sexual relations). The Chamber further notes that the witness readily admitted that he was not in a position to know what the girls were thinking about this, but said ‘I believe that if a commander wants your favours it’s very difficult to turn them down. Those girls were not in a position to do so’) (T-155, page 57); **P-0016**: DRC-OTP-2054-1447, from 1472 to 1474; DRC-OTP-2054-1781-R02, at 1795 to 1797; **P-0963**: T-80, pages 32 to 33, and 41. *See also* **P-0010**: T-48, page 5; **P-0758**: T-161, pages 53 to 54; **P-0883**: T-168, page 35; **P-0046**: T-101, pages 68 to 69; **P-0055**: T-71, page 89; **D-0300**: T-239, page 41.

<sup>1179</sup> **D-0300**: T-214, pages 30 to 31.

<sup>1180</sup> **P-0055**: T-71, pages 78, and 82; **P-0768**: T-34, page 52; **P-0901**: T-29, pages 52 to 53; **P-0016**: DRC-OTP-2054-1447, at 1467; **P-0888**: T-105, page 46; **P-0901**: T-29, pages 52 to 53; and **P-0907**: T-89, pages 17 and 18. *See also* **P-0046**: T-101, pages 69 to 70.

<sup>1181</sup> **P-0907**: T-89, page 30.

<sup>1182</sup> **P-0901**: T-29, page 53; and **P-0016**: DRC-OTP-2054-1447, at 1506.

<sup>1183</sup> **P-0883**: T-168, pages 36 to 37, and 43; **P-0898**: T-154, pages 8 to 9, and 26; **P-0768**: T-34, pages 54 to 55 (testifying that during the Mongbwalu operation, ‘children’ under the age of 15 ‘were soldiers as others [...] operated at the same level as all soldiers who were in operations [...] didn’t have a particular role’); and **P-0907**: T-89, pages 29 to 30 (testifying, when asked about ‘children, these 10 and 12-year-olds’, that some were selected to go directly into combat after having completed their training). Although not providing the basis for his assessment of age, the Chamber notes the consistency of his evidence with other evidence indicating that individuals under the age of 15 were deployed. *See also* **P-0014**: DRC-OTP-2054-0816, from 0835 to 0836 (stating that he was informed by a named individual that ‘children’ within the UPC/FPLC were used in combat and were used for military operations on the battlefield. He further stated having been told by another named individual that ‘this war was won by children’); **P-0016**: DRC-OTP-0126-0422-R03, from 0465 to 0466, para. 253 (testifying that ‘*les enfants*’ went out on operations with the other soldiers in their units and had the same responsibilities, including in combat); and DRC-OTP-2054-1447, at 1506 (testifying that recruits became soldiers regardless of their age and were deployed the same as everyone else); **P-0041**: DRC-OTP-0147-0002, at 0029, para. 171 (stating that very young soldiers were sent to the battlefield, and that there were ‘*des enfants*’ who were almost the same size as a Kalashnikov, and some had difficulties carrying their weapon); and **P-0963**: T-80, page 33 (testifying that in the brigades there were kadogos who participated in fighting like everyone else, and that there was no privilege extended to the kadogos such as being exempted from fighting).

<sup>1184</sup> **P-0014**: DRC-OTP-2054-0816, from 0835 to 0836 (stating that he was told by a named individual that children are generally very ‘bellicose’ when they are on the battlefield); *see similarly* **P-0041**: DRC-OTP-0147-0002, at 0029, para. 171 (stating that ‘*des enfants*’ fired their weapons easily and were used as executors).

415. During deployment, the expression '*kupiga na kuchaji*' was commonly used by UPC/FPLC commanders and soldiers.<sup>1185</sup> Several insider witnesses indicated that this was an order which meant to attack and to loot.<sup>1186</sup> The Chamber observes that several insiders also explained that this expression was understood to mean taking possession of the opponent's belongings, but also any kind of property, including that belonging to 'civilians'.<sup>1187</sup> In addition, two key insiders, considered by the Chamber as fully credible and reliable, explained that this order was understood to mean also get rid of everyone and everything, referring to all the Lendu, including civilians and their possessions.<sup>1188</sup> According to Mr Ntaganda, the expression '*kupiga na kuchaji*' only meant to charge at the fleeing enemy after having beaten them, and to take all their equipment.<sup>1189</sup> He explained that it did not involve looting, because it was forbidden to steal from the civilian population.<sup>1190</sup> He also stated that he did not use the expression '*kupiga na kuchaji*'

<sup>1185</sup> **P-0010**: T-47, page 16; **P-0768**: T-33, page 65; **P-0901**: T-29, pages 18, 20.

<sup>1186</sup> **P-0010**: T-47, pages 14 to 15; **P-0016**: DRC-OTP-0126-0422-R03, from 0464 to 0465, para. 247; DRC-OTP-2054-1625, from 1650 to 1651; **P-0017**: T-58, pages 54 to 55; T-61, pages 29 to 31; **P-0888**: T-105, page 77; **P-0901**: T-29, pages 18 to 20; and **P-0963**: T-78, page 70. The Chamber notes the Defence argument taking certain extracts from the cross-examination of P-0017 and P-0963 which seems to imply that the witnesses limited their previously provided explanation for the meaning of the term (Defence Closing Brief, paras 762 and 848, referring to **P-0963**: T-81, page 89; and **P-0017**: T-61, page 30). Taken in their context, the Chamber however considers that the witnesses' answers in cross-examination do not in fact undermine their testimony on the meaning of the phrase as provided in direct examination. Bearing in mind that the initial testimony of the witnesses on the meaning of the expression was unambiguous, and having further considered the consistent evidence before the Chamber on this matter, as referred to in this footnote, the Chamber finds the evidence of P-0017 and P-0963 probative and is satisfied that it supports the above finding. See also **D-0251**: T-260, page 100. In the view of the Chamber, the interpretation of the phrase by D-0251 was clear, even if she specified at the same time that 'she saw nothing related to that' and that 'it was not allowed' (**D-0251**: T-260, pages 27, and 99 to 100).

<sup>1187</sup> **P-0017**: T-58, page 56; **P-0055**: T-72, pages 10 to 12; **P-0901**: T-29, page 20; **P-0768**: T-33, pages 64 to 65; **P-0963**: T-78, pages 72 to 73; T-79, pages 19 and 79.

<sup>1188</sup> **P-0907**: T-90, page 8 (indicating in relation to the operation in Mongbwalu, when asked, in the context of a discussion on the use of the expression '*kupiga na kuchaji*, whether there were any specific instructions to attack civilians, that 'everything there, all the people there were enemies'); **P-0963**: T-78, pages 72 to 73 (indicating, in relation to the operation in Mongbwalu, when asked, in the context of a discussion on the use of the expression '*kupiga na kuchaji*', whether instructions were given regarding the civilian population, that the instruction was 'to drive all the Lendus out' and that 'it was a tribal war, and the purpose was to drive out the Lendu or eliminate all of them, loot their possessions, their various goods, possessions, financial means, occupy their houses). See also **P-0768**: T-33, pages 64-65 (explaining that the expression '*kuchaji*' was 'also used to attack civilians').

<sup>1189</sup> **D-0300**: T-213, page 9. D-0038 confirmed Mr Ntaganda's statement (**D-0038**: T-249, pages 18 to 19).

<sup>1190</sup> **D-0300**: T-213, page 10.

because he wanted his army to be exemplary.<sup>1191</sup> However, the Chamber, in light of the other evidence on this matter, does not consider Mr Ntaganda credible. Instead, the Chamber finds that '*kupiga na kuchaji*' was an expression commonly used in UPC/FPLC commanders' orders to soldiers, and that it was understood by the soldiers to mean attacking all the Lendu, including civilians, and to loot their property.

416. Kadogos, including individuals under the age of 15, participated in military operations, notably in Mongbwalu and Sayo in November 2002,<sup>1192</sup> as well as in the assault on Bunia in May 2003.<sup>1193</sup> In the context of an operation, kadogos were told to kill the enemy, namely the Lendu, regardless of their sex, age, and of whether they were soldiers or civilians.<sup>1194</sup> Kadogos, including individuals under the age of 15, used their weapons, sometimes killing people.<sup>1195</sup> Some got shot at, were injured, or died on the battlefield.<sup>1196</sup> Some kadogos had difficulties in fleeing when they were defeated, because of the military uniform they were wearing and the heavy weapons they were carrying.<sup>1197</sup>

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<sup>1191</sup> **D-0300**: T-235, page 57.

<sup>1192</sup> See para. 511 below. See also **P-0963**: T-80, page 33 (stating that 'there were kadogos in all wars [he] participated in').

<sup>1193</sup> See para. 655 below.

<sup>1194</sup> **P-0010**: T-47, pages 10, and 15; **P-0758**: T-161, pages 35, 39, and 43).

<sup>1195</sup> **P-0898**: T-154, pages 24 to 25.

<sup>1196</sup> **P-0883**: T-168, page 36; and DRC-OTP-2075-1005; and **P-0901**: T-29, page 55. See also **P-0768**: T-34, pages 54 to 55; and **P-0888**: T-105, pages 21, and 48 (testifying that two of his friends, one who he said was aged 14, and another whom he considered to be a bit older, were also killed in the context of an operation). The Chamber notes some apparent discrepancies between P-0888's testimony and prior written statement concerning the place where his three friends died (see T-106, pages 37 to 41); however, it recalls its observation that that these issues can be explained by a lack of memory or confusion, related to the trauma suffered by the witness, and the time passed since the events, and do not automatically affect his credibility. In this case, noting that the witness acknowledged that he may have been confused about the respective places of death, but reaffirmed that the three individuals died on the battlefield, the Chamber does not consider these discrepancies to affect the reliability of the witness's account that some of his friends died in the context of a military operation they participated in (see Defence Closing Brief, paras 1219 to 1220).

<sup>1197</sup> **P-0907**: T-89, page 30. The Chamber notes that the witness's testimony is based on his personal experience during fighting's with kadogos at the front.

**f) Demobilisation efforts**

417. In 2002 and 2003, international organisations invited armed groups that were active in Ituri, including the UPC/FPLC, to engage in pacification efforts<sup>1198</sup> and to demobilise any ‘children’ from their ranks.<sup>1199</sup>
418. In this context, the UPC/FPLC issued a series of documents concerning the demobilisation of ‘child soldiers’, as set out below.
419. On 21 October 2002, Thomas Lubanga addressed an order to Floribert Kisembo, which referred to the development of a ‘practice’<sup>1200</sup> of enrolment of minors under the age of 18, of both sexes, within the UPC forces and certain groups of revolutionary nature, and prohibited this practice within the UPC.<sup>1201</sup>
420. On 30 October 2002, Floribert Kisembo addressed an order to all UPC/FPLC unit commanders, which required the disarmament of all children under 18,<sup>1202</sup>

<sup>1198</sup> In early September 2002, just after the UPC/RP set up its government, the governments of Uganda and the DRC concluded the Luanda Accords concerning the Ituri pacification commission, in which the UPC was supposed to participate. Further initiatives for achieving pacification in Ituri in the second half of 2002 and beginning of 2003 did not yield any effective results (DRC-OTP-0136-0072; DRC-OTP-0074-0797, at 0808; DRC-OTP-0106-0187; **P-0005**: T-186, pages 31 to 32; T-189, pages 39 to 40, and 45. See also DRC-OTP-0136-0176) In May 2003, a ceasefire agreement was brokered by MONUC between the UPC and the FNI, and in June 2003 a ceasefire agreement between these parties was signed in Burundi (DRC-OTP-0074-0422, from 0481 to 0482).

<sup>1199</sup> **P-0005**: T-189, page 22; T-185, pages 12 to 13; **P-0041**: DRC-OTP-2054-5199, at 5240 to 5241, and 5245; **P-0046**: T-101, pages 9 to 11; **P-0057**: DRC-OTP-0150-0354, at 0390, para. 153; and **P-0031**: DRC-OTP-2054-3939, from 3971 to 3973. See also **P-0012**: DRC-OTP-2054-0073, at 0152; **D-0013**: DRC-D18-0001-6475, at 6551 to 6552; UN reports DRC-OTP-0203-0324; DRC-OTP-0001-0049; DRC-OTP-0001-0033; DRC-OTP-0001-0046; DRC-OTP-0001-0055; DRC-OTP-0001-0067; DRC-OTP-0001-0090; and DRC-OTP-0074-0797.

<sup>1200</sup> ‘Pratique’ in the French original.

<sup>1201</sup> DRC-OTP-0029-0274; **D-0013**: DRC-D18-0001-6475, from 6487, to 6488 (testifying that minors meant under the age of 18). The Chamber notes that the witness was questioned about document DRC-OTP-0178-0151, which is identical to DRC-OTP-0029-0274.

<sup>1202</sup> Noting that the documents discussed in this section all address the issue of the presence of ‘child soldiers’ in the *UPC/FPLC*, and in light of the overall evidence presented, the Chamber does not consider the reference to the ‘self-defence forces’ or ‘revolutionary troops’ in this or other documents to support **D-0013**’s statement that the *self-defence groups* constituted the sole reason for these orders (**D-0013**: DRC-D18-0001-6475, from 6487 to 6488, from 6504 to 6505, from 6534 to 6535, and at 6541, 6570, and 5639; see also Defence Closing Brief, para. 1335). In this regard, the Chamber also notes **P-0976**’s testimony that the self-defence forces, once they were integrated within the UPC, were part and under the control of the UPC (**P-0976**: T-152, pages 98 to 99).

within two weeks, to be followed by a report on this matter by 15 November 2002.<sup>1203</sup>

421. On 27 January 2003, Thomas Lubanga requested that Floribert Kisembo submit a report on the matter raised in the order of 21 October 2002.<sup>1204</sup>

422. On 12 February 2003, Adubango Biri, the UPC National Secretary for Education,<sup>1205</sup> sent a letter to the G5 Commander of the FPLC, concerning the initiation of a programme of demobilisation, disarmament, re-education, resettlement and reinsertion into the community for soldiers ‘aged 10-15/16 years’ who were ‘willing’ to return to civilian life, as well as the organisation of a seminar to train 13 officers designated by their military hierarchy.<sup>1206</sup>

423. On 16 February 2003, Mr Ntaganda<sup>1207</sup> informed Rafiki Saba<sup>1208</sup> in a report entitled ‘Disarmament of child soldiers’ that the instructions of the 21 October 2002 decree and the 27 January 2003 letter had been relayed, and that the UPC/FPLC faced resistance in demobilising and disarming the ‘children’ of their group.<sup>1209</sup>

424. On 18 March 2003, the IPC, composed of the forces that were active in Ituri and representatives of the local communities, was created in accordance with an

<sup>1203</sup> DRC-D01-0003-5894.

<sup>1204</sup> DRC-OTP-0029-0275.

<sup>1205</sup> DRC-OTP-0113-0070, at 0071; and **P-0005**: T-185, page 17.

<sup>1206</sup> DRC-OTP-0113-0070, at 0070. *See also* **P-0031**: T-174, page 44. The Chamber does not consider that the challenges raised by the Defence in relation to this letter (Defence Closing Brief, paras 1336, and 1366 to 1373), or the fact that P-0005 could not remember having seen this letter (**P-0005**: T-185, pages 17 to 18), undermine the authenticity or reliability of this document. While noting D-0013’s testimony that the document does not refer to child soldiers within the UPC, but that the child soldiers referred to could be only assimilated to the UPC because it was the only power in place, and that the document concerned not only child soldiers but any military in the region who wanted to demobilise (**D-0013**: DRC-D18-0001-6475, from 6534 to 6543), the Chamber is satisfied, in light of the overall evidence presented, that the document concerns, at least in part, the issue of child soldiers within the UPC.

<sup>1207</sup> **D-0300**: T-239, pages 25 to 26 (testifying that the document was signed by his secretary when he was away, that he ‘believed’ that his secretary had talked to him about the letter upon his return, and explaining that the document was signed with ‘PO’, meaning that it was signed in his absence and that the person who signed the document would explain the content of the document to the person in charge upon his return).

<sup>1208</sup> The report is addressed to ‘A.G.S./UPC, referring to the UPC’s ‘*Administrateur Général de Sécurité*’, who was Rafiki Saba (*see e.g.* **D-0300**: T-213, pages 76 to 77; T-218, page 76; and T-221, page 62, referring to DRC-D01-0003-5900, listing ‘AGS’ as invitee).

<sup>1209</sup> DRC-D01-0003-5896.

agreement signed on 6 September 2002 between the governments of the DRC and Uganda.<sup>1210</sup> It included representatives of the Lendu community, PUSIC, the FNI, the FPDC, the RCD-K/ML, the UPC, and the FAPC.<sup>1211</sup> These representatives signed, under the supervision of MONUC, an agreement to end hostilities, including an engagement to interrupt any recruitment and use of 'child soldiers' within their forces.<sup>1212</sup> Following the establishment of the IPC, an interim administration, with representatives elected from various ethnic groups, was set up, with support of the international community, to manage the district of Ituri and assist with the pacification process.<sup>1213</sup>

425. The interim administration established, under the lead supervision of UNICEF, but under governmental responsibility, interim measures for the demobilisation of child soldiers, including a programme called DDR.<sup>1214</sup> This programme required armed groups to appoint focal points to interact with the interim administration on 'children issues', to take weapons away from 'children' who were associated with the groups, and to stop sending 'children' to the battlefields.<sup>1215</sup>

426. In May 2003, when Bunia was taken for the second time by the UPC, Floribert Kisembo ordered the demobilisation of kadogos, who were to be handed over to Save the Children.<sup>1216</sup>

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<sup>1210</sup> DRC-OTP-0107-0198, at 0198 and 0202; **P-0300**: T-166, pages 62 to 65; and **P-0365**: T-147, page 76. *See also* **P-0012**: DRC-OTP-2054-0073, at 0153.

<sup>1211</sup> DRC-OTP-0107-0198, from 0201 to 0202. In relation to the UPC, the Chamber notes that, although a signature is missing on the document, P-0365 explained that the UPC was not in control of Bunia at that time, but that nonetheless, certain UPC soldiers or members were represented at the commission (**P-0365**: T-147, pages 76 to 77). *See also* **P-0012**: DRC-OTP-2054-0073, from 0155 to 0156 (stating that the UPC was not represented as a party, but signed the document 'unofficially' later, and that it was signed by Mr Eustache 'as minister of the environment', who was subsequently expelled from the UPC by Thomas Lubanga, because he had not authorised anyone to represent the UPC or to sign documents on its behalf).

<sup>1212</sup> DRC-OTP-0107-0198, at 0200; and **P-0300**: T-166, pages 62 to 66. *See also* **P-0012**: DRC-OTP-2054-0073, from 0152 to 0155.

<sup>1213</sup> **P-0046**: T-101, pages 9 to 10.

<sup>1214</sup> **P-0046**: T-101, pages 35 to 36.

<sup>1215</sup> **P-0046**: T-101, page 36.

<sup>1216</sup> **P-0898**: T-154, pages 28 to 29, and 32 to 33; and DRC-OTP-0103-0008, at 00:32:20.

427. On 1 June 2003, Thomas Lubanga signed a decree, providing for the immediate demobilisation from the UPC/FPLC of any individuals under 18 years.<sup>1217</sup>
428. On 5 June 2003, Floribert Kisembo signed a *note circulaire*, ordering all UPC/FPLC brigade commanders to proceed with the demobilisation of any soldier under 18 within the ranks of the FPLC, in accordance with the 1 June 2003 demobilisation decree.<sup>1218</sup>
429. On or about 16 June 2003, UPC/FPLC commanders met and discussed various matters, *inter alia*, related to demobilisation.<sup>1219</sup>
430. Around June and July 2003, a number of ‘children’ were demobilised from the UPC/FPLC in isolated initiatives.<sup>1220</sup> However, the UPC/FPLC did not effectively engage in any systematic demobilisation process.<sup>1221</sup>

<sup>1217</sup> DRC-OTP-0151-0299. *See also* **P-0901**: T-29, pages 59 to 60; and T-32, pages 25 to 26 (testifying that he recognised the document as the document he remembered having been signed at the end of 2003 by the president, asking all commanders who had ‘children’ in their groups to demobilise them); **D-0013**: DRC-D18-0001-6475, at 6506 (stating that he ‘believe[d]’ that the decree was brought to the attention of the population through the presidency’s press attaché who spoke on a radio programme); and DRC-OTP-0014-0253. The Chamber notes that Mr Ntaganda denied knowing this document (**D-0300**: T-239, pages 27 to 28). While considering this denial to be irrelevant to the finding made, the Chamber is not able to establish that Mr Ntaganda was aware of this decree.

<sup>1218</sup> DRC-OTP-0014-0254.

<sup>1219</sup> The case record contains several documents related to meetings held on 16 June 2003, notably, two reports related to a meeting between high level UPC/FPLC commanders (one handwritten (DRC-OTP-0091-0888), the other typed (DRC-D01-0003-5900)), and another document (DRC-OTP-0014-0177), which contains an attendance list of a ‘*réunion mixte: exec.-état major*’, also dated 16 June 2003. In relation to DRC-OTP-0014-0177, Mr Ntaganda testified that this related to another meeting, which he did not attend, and that he therefore did not sign the attendance list (**D-0300**: T-229, pages 39 to 40). Noting the different titles of the meeting, the Chamber is of the view that this attendance list relates to a separate meeting. Mr Ntaganda provided contradictory evidence with regard to the two reports DRC-OTP-0091-0888 and DRC-D01-0003-5900. He first testified, in relation to DRC-D01-0003-5900, that he was at the meeting (**D-0300**: T-221, pages 62, 64 to 66; and T-229, pages 31, and 34 to 35), then reaffirmed that he attended the meeting, but denied that the meeting occurred on 16 February (T-229, pages 35 to 39, and 41 to 42), and stated, in relation to DRC-D01-0003-5900 that at least two people took notes of the meeting (T-229, pages 50 to 51). In relation to DRC-OTP-0091-0888, he stated that he was not in Bunia on 16 June 2003 (T-229, pages 51 to 54). He ultimately stated that he participated in a meeting, which took place before he went to Mongbwalu, and where he was promoted to the rank of major general (T-229, page 54). Having considered documents DRC-OTP-0091-0888 and DRC-D01-0003-5900 in light of the related testimony and arguments made by the parties (Prosecution Closing Brief, paras 103 to 104; Defence Closing Brief, paras 141 to 142 and 1358), the Chamber is satisfied that UPC/FPLC soldiers met to discuss issues related to demobilisation, but is not in a position to determine the extent and circumstances of Mr Ntaganda’s involvement in this regard.

<sup>1220</sup> **P-0017**: T-60, page 32; **P-0046**: T-101, pages 37, and 66; **P-0031**: DRC-OTP-2054-3939, at 3972 to 3973, and 3975 to 3976; **P-0365**: T-148, page 12; DRC-OTP-0005-0041, at 0041; DRC-OTP-0001-0046, at 0048 (MONUC child protection report dated 6 July 2003; DRC-OTP-0001-0049, from 0050 to 0051; **D-0013**: DRC-

431. The recruitment and use of individuals under 15 continued,<sup>1222</sup> despite the instructions to demobilise individuals under the age of 18.

432. Moreover, among the individuals that were demobilised, some were re-armed or were threatened into reintegrating into the UPC forces.<sup>1223</sup> For example,

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D18-0001-6475, from 6507 to 6508 and at 6517; DRC-OTP-0014-0194, from 0195 to 0196. *See also* **D-0013**: DRC-D18-0001-6475, from 6515 to 6517; and DRC-OTP-0061-0228, at 0232, para. 17,

<sup>1221</sup> **P-0901**: T-29, pages 59 to 60 (suggesting that Kisembo's order to demobilise children was not followed by any action, but rather that demobilisation was organised by the UN in 2004, and that was when the majority of the child soldiers of the FPLC were demobilised through the DDR process); **P-0768**: T-36, page 47; **P-0046**: T-101, pages 37, and 66 (testifying that some children were released from certain camps by certain commanders, but there was no formal and systematic demobilisation process, with children being 'just left alone and sent away'); **P-0116**: T-195, pages 35 to 36 (testifying that there was information that groups, primarily from the UPC, promised to free children, but would not keep the promise or would not free all of them, but only those who were sick etc); and DRC-OTP-2054-3760, at 3807, lines 16 to 25 (testifying that following letters to and meetings with UPC officials in order to raise awareness concerning demobilisation, the number of children within the UPC was 'increasing all the time'); **P-0976**: T-152, pages 92 to 93 (testifying that he did not remember contacts with the UPC as regards child soldiers, or the UPC taking an initiative within the framework of the demobilisation of children, and that the UPC only pretended to demobilise), and page 20 (testifying that apart from the broadcast on Radio Candip, he was not aware of any other facts or actions or initiatives regarding the demobilisation of children by the UPC); and DRC-OTP-2054-2599, at 2651 (testifying that the demobilisation only concerned a limited number of children); **P-0055**: T-71, page 95 (testifying that he never saw any instructions or order in relation to demobilisation in the UPC, or heard of it). *See also* **P-0012**: DRC-OTP-2054-0274, at 0276 (testifying that in August/September 2003, when demobilisation occurred in Ituri, UPC soldiers, including children, did not give up their weapons); **P-0976**: T-152, pages 91 to 92 (testifying that he considered Lubanga's 21 October 2002 letter to constitute a 'manoeuvre to show to public opinion, [...] that the UPC was engaged in the path of banning the conscription or enlisting of child soldiers', while no initiative was taken by the UPC), and pages 92 to 93 (testifying that a short time after the publication of the report of HRW on the situation in Ituri which accused the UPC, among other things, of recruiting minors into its armed wing, it pretended to demobilise children); and DRC-OTP-2054-2599, at 2650 (testifying that after the UPC took Bunia in 2002, there were broadcasts in which the 'UPC pretended to demobilise certain children', although it was all a sham and children were still seen); **P-0031**: DRC-OTP-2054-3939, at 3971 to 3975 (stating that until June 2003, there was a tendency to demobilise children because there was pressure exercised by organisations such as MONUC, and that the demobilisation of 68 children was initiated when MONUC, Save the Children and local organisations exercised pressure, and that the demobilisation of 68 children was 'staged', a 'token gesture', while the UPC opened a centre to control those children); and DRC-OTP-2054-4494, at 4505-R03 (testifying that the UPC pretended to demobilise children, but in fact made no real efforts, and re-enlisted the 68 children). In light of the totality of the evidence, the Chamber does not consider its finding on the absence of a systematic demobilisation process to be affected by P-0365's testimony that she saw children being sent to the CTOs, which was in line with what had been promised by Thomas Lubanga (**P-0365**: T-148, page 12 (*see also* Defence Closing Brief, para. 1363) or by D-0013's disagreement with the suggestions that the 21 October 2002 order was only issued because of complaints by the UPC and was never intended to be implemented, or his arguments that Thomas Lubanga has always insisted that individuals under the age of 18 should not serve in the ranks of any army, and that the initiative stemmed from Thomas Lubanga seeing individuals under 18 at a rally in Bunia (**D-0013**: DRC-D18-0001-6475, from 6503 to 6504, and from 6555 to 6556, and at 6567).

<sup>1222</sup> *See* section IV.A.3.IV.A.3.a) Recruitment, and section IV.A.3.c) Escorts, bodyguards, and other assignments.

<sup>1223</sup> **P-0017**: T-60, page 32 (testifying that the Chief of General Staff had ordered the commander in charge of the kadogos to disarm them, but that they did not remain disarmed for long because they were rearmed at the time the UPC was attacked in Bunia and committed to combat on the same day); **P-0976**: T-152, pages 32, and 92 (testifying that the UPC troops threatened the children who remained in the programme so that they would join their forces), and pages 33 to 34 (testifying that the majority of children in the programme ended up back in the army because they were forced to do so); and DRC-OTP-2054-2599, at 2649 to 2650 (testifying that the UPC



P-0898, who was under 15 years of age at the time, was remobilised to participate in the UPC/FPLC assault on Bunia in May 2003.<sup>1224</sup>

## B. THE OPERATIONS INVOLVING THE UPC/FPLC

### 1. Relevant politico-military groups

433. In addition to international forces, such as Artemis and MONUC, respectively authorised and set up by the United Nations Security Council, other armed actors were present in Ituri.<sup>1225</sup> The Ugandan armed forces, the UPDF, maintained a presence in Ituri during the relevant time period.<sup>1226</sup> Initially, in 2002, the UPC/FPLC and the UPDF fought alongside each other, but in March 2003 they fought each other for the control of Bunia.<sup>1227</sup>

434. As already indicated, the RCD-K/ML's military wing was the APC.<sup>1228</sup> The APC comprised a large number of soldiers, who wore uniforms.<sup>1229</sup> It was divided into units, including companies and brigades.<sup>1230</sup> The APC had headquarters in different locations and geographical operational zones.<sup>1231</sup> It also operated

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threatened children to join, and never expressed any ban on children to join their ranks again); **P-0031**: DRC-OTP-2054-3760, at 3786 (testifying that in May 2003, a large number of child soldiers returned to the UPC after having fled in March 2003); DRC-OTP-2054-3939, at 3971 to 3972 (testifying that many children fell into the trap of being re-enrolled, two or three times, *inter alia* with the UPC), at 3975 (testifying that wherever there was demobilisation, the UPC would take the child back); DRC-OTP-2054-4494, at 4505-R03 (testifying that the children were re-enlisted, and those 68 children it had pretended to demobilise were later found among the ranks of the UPC again). D-0013, on the other hand, testified that the children were indeed demobilised and were not re-armed because after their return, there was no more fighting and because the contacts established with organisations to take charge of the children proved that there was demobilisation (**D-0013**: DRC-D18-0001-6475, at page 6573). In view of the amount of credible evidence to the effect that previously demobilised individuals were re-enlisted by the UPC, the Chamber considers D-0013's testimony on the absence of re-enlistment not credible and does not rely on it.

<sup>1224</sup> See paras 202 and 655. See also **P-0898**: T-154, pages 29, and 33.

<sup>1225</sup> Agreed Facts 66 and 67. See also UN Security Council Resolution 1493 of 28 July 2003: DRC-OTP-0131-161 (0165, para. 27).

<sup>1226</sup> See section I BACKGROUND.

<sup>1227</sup> See section IV Factual Findings under B.3 and B.9.

<sup>1228</sup> Agreed Facts 48 and 49.

<sup>1229</sup> **D-0172**: T-245, page 27; **D-0300**: T-214, page 60. The APC had uniforms bearing the acronym 'APC': **D-0172**: T-245, page 27.

<sup>1230</sup> **P-0016**: DRC-OTP-0126-0422-R-03, at 0429, 0451; **D-0300**: T-214, page 14.

<sup>1231</sup> **P-0016**: DRC-OTP-0126-0422-R03, at 0426, 0433; **D-0300**, T-214, pages 82 to 83 (indicating places abandoned by the APC when it was expelled from Bunia in August 2002); T-214, pages 83 to 84 (indicating places where the APC was still present after that time).

training facilities.<sup>1232</sup> Many witnesses referred to Lendu ‘combatants’, fighters, or ‘militia’, without specifying which group or organisation they belonged to. These Lendu fighters were sometimes referred to as wearing APC uniforms,<sup>1233</sup> and were often mentioned in the context of fighting involving the APC. As explained below, mid-2002, members of the APC as well as Lendu fighters controlled Mongbwalu and Sayo, with Sayo being the headquarters of the Lendu fighters. These two groups, whether or not they were formally aligned or constituted two separate entities, were considered as the military opponents of the UPC/FPLC during the time period of the charges in the present case.<sup>1234</sup> The RCD-K/ML was involved in several political negotiations and signed agreements.<sup>1235</sup>

435. Other relevant armed actors in Ituri during the temporal scope of the charges were notably the FRPI and the FNI. The FRPI was launched in November 2002 as the political umbrella of Ngiti armed groups mainly from Gety, Bogoro and Songolo.<sup>1236</sup> It participated in political negotiations and signed ceasefire agreements<sup>1237</sup> and was involved in fighting, including against the UPC/FPLC.<sup>1238</sup>

436. The FNI was created at the beginning of 2003 as the political umbrella of the Lendu armed groups located mainly in Kpandroma and Rethy, and had a reported leader.<sup>1239</sup> It participated in political negotiations and signed ceasefire agreements<sup>1240</sup> and was involved in fighting, including against the UPC/FPLC.<sup>1241</sup>

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<sup>1232</sup> **D-0300**, T-211, pages 39 to 40; T-214, page 14.

<sup>1233</sup> See para. 472 below.

<sup>1234</sup> See para. 293 above.

<sup>1235</sup> Agreed Facts 63 and 64.

<sup>1236</sup> DRC-OTP-0074-0422 at 0470.

<sup>1237</sup> Agreed Facts 63 and 65; and DRC-OTP-0136-0171.

<sup>1238</sup> This is shown by the need to enter into ceasefire agreements. See further DRC-OTP-1034-0057, at 0057; and **D-0300**: T-230, pages 3 to 6.

<sup>1239</sup> DRC-OTP-0074-0422 at 0469; and see DRC-OTP-0107-0470, at 0480, signed by Mr Ndjabu Ngabu as the President of the FNI.

<sup>1240</sup> Agreed Facts 63 and 65; DRC-OTP-0136-0171; and DRC-OTP-0107-0470.

<sup>1241</sup> DRC-OTP-1061-0212, at 0454 to 0461, paras 418 to 429.

## 2. UPC/FPLC military objectives

437. Around mid-2002, the emerging UPC/FPLC took steps to put an end to the power exercised by the RCD-K/ML on the territory of Ituri.<sup>1242</sup>
438. On the military side, to consolidate its power after taking over Bunia and to prevent the APC from reorganising and launching counter-attacks, the UPC/FPLC intended to occupy key positions in Ituri, notably Mongbwalu, and secure important roads leading to and from Bunia, including: towards the northeast, the Bunia-Mahagi axis; towards the south, the Bunia-Beni axis; and towards the northwest, the Bunia-Mongbwalu axis.<sup>1243</sup> It is in this context that the UPC/FPLC military operations described in the below sections unfolded.
439. As the headquarters of the APC were located in Beni, the UPC/FPLC considered it important to control the Bunia-Beni road in order to protect Bunia and to be able to reach Northern Kivu.<sup>1244</sup> Songolo<sup>1245</sup> and Komanda<sup>1246</sup> are two villages along this road which became the target of the UPC/FPLC in mid-2002.<sup>1247</sup>
440. Mongbwalu, the second most important town in Ituri after Bunia,<sup>1248</sup> was known to be a strategic location and a gold mining town, where the Kilo-Moto gold mining company was located.<sup>1249</sup> Two UPC/FPLC attempts to control Mongbwalu and the surrounding areas are discussed below, the first failed attempt and the First Operation. During its control over Mongbwalu, the UPC/FPLC showed interest in the factory of the Kilo-Moto gold mining company

<sup>1242</sup> See paras 287 to 294.

<sup>1243</sup> **P-0898**: T-154, pages 27 to 28; **P-0012**: DRC-OTP-0105-0085, at 0148, para. 343; and **D-0300**: T-214, pages 75, and 85, with DRC-REG-0001-0063; T-215, pages 3 to 6; T-234, pages 57 to 58; DRC-OTP-0109-0136, at 0141. See also Defence Closing Brief, para. 197.

<sup>1244</sup> **D-0300**: T-214, page 80; and T-215, page 3; **P-0907**: T-89, page 36. See also **D-0300**: T-226, pages 39 to 42.

<sup>1245</sup> **P-0898**: T-154, page 27.

<sup>1246</sup> **D-0300**: T-215, pages 3 to 6, with DRC-D18-0001-5290, and page 12. See also **P-0907**: T-89, page 36.

<sup>1247</sup> See sections IV.B.4 Songolo in August 2002 and IV.B.6 Komanda between October and December 2002.

<sup>1248</sup> **D-0300**: T-234, pages 57 to 58.

<sup>1249</sup> **P-0010**: T-50, page 60; **P-0017**: T-58, page 55; **P-0016**: DRC-OTP-0126-0422-R03, paras 119 to 121; and DRC-OTP-2054-1625, at 1641; **P-0039**: DRC-OTP-0104-0015-R03, para. 15; **P-0055**: T-70, page 99; **P-0768**: T-33, page 36; **P-0901**: T-28, pages 54 to 55; **P-0907**: T-90, page 6; and **D-0300**: T-234, page 30, and T-243, pages 9 to 10.

and also showed its intention to raise funds in relation to the exploitation of the gold mines.<sup>1250</sup>

441. Mongbwalu also had an airstrip, which was of importance to the UPC/FPLC, as the airport in Bunia was occupied by the UPDF at that time.<sup>1251</sup> Control of the Mongbwalu airstrip would assist the UPC/FPLC in receiving uniforms and other military equipment, as it provided a location for airplanes to land.<sup>1252</sup>

442. Regarding the Bunia-Mongbwalu axes, there were at least three roads connecting Mongbwalu to Bunia: a main road through Kobu and Bambu ('Main Road'), a second road through Kabakaba and Nyangaray, and a third road through Mabanga.<sup>1253</sup> The UPC/FPLC wanted to open the Main Road,<sup>1254</sup> which was in better condition and shorter than the other available roads.<sup>1255</sup> It is in this

<sup>1250</sup> **P-0002**: DRC-OTP-2060-0002-R03, from 0003 to 0004, paras 8 to 11, and from 0007 to 0008, paras 45 to 50, referring to DRC-OTP-2058-0251, at 00:16:39 to 00:19:13; **P-0768**: T-34, pages 14, 41, referring to DRC-OTP-2058-0251, at 00:27:10 to 00:28:36. DRC-OTP-2058-0251, at 00:34:58 to 00:37:13 and DRC-OTP-2102-3766, at 3782. *See also* DRC-OTP-0074-0422, para. 102; DRC-OTP-0074-0628, at 0670. The Chamber further notes that, shortly after Mongbwalu was taken over by the UPC/FPLC, a number of journalists, invited by Mr Ntaganda, came to Mongbwalu and filmed (**P-0768**: T-34, pages 31 to 32). Together with members of the UPC/FPLC, including Mr Ntaganda, Floribert Kisembo, Salongo Ndekezi, Rafiki, Thomas Kasangaki, and Salumu Mulenda, they visited the factory of the Kilo-Moto gold mining company (**P-0768**: T-34, pages 32 to 41, referring to DRC-OTP-2058-0251, at 00:02:40 to 00:04:15 and 00:15:55 to 00:21:06, *see* **P-0768**: T-34, page 40). **D-0300**: T-217, pages 78 to 79; T-241, pages 58 to 59, also referring to DRC-OTP-2058-0251, at 00:46:18 to 00:48:20. On other occasions, the UPC entered into agreements with private companies providing for exploitation of natural resources in the territory under its control, in exchange for payment (**P-0016**: DRC-OTP-0126-0422-R03, from 0454, para. 187 to 0455, para. 191; and **P-0041**: DRC-OTP-0147-0002, at 0024, para. 132).

<sup>1251</sup> **P-0963**: T-78, page 72; and **D-0300**: T-217, pages 81 to 82, and 85. *See also* **D-0300**: T-216, page 47; and T-217, page 85; T-234, page 58.

<sup>1252</sup> **P-0963**: T-78, page 72. The Chamber notes in this regard that up to that time, the UPC/FPLC was receiving such materials by way of air drops near Mandro (*see* section IV.A.2.f) Weapons, ammunition, and other material); and **D-0300**: T-217, pages 84 to 85. *See also* Defence Closing Brief, paras 243 to 244.

<sup>1253</sup> **P-0901**: T-28, pages 46 to 47, and 50; T-31, page 55, DRC-REG-0001-0003. *See also* **D-0300**: T-220, page 79.

<sup>1254</sup> **D-0300**: T-220, page 79. *See also* Defence Closing Brief, paras 1048 to 1049.

<sup>1255</sup> **P-0901**: T-29, page 10; T-31, pages 54 to 55; and **P-0963**: T-79, pages 40 to 41. In relation to the Kabakaba and Nyangaray road: *see* **P-0901**: T-29, page 10 (testifying that the Nyangaray road was very long); **P-0963**: T-79, pages 40 to 41 (testifying that the Kobu-Bambu road was the closest road to go to Bunia). In relation to the Mabanga road: *see* DRC-REG-0001-0003. While no witness appeared to explicitly state that the Kobu-Bambu road was shorter than the Mabanga road, it appears shorter on DRC-REG-0001-0003, which is an extract from the scaled map DRC-OTP-2080-0239.

context that the Second Operation, a series of assaults on the Walendu-Djatsi *collectivité* described below, was launched.<sup>1256</sup>

### 3. Bunia on or about 6 to 9 August 2002

443. On 6 June 2002, Governor Lompondo wrote a letter to DRC officials referring to a plan of Thomas Lubanga's militia to attack Bunia. He also indicated that a 'Gegere tribal militia' was being set up in Mandro by the emerging UPC/FPLC, with the purpose of establishing Ituri as an independent state, and to chase away all the RCD-K/ML authorities, as well as the '*non-originaires*'.<sup>1257</sup>
444. On or about 7 August 2002, Lendu and Bira fighters attacked Hema groups living in the Mudzipela neighbourhood of Bunia, which was, at the time, a predominantly Hema part of the city.<sup>1258</sup> The APC participated in the fighting, during which a number of Hema were killed.<sup>1259</sup>
445. Around the same date, with the support of the UPDF, the emerging UPC/FPLC launched an assault against the APC with the aim of dislodging the RCD-K/ML forces and displacing Governor Lompondo from Bunia.<sup>1260</sup>

<sup>1256</sup> **P-0901**: T-28, pages 46 to 51, with DRC-REG-0001-0003; and T-29, page 10; T-31, page 55; **P-0963**: T-79, pages 40 to 41; and **D-0300**: T-220, page 79. P-0017 testified that he remembered being told about the three points of resistance 'Bambu, Lipri and Kobu' and says that there was no mention of the road, but appeared to acknowledge that the road strategy may have been at a higher level (**P-0017**: T-63-FRA, page 57). The Chamber does not consider P-0017's testimony to be inconsistent with the evidence from P-0901, P-0963 and D-0300 that one of the objectives of the Second Operation was to open the road. It further notes that the parties seem agree that the Second Operation aimed at opening the Main Road (Prosecution Closing Brief, para. 443, footnote 1287; Defence Closing Brief para. 824, and Defence Reply Brief, para. 206 and footnote 525), but also observes that other roads were mentioned by witnesses in connection with the Second Operation (*see e.g.* **P-0055**: T-71, pages 29 to 30; **P-0907**: T-90-FRA, pages 59, and 61 to 62; and **P-0016**: DRC-OTP-0126-0422-R03, at 0477, para. 141; and DRC-OTP-0126-0471).

<sup>1257</sup> DRC-OTP-0055-0472, from 0472 to 0473. *See also* Agreed Facts 38 and 39.

<sup>1258</sup> **P-0017**: T-60, pages 64 to 67; and **D-0300**: T-214, page 58. *See also* **P-0005**: T-189, pages 24 to 25; and DRC-OTP-0049-0465, at 0467, para. 9. However, P-0014 stated that he never heard about 'a massacre committed by the APC and Lendu combatants in the night of the 7<sup>th</sup> to the 8<sup>th</sup> in Mudzipela' (**P-0014**: T-138, page 47, *see also* page 60), and only remembered the 'chaos [...] caused by Gegere and Hema troops' in Mudzipela (T-138, page 48).

<sup>1259</sup> **P-0017**: T-60, pages 66, and 68; and **P-0898**: T-153, page 51. *See also* **P-0005**: T-185, page 21.

<sup>1260</sup> **P-0014**: T-138, pages 47 to 48; DRC-OTP-2054-0429 at 0504; **P-0016**: DRC-OTP-2054-1447 at 1456; **P-0031**: T-174, pages 36 to 37; DRC-OTP-2054-3760, at 3778; **P-0105**: T-134, page 62; **P-0901**: T-31, pages 39 to 40. *See also* DRC-OTP-0074-0422, page 0439, para. 49; and DRC-OTP-0074-0797, from 0823 to 0824.

446. Mr Ntaganda led troops<sup>1261</sup> from Mandro towards the area of Mudzipela.<sup>1262</sup>

During and immediately after the assault, many people were killed.<sup>1263</sup>

447. On 9 August 2002, the emerging UPC/FPLC and the UPDF attacked Governor Lompondo's residence,<sup>1264</sup> using heavy weapons and three tanks.<sup>1265</sup> The tanks approached, and later fired on, the governor's residence.<sup>1266</sup> Governor Lompondo and a group of APC soldiers were able to escape on foot.<sup>1267</sup>

<sup>1261</sup> **D-0300**: T-214, page 58; and **P-0017**: T-58, pages 19 to 21. P-0017 testified that he saw young soldiers among the troops coming from Mandro and estimated the youngest to have been 11 or 12 years old on the basis of their size, their lack of concentration, and the fact that they played a lot. However, the witness did not specify when he saw these children, for how long he observed them, or what they were actually doing. Under these circumstances, the Chamber is unable to establish whether the young soldiers observed by P-0017 participated in the fighting in Bunia.

<sup>1262</sup> **P-0017**: T-58, page 19; and **P-0031**: T-174, page 36. *See also* **P-0014**: T-138, page 49. The Chamber does not consider this finding to be affected by Mr Ntaganda's statement that he left with 'two companies', alongside his own (*see* **D-0300**: T-214, page 58).

<sup>1263</sup> **P-0014**: DRC-OTP-2054-0612 at 0645; and **P-0031**: T-175, page 46. Noting the Defence challenge to the context of the deployment of troops and the killing of non-Hema civilians (Defence Closing Brief, paras 193 to 197), the Chamber considers the evidence of P-0017 and P-0901 about the troops coming from Mandro to be reliable. P-0014, who visited Bunia and the scene of combat just after the assault, observed a 'group of Gegeres' surrounding a Nande woman and shouting at her. According to the witness, the woman's shoulder blades had already been wounded by a machete but she was subsequently killed by this group (**P-0014**: DRC-OTP-2054-0612 at 0644 to 0645). The witness could identify the Nande woman on the basis of the way she spoke (Swahili), as well as by her 'look'. He could also identify the 'Gegere' group on the basis of their pronunciation and the language they spoke (DRC-OTP-2054-0612 at 0647 to 0648). On the identification of the Hema/Gegere, *see also* **P-0976**: DRC-OTP-2054-2599, at 2676. In relation to the Defence assertion that '[t]he evidence reveals that exactions might have been committed in Bunia by the UPDF, APC, or Lendu combatants, but there is no reliable evidence that an attack was committed against the civilian population by the FPLC' (Defence Closing Brief, para. 196), the Chamber considers that this submission does not reflect the content of P-0014's testimony, a witness whom the Chamber considers credible and reliable on the attribution of the killing of the Nande woman to the 'Gegere' soldiers present in Bunia during and immediately after the attack of August 2002, and whose testimony shows that the exactions were not only committed by the UPDF, the APC or the Lendu fighters (*see also* DRC-OTP-0074-0422, at 0439, para. 49). However, although the witness clearly affiliates the 'Gegere' group to the UPC (DRC-OTP-2054-0612 at 0648, to be read in conjunction with DRC-OTP-2054-0612 at 0681, which refers to the same meeting and the same group. *See also* DRC-OTP-2054-0961 at 1020; and T-138, page 74), the Chamber cannot conclude beyond reasonable doubt that this 'Gegere' group was indeed part of or under the command of the UPC group which attacked Bunia in August 2002.

<sup>1264</sup> **P-0014**: T-137, page 63; and T-138, page 47; and **P-0016**: DRC-OTP-2054-1447 at 1456. *See also* **P-0012**: DRC-OTP-0105-0085 at 0107, para. 125; and T-165, pages 29 to 30; **P-0245**: T-142, page 62; DRC-OTP-0074-0422, at 0439, para. 49; and DRC-OTP-0074-0797, from 0823 to 0824. *See also* DRC-OTP-0120-0293, from 00:00:35 to 00:02:06.

<sup>1265</sup> **P-0031**: T-175, pages 46 to 47, and 52; and **P-0012**: DRC-OTP-0105-0085 at 0107, paras 126 to 128; and T-165, page 22.

<sup>1266</sup> **P-0014**: T-138, page 63; and **P-0245**: T-142, pages 60 to 61. *See also* DRC-OTP-0074-0422, at 0439, para. 49.

<sup>1267</sup> **P-0005**: T-183, page 32; and **P-0245**: T-141, page 45. *See also* DRC-OTP-0074-0422, at 0439, para. 49.

448. Following the assault by the emerging UPC/FPLC and the UPDF, bodies were found in the Governor's residence, including bodies of women and children.<sup>1268</sup> Many people were killed in the residence alone<sup>1269</sup> – mostly women and children, mainly 'non-natives' or Lendu, who had tried to escape the fighting.<sup>1270</sup> Witnesses described the scene as 'macabre' or a 'massacre'.<sup>1271</sup> Many of the bodies had gunshot wounds.<sup>1272</sup>

449. From August 2002 onwards, the UPC was in control of the all the main roads within Bunia.<sup>1273</sup> Despite Thomas Lubanga's stated desire to set up a government integrating representatives of all ethnicities, the Lendu community of the town still felt insecure and many chose to flee towards Zumbe or the *chefferie* of Gety of Walendu-Bindi.<sup>1274</sup>

#### 4. Songolo in August 2002

450. Songolo is a Lendu town located in the Walendu-Bindi *collectivité*.<sup>1275</sup>

451. Following the attack on his residence in Bunia on or about 9 August 2002, Governor Lompondo and APC soldiers loyal to him reportedly fled to Songolo, where their troops were being reorganised.<sup>1276</sup>

<sup>1268</sup> **P-0012**: DRC-OTP-0105-0085, at 0108, paras 132 to 133; and T-165, pages 24 to 25; **P-0014**: DRC-OTP-2054-0612 at 0644; T- 137, page 9; and T-138, page 64; and **P-0031**: T-175, pages 46 to 47.

<sup>1269</sup> **P-0031**: T-175, pages 46 to 47. *See also* DRC-OTP-0074-0422 at 0439, para. 49.

<sup>1270</sup> **P-0012**: DRC-OTP-0105-0085, at 0108, paras 132 to 133; and T-165, pages 24 to 25; **P-0245**: T-141, pages 43 to 44; and **P-0031**: T-174, page 33 to page 37; and T-175, page 46. *See also* DRC-OTP-0074-0422, at 0439, para. 49.

<sup>1271</sup> **P-0014**: DRC-OTP-2054-0612 at 0644; and **P-0031**: T-174, page 37.

<sup>1272</sup> **P-0012**: DRC-OTP-0105-0085 at 0108, para. 133; and T-165, page 25; and **P-0014**: DRC-OTP-2054-0612, at 0644. *See also* **P-0005**: T-138, page 32.

<sup>1273</sup> **P-0976**: T-152, page 20; and DRC-OTP-0113-0133. *See also* **P-0005**: T-183, pages 20 to 21. With reference to the Defence challenge to Thomas Lubanga's statement declaring the effective control of Bunia (Defence Closing Brief, para. 63), the Chamber relies on the sequence of events as narrated by the aforementioned witnesses, whom it considers credible and reliable, as well as the level of implication of the UPC in the assault on Bunia on 9 August 2002, to conclude that the UPC controlled a large part of the town of Bunia at that time, as described by P-0976.

<sup>1274</sup> **P-0976**: DRC-OTP-2054-2801, at 2819, lines 1 to 8; **P-0245**: T-142, pages 8 to 12; **P-0105**: T-134, page 62; and **P-0301**: T-149, page 27.

<sup>1275</sup> DRC-OTP-0074-0422, at 0440, para. 50; and **P-0012**: T-165, page 49; DRC-OTP-0074-0422, at 0440, para. 50.

<sup>1276</sup> **P-0898**: T-154, page 27; and **D-0300**: T-214, pages 74 to 75. *See also* **P-0012**: DRC-OTP-0105-0085, at 0148, para. 344; and T-165, page 49.

452. Around the end of August 2002, troops which included P-0888 moved from Mandro to Bunia.<sup>1277</sup> At his residence in Bunia,<sup>1278</sup> Mr Ntaganda personally addressed a group of soldiers, telling them that they were going to Songolo, and instructing them to drive off the 'enemy', whom P-0888 understood to be the Lendu and the Ngiti.<sup>1279</sup>

<sup>1277</sup> As indicated in its credibility assessment, the Chamber has analysed P-0888's testimony with caution. It considers that the part of his testimony on the preparation and the unfolding of the assault on Songolo in August 2002 to be detailed and credible. The Chamber notes that the witness appeared open and honest about his own role in the attack, as well as the limits of his, at-times incomplete, recollection of the events. The witness also indicated that he understood the different roles of the main commanders of the emerging UPC/FPLC at that time (**P-0888**: T-107, page 40). The Defence argues that this attack was led by Floribert Kisembo (Defence Closing Brief, para. 200), with Commanders Didier and Safari also in attendance, which is also largely confirmed by P-0012 (**P-0012**: DRC-OTP-0105-0085, at 0148, para. 344). P-0012 indicated that Kisembo told him that Bagonza and Tchaligonza had participated in this attack, but the Defence suggests that they had not yet joined the ranks of the UPC at the time (T-165, pages 49 to 50). The Defence also states that the assault on Songolo was strictly a military operation, where the UPC/FPLC were instructed to set fire to the *manyata* huts in a military camp belonging to the APC on the edge of the village, well away from the civilian zone and argues that this assault was unsuccessful, as the APC noticed the smoke from the huts, and chased the UPC/FPLC away (Defence Closing Brief, para. 200). In support of this, the Defence refers to the testimony of UPC soldier, D-0017 (**D-0017**: T-252, pages 80 to 83). Mr Ntaganda also confirmed the narrative presented by D-0017 (**D-0300**: T-215, page 27; T-225, page 47; and T-226, pages 54 to 58). However, the Chamber recalls that it does not rely on the testimony of D-0017. The Chamber also notes that P-0041 indicated that the UPC conducted an attack on Songolo, but that they were repelled (**P-0041**: DRC-OTP-0147-0002, at 0034, para. 203), which suggests that there was also an unsuccessful UPC/FPLC assault on Songolo. This is in line with the testimony of Mr Ntaganda. However, the Chamber notes that P-0041's testimony on this point is very vague, provides no date, and appears to be anonymous hearsay, and contradictory to the extent that the witness also indicated that Ngiti were killed. As to the testimony of Mr Ntaganda in relation to the unfolding of the unsuccessful assault (**D-0300**: T-215, page 27; T-225, page 47; and T-226, pages 54 to 58), the Chamber considers that even if such an unsuccessful assault on Songolo took place mid-2002, there is also credible and reliable evidence which shows that, around the end of August 2002, the UPC/FPLC was successful in taking control of Songolo. In light of this evidence, the Chamber has reservations as to the credibility and reliability of this part of Mr Ntaganda's testimony, which tends to diminish his involvement in the Songolo operation. As a result, recalling also its evaluation of the credibility and reliability of P-0190, the Chamber mainly considers the testimony of P-0888 in relation to the successful attack on Songolo. The Chamber considers that P-0888 provided a credible narrative on this incident, based on what he could observe and on what he personally did during the UPC/FPLC assault on Songolo in August 2002. The Chamber also takes into account the testimony of Mr Ntaganda and notes that P-0012 received some information on this assault mainly from the commanders involved in its planning and/or unfolding.

<sup>1278</sup> **P-0888**: T-105, page 52.

<sup>1279</sup> **P-0888**: T-105, pages 46 to 50. The Chamber notes that while the witness indicated that he could not remember the exact words that Mr Ntaganda used, he said that he remembered that Mr Ntaganda brought the soldiers together and ordered them to go to Songolo to drive off the enemy. The Chamber also notes the order given to UPC/FPLC commanders Germain and Byaruhanga to be ready to attack and ambush, also referring to mortars and rockets (DRC-OTP-2061-0715, at 0716). Mr Ntaganda confirmed that he wrote and signed this order, but denied that it related to the attack on Songolo (**D-0300**: T-226, pages 50-55). The Prosecution alleges that this order concerned the assault on Songolo, in light of the positions of the commanders at the time, Mr Ntaganda's position of authority, as well as the testimony of P-0888 who was in the group of soldiers in Bunia (Prosecution Closing Brief, paras 163 and 164). The Chamber finds that it cannot infer beyond reasonable doubt that the order relates to the assault on Songolo, considering the information provided therein, as well as the other evidence in relation to this assault, including the testimony of P-0901, who indicated that there were many UPC/FPLC attacks on the road from Bunia to Komanda (**P-0901**: T-29, page 43). However,



453. Also around the end of August, and two days after arriving in Bunia from Mandro,<sup>1280</sup> soldiers of the emerging UPC/FPLC, which included P-0888, left for Songolo.<sup>1281</sup> Some troops were already present there.<sup>1282</sup> During this assault, they used heavy weapons<sup>1283</sup> and succeeded in driving out the Ngiti and Lendu.<sup>1284</sup> Many Ngiti and Lendu were killed.<sup>1285</sup>

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the Chamber considers that the order does confirm that at the relevant time (*i.e.* the end of August 2002), Mr Ntaganda was in a position to order the execution of a UPC/FPLC assault on a location.

<sup>1280</sup> **P-0888:** T-105, page 46. The Chamber considers credible and reliable the witness's consistent and repeated in-court descriptions that the troops who travelled from Mandro to Bunia, in preparation of the Songolo operation, remained stationed for two days at Mr Ntaganda's residence in Bunia (**P-0888:** T-107, pages 21 to 22), and considers that the credibility and reliability of his account is unaffected by the fact that details of this stay in Bunia were not provided during his Prosecution interview (*see* Defence Closing Brief, para. 1125). Regarding the date of the successful assault on Songolo, P-0012 indicated that Thomas Lubanga was back in Bunia the day of the UPC/FPLC assault on Songolo (**P-0012:** DRC-OTP-0105-0085, at 0148, para. 345), which would therefore place the assault as occurring after 29 August 2002 (*see* DRC-OTP-0074-0422 at 0479). P-0901 indicated that the UPC/FPLC attacked Songolo within one month after Lompondo was ousted from Bunia in August 2002 (**P-0901:** T-29, pages 43, and 48), and explained that Thomas Lubanga was not yet back from Kinshasa and at that time, and that Floribert Kisembo and Mr Ntaganda were responsible for the troops (T-29, pages 44, and 49). Regardless of the minor inconsistency between P-0012 and P-0901 on whether Lubanga had returned to Bunia at the relevant time, the Chamber concludes beyond reasonable doubt that the successful UPC/FPLC attack on Songolo was carried out around the end of August 2002. *See also*, DRC-OTP-0074-0422, at 0440, para. 51.

<sup>1281</sup> **P-0888:** T-105, page 46.

<sup>1282</sup> **P-0888:** T-105, page 46. The Chamber notes that the Prosecution alleges that the UPC soldiers were allied with Bira fighters during this attack relying on a UN report and a HRW report (Prosecution Closing Brief, para. 165). The Chamber considers that the sources relied upon by the Prosecution are of low probative value, and further notes that UN report DRC-OTP-0074-0422, at 0440, para. 51, cites HRW as being the source of some of its information. As no other witnesses have mentioned the role of Bira fighters in this particular assault, the Chamber is unable to make a finding beyond reasonable doubt that the UPC was allied with Bira groups in the attack on Songolo.

<sup>1283</sup> **P-0888:** T-105, page 61; and T-106, pages 57 to 58. In relation to the use of heavy weapons in this attack, the Prosecution alleges that the mortars and rockets used by the UPC in this operation were collected by two commanders known as Germain and Byaruhanga, under orders from Mr Ntaganda himself (Prosecution Closing Brief, para. 163), referring in support to DRC-OTP-2061-0715 – a hand-written letter, signed by Mr Ntaganda and dated 26 August 2002, approving a request from Germain and Byaruhanga for mortars and rockets, and containing additional orders to '[b]e there very early at 5am, attack and set traps, and then withdraw' and an assurance that Mr Ntaganda will 'remain in contact'. Mr Ntaganda admitted that '[Germain] was a commander of troops in Kasenyi who was deployed at Bogoro' (**D-0300:** T-226, pages 51 to 52), but denied having any geographical knowledge of the area when it was put to him that Bogoro was close to Songolo (**D-0300:** T-226, pages 54 to 56), and instead posited that the instructions related to a planned ambush by a river near Tchomia, Kasenyi, and Joo (**D-0300:** T-226, pages 57 to 58). Although the Chamber does not consider credible Mr Ntaganda's testimony on his geographical knowledge of the area, on the basis of the information before it, and without any other evidence in relation to this order, the Chamber cannot establish beyond reasonable doubt that these weapons referred to in the letter were indeed those used during this attack. Furthermore, the UDCC alleges that the UPC laid mines in Songolo (UDCC, para. 45). Noting that the only mention of the use of mines comes from HRW report, DRC-OTP-0074-0797, at 0827, in which the source of this specific allegation is anonymous, and that no eyewitnesses confirmed their usage, the Chamber is unable to conclude beyond reasonable doubt that the UPC used land mines during this assault on Songolo.

<sup>1284</sup> **P-0888:** T-105, pages 46 to 47, and 50.

<sup>1285</sup> **P-0888:** T-105, page 47.

454. After the Ngiti and Lendu fighters had been forced out of Songolo, Mr Ntaganda communicated via Motorola with the emerging UPC/FPLC commanders and gave them orders; orders were also given by these commanders to P-0888 to search each house for survivors.<sup>1286</sup> The troops were compliant because they knew that they would be ‘punished’ for disobeying orders.<sup>1287</sup> Accordingly, they went from house to house looking for people, and survivors found hiding were beaten or killed, regardless of whether or they were ‘combatants’.<sup>1288</sup> Soldiers killed both men and women, as well as the elderly<sup>1289</sup> and children, including babies.<sup>1290</sup> The soldiers also took items from the houses and shops.<sup>1291</sup> They were permitted to keep some items for themselves, such as clothing, but were required to hand over the more valuable items to their superiors.<sup>1292</sup> Following this, the soldiers were ordered to burn the houses which

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<sup>1286</sup> **P-0888**: T-105, pages 51, and 56. The Prosecution alleges that Mr Ntaganda gave orders to ‘massacre Lendu found there’ (Prosecution Closing Brief, para. 164). P-0888 testified that he was told that Mr Ntaganda gave orders by Motorola to other commanders to go from house to house and kill ‘enemies’ found, but that he never heard this directly (**P-0888**: T-105, page 51). In light of P-0888’s testimony, and without further details, the Chamber cannot conclude beyond reasonable doubt that Mr Ntaganda gave orders in the terms reported by the witness, on the basis of information he received from lower level UPC commanders. However, based on the testimony of P-0088, the Chamber can conclude beyond reasonable doubt that Mr Ntaganda was in contact with, and gave orders to, the commanders in the context of this assault via Motorola (**P-0888**: T-107, page 40). The Chamber does not consider this finding to be affected by P-0012’s statement that he received information that Mr Ntaganda was not among the commanders directly participating in the assault, and that Floribert Kitembo was the commander in charge of the planning of the assault (**P-0012**: DRC-OTP-0105-0085, at 0148, paras 344 and 346).

<sup>1287</sup> **P-0888**: T-105, pages 47, and 57.

<sup>1288</sup> **P-0888**: T-105, pages 47, 51, 56, and 61. *See also* **P-0012**: DRC-OTP-0105-0085, at 0148, para. 347.

<sup>1289</sup> **P-0888**: T-105, page 47. *See also* **P-0012**: DRC-OTP-0105-0085, at 0148, para. 347.

<sup>1290</sup> **P-0888**: T-105, page 54.

<sup>1291</sup> **P-0888**: T-105, pages 57 to 58.

<sup>1292</sup> **P-0888**: T-105, pages 57 to 58. On this practice, *see* para. 515 below.

were made of straw.<sup>1293</sup> After this operation, the emerging UPC/FPLC troops then left for Bunia.<sup>1294</sup>

## 5. Zumbe in October 2002

455. Zumbe is a *localité* within the Bedu-Ezekere *groupement*,<sup>1295</sup> located a few kilometres away from Mandro.<sup>1296</sup> At the relevant time, it was a predominantly Lendu area,<sup>1297</sup> where APC soldiers and prominent Lendu figures retreated after Governor Lompondo fled from Bunia. Zumbe was used as a base by Lendu fighters around the relevant time.<sup>1298</sup>

456. On or about 15 October 2002,<sup>1299</sup> Commander Safari led an assault on Zumbe, in which P-0907 participated, in response to reports that Lendu from Zumbe had stolen cattle from Mandro.<sup>1300</sup> Prior to the attack, Safari had been in contact with

<sup>1293</sup> **P-0888**: T-105, pages 47, and 57 to 58. For evidence of the destruction of civilian property in Songolo during this operation, the Prosecution refers to the testimony and satellite images of Satellite Imagery Expert Lars Bromley (P-0810) (*see* **P-0810**: DRC-OTP-2099-0166, at 0211, figure 24, showing a comparison of Songolo on 15 June 2002 and on 22 May 2003), indicating that 59 structures disappeared between those dates (DRC-OTP-2099-0166, at 0183; and T-175, page 102). While P-0810 provided credible expert testimony, the Chamber notes the extensive time period between the two photos, the ongoing fighting in Ituri at the relevant time, and P-0810's acknowledgment that changes could have happened any time during the relevant time frame (**P-0810**: T-176, page 60). In these circumstances, the Chamber is not in a position to establish beyond reasonable doubt that the destruction of property within this time frame as shown on the 22 May 2003 satellite image occurred during this specific assault.

<sup>1294</sup> **P-0888**: T-105, page 61.

<sup>1295</sup> **P-0245**: T-142, page 75; and DRC-OTP-0074-0422, at 0442, para. 62.

<sup>1296</sup> **P-0907**: T-89, page 70. *See also* **D-0300**: T-214, page 38; and DRC-D18-0001-1767.

<sup>1297</sup> **P-0976**: T-152, page 20. *See also* **P-0019**: T-115, page 50; and T-116, page 42; and **D-0300**: T-230, page 6.

<sup>1298</sup> **P-0907**: T-92, page 65; **D-0300**: T-214, page 6; and T-215, pages 31 to 32; and DRC-OTP-0074-0422, at 0442, para. 62.

<sup>1299</sup> DRC-OTP-0074-0422, at 0443, para. 63. *See also* **P-0907**: T-89, pages 70 to 75; and **D-0300**: T-215, page 78, both referring to October 2002. The Chamber also heard evidence on several UPC operations in the area of Bedu-Ezekere (**P-0901**: T-29, page 48; **P-0976**: T-152, page 20; DRC-OTP-0109-0268, from 0273 to 0274, para. 20; and DRC-OTP-0074-0422, from 0442 to 0443), and considers it possible that the UPC attacked Zumbe more than once between August 2002 and December 2003. The Prosecution also indicates that the village, as well as other villages in the Bedu-Ezekere *groupement*, were attacked 'several times between January 2001 and March 2003' (Prosecution Closing Brief, para. 167). The Chamber assesses and retains in the present section only the evidence found to be sufficiently related to the unfolding of the specific attack charged. Evidence regarding the conduct of other attacks in the area has otherwise not been relied upon.

<sup>1300</sup> **P-0907**: T-89, page 71. In considering the unfolding of the attack, the Chamber relies mostly on P-0907, whose description of the events was based on personal observation and rich in detail, such as the names of some of the individuals who participated in the attack, the sequence of specific events, and their context (*see* **P-0907**: T-89, pages 70 to 75). The Chamber also recalls that it finds P-0907 generally to be a credible and reliable witness. The Chamber notes that Mr Ntaganda did not address any specific allegations regarding the unfolding of the operation, but he testified that he was aware that an attack on Zumbe took place in October

Mr Ntaganda.<sup>1301</sup> He had also been in contact with Floribert Kisembo to ask for ammunition and reinforcements for the operation.<sup>1302</sup> Before the start of the assault, Safari informed the troops that everyone in Zombe was an ‘enemy’.<sup>1303</sup> Soldiers were also told to conduct a *ratissage* operation: to ‘strike hard’ and to ‘show no mercy’.<sup>1304</sup>

457. When the UPC/FPLC troops entered Zombe, they realised that the cattle had been slaughtered, and became angry.<sup>1305</sup> The soldiers ‘killed everyone’, including elderly people and women,<sup>1306</sup> and burned down some houses.<sup>1307</sup> The soldiers were told that they could only take one item of the goods that had been looted,<sup>1308</sup> and placed anti-personnel mines on paths and roads - including those leading to the river and to the market and the church.<sup>1309</sup>

458. After the assault, the troops travelled to Mr Ntaganda’s compound in Bunia, where they spent the night before returning to Mandro. Commander Safari reported to Mr Ntaganda.<sup>1310</sup>

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200 and that it was conducted in response to claims that the Lendu had stolen cattle from the Hema. He denied that he was involved in the operation (**D-0300**: T-215, pages 78 to 79).

<sup>1301</sup> **P-0907**: T-89, pages 71 to 72. The Chamber notes that although P-0907 indicated that there were some communication between Mr Ntaganda and Safari before the attack, which the Chamber can establish, and that Safari was told that very early in the morning the troops would attack Zombe, the Chamber also notes that the witness clearly indicated that they spoke over the radio in Kinyarwanda and that he ‘didn’t understand a word’ (**P-0907**: T-89, page 75). Therefore, the Chamber cannot conclude beyond reasonable doubt that Mr Ntaganda ordered this assault on the basis of the testimony of P-0907 (*see* Prosecution Closing Brief, para. 168).

<sup>1302</sup> **P-0907**: T-89, pages 71 to 72, and 75. The Chamber notes that P-0907 stated that he was able to hear, and understand the language of, the conversation between Safari and Floribert Kisembo (T-89, page 75).

<sup>1303</sup> **P-0907**: T-89, pages 73 to 74.

<sup>1304</sup> **P-0907**: T-89, page 73. The Chamber notes that the French transcript records the witness’s evidence as: ‘*On nous a donné l’ordre d’aller ratisser Zombe*’ (T-59-FR, page 75). Noting paras 787, and 845 to 846 of the Defence Closing Brief, the Chamber considers that the Defence arguments are not supported by the evidence presented before it. The Chamber therefore dismisses them and relies on the witnesses’ accounts, including eyewitnesses, who described the *ratissage* operation carried out.

<sup>1305</sup> **P-0907**: T-89, page 72.

<sup>1306</sup> **P-0907**: T-89, page 74.

<sup>1307</sup> **P-0907**: T-89, page 72.

<sup>1308</sup> **P-0907**: T-89, page 72.

<sup>1309</sup> **P-0907**: T-89, pages 72, and 74.

<sup>1310</sup> **P-0907**: T-89, page 72. Mr Ntaganda is charged with using children under the age of 15 to participate in hostilities in Zombe in October 2002 (*see* Confirmation Decision, para. 94). The Prosecution alleges that one ‘child soldier’ was used during this attack (Prosecution Closing Brief, para. 167), citing in support reference to an anonymous ‘child’ interviewed by P-0046, who took part in an attack under ‘Commander Bosco’ in Zombe in September 2002 (*see* DRC-OTP-0208-0284, from 0318 to 0319). Given that no other evidence relating to the use of individuals under 15 in Zombe was presented, and in light of its prior assessment of the probative

## 6. Komanda between October and December 2002

459. Between August 2002 and January 2003, a lot of fighting between the UPC/FPLC and the APC took place on the Beni-Komanda-Bunia road.<sup>1311</sup>

460. During a meeting in Aru in September 2002, Adèle Lotsove and Chief Kahwa discussed the plan to open a front in Komanda.<sup>1312</sup>

461. In preparation for the assault on Komanda,<sup>1313</sup> after having loaded weapons at Mr Ntaganda's and Floribert Kisembo's residences, respectively, four trucks full

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value of document DRC-OTP-0208-0284, the Chamber is unable to conclude that the UPC/FPLC used individuals under the age of 15 years old in the attack on Zumbe in October 2002.

<sup>1311</sup> **P-0898**: T-154, pages 8 to 9; **P-0901**: T-29, pages 43, and 48; **P-0907**: T-89, pages 36 to 37; and **D-0300**: T-215, page 6; T-218, page 21; and T-219, pages 16 to 17. *See also* **P-0888**: T-105, page 89; and DRC-OTP-0100-0314, at 0317, para. 6. The Chamber also heard evidence from Mr Ntaganda concerning an assault on Komanda at the end of August 2002 (**D-0300**: T-215, page 8; and T-226, page 48), which he commanded (**D-0300**: T-213, page 13; and T-226, page 50; *see also* **D-0300**: T-225, pages 46, and 48). Considering Mr Ntaganda's testimony on the date of the aforementioned assault, the Chamber understands his evidence not to refer to the assault discussed in the present section.

<sup>1312</sup> **P-0014**: T-137, pages 48 and 49. The Prosecution argues that from mid-2002 onwards, UPC/FPLC forces allied with the MLC and RCD-N carried out attacks on Mambasa, Komanda, and Eringeti (Prosecution Closing Brief, para. 173). It further argues that the MLC and RCD-N were responsible for most of the killings, pillage, and widespread rape committed in Mambasa and that, with that assault, the region witnessed a new scale of violence characterised by a premeditated operation and the use of looting, rape, and summary executions as tools of warfare (Prosecution Closing Brief, para. 179). In this respect, the Chamber notes that the only evidence on the record concerning the involvement of the MLC and RCD-N in fighting on the Komanda road comes from two UN personnel (P-0046 and P-0317) as well as the related MONUC reports (DRC-OTP-0074-0422 and DRC-OTP-0100-0314, paras 6 and 118). Furthermore, P-0317 and DRC-OTP-0074-0422 are also the only evidence received referring to attacks on Mambasa carried out by the MLC and RCD-N, with the assistance of the UPC (**P-0317**: T-192, pages 37 to 39; and DRC-OTP-0074-0422, from 0452 to 0453 paras 105 to 107). This document indicates that, during the periods in which they controlled the area, the MLC and RCD-N forces committed crimes, including summary executions, systematic rape, systematic looting, and acts of cannibalism (DRC-OTP-0074-0422, at 0453, paras 108 to 109). Furthermore, it concludes that similar abuses were also systematically carried out in the villages south of the town and between Komanda and Eringeti, with the involvement of the UPC/FPLC (DRC-OTP-0074-0422, at 0453, paras 108 to 109). The Chamber notes that the evidence of the two witnesses related to the alleged Komanda and Mambasa assaults and their alleged perpetrators does not consist of their personal observations or experiences in Ituri, but on what they learned in the context of a MONUC investigation carried out by P-0317 as head of mission, and in which P-0046 also participated, where the investigation team interviewed several hundreds of people, including community leaders and victims, in, *inter alia*, Oicha, Eringeti, Butembo, and Beni (**P-0317**: T-192, page 38). The Chamber considers that the information contained in these reports shall only be used in corroboration and, considering the fact that the evidence of P-0046 and P-0317 is based on the same investigation as the reports, it makes no finding concerning the involvement of the MLC and RCD-N and/or concerning an alleged assault on Mambasa.

<sup>1313</sup> The Prosecution alleges that Mr Ntaganda 'conceded that he was responsible for the Komanda and Mahagi operations prior to February 2003' (Prosecution Closing Brief, para. 174, referring to **D-0300**: T-219, pages 32 to 33; and T-220, page 12). However, Mr Ntaganda's evidence that he had been ordered by Floribert Kisembo to oversee the security situation in the area of Komanda and Mahagi refers to the period on or about January 2003 (**D-0300**: T-219, pages 30 to 33; *see also* Defence Closing Brief, para. 1012; and Defence Reply Brief, para. 284). In these circumstances, the Chamber does not find that Mr Ntaganda was responsible for the Komanda assault discussed in the present section.

of soldiers went to Irumu.<sup>1314</sup> In Irumu, the troops set up a base<sup>1315</sup> and held a military parade, where the commanders gave them instructions for the upcoming fighting.<sup>1316</sup>

462. In November 2002, the UPC/FPLC attacked Komanda.<sup>1317</sup> The UPC/FPLC fought against the APC – commanded by Mbusa Nyamwisi – and Ngiti and Mai Mai fighters, mixed with the local population.<sup>1318</sup> The UPC/FPLC assault was led by Safari and Nduru Tchaligonza.<sup>1319</sup> Mr Ntaganda and Floribert Kisembo stayed in Irumu and did not participate in the assault itself.<sup>1320</sup>

463. After intense fighting, the UPC/FPLC took over Komanda.<sup>1321</sup> Some people were killed in the fighting, including soldiers, as well as persons referred to by P-0907 as ‘civilians’, some of whom were killed while they were fleeing.<sup>1322</sup>

<sup>1314</sup> **P-0907**: T-89, page 37. The Defence argues that the evidence provided by P-0907 in relation to Komanda cannot be relied upon, considering that D-0017 testified that he did not remember that P-0907 was there (Defence Closing Brief, para. 205). It further argues that P-0907’s account of the assault is ‘far-fetched, implausible, and unreliable in light of the evidence he fabricated in relation to the Mongbwalu operation’ (Defence Closing Brief, para. 205). The Chamber notes that P-0907’s account in relation to the assault on Komanda is rich in details, notably regarding the conduct of UPC/FPLC troops towards what he referred to as ‘civilians’, and that the witness clearly differentiated between information he was in a position to provide and information he was not in a position to provide. The Chamber further recalls its conclusion concerning the credibility of D-0017 and that it finds P-0907 to be a fully credible witness in relation to the first and second UPC/FPLC assault on Mongbwalu. In light of the foregoing, the Chamber finds that P-0907’s evidence concerning the November 2002 UPC/FPLC assault on Komanda is credible and has relied on his account of its unfolding.

<sup>1315</sup> **P-0907**: T-89, page 37. *See also* **P-0907**: T-89, page 38.

<sup>1316</sup> **P-0907**: T-89, pages 37 to 38.

<sup>1317</sup> **P-0907**: T-89, pages 36, and 79. The Chamber notes that P-0907 testified that there were ‘children’ who participated in the UPC/FPLC assault on Komanda (*see* **P-0907**: T-89, page 30). Later on, the witness was asked whether he was able to observe any children under the age of 15 participating in the attack on Komanda, in response to which the witness referred to a person named Bali, who was 15 or 16 years old at the time and who took part in the operation, while there were others that the witness referred to as kadogos whose names he did not know (*see* **P-0907**: T-89, pages 51 to 52). The witness was not further questioned in relation to his understanding of the term kadogo, particularly as to whether he understood it as referring to a specific age. The Chamber considers that P-0907’s evidence is not sufficiently probative on this point and, in light of its prior assessment of the probative value of document DRC-OTP-0208-0284, considers that it cannot be established that individuals under the age of 15 participated in the assault on Komanda.

<sup>1318</sup> **P-0907**: T-89, pages 36, 38, and 41. *See also* **P-0014**: T-137, page 48.

<sup>1319</sup> **P-0907**: T-89, page 38, and page 46.

<sup>1320</sup> **P-0907**: T-89, page 46. The Chamber notes Mr Ntaganda’s testimony that he led a single battle in Komanda (**D-0300**: T-228, page 10), namely the one on August 2002, referred to above. Considering its finding that, during the Komanda assault which took place in November 2002, Mr Ntaganda stayed in Irumu and did not participate in the assault itself, the Chamber considers that Mr Ntaganda’s aforementioned evidence is not incompatible with P-0907’s evidence and its findings set out in the present section.

<sup>1321</sup> **P-0907**: T-89, pages 36 to 39.

<sup>1322</sup> **P-0907**: T-89, pages 42 to 43.

464. After taking over the town, pursuant to Safari's orders, the UPC/FPLC carried out a *ratissage* operation, searching the houses for any remaining soldiers.<sup>1323</sup> Some soldiers were taken captive and subsequently taken to Irumu while other soldiers were killed.<sup>1324</sup> A number of persons referred to by P-0907 as 'civilians' were also taken captive, while others were killed, some of them inside their homes.<sup>1325</sup> Houses, including houses in which soldiers were living or where soldiers were believed to be hiding, as well as a small military camp, were burned down.<sup>1326</sup> The UPC/FPLC soldiers also looted houses in Komanda, taking items such as mattresses, bicycles, sewing machines, and food.<sup>1327</sup> UPC/FPLC soldiers also raped women during the *ratissage* operation.<sup>1328</sup>

465. While Safari had expressly forbidden killings, looting, and the burning of houses, the UPC/FPLC soldiers still carried out such acts because they felt that 'all that was before [them] was the enemy'.<sup>1329</sup> P-0907 was not aware of anyone having been punished for their conduct in Komanda, notably the killings, looting, or the burning of houses.<sup>1330</sup>

<sup>1323</sup> **P-0907**: T-89, pages 43, and 48 to 50. The Chamber notes that P-0907 referred to this exercise as '*cleaning house*', an expression which appears in both the English (T-89, page 43) and the French (T-89-FR, page 44), and using the verb 'to mop up'/'*ratisser*' (T-89, page 49; T-59-FR, page 51). The witness was asked what the term '*ratissage*' meant to him in terms of military operations, and stated: "'Ratissage' means clean up everything you find across your path, clean everything, insects, birds, animals, men, hit everything, spare nothing, nothing at all. That is what it means. Because only the enemy were to be found there' (T-89, page 74).

<sup>1324</sup> **P-0907**: T-89, pages 39, 43 to 44, and 49. The Defence argues that there is no reliable evidence that, *inter alia*, the Komanda operation was directed against civilians or that crimes were committed during this operation (Defence Closing Brief, para. 204). In this respect, the Chamber notes that the Defence's challenge is based on its arguments concerning the alleged unreliability of P-0907's evidence, which are addressed above. The Defence also argues that Komanda was deserted because the civilian population had left before as a result of clashes between the APC and Mr Ntaganda's group (Defence Closing Brief, para. 198). However, the Chamber notes that, in support of its argument, the Defence refers to Mr Ntaganda's evidence, which, as noted above, the Chamber finds to refer to a different assault to the one discussed in the present section.

<sup>1325</sup> **P-0907**: T-89, pages 42 to 43. *See also* page 45.

<sup>1326</sup> **P-0907**: T-89, pages 39, and 46 to 49.

<sup>1327</sup> **P-0907**: T-89, pages 39, and 46 to 47. *See also* **P-0901**: T-29, pages 18 to 19. For more information on the term '*kupiga na kuchaji*', *see above* para. 415.

<sup>1328</sup> **P-0907**: T-89, pages 42 to 43, and 45 to 46. *See also* pages 36, and 49.

<sup>1329</sup> **P-0907**: T-89, pages 47 to 48.

<sup>1330</sup> **P-0907**: T-89, page 48.

466. Once the *ratissage* operation was over, the UPC/FPLC soldiers reported to Safari that ‘all had been done and that everything was fine’.<sup>1331</sup>

## 7. First Operation: Assaults on a number of villages in the Banyali-Kilo *collectivité* in November/December 2002

### a) Situation in the area prior to November 2002

467. Mongbwalu is a town located in the Banyali-Kilo *collectivité*.<sup>1332</sup>

468. The majority of the merchants in Mongbwalu were Hema.<sup>1333</sup> Around mid-2002, tensions between the Hema and the Lendu became severe, following which the Hema left Mongbwalu and Sayo, going to, *inter alia*, Bunia and Ariwara.<sup>1334</sup> Many Hema who left did so out of fear.<sup>1335</sup> The Lendu also ‘chased out’ the Hema from Kilo.<sup>1336</sup>

469. Those who left the town left everything behind, including their houses, personal property, and businesses.<sup>1337</sup> As the Hema left, more Lendu arrived from the surrounding areas, taking over the town and the surrounding areas.<sup>1338</sup> The newly arrived inhabitants took over the majority of the houses and the businesses which had been left behind.<sup>1339</sup>

470. Following the departure of the Hema inhabitants, the Lendu constituted the majority of the population in Mongbwalu and the surrounding villages; members

<sup>1331</sup> **P-0907**: T-89, pages 48 to 49.

<sup>1332</sup> Agreed Fact 6.

<sup>1333</sup> **P-0901**: T-31, page 19; and **P-0907**: T-91, page 28.

<sup>1334</sup> **P-0800**: T-69, pages 25 to 26; **P-0815**: T-76, pages 12 to 13; **P-0850**: DRC-OTP-2067-1825-R02, from 1826 to 1827, paras 10 to 11; **P-0887**: T-94, pages 43, and 52; **P-0901**: T-31, page 20; **P-0907**: T-89, pages 12 to 13; T-91, pages 13, and 28; and **D-0300**: T-229, pages 71 to 75. *See also* **P-0002**: T-172, pages 34 to 35; DRC-OTP-0074-0422, at 0451, para. 100; and DRC-OTP-0074-0797, at 0827.

<sup>1335</sup> **P-0850**: T-112, pages 66 to 67; DRC-OTP-2067-1825-R02, at 1827, paras 11 to 12; **P-0887**: T-94, pages 40 to 43, and 45 to 46; **P-0892**: T-85, pages 44 to 46; **P-0901**: T-31, page 20; and **P-0907**: T-91, page 33.

<sup>1336</sup> **P-0877**: DRC-OTP-2069-2086-R03, para. 22.

<sup>1337</sup> **P-0907**: T-89, page 78, T-91, page 33.

<sup>1338</sup> **P-0815**: T-76, page 12; **P-0887**: T-94, page 41; **P-0892**: T-85, page 45. *See also* **P-0907**: T-89, pages 12, and 28.

<sup>1339</sup> **P-0800**: T-69, page 25; **P-0850**: T-112, pages 72 to 73; **P-0887**: T-94, page 53.



of other ethnic groups, except the Hema, were also present.<sup>1340</sup> In Sayo, the majority of the inhabitants were also Lendu.<sup>1341</sup>

471. Furthermore, before the UPC/FPLC attacked, members of the APC as well as Lendu fighters controlled Mongbwalu and Sayo, with Sayo being the headquarters of the Lendu fighters.<sup>1342</sup>

472. The Lendu fighters did not have a common military uniform; some of the fighters wore APC uniforms, some wore clothing which included animal skins and banana leaves around their hips and necks, as well as fetishes,<sup>1343</sup> and some switched to wearing UPC/FLPC uniforms which they recuperated during the fighting.<sup>1344</sup> The fact that they were not uniformly dressed made some of the Lendu fighters difficult to identify.<sup>1345</sup>

473. The Lendu fighters initially organised themselves in groups to protect themselves and their communities, and lived among the population.<sup>1346</sup> The Lendu fighters included women and children.<sup>1347</sup> The Lendu fighters had machetes, arrows, spears, and other bladed weapons, and some of them also had rifles.<sup>1348</sup>

<sup>1340</sup> **P-0800**: T-68, page 21; **P-0815**: T-76, pages 12, and 14; **P-0859**: T-52, page 21; and. **P-0887**: T-93, page 12. *See also* **P-0017**: T-59, pages 4 to 5; and **P-0039**: DRC-OTP-2062-0244-R02, at 0247, para. 10.

<sup>1341</sup> **P-0768**: T-33, page 45; **P-0800**: T-68, page 21; **P-0815**: T-76, page 14. *See also* **P-0886**: T-39, page 28.

<sup>1342</sup> **P-0017**: T-61, page 49; **P-0039**: DRC-OTP-0104-0015-R03, paras 18 to 19 and DRC-OTP-2062-0244-R02, paras 14 to 15; **P-0300**: T-166, pages 30 to 31; **P-0800**: T-68, pages 16 to 17; and T-69, pages 22, and 25 to 28; **P-0805**: T-26, pages 37 to 39; **P-0859**: T-51, page 14; and T-52, page 15; **P-0886**: T-37, page 8; **P-0887**: T-94, pages 49 to 52; **P-0892**: T-85, pages 41 to 42; **P-0894**: DRC-OTP-2076-0194-R02, paras 19, and 26 and 50; **P-0901**: T-30, pages 43 to 44; T-32, pages 6 to 7. *See also* **P-0800**: T-69, page 15; **P-0850**: T-112, page 68.

<sup>1343</sup> **P-0800**: T-68, page 17; T-69 pages 21 to 22; **P-0886**: T-38, pages 75 to 76; **P-0907**: T-91, page 29. *See also* **P-0039**: DRC-OTP-0104-0015-R03, para. 20; **P-0850**: T DRC-OTP-2067-1825-R02, para. 21; **P-0901**: T-30, pages 44 to 45; **P-0887**: T-30, page 52.

<sup>1344</sup> **P-0901**: T-30, pages 43 to 44. *See also* **D-0207**: T-261, pages 55 to 56 (stating, when shown video recording DRC-OTP-0103-0008, at 00:32:17, depicting individuals with uniforms resembling UPC uniforms, that the individuals look like Lendus, and that sometimes, when they were fighting the UPC or killing UPC men, the Lendus would wear UPC uniforms).

<sup>1345</sup> **P-0887**: T-94, page 52; **P-0901**: T-30, page 45. *See also* **P-0012**: DRC-OTP-2054-0073, page 34; and **P-0886**: T-39, page 25.

<sup>1346</sup> **P-0887**: T-94, page 42. *See also* **P-0012**: DRC-OTP-2054-0073, page 34.

<sup>1347</sup> **P-0800**: T-69, page 48; **P-0887**: T-94, page 48; and **P-0907**: T-91, pages 29 to 30.

<sup>1348</sup> While according to P-0039 the Lendu fighters had no firearms (**P-0039**: DRC-OTP-0104-0015-R-03, para. 19), P-0800 testified that some of them got hold of firearms (**P-0800**: T-69, pages 26 to 27), which is further

474. Mongbwalu was the seat of the Kilo-Moto gold mining company.<sup>1349</sup> However, following the onset of the conflict in Ituri, the company's output and workforce decreased, until it closed sometime in 2002.<sup>1350</sup> Following a meeting with the Executive Committee of the Kilo-Moto gold mining company held on 26 September 2002,<sup>1351</sup> Thomas Lubanga received a letter signed by the company's director general, setting out the expectations of the company, as previously explained in the meeting.<sup>1352</sup> The company was faced with a number of challenges, including financial constraints and issues related to the maintenance of the factory's equipment.<sup>1353</sup>

#### **b) Failed assault on Mongbwalu**

475. On or about 9 November 2002, the UPC/FPLC attempted to take over Mongbwalu.<sup>1354</sup> The UPC/FPLC, under the command of Salumu Mulenda,<sup>1355</sup> advanced towards Mongbwalu through Mabanga, Dala, and Damblo.<sup>1356</sup> They were accompanied by 'civilians', some of whom were armed with machetes, arrows, and other weapons and who assisted the members of the UPC/FPLC in

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corroborated by P-0887, who testified that the Lendu fighters had traditional weapons, but also firearms (P-0887: T-94, page 42). *See also* P-0894: DRC-OTP-2076-0194-R02, para. 24.

<sup>1349</sup> P-0039: DRC-OTP-0104-0015-R03, at 0017, para. 14.

<sup>1350</sup> P-0039: DRC-OTP-0104-0015-R03, at 0017, para. 15.

<sup>1351</sup> DRC-OTP-0136-0161, at 0161.

<sup>1352</sup> DRC-OTP-0136-0161. While the letter is dated 1 October 2002 (*see* 0161 and 0166), at 0164 the Executive Committee is recorded as congratulating the UPC/FPLC for its takeover of Mongbwalu. DRC-OTP-0074-0628, at 0661 refers to the letter, stating that the UPC/FPLC was being congratulated on its anticipated victory. *See also* P-0315: DRC-OTP-2058-0990, from 1015 to 1016, para. 138.

<sup>1353</sup> DRC-OTP-0136-0161, at 0165. *See also* P-0002: DRC-OTP-2060-0002-R03, at 0008, para. 52 and DRC-OTP-2058-0251, from 00:30:55 to 00:33:35; and D-0300: T-217, page 83.

<sup>1354</sup> P-0892: T-83, page 17. *See also* P-0892: T-83, page 18; and T-85, pages 39 to 40; DRC-OTP-0074-0422, from 0451 to 0452, para. 101; and DRC-OTP-0074-0628, at 0662. Many witnesses also confirmed that the first UPC/FPLC assault on Mongbwalu occurred approximately a week and a half before the First Operation (P-0800: T-68, pages 20 to 21; P-0894: T-104, page 57 with DRC-OTP-2076-0194-R02, at 0200, para. 32; P-0898: T-154, page 9) or two weeks (P-0850: T-112, page 73; DRC-OTP-2067-1825-R02, at 1829, para. 31; P-0887: T-93, page 14; P-0888: T-105, page 74; and P-0907: T-89, page 84).

<sup>1355</sup> P-0907: T-89, page 80; T-90, page 25. *See also* P-0768: T-33, page 32. In light of its below finding on Mr Ntaganda's presence in Mongbwalu at the relevant time, and considering that P-0898, in his capacity as an escort of another commander and low-level soldier, may not have been in a position to distinguish between the specific roles during the operation, the Chamber considers that this finding is not affected by P-0898's testimony that this operation was led by Mr Ntaganda (P-0898: T-154, page 10).

<sup>1356</sup> P-0907: T-89, pages 80 to 82; T-90, pages 20 to 21, and 24. *See also* P-0898: T-154, page 10.

transporting their weapons.<sup>1357</sup> In Damblo, a Nyali village, the UPC/FPLC soldiers went from house to house, killing people inside their homes.<sup>1358</sup> They then spent the night close to the Mongbwalu airstrip, gathering information for the assault to be conducted the next day.<sup>1359</sup> Mr Ntaganda was present in or around Mongbwalu prior to and during the assault and addressed the soldiers at an assembly.<sup>1360</sup>

476. Around 6:00 or 7:00 the following morning,<sup>1361</sup> the UPC/FPLC attacked and took control of the Mongbwalu airstrip and the nearby Gangala neighbourhood, before advancing towards the centre of Mongbwalu.<sup>1362</sup> The attack was carried out with light and heavy weaponry.<sup>1363</sup> Numerous inhabitants of Mongbwalu heard the sound of gunfire and fire from heavy weapons and began to flee, most in the direction of Sayo.<sup>1364</sup> The health centre in Sayo received injured men who had

<sup>1357</sup> **P-0907**: T-89, page 80; and T-90, page 21.

<sup>1358</sup> **P-0907**: T-89, page 81; T-90, pages 21, and 24 to 25; and T-92, pages 32 to 34. *See also* **P-0887**: T-93, pages 16 to 18, and 51 to 52; and T-94, pages 37, and 81.

<sup>1359</sup> **P-0907**: T-89, page 81; and T-90, page 25. *See also* **P-0907**: T-90, page 21; and **P-0898**: T-154, page 10.

<sup>1360</sup> **P-0907**: T-89, pages 79 to 80; and T-90, page 20 (testifying that Mr Ntaganda addressed the soldiers at an assembly in Nizi and told them that they were going to launch an attack on Mongbwalu, where the enemy was weak); **P-0898**: T-154, page 10 (testifying that he travelled to Mongbwalu with Mr Ntaganda); and **P-0888**: T-105, page 74 (testifying that he went with Mr Ntaganda and Salumu Mulenda to Mongbwalu to start an operation, but they failed and returned to Bunia). Noting the Defence's challenges to the credibility of these witnesses' accounts (*see*, in particular, Defence Closing Brief, paras 357, 370, 1221, 1223, 1245, and 1246), the Chamber recalls its finding that P-0898 and P-0907 are credible witnesses whose testimony can be fully relied upon. As for the testimony of P-0888, the Chamber recalls its finding that the witness provided detailed and mostly coherent information about, *inter alia*, his participation in certain operations, as well as its finding that his failure to describe the road to, or to provide details about places in, Mongbwalu can be explained by a lack of memory or confusion, related to the trauma suffered by the witness, and the time passed since the events. In light of the aforementioned credible evidence on the presence of Mr Ntaganda in or around Mongbwalu prior to and during the assault, the Chamber considers not credible Mr Ntaganda's statement that he heard about the failed assault for the first time when returning from Kandoyi in the context of a trip to Aru (**D-0300**: T-216, pages 40 to 42).

<sup>1361</sup> **P-0850**: DRC-OTP-2067-1825-R02, at 1827, paras 15 to 16; **P-0859**: T-51, page 17; **P-0887**: T-93, page 13; T-94, page 53; **P-0894**: T-104, page 53; DRC-OTP-2076-0194-R02, at 0198, para. 22; and **P-0907**: T-89, page 81; and T-90, pages 21, and 25.

<sup>1362</sup> **P-0850**: T-112, page 70; DRC-OTP-2067-1825-R02, from 1827 to 1828, paras 14 and 19; **P-0894**: T-104, page 53; DRC-OTP-2076-0194-R02, para. 23; and **P-0907**: T-89, page 81; and T-90, pages 21, and 25. *See also* **P-0800**: T-68, page 18; T-69, page 31.

<sup>1363</sup> **P-0850**: DRC-OTP-2067-1825-R02, paras 16 to 17; **P-0859**: T-51, page 15; **P-0887**: T-93, page 13; **P-0894**: DRC-OTP-2076-0194-R02, at 0198, para. 22; and **P-0907**: T-90, page 21. *See also* **P-0892**: T-83, page 23; and DRC-OTP-0074-0422, from 0451 to 0452, para. 101.

<sup>1364</sup> **P-0800**: T-68, page 18; T-69, page 30; **P-0850**: T-112, pages 71 to 72; DRC-OTP-2067-1825-R02, at 1827, paras 17, 18 and at 1829, paras 26 to 27; **P-0859**: T-51, pages 15 to 16; **P-0887**: T-93, pages 12 to 13; T-94, pages 53 to 54; **P-0892**: T-83, pages 19 to 21, and 24 to 25; **P-0907**: T-89, page 81; and T-90, page 21; and **P-0912**: T-148, pages 35 to 37, 44 to 45, and 100.

been wounded by gunfire; some of them were unarmed, while others had machetes and bladed weapons.<sup>1365</sup> Some people were killed in the attack.<sup>1366</sup>

477. Although initially the UPC/FPLC soldiers met little resistance, after several hours, the APC, supported by Lendu fighters armed with rifles and bladed weapons,<sup>1367</sup> succeeded in pushing them back.<sup>1368</sup> Once the UPC/FPLC retreated, some of the inhabitants of Mongbwalu returned to the area.<sup>1369</sup>

### c) Planning of the First Operation

478. For the second UPC/FPLC attempt to take over Mongbwalu, Mr Ntaganda devised a tactic to approach the enemy from two sides; Jérôme Kakwavu's troops, who had recently joined the UPC/FPLC,<sup>1370</sup> were to be deployed from the north, while other UPC/FPLC troops, including Salumu Mulenda's brigade, were to come from the south-east.<sup>1371</sup>

<sup>1365</sup> **P-0800**: T-68, pages 18 to 20.

<sup>1366</sup> P-0907 testified that some 'civilians' were killed during the operation, without providing any specific examples of such killings (**P-0907**: T-89, page 81). P-0887 stated that she saw dead bodies cut in two pieces on the way from Sayo to Mongbwalu when returning to Mongbwalu in the aftermath of the attack (**P-0887**: T-93, page 14; and T-94, page 55). P-0894 testified that there were some people who were killed in the attack (**P-0894**: T-104, page 56). While the Chamber is satisfied, on the basis of the aforementioned evidence, that people were killed during the attack, it is not able to establish whether those killed included fighters, people not engaged in the fighting, or both.

<sup>1367</sup> **P-0894**: T-104, pages 55 to 56; DRC-OTP-2076-0194-R02, at 0198, para. 23; and **P-0907**: T-89, pages 81 to 82.

<sup>1368</sup> **P-0800**: T-68, page 17; T-69, pages 27, and 29 to 30; **P-0850**: T-112, page 72; T-113, page 21; and DRC-OTP-2067-1825-R02, from 1827 to 1828, paras 14, 19; **P-0859**: T-51, pages 14 to 15; **P-0887**: T-93, page 13; and T-94, page 54; **P-0892**: T-83, pages 19, and 25; **P-0894**: T-104, pages 53 to 55; and DRC-OTP-2076-0194-R02, at 0198, paras 23 to 24; **P-0898**: T-154, page 9; and **P-0907**: T-89, pages 81 to 82; T-90, pages 21 to 22; and T-92, pages 35 to 37. *See also* **P-0017**: T-61, pages 22 to 23; **P-0768**: T-33, page 32; **P-0888**: T-105, page 74; **P-0963**: T-78, pages 69 to 70; T-81, pages 85 to 86; DRC-OTP-0074-0422, from 0451 to 0452, para. 101; and **D-0300**: T-216, page 41.

<sup>1369</sup> **P-0800**: T-69, pages 32 to 33; **P-0850**: T-112, page 72; and DRC-OTP-2067-1825-R02, at 1828, para. 20 and 1829, paras 26 to 29; **P-0859**: T-51, page 18; **P-0887**: T-93, pages 13 to 14; and T-94, page 56; **P-0892**: T-83, page 25; **P-0912**: T-148, pages 46 to 48, and 104.

<sup>1370</sup> *See* section IV.A.2.d) Command structure and effectiveness of the military apparatus.

<sup>1371</sup> **D-0300**: T-226, pages 72, and 75; and T-234, pages 45 to 47, and 72 to 74. The Chamber notes that Mr Ntaganda testified that he was tasked by Floribert Kisembo to liberate Mongbwalu only upon his return to Bunia, on 19 November 2002, and that the idea to use Jérôme Kakwavu's force was only discussed for the first time on this occasion. In light of the consistent evidence on the record regarding the meetings and briefing which took place during Mr Ntaganda's prior travel to Aru, discussed below, the Chamber does not find credible Mr Ntaganda's statement that the tactic of approaching the enemy from two sides was devised only after his return to Bunia. *See also* **P-0963**: T-78, page 73; and **P-0907**: T-90, pages 4, and 22 to 23; and, for the deployment of these troops, *see* section IV.B.7.d)(1)(a) The advance of the troops towards Mongbwalu.

479. Following other UPC/FPLC leadership initiatives in Aru,<sup>1372</sup> and after the failed assault on Mongbwalu, Mr Ntaganda travelled by plane from Bunia to Aru<sup>1373</sup> with a view to organising Jérôme Kakwavu's troops and inventorising their needs in preparation for the First Operation.<sup>1374</sup>

480. In this context, weapons and ammunitions were sent from Bunia to Aru;<sup>1375</sup> some were loaded onto the plane in which Mr Ntaganda travelled.<sup>1376</sup> These weapons and ammunition were meant for, and effectively used by, Jérôme Kakwavu's troops during the First Operation.<sup>1377</sup>

481. In Aru, Mr Ntaganda and Jérôme Kakwavu planned the First Operation; Mr Ntaganda questioned Jérôme Kakwavu with regard to preparations for the upcoming assault on Mongbwalu; Jérôme Kakwavu described the situation of his

<sup>1372</sup> **P-0014**: DRC-OTP-2054-0612, at 0691 to 0695; and **P-0768**: T-33, pages 21 to 25. In this regard, the Chamber notes that the evidence supports the existence of meetings in Aru which precede the relevant travel by Mr Ntaganda (contrary to what is suggested in Defence Closing Brief, para. 272). *See* section IV.A.2.d) Command structure and effectiveness of the military apparatus.

<sup>1373</sup> The Chamber observes that Mr Ntaganda's testimony on the individuals who were present with him on the plane to Aru (**D-0300**: T-216, pages 22 to 24; *see also* Defence Closing Brief, para. 271), is not consistent with other evidence in this respect (**P-0055**: T-70, page 36; and T-73, pages 92 to 93; and **P-0768**: T-36, page 28). Noting the consistency between the testimony of P-0768 and P-0055 in this respect, and the details provided, the Chamber considers it appropriate not to rely on Mr Ntaganda's evidence on this specific point. The Chamber further considers that Mr Ntaganda's testimony that he did not travel to Aru with Didier (**D-0300**: T-242, page 17), is not incompatible with the testimony of P-0055, which seems to indicate that Didier was on the various return trips the plane made between Bunia and Aru, without specifying that Didier was in the plane on the specific trip to Aru underlying this finding (**P-0055**: T-70, pages 46, and 49).

<sup>1374</sup> **P-0055**: T-70, page 43. *See also* **P-0014**: DRC-OTP-2054-0612, at 0708 and DRC-OTP-2054-0816, at 0823. The Chamber notes that Mr Ntaganda denied having conducted his trip to Aru with this objective in mind. He stated that he travelled to Aru before receiving command for the second assault on Mongbwalu, and having done so to welcome Jérôme Kakwavu and his troops and to speak to them about ideology (**D-0300**: T-216, pages 21, and 24 to 36, 45, and 48; and T-226, pages 74 to 75; *see* Defence Closing Brief, paras 171, 494 to 505 and 592). Noting, in particular the evidence detailed below regarding the meeting and briefing held during this travel, as well as Mr Ntaganda's involvement in the first attempt to capture Mongbwalu, the Chamber does not find his related accounts to be credible. Consequently, in the present section, the Chamber does not generally rely on Mr Ntaganda's contrasting evidence, notably regarding the discussions he had and the briefings he provided during his trip to Aru (*see e.g.* **D-0300**: T-216, pages 28 to 40; T-234, pages 56 to 61; and T-242, pages 6 to 14, and 30 to 34).

<sup>1375</sup> **P-0901**: T-28, pages 42, and 53 to 54; and T-31, pages 72 to 73; and **P-0768**: T-33, pages 29 to 30. *See also* **P-0055**: T-70, pages 49, and 51; and T-73, pages 92 to 93; and **D-0300**: T-216, page 20.

<sup>1376</sup> **P-0055**: T-70, pages 36, 40, and 43 to 44; and T-73, pages 80, and 85 to 90.

<sup>1377</sup> **P-0768**: T-33, pages 29 to 30; and T-34, pages 6 to 7, and 10 to 14, with DRC-OTP-2058-0669-R02, DRC-OTP-2058-0671-R02, DRC-OTP-2058-0673-R02; and **P-0055**: T-70, pages 43 to 44, together with page 45. *See also* **P-0901**: T-28, pages 42, and 53 to 54; and T-31, page 72.

troops and the equipment they lacked; and Mr Ntaganda provided assistance and told Jérôme Kakwavu what he could do.<sup>1378</sup>

482. During a visit to Jérôme Kakwavu's troops based in Kandoyi, Mr Ntaganda provided a briefing in preparation for the First Operation; he informed the troops about the planned two-sided strategy, and told them that they had to do everything to join up with the troops coming from Bunia via Mabanga.<sup>1379</sup> Mr Ntaganda's address to the troops boosted their morale; he told them that he had come with the support weapons to overcome the enemy, who was no longer strong, and that they would not lack anything at the frontline.<sup>1380</sup> In Kandoyi,

<sup>1378</sup> **P-0055**: T-70, pages 48 to 51. The Chamber notes that P-0010 describes a late-night encounter between Mr Ntaganda and Jérôme Kakwavu in Aru, in a way that is compatible with the account provided by P-0055 (**P-0010**: T-47, pages 19 to 20; and T-50, pages 7 to 8). The Chamber considers that P-0055's testimony in this regard is credible, noting that: (i) the evidence indicates that Mr Ntaganda would not have heard about the initial failed attempt to attack Mongbwalu only during his stay in Aru, but was rather involved in that initial failed attempt; (ii) given the scale of the assault in Mongbwalu from a military point of view and Mr Ntaganda's own description of his position as deputy chief of staff in charge of operations and organisation, he would not have been involved in, or at least known about, an attack in the area, both as concerns any failed attempt as well as any plans to launch a further attack to try to capture Mongbwalu (*see* para. 440); and (iii) as regards the level of preparation of the First Operation and Mr Ntaganda's involvement therein (addressed further below), it is unlikely that any further attempt to attack Mongbwalu – after the initial attempt failed – would not have involved efforts to mobilise troops and secure materiel, or that any such preparatory activities would have taken place without the involvement, or at least knowledge, of Mr Ntaganda. Concerning the related Defence challenges (Defence Reply Brief, paras 173 to 175), the Chamber notes that P-0055 sufficiently explained his basis of knowledge, and considers it appropriate to rely on this part of his testimony.

<sup>1379</sup> **P-0055**: T-70, pages 51 to 53, and 55. *See also* **P-0055**: T-74, pages 86 to 87. The Chamber notes that the witness's recollection of this briefing is detailed and consistent with the remainder of his testimony on the objective of Mr Ntaganda's travel to Aru. Concerning the Defence's challenge based, in part, on the suggestion that P-0055 did not know at the time about a previous failed assault on Mongbwalu (Defence Closing Brief, paras 275 and 494), the Chamber considers that P-0055's alleged lack of knowledge regarding this prior assault does not necessarily affect the reliability of his statement about the content of Mr Ntaganda's briefing to the troops based in Kandoyi. Further, the Chamber observes that while P-0055 was questioned on his knowledge about the failed assault on Mongbwalu, he did not provide any conclusive answers (**P-0055**: T-74, pages 86 to 87) and the Chamber accordingly draws no conclusion as to whether P-0055 would have known about an initial failed attempt to capture Mongbwalu at the time of Mr Ntaganda's trip to Aru and Kandoyi. The Chamber notes that P-0768 also stated that Mr Ntaganda provided instructions prior to the deployment for the First Operation (**P-0768**: T-33, page 28, stating that they were supposed to drive out the RCD troops and recapture Mongbwalu). While the Chamber is not in a position to determine precisely when or where this briefing took place, and having considered in this regard the whereabouts of both P-0768 and Mr Ntaganda, the Chamber considers this aspect of P-0768's evidence to corroborate P-0055 on Mr Ntaganda effectively preparing the troops for the First Operation during his travel to Aru. This finding is unaffected by the fact that P-0768 did not provide as many details as P-0055 with regard to the briefing (*see* Defence Closing Brief, para. 273).

<sup>1380</sup> **P-0055**: T-70, pages 51 to 52, and 55 to 57; and T-74, page 86. *See also* **D-0300**: T-216, page 38; T-234, page 57.

Mr Ntaganda also distributed weapons,<sup>1381</sup> and tested the support weapons which he had brought with him in front of the troops.<sup>1382</sup>

483. In Bunia, during the final preparations for the First Operation, Mr Ntaganda, as well as Salumu Mulenda, collected weapons and ammunition from the UPC/FPLC's warehouse.<sup>1383</sup> UPC/FPLC soldiers took heavy weapons from Mr Ntaganda's compound<sup>1384</sup> and further weapons from Floribert Kisembo's compound.<sup>1385</sup> This material was used by the troops who participated in the First Operation.<sup>1386</sup>

484. Finally, the night before leaving Bunia for the First Operation, Mr Ntaganda spoke to some of the UPC/FPLC troops, telling them that they were going to Mongbwalu to fight against the Lendu and ordering them to attack using the term '*kupiga na kuchaji*'.<sup>1387</sup>

<sup>1381</sup> **P-0055**: T-70, pages 44 to 45; T-74, page 86; and **P-0768**: T-34, pages 6 to 7.

<sup>1382</sup> **P-0768**: T-34, pages 6 to 7, and 10 to 14, with DRC-OTP-2058-0673-R02. The Chamber further notes that P-0055 stated that Mr Ntaganda had brought support weapons (**P-0055**: T-70, page 52; and T-74, page 86). *See also* **D-0300**: T-216, page 37.

<sup>1383</sup> **P-0901**: T-28, pages 53 to 54; T-32, page 20. The Chamber considers P-0901's account credible in this respect, bearing in mind the witness's basis of his knowledge, as explained by him. In relation to his testimony that Mr Ntaganda would have come to the warehouse on more than one occasion to pick up weapons, the Chamber considers his evidence to support the conclusion that such activity in preparation of military operations was not an unusual occurrence, rather than undermining his account (**P-0901**: T-28, page 32 with DRC-OTP-0014-0257; *contra* Defence Closing Brief, para. 410). In this context, the Chamber further notes that the Defence implies that Mr Ntaganda picked up ammunition from the depot before departing for Mongbwalu, relying on the same part of P-0901's evidence that it elsewhere challenges (*see* Defence Closing Brief, para. 519 and footnote 1511). In relation to whether or not Mr Ntaganda and Salumu collected weapon on the same occasion, the Chamber notes the witness's hesitation on this point (**P-0901**: T-32, page 20) and accordingly, as he provided the only evidence on this specific point, the Chamber considers that it cannot conclude that Mr Ntaganda and Salumu Mulenda were at the warehouse at the same time for this purpose.

<sup>1384</sup> **P-0017**: T-58, pages 32 to 35; T-60, pages 83 to 85; T-61, pages 8, and 14; DRC-REG-0001-0014. The Chamber considers P-0017's evidence in this regard to be reliable, noting that the witness provided clear and direct answers, detailing which weapons were taken (including a B-10, grenade launcher and 12.7) and from which specific locations.

<sup>1385</sup> **P-0017**: T-58, page 35; T-60, page 87; and T-61, page 11; and DRC-REG-0001-0013.

<sup>1386</sup> **P-0901**: T-28, page 53. *See also* **P-0017**: T-58, pages 35 to 36, and 62 to 64; and **P-0768**: T-33, pages 34 to 35. In addition, the Chamber notes that Mr Ntaganda himself testified that he left Bunia to go to Mongbwalu with a group of people which included two individuals in charge of handling a B-10 support weapon stored in his compound (**D-0300**: T-215, pages 84 to 85; T-216, page 85; T-223, page 38; and T-226, pages 76 to 77).

<sup>1387</sup> **P-0010**: T-47, pages 14 to 15. The Chamber considers this aspect of the witness's account of a speech she personally witnessed to be reliable and notes in particular that P-0010 provided the information on this specific briefing spontaneously, in the context of being questioned on a broader topic not exclusively related to the operation in Mongbwalu (*contra* Defence Closing Brief, para. 1278). For more information on the term '*kupiga na kuchaji*', *see above* para. 415.

485. On 19 November 2002, Mr Ntaganda gave the final order for the troops to advance towards Mongbwalu.<sup>1388</sup> On this occasion, Mr Ntaganda informed the operation commanders that he would soon join them and that he would be bringing with him the ammunition they requested.<sup>1389</sup>

#### d) Unfolding of the First Operation

##### (1) Assault on Mongbwalu

486. Several witnesses<sup>1390</sup> described that following Mr Ntaganda's order, the UPC/FPLC attacked Mongbwalu on or about 20 November 2002.<sup>1391</sup> In line with

<sup>1388</sup> Logbook DRC-OTP-2102-3854, at 4035. *See also* **D-0300**: T-216, page 48 and Defence Closing Brief, para. 506.

<sup>1389</sup> Logbook DRC-OTP-2102-3854, at 4035. *See also* DRC-OTP-2102-3828, at 3846.

<sup>1390</sup> See findings below. In relation to V-2, the Chamber notes the Defence challenges concerning the witness's credibility (Defence Closing Brief, paras 425 to 429), including its argument that the witness lied about living in Mongbwalu at the time of relevant events, which impairs her credibility in respect of all evidence that she provided (Defence Closing Brief, paras 425 and 426, and Defence Reply Brief, paras 141 to 145). In this respect, the Chamber recalls its in-court instruction to the parties and participants to adapt their questioning in accordance with the needs and capacities of the witness, which was repeated to the Defence during cross-examination, when, in the view of the Chamber, the witness appeared not to understand the line of questioning put to her concerning the conditions prevailing in Mongbwalu during her time there (**V-2**: T-202, pages 3, and 70). The Chamber further notes that, while the witness appeared to show a certain reluctance in testifying about matters that she observed happening in Mongbwalu (*see e.g.* **V-2**: T-202, pages 70 to 72), it does not consider this to impair her credibility in respect of the evidence which she provided without displaying such reluctance, specifically concerning events that she personally saw or experienced. The Chamber further emphasises that its intervention reminding the witness of her obligation to tell the truth was given specifically in reaction to the witness's apparent reluctance to testify to the situation prevailing in Mongbwalu during her time there (*see V-2*: T-202, pages 73 to 75, *contra* Defence Closing Brief, para. 427). As to the witness's apparent lack of knowledge of the existence or not of the airport in Mongbwalu and her inability to indicate the distance between Sayo and where she lived (*see* Defence Closing Brief, para. 426 and Defence Reply Brief, para. 142), the Chamber does not consider these factors to demonstrate that she would not have resided in Mongbwalu at the relevant time (*see V-2*: T-202, pages 71 to 72). Under these circumstances, the Chamber is satisfied that the witness's testimony relating to what she personally saw or experienced in Mongbwalu is credible and can be relied upon. In relation to the Defence's assertion that the witness 'clearly' testified in order to obtain financial assistance (*see* Defence Closing Brief, para. 429), Chamber considers this to be unsubstantiated in the absence of any indication that the witness's testimony was untruthful and considering the context of her testimony regarding rebuilding her house and resuming her trade (*see V-2*: T-202, page 41). The Chamber does not consider necessary to further address the Defence challenges to other specific aspects of V-2's (Defence Closing Brief, para. 428), noting that it does not rely on these specific aspects of V-2's testimony in order to make any findings.

<sup>1391</sup> This fact is not contested *per se* by the Defence, which 'acknowledges that during this period [between on or about 20 November and 6 December 2002], the UPC-RP called upon the FPLC to conduct a military operation in Mongbwalu' (Defence Closing Brief, para. 231). As to the date of the attack, the Chamber notes that the majority of witnesses placed the attack towards the end of 2002, between September and December 2002, *see P-0017*: T-58, page 50; T-61, page 33; **P-0039**: DRC-OTP-0104-0015-R03, at 0019, para. 21; **P-0103**: DRC-OTP-0104-0170-R02, at 0173, para. 16; **P-0768**: T-35, pages 6 to 7; **P-0800**: T-68, page 15; **P-0805**: T-25, page 31; **P-0850**: T-112, page 73; DRC-OTP-2067-1825-R02, at 1826, para. 9, at 1827, para. 13, and at 1829, para. 31; **P-0868**: T-178, pages 7 to 9; **P-0887**: T-93, page 9; **P-0898**: T-154, pages 9 to 10; **P-0907**: T-89,



the devised strategy, the attack on Mongbwalu was carried out from two sides.<sup>1392</sup> The attack lasted approximately three to four days.<sup>1393</sup> Mongbwalu was attacked by soldiers with AK-47s, who were supported by heavy weapons, which were situated behind them.<sup>1394</sup> Besides the AK-47s, the weapons used in the attack on Mongbwalu included SMGs, 48s, a grenade launcher, a B-10 recoilless which shot 82-milimetre shells, a 12.7 machine gun, and a 60-milimetre mortar.<sup>1395</sup>

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pages 75 to 76. In relation to the Defence's general challenge to P-0907's participation in the First Operation, the Chamber refers to its general assessment of his credibility; **V-2**: T-202, pages 13 to 15, and 76 to 78. Considering the time elapsed since the relevant events took place, as well the likely impact of the events on the witnesses' ability to remember specific dates, the Chamber relies on Mr Ntaganda's testimony in relation to the date when the attack commenced, who testified by referring to, *inter alia*, entries in the contemporaneous logbook, *see* **D-0300**: T-216, pages 82 to 83 (testifying that on 20 November 2002 at about 8:35 a.m. Seyi was engaged in battle in Pluto; he could have only done that once Salumu Mulenda had already launched an attack on the airstrip, which implies that on 20 November 2002 the attack had already begun), pages 83 to 84, referring to DRC-D18-0001-5778, at 5784; an T-235, pages 9 to 10, referring to DRC-D18-0001-5778, at 5782. *See also* **D-0300**: T-241, pages 49, 51 to 53, also referring to DRC-OTP-0134-0062, at 0068.

<sup>1392</sup> **P-0010**: T-50, page 16. *See also* **P-0894**: DRC-OTP-2076-0194-R02, at 0200, para. 32.

<sup>1393</sup> **P-0800**: T-68, pages 21 to 22, 26, and 31; T-69, pages 31 to 33, 43, 45, and 56 to 57; **P-0886**: T-36, page 70; T-38, page 79; **P-0892**: T-85, page 20; T-83, pages 28 to 31; **P-0963**: T-78, page 75. The Chamber notes that there are some discrepancies in the various witnesses' accounts with respect to the exact number of days that the attack lasted, as well as in relation to the exact day of the week when particular areas in and around Mongbwalu were attacked. Considering the time elapsed since the relevant events took place, the likely impact of the events on the witnesses' ability to remember specific dates, as well as the fact that some witnesses did not participate in the attack, but were present in and around Mongbwalu and fled as the attack progressed, the Chamber considers that these inconsistencies do not affect its overall finding on the approximate length of the attack.

<sup>1394</sup> **P-0017**: T-61, pages 52 to 53; and **P-0963**: T-78, pages 77 to 78; T-82, pages 21, and 28. In relation to the Defence challenge to P-0963's evidence on the basis that, according to P-0017 and contrary to P-0963, Salumu Mulenda's brigade had only one 12.7 which was not mounted on a four-by-four vehicle (Defence Closing Brief, paras 348 and 352; and Defence Reply Brief, paras 98 and 100), the Chamber notes that P-0017 testified to the UPC having more than one 12.7, including during the Mongbwalu attack (**P-0017**: T-62, page 12), and did not state that there was only one 12.7 available, but listed 12.7 among the weapon types they had and gave the name of the responsible gunner-in-chief and his deputy (**P-0017**: T-58, pages 59 to 60). As for the Defence's challenge based on the alleged implausibility of the witness's claim that the 12.7 was mounted on a vehicle, the Chamber notes that the evidence cited by the Defence to claim that there was no vehicle available does not refer to vehicles but to weapons (**P-0017**: T-58, pages 59 to 60; and **D-0017**: T-253, page 40), and in any event for D-0017 recalls its conclusion concerning his credibility. However, the Chamber also notes Mr Ntaganda's testimony that there were no vehicles in Mongbwalu when the UPC attacked Sayo (**D-0300**: T-223, page 43), as well as contrasting evidence as to whether the road to Mongbwalu was motorable at the relevant time (*see* **P-0901**: T-31, page 63 *versus* **P-0017**: T-61, page 45). In these circumstances, the Chamber does not rely on P-0963's testimony that the 12.7 was mounted on a vehicle, but does not consider this issue to affect the overall credibility of his account.

<sup>1395</sup> **P-0010**: T-47, pages 11 to 12; **P-0017**: T-58, pages 59 to 62; T-61, page 24; **P-0768**: T-33, page 35; T-34, pages 10 to 14, also referring to DRC-OTP-2058-0669 and DRC-OTP-2058-0673-R02; **P-0887**: T-93, pages 50 to 51; **P-0963**: T-78, page 69; T-81, page 82; and **D-0300**: T-217, pages 39, and 48 to 51; and T-223, page 43. *See also* **P-0022**: DRC-OTP-0104-0026, at 0030, para. 22; **P-0039**: DRC-OTP-0104-0015-R03, at 0019, para. 22; **P-0055**: T-70, page 96; and **P-0103**: DRC-OTP-0104-0170-R02, from 0173 to 0174, para. 19.

(a) The advance of the troops towards Mongbwalu

487. One brigade led by Emmanuel Ndungutse,<sup>1396</sup> which included Seyi's battalion<sup>1397</sup> went to Mongbwalu from Kandoyi through Makofi, Mbidjo, and Pluto.<sup>1398</sup> Another brigade, led by Salumu Mulenda,<sup>1399</sup> went from Bunia through Mabanga, Lalu, Dala, and on to the airstrip in Mongbwalu.<sup>1400</sup>

488. While *en route* to Mongbwalu, the brigade led by Salumu Mulenda stopped in or near Mabanga, where Salumu Mulenda addressed the soldiers at a gathering.<sup>1401</sup> The Chamber understands the evidence of P-0017 and P-0963 to

<sup>1396</sup> **P-0768**: T-33, page 32; and **P-0907**: T-90, page 11. *See also* **P-0041**: DRC-OTP-0147-0002, from 0015 to 0016, para. 80. The Chamber notes Mr Ntaganda's evidence that it was Seyi who commanded this unit (**D-0300**: T-216, page 64), and that he maintained that Emmanuel Ndungutse ('Manu') was initially supposed to lead Jérôme Kakwavu's troops from Aru, but did not in fact advance with the troops from Aru and reached Mongbwalu only after the operation in Sayo, for which Mr Ntaganda even punished him (**D-0300**: T-235, pages 18 to 51; and T-241, pages 40 to 46, 56 to 60, and 66 to 67). However, the Chamber considers P-0768's testimony (**P-0768**: T-33, pages 31 to 32) to be reliable on this point, noting that he provided a direct and consistent account of the events, which is corroborated by other evidence on the record suggesting that even if Emmanuel Ndungutse ('Manu') may not have been the leader of the troops advancing from direction of Aru, he was present with them (*see e.g.* **P-0901**: T-28, pages 40 to 42; and T-32, pages 10 to 11. *See also* **P-0055**: T-70, pages 93 to 94; and **P-0907**: T-90, pages 7, and 23; and T-92, pages 48 to 49).

<sup>1397</sup> **P-0768**: T-33, page 32.

<sup>1398</sup> **P-0300**: T-166, pages 29 to 30; **P-0768**: T-33, pages 30 to 31; T-34, pages 3 to 5; T-35, pages 29 to 32; and T-36, page 8, referring to DRC-REG-0001-0004. *See also* **P-0103**: DRC-OTP-0104-0170-R02, at 0173, para. 17; **P-0907**: T-90, pages 19, 23, 28 to 29, and 31 to 33.

<sup>1399</sup> **P-0768**: T-33, page 32; and **P-0907**: T-90, page 11. *See also* **P-0963**: T-78, pages 68, and 74; T-81, pages 79 to 82; and T-82, pages 21 to 22; and **D-0300**: T-216, pages 54 to 55.

<sup>1400</sup> **P-0017**: T-58, pages 50 to 51, 53 to 54, and 59; T-61, pages 32 to 38, and 41 to 46, referring to DRC-OTP-2080-0239; **P-0768**: T-33, page 34; **P-0898**: T-154, pages 10, and 12; **P-0907**: T-90, pages 19, and 28; and **P-0963**: T-82, pages 4 to 6, and 20. *See also* **P-0055**: T-70, pages 95 to 96. Regarding the Defence challenge P-0963's participation in the First Operation, *inter alia*, on the basis that Salumu Mulenda's brigade and the heavy weapons section reached Mongbwalu by foot, whereas P-0963 testified that he travelled from Bunia to Mongbwalu in a four-by-four vehicle (Defence Closing Brief, paras 346 and 348 and Defence Reply Brief, para. 98), the Chamber notes that (i) while P-0963 initially testified that he travelled from Bunia to Mongbwalu in a vehicle (**P-0963**: T-78, page 69), he later clarified that the group advanced on foot with vehicles travelling behind them (**P-0963**: T-82, page 5); (ii) this clarification is consistent with the testimony of P-0017 stating that they initially travelled by car and subsequently travelled by foot from Mabanga to Lalu and Mongbwalu (**P-0017**: T-61, page 43); and (iii) the Chamber received contradictory evidence on the availability of vehicles (*see* **D-0300**: T-223, page 43) and inconsistent testimony on whether it was possible for vehicle to navigate the road to Mongbwalu (*see* **P-0017**: T-61, pages 44 to 45, in contrast to **P-0901**: T-31, page 63). In light of this and absent any other evidence on the matter, the Chamber is unable to make a finding on the use of vehicles in this context, and does not consider this issue to affect the overall credibility of P-0963.

<sup>1401</sup> The Chamber notes that P-0963 testified that a gathering took place in Mabanga while *en route* to Mongbwalu, during which both Mr Ntaganda and Salumu Mulenda were present and addressed the soldiers (**P-0963**: T-78, pages 68 to 73; T-81, pages 79 to 91). P-0017 on the other hand testified that a pre-Mongbwalu gathering took place in Lalu (**P-0017**: T-58, pages 50 to 51, 53 to 59, and 62; and T-61, pages 20 to 27, and 29 to 30). P-0017 also mentioned Mabanga, but testified that he stopped there for just one night, before arriving in Lalu (**P-0017**: T-58, page 51; T-61, pages 21 to 23) where Salumu Mulenda and another commander – not Mr Ntaganda – addressed the soldiers who were supposed to participate in the assault on Mongbwalu (**P-0017**: T-58, pages 50 to 51, 57, and 62). Lastly, P-0963 also mentioned a person with the same name as P-0017 as

refer to the same gathering of soldiers having taken place while on the way to Mongbwalu, in or around Mabanga, during which the soldiers received instructions in relation to the assault which was to take place.<sup>1402</sup> Salumu Mulenda explained to the soldiers the importance of taking over Mongbwalu.<sup>1403</sup> The soldiers were instructed to regain Mongbwalu<sup>1404</sup> and drive out all the Lendu; Salumu Mulenda used the expression '*kupiga na kuchaji*'.<sup>1405</sup> P-0963 explained that their mission in Mongbwalu was to shoot 'at everybody', 'at anything that moved'.<sup>1406</sup> From there onwards, Salumu Mulenda's soldiers were accompanied

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having been present in the group that travelled to Mabanga (**P-0963**: T-78, page 68; *see also* **P-0963**: T-78, pages 87 to 88. With regard to Mr Ntaganda's alleged presence at the gathering, the Chamber takes into account paras 347, 593, and 624 of the Defence Closing Brief, as well as the fact that P-0963's evidence in this respect is not corroborated by P-0017, and accordingly makes no finding on this matter. Noting the time passed since the events and the overall similarities between the witnesses in relation to the gathering as discussed above, the Chamber does not consider this inconsistency to affect the overall credibility or reliability of P-0963.

<sup>1402</sup> The Chamber notes a large number of similarities in the descriptions of the Lalu gathering by P-0017 and the Mabanga gathering by P-0963. In this regard, the Chamber takes note of paras 348 and 593 of the Defence Closing Brief as well as para. 98 of the Defence Reply Brief. Both witnesses described a gathering taking place for the soldiers (**P-0017**: T-61, pages 26 to 27; **P-0963**: T-81, pages 83 to 84); being briefed for the purpose of the Mongbwalu operation (**P-0017**: T-58, page 58, testifying to being told that purpose of the operation was to take back Mongbwalu, which had been taken over by the APC and the Lendu; and **P-0963**: T-78, pages 70 to 71, and 73, testifying to being told that one of the objectives of the fighting was to regain Mongbwalu, which was a strategic location, which Salumu Mulenda explained was because Mongbwalu was a mining region and the idea was to cut off the supplies to the Lendu and their headquarters, and to drive out the Lendu); being briefed on the two axis nature of the planned assault (**P-0017**: T-58, pages 57 to 58; **P-0963**: T-81, pages 86 to 87); the use of the expression '*kupiga na kuchaji*', which the witnesses understood as meaning to attack and pillage (**P-0017**: T-58, pages 54 to 55; and T-61, pages 29 to 30; and **P-0963**: T-78, pages 70, and 72 to 75); singing being conducted at the gathering (**P-0017**: T-61, page 27; and **P-0963**: T-81, page 84), and Hema 'civilians' accompanying them from that location to Mongbwalu, helping to transport ammunition (**P-0017**: T-59, pages 9, and 10; and **P-0963**: T-78, page 86). While P-0017 testified that it was at this gathering that they found out that the initial UPC/FPLC attack on Mongbwalu had been a failure (**P-0017**: T-61, pages 22 to 23), P-0963 testified that he found this out in Bunia (**P-0963**: T-81, page 85), however the Chamber notes that P-0963's evidence does not imply that information concerning the first failed attempt to capture Mongbwalu was not conveyed during the gathering, but rather that P-0963 had a different opportunity to receive this information.

<sup>1403</sup> P-0963 testified that Salumu Mulenda: 'explained to us the objective of gaining Mongbwalu was very important because we were supposed to normally regain that area, which was a mining region. So I'm saying cut off the supplies to the Lendu and cut off their headquarters. That's what Commander Salumu explained to us. The objective was also to establish headquarters in Mongbwalu, and that occurred later.' **P-0963**: T-78, page 71. P-0017 stated that Salumu Mulenda: 'said that we would move to Mongbwalu and capture Mongbwalu and that the troops will receive money, they would sleep on mattresses, that they would have food, that they would have women and that they would forget all the suffering that they had endured'. **P-0017**: T-58, page 54. In the view of the Chamber, these two statements about the information given to UPC/FPLC soldiers in Mabanga before the commencement of the First Operation, notably the objectives of the operation, are in essence compatible.

<sup>1404</sup> **P-0963**: T-78, page 73.

<sup>1405</sup> **P-0017**: T-58, page 54; and **P-0963**: T-78, pages 75. For more information on the term '*kupiga na kuchaji*', *see above* para. 415.

<sup>1406</sup> **P-0963**: T-78, page 81.

by Hema persons, referred to by witnesses as ‘civilians’, who helped them transport weapons, ammunition, and food supplies.<sup>1407</sup>

489. Mr Ntaganda travelled from Bunia towards Mongbwalu via Iga Barrière, Mabanga, Nizi, Lalu, Dala and then to the Mongbwalu airstrip,<sup>1408</sup> together with Salongo Ndekezi<sup>1409</sup> a small support unit, and some of his escorts, as well as a number of Hema persons, referred to by witnesses as ‘civilians’, who helped transport heavy weapons and ammunition.<sup>1410</sup> Mr Ntaganda arrived once the assault on Mongbwalu had already commenced and before the UPC/FPLC assault on Sayo began,<sup>1411</sup> and he remained in the area until at least one week after the UPC/FPLC had taken over Mongbwalu.<sup>1412</sup>

490. In Mabanga, while *en route* to Mongbwalu, Mr Ntaganda talked to the population about the upcoming assault on Mongbwalu.<sup>1413</sup>

<sup>1407</sup> **P-0017**: T-59, page 9; and T-61, page 59; and **P-0963**: T-78, page 86. *See also* **P-0002**: T-170, pages 62 to 65; and T-172, page 5.

<sup>1408</sup> **P-0010**: T-47, pages 9 to 10; **P-0768**: T-33, page 34; and **D-0300**: T-217, pages 21 to 25, and 29 to 32, also referring to DRC-OTP-2080-0239, DRC-REG-0001-0066, DRC-REG-0001-0067, and DRC-D18-0001-5778. *See also* **P-0002**: T-170, page 62.

<sup>1409</sup> **P-0017**: T-58, page 65; and **D-0300**: T-216, pages 85 to 86. *See also* **P-0002**: T-170, pages 61 to 62.

<sup>1410</sup> **P-0010**: T-47, pages 9 to 11, and 13; T-50, page 15; **P-0768**: T-33, pages 34 to 35; **D-0300**: T-216, page 85; T-217, pages 24 to 25, also referring to DRC-REG-0001-0067, and pages 32 to 34. *See also* **P-0002**: T-170, pages 61 to 62.

<sup>1411</sup> The Chamber notes that it received some evidence on the timing of Mr Ntaganda’s arrival to Mongbwalu from a number of witnesses, including Mr Ntaganda himself (*see e.g.* **P-0768**: T-33, pages 33 to 34; **P-0907**: T-90, pages 37 to 38; and **D-0300**: T-216, pages 79, and 85; T-217, pages 29 to 33; and T-237, page 11). While the Chamber cannot establish the exact day of Mr Ntaganda’s arrival in the town, it is satisfied that Mr Ntaganda arrived in Mongbwalu once the attack on the town had already commenced and before the UPC/FPLC assault on Sayo began.

<sup>1412</sup> The Chamber notes that it also received evidence on Mr Ntaganda’s stay in Mongbwalu and his departure from a number of witnesses, including Mr Ntaganda himself (**P-0002**: DRC-OTP-2060-0002, at 0012; **P-0768**: T-34, page 7; **P-0901**: T-28, page 57; **P-0963**: T-79, page 26; T-82, page 40; **D-0300**: T-217, page 92; and T-218, pages 4 to 5). In this regard, the Chamber has not retained as credible Mr Ntaganda’s statement that he left by plane on 28 November 2002, noting that it is contradicted by the evidence of P-0002, who states that he returned to Bunia by plane with, *inter alia*, Mike Arereng, but also specifying that Floribert Kisembo, and not Mr Ntaganda, travelled with them to Bunia. While the exact day of Mr Ntaganda’s departure cannot be established, the Chamber, in light of the informed evidence of the abovementioned witnesses who were in Mongbwalu at the time, and having had further regard to the other findings related to Mr Ntaganda’s whereabouts and conduct during the First Operation (*see paras* 510 (killings in Nzebi) and 535 (women being brought to *Appartements*)), is satisfied that he remained in the town for at a minimum one week after the UPC/FPLC took over Mongbwalu.

<sup>1413</sup> **D-0300**: T-217, pages 29 to 30, referring to DRC-D18-0001-5778, at 5788, and page 31.

(b) The assault

491. Mr Ntaganda was the overall commander of the assault on Mongbwalu: he gave orders to the UPC/FPLC members who reported directly to him.<sup>1414</sup> As the attack unfolded, he and the UPC/FPLC commanders communicated with each other using the *radiophonie* and Motorolas.<sup>1415</sup> As the troops entered Mongbwalu, Salumu Mulenda and Mr Ntaganda gave orders, either in person or over the radio, to fire the heavy weapons, and decided which objects were to be shot at.<sup>1416</sup>
492. Emmanuel Ndungutse's brigade attacked Pluto,<sup>1417</sup> and Salumu Mulenda's brigade captured the airstrip.<sup>1418</sup> Once the airstrip was captured, support weapons

<sup>1414</sup> **P-0768**: T-33, page 29; **P-0898**: T-154, page 22 (testifying that Mr Ntaganda was commanding the Mongbwalu attack); and **P-0963**: T-78, pages 76 to 78 (testifying that the attack was commanded by, among others, Mr Ntaganda and Salumu Mulenda; Mr Ntaganda gave orders during this attack). *See also* **P-0055**: T-71, page 18. Mr Ntaganda testified that Mongbwalu was taken over by Salumu Mulenda and that he was only involved in the takeover of Sayo (**D-0300**: T-225, page 48; *see also* T-235, page 58). However, at a different point of his testimony, when asked if it was up to him to coordinate the advance of Salumu Mulenda and Seyi, Mr Ntaganda responded, '[w]hen I received the authorisation to command I started my work to liberate Mongbwalu' (**D-0300**: T-234, page 73). Furthermore, when confronted with a contemporaneous video in which he was depicted describing how the fighting had taken place (DRC-OTP-2058-0251, from 00:07:08 to 00:08:26, transcript DRC-OTP-2102-3708, at 3713, and translation DRC-OTP-2102-3766, at 3772), Mr Ntaganda testified that he had been in a position to do so even though he had not participated in the attack on Mongbwalu, because as a commander, he had been informed about the unfolding of the attack by his subordinates (**D-0300**: T-235, pages 60 to 65). Mr Ntaganda was further confronted with the fact that on the same video (DRC-OTP-2058-0251, from 00:19:09 to 00:19:36, transcript DRC-OTP-2102-3708, at 3718, translation DRC-OTP-2102-3766, at 3777), he was referred to as the commander of operations, who had just 'liberated' Mongbwalu (**D-0300**: T-235, pages 65 to 66). In this respect, he testified that the cameraman who made this comment would have not been informed about the details of the attack, including who had been in charge thereof (**D-0300**: T-235, pages 66 to 67). Considering that Mr Ntaganda's evidence is contradicted by the evidence of several witnesses, including insider witnesses who, by virtue of their position at the relevant time, can be considered to have detailed knowledge concerning the unfolding of the attack, the Chamber considers his testimony on this point, as well as the aforementioned explanation in relation to the video, to not be plausible. The Chamber therefore does not consider Mr Ntaganda to be credible on this point and has relied on the evidence of other witnesses in this respect.

<sup>1415</sup> **P-0768**: T-33, pages 32 to 33, and 37; and T-35, page 43; **P-0907**: T-90, pages 36 to 37. *See also* **P-0010**: T-47, page 12; and **P-0768**: T-34, pages 35 to 36, referring to DRC-OTP-2058-0251, from 00:03:01 to 00:03:14, and page 42, referring to DRC-OTP-2058-0251, from 00:27:07 to 00:27:16. In this regard, *see also* **D-0300**: T-235, pages 58 to 59, referring to DRC-OTP-2058-0251, from 00:08:48 to 00:09:07.

<sup>1416</sup> **P-0017**: T-58, page 62; and **P-0963**: T-78, pages 77, and 82 to 83.

<sup>1417</sup> **P-0907**: T-90, pages 32 to 33 (testifying that 'Jérôme's people' attacked from the direction of Pluto, which the Chamber understands to refer to Manu's brigade). *See also* **P-0800**: T-69, pages 32 to 33, and 43; **P-0850**: DRC-OTP-2067-1825-R02, at 1829, para. 31; **P-0877**: DRC-OTP-2069-2086-R03, at 2089, para. 20. In relation to alleged killings committed in Pluto, the Chamber considers the evidence referred to by the Prosecution to be either not on point (*see* Prosecution Closing Brief, paras 333 to 335, and references contained therein) or not sufficiently reliable in order to support such a finding in the absence of corroboration. Under these circumstances and considering that there is no other information before the Chamber on this point, the Chamber makes no findings in this regard.

<sup>1418</sup> **P-0017**: T-61, page 48; **P-0768**: T-33, page 33; and T-35, page 44; **P-0886**: T-36, page 71; and T-37, pages 3, and 5; **P-0963**: T-78, page 75; and T-82, pages 21 to 22. *See also* **P-0877**: DRC-OTP-2069-2086-R03,

were installed at the end of the airstrip with a good view on the town of Mongbwalu.<sup>1419</sup> The UPC/FPLC then took over the centre of Mongbwalu,<sup>1420</sup> the Kilo-Moto offices,<sup>1421</sup> and Camp Goli.<sup>1422</sup> The two brigades involved then met in the centre of Mongbwalu.<sup>1423</sup>

493. Once the Kilo-Moto offices and the Mongbwalu airstrip had been taken over by the UPC/FPLC,<sup>1424</sup> Mr Ntaganda met the commanders involved in the assault, including Salumu Mulenda, Emmanuel Ndungutse, and Thomas Kasangaki, at Camp Goli.<sup>1425</sup> He was given a report of the situation<sup>1426</sup> and discussed the division of tasks for the next day.<sup>1427</sup> Mr Ntaganda gave orders to take over the whole of Mongbwalu.<sup>1428</sup> Mr Ntaganda also ordered to attack 'the Lendu' who were in Mongbwalu, without making a difference between 'Lendu civilians' and the militia.<sup>1429</sup> Salumu Mulenda and Emmanuel Ndungutse were respectively instructed by Mr Ntaganda to take over Mongbwalu factory and a hill from

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at 2088, paras 11 to 12, and at 2089, para. 20; and **P-0894**: DRC-OTP-2076-0194-R02, at 0200, para. 32. The Chamber notes that it has not received any evidence concerning killings at the Mongbwalu airfield and therefore is unable to make a finding in this regard.

<sup>1419</sup> **P-0017**: T-61, pages 48 to 49, 51 to 52, and 92 to 94, also referring to DRC-D18-0001-0498, at 0498, and 0499.

<sup>1420</sup> **P-0017**: T-61, pages 55 to 56. *See also* **P-0768**: T-33, page 33; and T-35, page 44; and **P-0963**: T-78, page 75. The Chamber notes that it has not received any evidence concerning killings in the Gangala area of Mongbwalu and therefore is unable to make a finding in this regard.

<sup>1421</sup> **P-0768**: T-35, page 44.

<sup>1422</sup> **P-0017**: T-61, page 55. P-0017 referred to 'the camp in which the APC had been based' and also testified that the camp was located on the road which comes from the Mongbwalu airstrip and before going to the centre of Mongbwalu (**P-0017**: T-58, page 65). Although P-0017 did not provide the camp's name, his description is consistent the 'Camp Goli' described by Mr Ntaganda (**D-0300**: T-217, page 44 together with DRC-REG-0001-0068, and *see also* **P-0017**: T-61, page 55), and the Chamber is therefore satisfied that the camp referred to by P-0017 is Camp Goli.

<sup>1423</sup> **P-0963**: T-78, pages 75 to 76. *See also* **P-0017**: T-59, pages 13 to 14; and T-61, page 55; and **P-0907**: T-90, pages 28 to 29, and 31.

<sup>1424</sup> **P-0768**: T-33, pages 33 to 35.

<sup>1425</sup> **P-0017**: T-58, pages 63 to 64; **P-0768**: T-33, pages 34, 36, and 39 to 40, referring to DRC-OTP-2058-0664-R02; **P-0907**: T-90, pages 37 to 39; and **D-0300**: T-216, pages 79, and 81; and T-217, pages 36 to 37, and 44, also referring to DRC-REG-0001-0068. In light of the consistent evidence of these witnesses whom the Chamber has found to be credible, the Chamber considers the fact that Mr Ntaganda stated that one of these individuals was not present at this meeting (**D-0300**: T-217, pages 36 to 37) not to affect its finding.

<sup>1426</sup> **P-0768**: T-33, page 34; and **D-0300**: T-217, page 37.

<sup>1427</sup> **P-0768**: T-33, page 35.

<sup>1428</sup> **P-0768**: T-33, page 35.

<sup>1429</sup> **P-0768**: T-33, page 37.

where the UPC/FPLC was being threatened near Mongbwalu.<sup>1430</sup> The next day, Emmanuel Ndungutse attacked the hill overlooking the market in Mongbwalu, while Salumu Mulenda and Mr Ntaganda took over the factory and Sayo.<sup>1431</sup>

494. The UPC/FPLC faced resistance in the attack on the town of Mongbwalu from the APC, as well as Lendu fighters, both male and female, who took up arms, including arrows, knives, machetes, as well as firearms obtained from the APC, and fought.<sup>1432</sup> The UPC/FPLC soldiers fired at everyone in Mongbwalu, including the ‘civilian population’.<sup>1433</sup>

495. The UPC/FPLC killed some individuals during the assault, including children and the elderly.<sup>1434</sup> Some people were killed by shelling.<sup>1435</sup> A number of people

<sup>1430</sup> **P-0768**: T-33, pages 35 to 36. *See also* **P-0768**: T-35, page 45. The Chamber notes Mr Ntaganda’s evidence that, after being given a report of the situation, he did not tell his subordinates what was going to happen the next day (**D-0300**: T-217, page 38), and that it was only after he visited the injured in the morning of the next day that he asked the soldiers to make available a few troops in order to go to Sayo (**D-0300**: T-217, page 39). However, the Chamber considers P-0768’s testimony in this respect credible, noting that his account is specific and rich in detail. The Chamber also does not consider it plausible, in light of his position at the time of the attack, as well as his involvement in its planning, that Mr Ntaganda would have only received a report of the unfolding of the attack to that point, without providing further orders. Relatedly, the Chamber notes that the Defence concedes that after being briefed on the situation by Salumu Mulenda, Mr Ntaganda organised the next day’s operation in Sayo (*see* Defence Closing Brief, para. 601, referring to, *inter alia*, Mr Ntaganda’s testimony stating that he was the one who commanded the attack on Sayo, **D-0300**: T-235, page 58). Accordingly, the Chamber does not find Mr Ntaganda credible on this point.

<sup>1431</sup> **P-0017**: T-58, pages 66 to 67; and T-61, page 66; **P-0768**: T-33, pages 37 to 40, also referring to DRC-OTP-2058-0664-R02, and pages 49 to 50; and **P-0963**: T-78, pages 75, and 78 to 79. *See also* **P-0800**: T-68, pages 15 to 17; and T-69, pages 30, and 53; **P-0850**: DRC-OTP-2067-1825-R02, at 1827, para. 14; **P-0886**: T-36, page 70; and T-38, pages 79 to 80; **P-0894**: DRC-OTP-2076-0194-R02, at 0201, para. 37; and **P-0907**: T-92, page 51. While P-0907 testified that when Mr Ntaganda arrived in Mongbwalu, Sayo was already being controlled (**P-0907**: T-90, pages 37 to 39; and T-92, page 56), the Chamber notes the witness’s testimony on his location during the assault (**P-0907**: T-90, pages 27 to 28, and 33) and his statement that he only went to Mongbwalu for the *ratissage* operation (**P-0907**: T-90, page 33). Under these circumstances, the Chamber considers that P-0907 was not in a position to know when Mr Ntaganda arrived in Mongbwalu. The Chamber also notes Mr Ntaganda’s testimony that by the time he arrived in Mongbwalu, the entirety of the town, including the factory had been taken over (*see* **D-0300**: T-216, page 79; T-217, page 36; and T-237: page 11). However, the Chamber considers the testimony of Mr Ntaganda in this respect to not be credible considering the importance of the operation, his role in its planning, his position in the UPC/FPLC at the time, as well as the fact that a previous attack on the town had failed (as discussed above).

<sup>1432</sup> **P-0768**: T-35, pages 47 to 48; **P-0859**: T-51, pages 19 to 21; and T-52, page 18; **P-0894**: T-104, page 60; **P-0898**: T-154, page 12; and **P-0963**: T-78, page 76; and T-82, page 21. *See also* **P-0002**: T-170, page 66. Children and people from other provinces fled to Sayo, *see* **P-0894**: T-104, page 60. *See also* **P-0894**: DRC-OTP-2076-0194-R02, from 0200 to 0201, paras 33 and 36; **P-0894**: T-104, page 37.

<sup>1433</sup> **P-0963**: T-78, pages 81 and 84.

<sup>1434</sup> **P-0017**: T-58, pages 67 to 68; and T-59, page 3; **P-0768**: T-33, pages 58 to 59, referring to DRC-REG-0001-0004; **P-0894**: DRC-OTP-2076-0194-R02, from 0201 to 0202, para. 38; and **P-0963**: T-78, pages 84 to 85. *See also* **P-0055**: T-71, pages 19 to 20; and **P-0886**: T-40, pages 60 to 62. With regard to the Defence arguments in para. 627 of its closing brief that the evidence provided by both P-0963 and P-0768 in relation to the presence of dead bodies cannot be relied on as they were not present, the Chamber recalls its earlier

who had suffered gunshot wounds and some who had been wounded by fragments of shells sought medical help at the health centre in Sayo.<sup>1436</sup>

496. The impact of the fighting during the takeover of Mongbwalu could also be observed from the state of the people's homes in the town, some of which had been hit by shells fired by the UPC/FPLC and destroyed.<sup>1437</sup>

497. While some chose to stay,<sup>1438</sup> many persons who were present in the town as the assault unfolded fled Mongbwalu to the bush and to other places.<sup>1439</sup> Some fled to Sayo before Sayo was attacked.<sup>1440</sup> Some fled to Kilo.<sup>1441</sup> Some of those who

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findings that both P-0963 and P-0768 are credible as to their respective presence at the First Operation. The Chamber further notes Mr Ntaganda's testimony that when the UPC/FPLC entered Mongbwalu, the population had already fled (**D-0300**: T-217, page 37), and that he only saw one body in Sayo and one person who had been taken captive and was not an eyewitness to any other killings (**D-0300**: T-235, pages 80, and 83, also referring to DRC-OTP-0074-0797). When confronted with a contemporaneous video (DRC-OTP-2058-0251, from 00:12:04 to 00:12:40, translation DRC-OTP-2102-3766, at 3774), depicting Mr Ntaganda telling a journalist that the UPC/FPLC had captured a lot of people that many of them had been killed, Mr Ntaganda testified that what he had said was not true, but he had said it in order to intimidate the 'enemy' (**D-0300**: T-235, pages 84 to 87). Considering that Mr Ntaganda's evidence is contradicted by the evidence of a number of witnesses, including the aforementioned witnesses who saw dead bodies of people in the aftermath of the attack, the Chamber considers Mr Ntaganda's testimony on this point, as well as the aforementioned explanation in relation to his statement made on the video, not plausible.

<sup>1435</sup> **P-0886**: T-37, page 7.

<sup>1436</sup> **P-0800**: T-68, pages 22 to 24, and 26 to 28.

<sup>1437</sup> **P-0010**: T-50, page 61; and **V-2**: T-202, page 18. *See also* DRC-OTP-0074-0422, at 0452, para. 102. The Chamber notes the evidence of: (i) P-0887 that houses were not damaged in the attack (**P-0887**: T-93, page 28); (ii) Mr Ntaganda that, according to information he received from Salumu Mulenda, no houses were damaged in the attack on Mongbwalu and that he also did not see any such damage himself (**D-0300**: T-217, page 47); and (iii) P-0002 that on the way to Mongbwalu centre from the airport he did not see any houses that had been destroyed or burned (**P-0002**: T-172, page 12). In this respect, the Chamber notes that, while P-0887, D-0300, and P-0002 did not witness any destruction themselves, it is plausible that some houses were nevertheless destroyed – as testified by P-0010 and V-2 and corroborated by DRC-OTP-0074-0422 (*see also* Defence closing Brief, para. 555).

<sup>1438</sup> **P-0892**: T-83, pages 27 to 29.

<sup>1439</sup> **P-0017**: T-59, page 11; **P-0022**: DRC-OTP-0104-0026, at 0030, para. 22; **P-0039**: DRC-OTP-0104-0015-R03, at 0019, paras 21 to 22; **P-0103**: DRC-OTP-0104-0170-R02, at 0173, para. 18, and from 0174 to 0175, paras 22 to 24; **P-0768**: T-34, page 15; **P-0792**: T-150, pages 43, and 45 to 46; **P-0805**: T-25*bis*, pages 2 to 4; and T-26, pages 37, and 39; **P-0850**: T-112, pages 73 to 75; and DRC-OTP-2067-1825-R02, from 1829 to 1830, paras 32 and 35; **P-0859**: T-51, pages 16, and 22 to 24; and T-52, pages 17 to 20, and 33; **P-0863**: T-180, pages 11 to 12; **P-0868**: T-178, pages 7 to 9; **P-0887**: T-93, pages 14 to 16, and 18 to 19; and T-94, pages 67 to 68; and **P-0892**: T-83, pages 27 to 28.

<sup>1440</sup> **P-0800**: T-69, page 32; and **P-0894**: T-104, pages 57, and 59; and DRC-OTP-2076-0194-R02, from 0200 to 0201, para. 33, and at 0201, para. 36. *See also* **P-0894**: T-104, page 60. The Chamber notes that while P-0894 testified that *all* people in Mongbwalu fled to Sayo, the Chamber considers that he was not in a position to know whether some people did not also flee to places other than Sayo; and **P-0886**: T-38, page 77; and T-40, page 61 (testifying that when people in Mongbwalu heard the shooting, they went to Sayo).

<sup>1441</sup> **P-0022**: DRC-OTP-0104-0026, at 0030, paras 22 to 23. The Chamber has addressed the Defence's challenges to P-0022's evidence at footnote 1637 below. **P-0103**: DRC-OTP-0104-0170-R02, at 0174, para. 23; **P-0850**: T-112, pages 73 to 75; and DRC-OTP-2067-1825-R02, from 1829 to 1830, paras 32 to 35;



fled stayed in makeshift shelters<sup>1442</sup> or in abandoned houses;<sup>1443</sup> they had no money and insufficient food and water,<sup>1444</sup> and no access to medical care.<sup>1445</sup>

498. The Chamber's finding that many persons were present in the town as the assault unfolded is unaffected by Mr Ntaganda's testimony that when the UPC/FPLC got to Mongbwalu, the members of the population had already left,<sup>1446</sup> which the Chamber considers not to be credible,<sup>1447</sup> and the Defence argument that the civilian population fled Mongbwalu upon hearing the first gunshots, leaving before the fighting reached Mongbwalu and that therefore, there were no 'civilians' in Mongbwalu when the fighting reached the town.<sup>1448</sup>

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**P-0894:** DRC-OTP-2076-0194-R02, from 0200 to 0201, paras 33 to 34 and para. 36; and **P-0963:** T-79, page 17. *See also* **P-0850:** DRC-OTP-2067-1825-R02, at 1830, para. 36.

<sup>1442</sup> **P-0805:** T-26, pages 16 to 17, and 27 to 28; and **P-0886:** T-37, page 12; and T-39, page 24.

<sup>1443</sup> **P-0859:** T-51, page 24.

<sup>1444</sup> **P-0805:** T-26, pages 26 to 27; **P-0886:** T-37, page 12; and T-39, page 24; and **P-0859:** T-51, page 24.

<sup>1445</sup> **P-0805:** T-26, pages 28 to 29.

<sup>1446</sup> According to Mr Ntaganda, members of the population had been taken 'hostage' by the APC, who told them that the UPC/FPLC were going to harm them and the UPC/FPLC sent a message inviting them to come back (**D-0300:** T-235, pages 71 to 73, also referring to DRC-OTP-0091-0709; *see also* **D-0300:** T-217, page 37).

<sup>1447</sup> In this respect, when confronted with a contemporaneous video (DRC-OTP-2058-0251, from 00:10:17 to 00:10:45, translation DRC-OTP-2102-3766, at 3773) in which Mr Ntaganda states that some people 'had fled with the forces that [they] had defeated' (**D-0300:** T-235, page 73), the Chamber considers that Mr Ntaganda was not able to provide a satisfactory explanation concerning his statements in the video, in relation to which he testified that he was 'speaking in general terms' (**D-0300:** T-235, pages 73 to 74). Noting further that Mr Ntaganda's evidence is contradicted by the evidence of numerous witnesses, including eyewitnesses and witnesses who fled Mongbwalu themselves together with members of their families as a consequence of the attack (as addressed below), the Chamber does not consider Mr Ntaganda to be credible on this point.

<sup>1448</sup> Defence Closing Brief para. 598, referring in support to the evidence of P-0859, P-0887, P-0892, P-0800, P-0850, and P-0894. In this respect, the Chamber notes that P-0859 did not specify the exact moment when he and others fled during the second assault on Mongbwalu in relation to the moment when the UPC/FPLC entered Mongbwalu (**P-0859:** T-51, pages 16, and 22 to 24; and T-52, pages 17 to 20, and 33) and also did not provide any evidence in relation to how others reacted. The Chamber relies on P-0859's personal experience as that of a 'civilian', since it considers that the witness provided clear accounts of his conduct and whereabouts during the First Operation, indicating that he did not participate in the resistance (*see* Defence Closing Brief, para. 735). P-0887 indeed testified that as soon as they heard gunfire coming from the direction of the Mongbwalu airstrip, she and members of her family fled Mongbwalu (**P-0887:** T-93, pages 14 to 16, and 18 to 19; and T-94, pages 67 to 68). However, P-0892, who stayed in Mongbwalu during the attack together with her family, but saw the population fleeing, also did not specify the moment in time when this occurred in relation to the arrival of the UPC/FPLC in the town (**P-0892:** T-83, pages 27 to 28). P-0850 testified that everybody fled Mongbwalu when they heard gunshots (**P-0850:** T-112, pages 73 to 75; and DRC-OTP-2067-1825-R02, from 1829 to 1830, paras 32 and 35). P-0894 testified that 'whenever there was a gunshot everyone fled to Sayo'; once the attack started, he and his family fled to Sayo (**P-0894:** T-104, pages 57, and 59, also referring to DRC-OTP-2076-0194-R02, from 0200 to 0201, para. 33). Further, the Chamber notes P-0017's evidence that when the UPC/FPLC engaged in the fighting, he did not see any 'civilians' (**P-0017:** T-61, page 51). In this respect, the Chamber notes that, as P-0017 formed part of one of the brigades involved in the takeover of Mongbwalu, it was possible for 'civilians' to have still been present in the town without P-0017 having seen them. The Chamber has therefore relied on the evidence of eyewitnesses who fled Mongbwalu themselves in order to make a finding on the matter. Under these circumstances, the Chamber finds that while some people

499. Once Mongbwalu was taken over, Mr Ntaganda met with the commanders, including Emmanuel Ndungutse, Salumu Mulenda, and Thomas Kasangaki to carry out an evaluation of the operations.<sup>1449</sup> Mr Ntaganda congratulated everyone present for the assault that had been carried out, asked them whether they were ready to continue the attacks, and wanted to know in which direction the ‘enemy’ – the members of the RCD-K/ML and the Lendu – had gone.<sup>1450</sup>

## (2) Assault on Sayo

500. On or about 24 November 2002,<sup>1451</sup> the UPC/FPLC attacked Sayo, coming from the direction of the factory in Mongbwalu.<sup>1452</sup> Mr Ntaganda oversaw the assault.<sup>1453</sup> Mr Ntaganda was not present in Sayo during the assault; at the relevant time, he was at the *Appartements* camp<sup>1454</sup> and communicated from there.<sup>1455</sup> Salumu Mulenda and Thomas Kasangaki were present on the front and led the troops into combat, receiving orders from, and reporting back to, Mr Ntaganda.<sup>1456</sup>

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fled upon hearing the first sounds of fighting, before the fighting reached Mongbwalu, others fled once the UPC/FPLC entered the town.

<sup>1449</sup> **P-0768**: T-33, pages 40 to 41.

<sup>1450</sup> **P-0768**: T-33, page 41.

<sup>1451</sup> **P-0800**: T-69, page 32; **D-0300**: T-216, page 79; T-217, pages 41, and 63; T-227, page 59; T-237, page 11; and T-241, page 52. *See also* **D-0300**: T-241, pages 70 to 71, referring to DRC-D18-0001-5748, at 5796.

<sup>1452</sup> **P-0017**: T-58, page 66; and T-61, pages 66 to 67. In relation to the Defence’s general challenge to P-0017’s presence in Sayo, the Chamber notes that the Defence argument is mainly based on a contradiction with the testimony of Mr Ntaganda as to individuals present in Sayo that day (*see* Defence Closing Brief, para. 326 and the references contained therein). In this respect, the Chamber recalls that it finds P-0017 to be generally credible and reliable, and, in light of its assessment of his evidence on other aspects of the attack on Sayo, does not consider the fact that the witness may not have seen or remember seeing certain individuals to affect his credibility on the matter. **P-0800**: T-69, pages 56 to 57; **P-0886**: T-37, pages 9 to 10; T-39, pages 67 to 69, also referring to DRC-OTP-2077-0035; and T-40, pages 4 to 5; and **P-0963**: T-78, page 75. *See also* **P-0010**: T-50, page 19; **P-0894**: DRC-OTP-2076-0194-R02, at 0201, para. 37; and **P-0898**: T-154, pages 12, and 26.

<sup>1453</sup> **P-0963**: T-79, page 11; and **D-0300**: T-235, page 58. While P-0907 testified that when Mr Ntaganda arrived in Mongbwalu, Sayo was already being controlled by the UPC/FPLC (**P-0907**: T-90, pages 37 to 39; and T-92, page 56), the Chamber considers that, noting the witness’s position at the relevant time (**P-0907**: T-90, pages 27 to 28, and 33), P-0907’s testimony cannot be relied upon for a finding regarding when Mr Ntaganda arrived in Mongbwalu.

<sup>1454</sup> For further details on the *Appartements* camp, *see* below.

<sup>1455</sup> **P-0017**: T-58, page 69; and T-62, page 11; **P-0963**: T-79, pages 11 to 12; and **D-0300**: T-217, page 48.

<sup>1456</sup> **P-0017**: T-58, pages 65 to 68; T-61, pages 99 to 101; and T-62, pages 10 to 11; and **P-0963**: T-79, pages 11 to 12. In this regard, the Chamber notes para. 351 of the Defence Closing Brief and para. 100 of the Defence Reply Brief which the Chamber addressed in paras 246 to 247 above. **D-0300**: T-217, page 54 (testifying that Seyi, Thomas Kasangaki, Kazungu, and Théophile were among the forces that went to Sayo).

501. Like Mongbwalu, Sayo was attacked by the UPC/FPLC with infantry and heavy weapons which supported the infantry from behind.<sup>1457</sup> The UPC/FPLC fired heavy weapons on Sayo from the *Appartements* camp.<sup>1458</sup>

502. As the UPC/FPLC entered Sayo, it faced resistance from both the APC, and Lendu persons who did not form part of the APC, referred to as the 'Lendu militia'.<sup>1459</sup> After one of its soldiers was injured by gunfire, the UPC/FPLC started a house-to-house search.<sup>1460</sup> As the UPC/FPLC advanced, the 'enemy' retreated.<sup>1461</sup>

503. Some houses were hit by shells<sup>1462</sup> and some were destroyed by the heavy weapons fired.<sup>1463</sup> A house which was referred to as 'Godza' was also entirely burned down.<sup>1464</sup>

<sup>1457</sup> **P-0017**: T-61, pages 66 to 70, and 99; and **P-0963**: T-79, page 12; and T-82, page 39. Recalling its earlier finding in footnote 1394 above, and further noting that P-0963 explained his testimony on the persons using the 12 (**P-0963**: T-82, page 38), the Chamber considers that P-0963's evidence on this aspect is credible and can be relied upon (*see* Defence Closing Brief, paras 348, 351, and 352, and Defence Reply Brief, para. 100). *See also* **D-0300**: T-217, page 53, confirming that support weapons are always in the rear during an attack.

<sup>1458</sup> **P-0768**: T-33, page 50, referring to DRC-REG-0001-0004; **P-0963**: T-79, pages 12 to 13; and **D-0300**: T-217, pages 48 to 51; and T-223, page 38.

<sup>1459</sup> **P-0017**: T-58, page 68; and T-61, pages 102 to 103, also referring to DRC-D18-0001-0491, at 0494.

<sup>1460</sup> **P-0017**: T-58, page 68; and T-61, page 70.

<sup>1461</sup> **P-0017**: T-61, page 70; and **P-0894**: DRC-OTP-2076-0194-R02, at 0201, paras 34 to 37 (stating that after opposing some resistance, all APC soldiers and all Lendu, both 'combatants' and 'civilians', left towards Kilo, while members of non-Lendu tribes stayed in 'Camp Saio'). While the witness referred to all APC soldiers and all Lendu leaving Mongbwalu for Kilo, the Chamber considers that, given the chronology of events as described by the witness, this refers to people leaving the broader area of Mongbwalu, including Sayo, as Mongbwalu town was already controlled by the UPC/FPLC at this point. *See also* **D-0300**: T-217, page 46.

<sup>1462</sup> **P-0800**: T-68, page 27; T-69, pages 40 to 41, and 51 to 52. In relation to the Defence's challenge to P-0800's testimony in this respect (*see* Defence Closing Brief, para. 737), the Chamber notes that: (i) the witness plausibly explained the fact that he referred to shelling taking place in Sayo over a period of two days for the first time during his testimony with the time passed since the events (**P-0800**: T-69, pages 51 to 52); (ii) P-0800's testimony that he saw UPC/FPLC troops in Sayo when he was fleeing, and that it began to rain around that time (**P-0800**: T-69, pages 54, 58, and 60) is broadly consistent with the testimony of Mr Ntaganda in this respect (**D-0300**: T-217, pages 41, and 56), which, despite the lack of reliability of P-0800's testimony for the precise timing of the UPC/FPLC securing Sayo, suggests that P-0800 was indeed still in Sayo at the time the UPC/FPLC secured Sayo; (iii) the witness explained that he could hear the soldiers from the AGK camp which was downhill from Sayo in Mongbwalu (**P-0800**: T-69, pages 52 to 54), which does not appear inconsistent with his statement that he could not hear the soldiers, and is further of insufficient significance to affect his credibility on the matter; (iv) P-0800's evidence is corroborated by P-0017's evidence on the troops' advance towards the centre of Sayo (**P-0017**: T-58, page 68); and (v) Mr Ntaganda's testimony on the use of heavy weapons during the Sayo operation (**D-0300**: T-217, pages 49 to 51) does not appear credible as it differs from that of P-0017 (**P-0017**: T-58, pages 67, and 69), which is further corroborated by P-0963 (**P-0963**: T-79, page 12). In these circumstances, the Chamber relies on P-0800's testimony in this respect.

<sup>1463</sup> **P-0768**: T-33, page 51; and **P-0963**: T-79, pages 12 to 13.

<sup>1464</sup> **P-0898**: T-154, pages 26 to 27. While the Prosecution argues that the UPC/FPLC troops attacked the church known as 'Mungu Samaki' in the presence of Mr Ntaganda, the evidence referred to by the Prosecution does

504. While part of the population fled Sayo,<sup>1465</sup> the UPC/FPLC also killed individuals during the assault,<sup>1466</sup> including Lendu.<sup>1467</sup> The bodies of some of

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not support the assertion that the church attacked (*see* Prosecution Closing Brief, para. 412, referring to **P-0017**: T-58, pages 73 to 79; T-59, pages 7 to 9).

<sup>1465</sup> The Chamber has taken note of the Defence's arguments in paras 532 and 603 of its closing brief that as the operation unfolded, 'there were no civilians remaining in Sayo; only the enemy could be observed' and that the presence of the 'enemy' in Sayo prevented Seyi's forces from advancing, thereby allowing any 'civilians' remaining in Sayo to leave via Nzebi and that witnesses who testified to being present in Sayo at some point before it was liberated by the UPC/FPLC confirmed that by the time the UPC/FPLC troops entered Sayo, the population had left the town. In support of its argument, the Defence refers to the evidence of P-0800 and P-0886, and Mr Ntaganda. P-0880 testified that on the day of the attack, Sayo was 'nearly' empty (**P-0800**: T-68, page 31). P-0886 testified that after the airstrip was captured, people fled from the airstrip to Sayo and once the attack came as far, 'everyone fled from the city' (**P-0886**: T-36, pages 70 to 71). Mr Ntaganda testified that when he went to Sayo, there was no one inside the church and that '[n]o civilian inhabitants of the area were in the neighbourhood' (**D-0300**: T-217, page 56). The Chamber first notes that Mr Ntaganda went to Sayo once the fighting had already ceased, therefore, his aforementioned evidence is not relevant for establishing whether there were still any members of the population present as the UPC/FPLC entered Sayo. As to the evidence of P-0800 and P-0886, the Chamber considers that their evidence is not incompatible with the fact that some members of the population, including P-0800 himself, were still present when the attack started and subsequently fled. The Chamber thus considers that, while part of the population fled before the fighting reached Sayo and others fled once the UPC/FPLC entered the village, some people were still killed in the fighting, as indicated by the evidence of the witnesses referred to below.

<sup>1466</sup> **P-0017**: T-61, pages 70 to 71; **P-0768**: T-33, pages 44 to 46, and 50 to 51; **P-0886**: T-36, page 70; T-37, pages 16, 31 to 37, and 45 to 47; and T-40, pages 24 to 31; **P-0898**: T-154, page 26. *See also* **P-0815**: T-76, pages 22 to 27, and 56; DRC-OTP-2080-0393-R02; DRC-OTP-2080-0385-R01; and DRC-OTP-2080-0401-R01. In relation to the Defence argument that P-0768's evidence regarding the dead bodies in Sayo must be disregarded, because he did not go to Sayo the day after the attack (Defence Closing Brief, para. 659), the Chamber recalls its earlier finding in para. 169 above. Concerning the Defence challenges to P-0886's testimony (Defence Closing Brief, paras 664 to 665, and Defence Reply Brief, paras 184 to 188), the Chamber considers that P-0886 maintained his testimony on the burial of bodies in Sayo in cross-examination, and provided a detailed and coherent account on the matter. The Chamber further received exhumation evidence which it considers to be consistent with the testimony of P-0886 and P-0815, noting: (i) that five bodies were exhumed in 2014 from a single grave in Sayo (SAI1) (**P-0420**: DRC-OTP-2074-0148, at 0148, from 0154 to 0156, and 0158); (ii) the consistency between the age and gender of the five bodies exhumed with the testimony of both P-0815 and P-0886 (SAI1-F1-B1: **P-0420**: DRC-OTP-2074-0174, at 0177; **P-0815**: T-76, page 25; **P-0886**: T-37, page 30. SAI1-F1-B2: **P-0420**: DRC-OTP-2074-0180, at 0182; **P-0815**: T-76, page 18; **P-0886**: T-37, page 31. SAI1-F1-B3: **P-0420**: DRC-OTP-2074-0189, at 0191; **P-0815**: T-76, page 19; **P-0886**: T-37, page 31. SAI1-F1-B4: **P-0420**: DRC-OTP-2074-0195, at 0197; **P-0937**: DRC-OTP-2075-0510, at 0512; **P-0815**: T-76, pages 18 and 21; **P-0886**: T-37, page 31. SAI1-F1-B5: **P-0420**: DRC-OTP-2074-0202, at 0204; **P-0815**: T-76, pages 18 to 19; **P-0886**: T-37, page 31); (iii) the consistency between the injuries described by P-0886 and the experts' conclusions (**P-0886**: T-37, page 16, and pages 30 to 37, *compared with* Forensic Pathology and Genetics Expert P-0937, Dr Lars Uhlin-Hansen's conclusions that skeletal remains of three of the corpses had damage consistent with gunshot wounds (SAI1-F1-B1: **P-0937**: DRC-OTP-2075-0440, at 0443; and T-127, pages 29 to 30. SAI1-F1-B2: **P-0937**: DRC-OTP-2075-0462, at 0465; and T-127, pages 27 to 28. SAI1-F1-B4: **P-0937**: DRC-OTP-2075-0510, at 0514; and T-127, pages 28 to 29). While Dr Uhlin-Hansen concluded that the two other bodies showed no definitive signs of perimortem injuries (SAI1-F1-B3: **P-0937**: DRC-OTP-2075-0487, at 0490. SAI1-F1-B5: **P-0937**: DRC-OTP-2075-0534, at 0537), he noted for SAI1-F1-B5 that significant post mortem damage may have disguised perimortem injuries (**P-0937**: DRC-OTP-2075-0534, at 0537), and also explained that different kinds of trauma may be followed by death without any injuries to the bones (**P-0937**: T-127, page 32); (iv) that the remains SAI1-F1-B3 showed a familial match with P-0815's family (**P-0945**: DRC-OTP-2084-0002, at 0010; and DRC-OTP-2070-0040. *See also* **P-0945**: T-124, pages 76 to 79); and (v) the consistency between P-0886's testimony on burial and expert evidence (*compare* **P-0420**: T-123, pages 31 to 32 with **P-0886**: T-37, page 37; and **P-0886**: T-37, page 35 with **P-0937**: T-127, page 33). Having regard to all of the above, this conclusion is unaffected by: (i) the discrepancies between P-0815's in-court testimony on the dates of birth and the date of birth information shown in DRC-OTP-2070-0040 (*see* Defence Reply Brief, para. 185), noting P-0815's difficulty in providing precise birth dates during his testimony (**P-0815**: T-76, page 19);

those killed did not have weapons or fetishes on them,<sup>1468</sup> and some belonged to women, children, and the elderly.<sup>1469</sup> Some people were also killed by shelling during the assault.<sup>1470</sup>

505. Members of the population fled Sayo, often to the bush.<sup>1471</sup> Depending on the progress of the assault, some fled towards Nzebi, others to Uganda.<sup>1472</sup>

506. The UPC/FPLC soldiers advanced from the church<sup>1473</sup> towards the health centre in Sayo, and fired projectiles at the health centre.<sup>1474</sup> Furthermore, a shell hit

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(ii) a negative DNA match for SAI1-F1-B5 (*see* Defence Reply Brief, paras 184 and 188), noting that the relevant DNA testing was conducted to establish a parent-child or sibling relationship (**P-0945**: DRC-OTP-2084-0002, at 0006 and 0010), and that the paternal information for one of the alleged victims is unclear (*see* DRC-OTP-2070-0040 *versus* **P-0815**: T-76, pages 18 to 19); and (iii) the lack of any further DNA matches (*see* Defence Closing Brief, para. 665), noting that DNA profiling was only successful for two out of five of the relevant remains (**P-0945**: DRC-OTP-2084-0002, from 0008 to 0009). Noting the limited scope of the exhumation exercise conducted in Sayo (*see* **P-0420**: DRC-OTP-2074-0148, at 0148, and 0150, stating that grave prospection was initiated by witness testimony, and referring to only two alleged burial sites identified by witnesses), the Chamber does not consider that the witness testimony of other alleged burials is affected by the exhumation evidence (*see* Defence Closing Brief, para. 665). The Chamber further notes that, while none of the aforementioned witnesses testified to having seen the UPC/FPLC perpetrate any killings, having found that the UPC/FPLC was attacking Sayo during that time (as discussed above) and considering the temporal proximity between the assault and the discovery of the bodies by P-0768, P-0886, and P-0898, the Chamber is satisfied that the only reasonable conclusion is that these people were killed by the UPC/FPLC during the assault on the village.

<sup>1467</sup> **P-0886**: T-37, pages 7, and 21 to 22.

<sup>1468</sup> **P-0768**: T-33, pages 47 to 48.

<sup>1469</sup> **P-0768**: T-33, page 48.

<sup>1470</sup> **P-0768**: T-33, pages 44 to 46, and 50 to 51; and **P-0963**: T-79, pages 13 to 14. With regard to P-0886's testimony on finding 14 male bodies in a banana field near Brique (*see* **P-0886**: T-37, pages 60 to 62; T-39, pages 23 to 24; and T-40, page 56), the Chamber notes that it has received insufficient evidence as to the fate of these 14 men at the time of the attack to make a finding on the matter. With regard to the alleged killing of Colonel Lusala and a Lulu man, his father and two nephews in Sayo, the Chamber takes note of paras 436 to 446 and 666 to 667 of the Defence Closing Brief and paras 136 to 140 of the Defence Reply Brief, and further notes that it received insufficient evidence to make a finding on the matter.

<sup>1471</sup> **P-0800**: T-68, pages 35 to 36, and 39 to 43. *See also* **P-0877**: DRC-OTP-2077-0118-R03, at 0121, para. 19, referring to DRC-OTP-2081-0589, at 0657. Noting P-0877's explanation as to how he obtained the information in his notebook, the Chamber considers that his evidence on this issue is sufficiently reliable (*see* Defence Closing Brief, para. 724). **P-0886**: T-37, pages 5, 9 to 10, and 12; T-38, pages 77, 79 to 80, and 82; T-39, page 24; and T-40, pages 4 to 7.

<sup>1472</sup> **P-0894**: T-104, pages 6 to 7, and 60; and DRC-OTP-2076-0194-R02, from 0200 to 0201, paras 33 to 34; **P-0815**: T-76, pages 12, 15 to 16, 27 to 28, and 55; and T-77, pages 26 to 29.

<sup>1473</sup> The Chamber notes P-0017's testimony that, approximately one week after the UPC/FPLC assault on Sayo, he learned from an eyewitness to the event that some people who had taken refuge inside the church in Sayo (*see* para. 114 above) were killed by what the witness referred to as Hema Gegere 'combatants' with bladed weapons, after which other Hema 'combatants' from Mongbwalu were asked to bury their bodies (**P-0017**: T-58, pages 78 to 79; T-62, pages 44 to 46). The Human Rights Watch report 'Ituri: Covered in Blood' states that some 'civilians' tried to hide in Sayo, including inside a church called 'Mungu Samaki'; when the UPC/FPLC soldiers found them, they 'slaughtered' them (DRC-OTP-0074-0797, at 0829). SIT report DRC-OTP-0074-0422 also refers to the killing of 'civilians' inside the 'Mungu Samaki' church in Sayo, but states that its source is the aforementioned Human Rights Watch report (DRC-OTP-0074-0422, para. 102 and footnote 39). The Chamber notes that the evidence of P-0017 in relation to this alleged killing is hearsay. As

a house behind the health centre.<sup>1475</sup> Two persons present at the health centre fled because they felt that they were in danger.<sup>1476</sup> Three seriously injured men,<sup>1477</sup> as well as a Lendu woman and her child – who was approximately two years old and whom the woman had brought to the health centre for treatment – were left behind at the centre.<sup>1478</sup> The woman, who was wearing rags and was unarmed at the time she came to the health centre,<sup>1479</sup> was killed by the UPC/FPLC during the assault.<sup>1480</sup> The Defence argues that P-0017 modified the version of this event from

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far as the Human Rights Watch report is concerned, the Chamber notes that it has relied on the information contained therein only in corroboration. It further notes that the report refers to people hiding inside the church as having been killed by ‘UPC combatants’, while according to P-0017 they were killed by persons who did not form part of the UPC/FPLC, that the witness referred to as Hema Gegere ‘combatants’. As the MONUC report cites the Human Rights Watch report in relation to information concerning people having allegedly been killed inside the church in Sayo, it cannot be considered as an additional source of information. The Chamber thus considers that all the evidence received in relation to the fate of people who had sought refuge inside the church is weak. Under these circumstances, the Chamber is unable to make a finding on the matter.

<sup>1474</sup> **P-0800**: T-68, pages 31 and 34. *See also* **P-0017**: T-61, pages 67 to 70 (P-0017 refers to the health centre as a ‘dispensary’: T-61, pages 69-72 and 79); and **D-0300**: T-217, pages 51 to 52; and T-223, page 43, confirming that a rocket launcher was used during the UPC/FPLC’s advance towards Sayo. The Defence contends that there is no evidence that the health centre in Sayo was targeted deliberately or hit by a heavy weapon’s fire (Defence Closing Brief, para. 752). To the extent the Defence intended to argue that the building of the health centre was not deliberately targeted for being a health centre, the Chamber will discuss this matter in the legal findings in relation to Counts 17. To the extent the Defence meant to argue that the building as such was not deliberately targeted, the Chamber notes that in support of its argument, the Defence only refers to Mr Ntaganda’s general explanation of how heavy weapons were used during the Sayo operation (*see* **D-0300**: T-217, pages 49 to 51). The Defence further argues that P-0800’s evidence about the presence of UPC/FPLC members in Sayo, less than 500 meters from him, is implausible, not corroborated by other reliable evidence and should be disregarded. It also argues that P-0800’s evidence that the UPC/FPLC moved from the church towards the health centre while he left towards Nzebi is implausible and uncorroborated (Defence Closing Brief, para. 752, and references contained therein), and that P-0800’s ‘inconsistent’ and ‘confusing’ evidence regarding the presence of UPC/FPLC members whom he could hear but could not see five kilometres away in Mongbwalu and the timing of the UPC/FPLC’s control of the area of the *Usine* on the way to Sayo leads to the conclusion that P-0800 had left Sayo when the UPC/FPLC secured the town following the ‘enemy’s retreat’. In this respect, the Chamber considers that P-0800’s evidence of the health centre being fired upon is not incompatible with him having fled Sayo as soon as the UPC/FPLC entered the village.

<sup>1475</sup> **P-0800**: T-69, pages 51 to 52.

<sup>1476</sup> **P-0800**: T-68, pages 31, and 33 to 34.

<sup>1477</sup> **P-0800**: T-68, pages 22 to 24, and 33. The Chamber notes that it received insufficient evidence as to the fate of these men in order to make a finding that they were killed.

<sup>1478</sup> **P-0800**: T-68, pages 30 to 31; and T-69, pages 8, and 49 to 51. In relation to the Defence argument that P-0800 could not explain why he would leave behind a woman who could walk and her baby (Defence Closing Brief para. 662, referring to **P-0800**: T-68, pages 31, 34, and 50 to 51; and T-69, page 60), the Chamber notes that when questioned on the matter, the witness testified that fleeing was ‘brutal and quick’ and that before fleeing he had shouted to all those present ‘save yourselves’ (**P-0800**: T-69, page 75), and accordingly does not consider this issue to impact the witness’s credibility in relation to this event.

<sup>1479</sup> **P-0886**: T-37, pages 59 to 60; and **P-0800**: T-68, page 30.

<sup>1480</sup> **P-0017**: T-58, pages 68 to 69, and 80; and T-61, pages 71 to 72 (testifying that, when passing the health centre during the attack, he saw the dead body of a woman and, subsequently, that of a child in front of the centre); **P-0886**: T-36, pages 73 to 74; T-37, pages 59 to 60; and T-39, page 23 (testifying that when returning to Sayo after hiding in the bush for three days, he found the dead bodies of a woman identified by name and a child in front of the health centre). *See also* **P-0800**: T-68, pages 52 to 53, and 57. P-0800 saw the place where

his statement to his testimony.<sup>1481</sup> However, the Chamber sees no merit in the Defence argument in this respect.<sup>1482</sup> The Defence also challenges P-0886's<sup>1483</sup> and P-0800's<sup>1484</sup> evidence in this respect. However, the Chamber considers that the Defence challenges are unsubstantiated.

507. As the operation in Sayo was nearing its end and the last houses were being searched by the troops, Mr Ntaganda, followed by a group of Hema Gegere persons,<sup>1485</sup> joined the UPC/FPLC troops already present in Sayo.<sup>1486</sup> He had a camera and was filming.<sup>1487</sup>

508. Mr Ntaganda issued an order to Salumu Mulenda's brigade to fire with a grenade launcher at the slope of the mountain where a number of men and women wearing civilian clothing<sup>1488</sup> were walking in a single file.<sup>1489</sup>

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a woman identified by the same name as the woman identified by P-0886 and her child had been buried, with the child's arm slightly sticking out of the earth (**P-0800**: T-68, page 53). The Chamber notes that the aforementioned crime base witnesses did not witness the killing of the woman in front of the health centre and only saw her dead body. However, P-0017 saw the woman's body when the assault was still ongoing, just after P-0800 had seen her alive at the health centre, before he fled. Having found that the UPC/FPLC was attacking Sayo during that time (as discussed above) and considering the fact the two were left behind alive at the health centre as the assault commenced (see footnote 1478 above) and were seen dead by P-0017 shortly after, the Chamber is satisfied that the only reasonable conclusion is that the woman was killed by the UPC/FPLC during the assault on Sayo. As to the death of the child, the Chamber recalls the involvement of Hema 'civilians' in the *ratissage* operations following the takeover of Sayo (see para. 526) and considers that, in the absence of more specific information concerning the circumstances of his death, it cannot establish that his death was attributable to the UPC/FPLC.

<sup>1481</sup> Defence Closing Brief, para. 662, referring to **P-0017**: T-58, pages 68 to 69, and 80; T-59, pages 3 to 4; and T-61, pages 71, and 103 to 104.

<sup>1482</sup> The Chamber considers that P-0017 was effective in clarifying that, on his way into Sayo, he saw the body of the woman in front of the health centre and heard a child crying inside the centre, while on the way back, once the attack had finished, the child was also lying dead in front of the health centre (**P-0017**: T-61, pages 103 to 104). The Chamber further notes that while P-0017 testified that it appeared to him that the woman whose body he saw had just given birth and therefore, had not been able to flee, according to P-0800, the woman he left behind at the health centre had not given birth recently but had come to the health centre with her sick child. In this respect, the Chamber considers that P-0017's evidence in relation to the reason why the woman had not fled constitutes mere speculation and, given the temporal proximity of the observations of the two witnesses, the Chamber is satisfied that the bodies that P-0017 saw were those of the same woman and the child that P-0800 had left behind at the health centre.

<sup>1483</sup> Defence Closing Brief, para. 662, referring to, *inter alia*, **P-0886**: T-39, pages 23 to 24.

<sup>1484</sup> Defence Closing Brief, para. 662, referring to **P-0800**: T-68, page 53.

<sup>1485</sup> **P-0017**: T-58, pages 77 to 78.

<sup>1486</sup> **P-0017**: T-58, page 70; and T-62, pages 18 to 20; and **D-0300**: T-217, pages 45 to 46, and 52, together with DRC-REG-0001-0068.

<sup>1487</sup> **P-0017**: T-58, page 70; and T-62, page 20; and **D-0300**: T-235, page 83. See also **P-0768**: T-33, pages 40 to 41.

<sup>1488</sup> **P-0017**: T-58, page 72; and T-59, page 4. The Chamber recalls its credibility assessment on this specific aspect of his testimony.

Mr Ntaganda's order was executed.<sup>1490</sup> It was a hot and clear day and the visibility was good.<sup>1491</sup> After the firing, the people spread in all directions, but none of them appeared to have been injured.<sup>1492</sup> The Defence challenges<sup>1493</sup> P-0017's evidence on this point, on the basis that: (i) no heavy weapon was brought to the centre of Sayo;<sup>1494</sup> (ii) in his 2013 statement, the witness did not refer to any such order;<sup>1495</sup> (iii) the witness's description of the unfolding of the event is inconsistent with the presence of a large group of people;<sup>1496</sup> (iv) at that time, the population had

<sup>1489</sup> **P-0017**: T-58, pages 70 to 73; T-61, page 106; and T-62, pages 27 to 28, referring to DRC-REG-0001-0017, and pages 34 to 35, referring to DRC-REG-0001-0018.

<sup>1490</sup> **P-0017**: T-58, page 71.

<sup>1491</sup> **P-0017**: T-58, page 72; and T-61, page 107.

<sup>1492</sup> **P-0017**: T-58, page 72. Regarding P-0017's evidence concerning the alleged killing of an unarmed Lendu man wearing civilian clothing in front of the church in Sayo by one of Mr Ntaganda's bodyguards, in Mr Ntaganda's presence, the Chamber is unable to make a finding for the reasons set out in para. 115. The Chamber notes that P-0017 also testified that, approximately one week after the attack on Sayo, he learned from a named eyewitness to the event that there was a lot of 'disorder', that the people who were inside the church were executed by what the witness referred to as a group of Hema Gegere 'civilians' they called 'combatants', with bladed weapons, after which other Hema 'combatants' from Mongbwalu were asked to bury their bodies (**P-0017**: T-58, pages 77 to 79; and T-62, pages 44 to 46; *see* T-58-FRA, page 76). In this regard, P-0017 explained how, alongside the UPC/FPLC troops, 'fighters', mostly Gegere, participated in the First Operation, but that he did not see a person coordinating them (T-58, pages 58 to 59, and 78). The HRW report 'Ituri: Covered in Blood' states that some 'civilians' tried to hide in Sayo, including inside a church called 'Mungu Samaki'; when the UPC/FPLC soldiers found them, they 'slaughtered' them (DRC-OTP-0074-0797, at 0829). SIT report DRC-OTP-0074-0422 also refers to the killing of 'civilians' inside the 'Mungu Samaki' church in Sayo, but states that its source is the aforementioned HRW report (DRC-OTP-0074-0422, at 0452, para. 102 and footnote 39). As far as the HRW report is concerned, the Chamber notes that it has relied on the information contained therein only in corroboration. As the MONUC report cites the HRW report in relation to information concerning people having allegedly been killed inside the church in Sayo, it cannot be considered as an additional source of information. The Chamber notes that these events unfolded immediately after combat and that P-0017 was told that there was 'disorder' at the time. In the absence of direct evidence, the Chamber is not in a position to conduct the required assessment of the circumstances nor to understand the role of the UPC/FPLC troops regarding these events. Accordingly, the Chamber considers that it does not have sufficiently probative evidence to reach a finding beyond reasonable doubt on the events which led to the death of the remaining people inside the church.

<sup>1493</sup> Defence Closing Brief, paras 320 to 321, *see also* paras 609, 663.

<sup>1494</sup> In relation to point (i), the Chamber notes that: (i) the Defence relies on Mr Ntaganda's testimony that he did not see the grenade launcher in Sayo (**D-0300**: T-217, page 53) and the evidence of P-0886 in relation to what heavy weapons he saw having been set up on Mount Adidi upon his return to Sayo (**P-0886**: T-37, pages 14 to 15). Noting that P-0886 testified that he returned to Sayo after three days in the bush (**P-0886**: T-40, page 8), his evidence in relation to what heavy weapons he saw set up on Mount Adidi upon his return is irrelevant to the question whether a grenade launcher was brought to Sayo in the immediate aftermath of the attack. The Chamber has thus carefully assessed the testimony of P-0017 against that of Mr Ntaganda and, noting that P-0017 provided a sufficiently clear and detailed account of what he saw, the Chamber has retained the internally consistent testimony of P-0017 in this respect, as opposed to Mr Ntaganda's account.

<sup>1495</sup> In relation to point (ii), noting the exact words used in the witness's 2013 statement, and the related explanation provided in Court (**P-0017**: T-61, page 106), the Chamber considers the absence in the statement of an explicit reference to the order not to affect the credibility of his testimony in this regard.

<sup>1496</sup> In relation to point (iii), the Chamber considers that the Defence apparent suggestion that the presence of 'numerous people' in Mr Ntaganda and P-0017's close proximity would have been more obvious than the



already left Sayo;<sup>1497</sup> and (v) had the heavy weapon been fired at people who were a few hundred meters away, there would have been a ‘carnage’.<sup>1498</sup> However, the Chamber considers that P-0017’s evidence in relation to Mr Ntaganda’s order to fire on people walking on the slope of the mountain to be credible and reliable.

### (3) Assault on Nzebi

509. After taking over Sayo, the UPC/FPLC attacked Nzebi.<sup>1499</sup> Nzebi was also shelled from the *Appartements* camp.<sup>1500</sup> The UPC/FPLC killed some individuals<sup>1501</sup>

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witness appeared to suggest (*see* Defence Closing Brief, para. 320, referring to **P-0017**: T-58, pages 70, and 72), to be without merit.

<sup>1497</sup> As far as point (iv) is concerned, the Defence refers to P-0017’s evidence in relation to Mongbwalu that ‘those who knew that there was a conflict with the UPC preferred to withdraw’ (**P-0017**: T-61, page 50) and that he did not see any ‘civilians’ when engaged in fighting in Mongbwalu (**P-0017**: T-61, page 51), as well as P-0017’s testimony that as the attack on Mongbwalu unfolded, both the APC and the Lendu fighters withdrew towards the factory on the way to Sayo (**P-0017**: T-61, pages 49 to 50). The evidence referred to by the Defence refers, in both instances, to the population fleeing and/or retreating from Mongbwalu, not Sayo. Furthermore, the events that P-0017 described appear to have taken place in the immediate temporal proximity of the attack on Sayo, therefore making it possible for the population to have still been in the process of fleeing. Lastly, the Defence refers to P-0886 testimony that when the UPC/FPLC entered the village, he had already left (**P-0886**: T-40, page 17). Although the Defence argues that P-0886 was ‘amongst the very last to leave Sayo’ (Defence Closing Brief, para. 321), the evidence that it referred to does not support this statement.

<sup>1498</sup> As for point (v), the Defence argues that the distance between the area where P-0017 was and the area where the people fleeing were located was less than 200 metres (Defence Closing Brief, para. 321, referring to DRC-D18-0001-0491, DRC-D18-0001-5290, and DRC-REG-0001-0068) and that under such circumstances, had the grenade launcher been shot in their direction, many of them would have been killed (Defence Closing Brief, para. 321). In this respect, the Chamber considers that it is plausible for the shooter to have missed the target, even under the aforementioned circumstances, or not to have shot at the people themselves, but only in their direction, thereby still leaving them unharmed. Lastly, with reference to the Defence argument that, noting P-0017’s testimony that after the firing, Mr Ntaganda commented that ‘this should discourage them, that they would not have the strength to reorganise or to launch a counterattack’ (**P-0017**: T-58, page 73), even if such an order would have been given, it would have been directed at the ‘enemy’ and not at ‘civilians’, the Chamber considers that, even if the firing was aimed at discouraging a counterattack, this is not irreconcilable with the fact that it was aimed at what P-0017 referred to as ‘fleeing civilians’.

<sup>1499</sup> **P-0768**: T-33, page 50.

<sup>1500</sup> **P-0768**: T-33, page 50, referring to DRC-REG-0001-0004.

<sup>1501</sup> The Prosecution argues that ‘civilians’ were also displaced from Nzebi during the First Operation by UPC/FPLC soldiers, referring to P-0877’s evidence that, on 2 December 2002, the Nyali population from Nzebi, Buraki, Sayo, Abombi, and a part of Kilo called Lisey, fled UPC/FPLC assaults through the bush towards Beni (Prosecution Closing Brief, para. 325, referring to **P-0877**: DRC-OTP-2077-0118-R03, at 0121, para. 19, referring to DRC-OTP-2081-0589, at 0657). The Chamber notes that P-0877 stated that he obtained the information from his contacts with the Nyali people and, as indicated above, this evidence is sufficiently reliable in order to be considered by the Chamber. The Prosecution further argues that in the Banyali-Kilo *collectivité*, ‘civilians’ fled in all directions as the UPC/FPLC progressed in its assault: from Pluto to Mongbwalu, from Mongbwalu to Sayo and Nzebi, and towards Kilo; from Kilo, thousands fled to the Walendu-Djatsi *collectivité*, including P-0039, P-0300, and P-0805 (*see* Prosecution Closing Brief, para. 326, and the references contained therein). In this respect, the Chamber notes that none of the evidence referred to by the Prosecution refers to the population fleeing Nzebi specifically. The Prosecution further argues that Mr Ntaganda ordered his troops to fire upon fleeing ‘civilians’. Referring to the evidence of P-0768, the Prosecution alleges that when two Lendu ‘civilians’ tried to return to their houses in Nzebi, Mr Ntaganda

by gunshot during the assault.<sup>1502</sup> Some were also killed by shelling.<sup>1503</sup> The Defence challenges that Nzebi was attacked in the manner described by P-0768.<sup>1504</sup> However, the Chamber considers P-0768's evidence in this respect to be credible and reliable.<sup>1505</sup>

510. Sometime between the assault on Nzebi and Mr Ntaganda's departure from Mongbwalu to Bunia,<sup>1506</sup> Mr Ntaganda's bodyguards, upon Mr Ntaganda's order, shot and killed two Lendu persons who had been captured pursuant to Mr Ntaganda's order in Nzebi.<sup>1507</sup>

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ordered his bodyguards to shoot and kill them (Prosecution Closing Brief, para. 327, referring to **P-0768**: T-33, pages 54 to 55; and T-35, pages 50 to 60). In this respect, the Chamber notes that this evidence discussed below, does not support the contention that these two individuals were trying to return to their houses in Nzebi when they were killed. Lastly, the Prosecution argues that the 'civilians' who fled from Nzebi would have been killed had they attempted to return to their houses, referring to the evidence of P-0768, P-0907, P-0963, and a HRW report (*see* Prosecution Closing Brief, para. 329, and references contained therein). In relation to P-0768, the Chamber recalls its aforementioned considerations. As far as P-0907 is concerned, the evidence referred to by the Prosecution relates to the alleged impossibility for Lendu to return to Mongbwalu (*see* **P-0907**: T-90, pages 50 to 51). The same applies to the evidence of P-0863, referred to by the Prosecution (*see* **P-0863**: T-79, pages 15 to 16, and 22). Lastly, HRW report also states that the Lendu, Nande, and Jajambo people were 'not welcome' in Mongbwalu (DRC-OTP-0074-0628, at 0666), not Nzebi. In light of the foregoing, and since the evidence of P-0877 on this point lacks details and specificity, the Chamber does not find it appropriate to reach a finding on the matter on the basis of the sole evidence of P-0877, which it finds has a low probative value.

<sup>1502</sup> **P-0768**: T-33, pages 45 to 46. The Chamber further notes that P-0768 did not witness himself the killing of individuals in Nzebi. However, having found that the UPC/FPLC attacked the village at the time and considering the temporal proximity between the assault and the discovery of the bodies by P-0768, the Chamber is satisfied that the only reasonable conclusion is that these people were killed by the UPC/FPLC during the assault on the village.

<sup>1503</sup> **P-0768**: T-33, pages 45 to 46.

<sup>1504</sup> Defence Closing Brief, para. 282.

<sup>1505</sup> The Chamber notes that the fact that Nzebi is not referred to in a segment of the video referred to by the Defence and/or in the logbooks does not demonstrate that an assault on the village did not occur. As to the Defence's argument that P-0768 could not have gone to Nzebi, the Chamber notes that is based on the testimony of Mr Ntaganda alone. As also noted below, the Chamber has carefully assessed P-0768's testimony in relation to the unfolding of an assault in Nzebi against Mr Ntaganda's account, and decides to rely on P-0768's testimony in this respect.

<sup>1506</sup> While the Prosecution argues that this event occurred on the third day of the attack (Prosecution Closing Brief, para. 375), P-0768 testified that Mr Ntaganda went to Nzebi prior to or just before his departure to Bunia (**P-0768**: T-33, page 52) which took place, according to P-0768, approximately one and a half weeks after Mongbwalu was captured (**P-0768**: T-34, page 7). Furthermore, P-0768 testified that on the third day of the attack, Mr Ntaganda was at the *Appartements* camp (**P-0768**: T-33, page 49, referring to DRC-OTP-2058-0664-R02) and that the day that he first went to Nzebi, Mr Ntaganda was not with him (**P-0768**: T-33, page 52).

<sup>1507</sup> **P-0768**: T-33, pages 54 to 55; and T-35, pages 50 to 59. The Chamber takes note of Mr Ntaganda's testimony denying that he ordered these killings in the aftermath of the Mongbwalu attack and stating that he never went to Nzebi and that it was his habit to consider members of the population as innocent, so he could have never done such a thing (**D-0300**: T-237, pages 8 to 9). The Chamber has carefully assessed the testimony of P-0768 against that of Mr Ntaganda and, noting that P-0768 provided a sufficiently clear and detailed account of what he saw, and that he generally acknowledged when he could not clearly remember something

#### (4) Involvement of persons under the age of 15

511. Persons under the age of 15 participated in the assaults forming part of the First Operation.<sup>1508</sup> Some of them wore military uniforms which were too big for them and which they therefore had to roll up,<sup>1509</sup> and they had firearms.<sup>1510</sup>

#### (5) Aftermath of the assault

##### (a) Mongbwalu

##### (i) Ratissage operation

512. In the immediate aftermath of the takeover of Mongbwalu, members of the UPC/FPLC and Hema 'civilians' conducted a *ratissage* operation during which they searched from house to house for items to loot, abducting, intimidating, and killing people who resisted.<sup>1511</sup> The Hema 'civilians' came as reinforcements with machetes and spears to provide support to the UPC/FPLC in the *ratissage*

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or when there was something that he did not see, the Chamber has retained the internally consistent testimony of P-0768 in this respect, as opposed to Mr Ntaganda's account.

<sup>1508</sup> **P-0898**: T-154, pages 9 to 10; **P-0017**: T-58, pages 51 to 52 (testifying that some of Thomas Abelanga's bodyguards present in Lalu – from where they subsequently went to Mongbwalu – Mave and Francine, appeared to be between 12 and 13 years old. He specified that he could tell the girls were this age based on their 'physiognomy', 'their sizes', and the fact that they played, and that 'they looked more like young boys because they didn't have any breasts'), and pages 52 to 53 (testifying that there were also a few males under the age of 14 within the troops. In this regard, the Chamber recalls its previous finding in P-0898's credibility assessment that it considers the witness's age assessments to be generally credible; **P-0886**: T-37, pages 10 to 11 (testifying that he saw persons 14 years of age amongst the attackers in Sayo. In this regard, the Chamber recalls its finding in footnote 1079 that P-0886's age assessment can be relied upon as corroboration for a finding that kadogos served as bodyguards for UPC/FPLC commanders).

<sup>1509</sup> **P-0017**: T-58, page 53; and **P-0886**: T-37, pages 10 to 11.

<sup>1510</sup> **P-0017**: T-58, page 53; **P-0768**: T-34, pages 54 to 55; and **P-0886**: T-37, page 11.

<sup>1511</sup> **P-0017**: T-58, pages 80 to 81; **P-0768**: T-34, pages 15 to 16; and **P-0859**: T-51, pages 26, and 32 to 33. With reference to the Defence challenges in this regard (*see* Defence Closing Brief, para. 766), the Chamber considers the account provided by P-0859 that he returned to Mongbwalu approximately a week after the attack to be reliable (*see* **P-0859**: T-51, pages 7 to 8, and 25 to 26; and T-52, page 17). Further, in respect of the Defence's argument that the fact that P-0859 was able to see his neighbours wearing his clothes is indicating that the 'civilians' were involved in looting (referring to **P-0859**: T-51, pages 32 to 33), the Chamber notes that first, these neighbours, according to the witness, were of Hema ethnicity (**P-0859**: T-51, pages 32 to 33), and second, that the witness testified that upon his return to Mongbwalu, the village was 'full of UPC/FPLC soldiers' (**P-0859**: T-51, page 26), which does not contradict the Chamber's finding on the perpetrators of looting in Mongbwalu. **P-0887**: T-93, pages 27 to 28; **P-0888**: T-105, pages 79 to 81; **P-0898**: T-154, pages 13, and 21 to 22; and **P-0907**: T-90, pages 11, and 33 to 35. *See also* **P-0892**: T-83, pages 36 to 38, 40 and 42; **P-0912**: T-148, pages 56 to 59, and 101; **V-2**: T-202, page 19; and **P-0315**: DRC-OTP-2058-0990, from 1011 to 1014, paras 127 to 132.

operation.<sup>1512</sup> They followed the orders of the UPC/FPLC leadership.<sup>1513</sup> While an order to stop the looting and the killings in Mongbwalu was issued by the UPC/FPLC several days after they had taken over the town,<sup>1514</sup> the looting and killings continued.<sup>1515</sup>

513. Members of the UPC/FPLC also took Lendu persons as ‘prisoners’ in Mongbwalu.<sup>1516</sup> One location where such ‘prisoners’ were taken to was the house of Salumu Mulenda, also referred to as ‘Salumu’s camp’.<sup>1517</sup> On one occasion, Salumu Mulenda interrogated a Lendu woman, who was accused of being a chieftain of the Lendu ‘combatants’; when she refused to answer his questions and insulted him, members of Bureau Two<sup>1518</sup> put her on her knees which were crushed and she stayed on the floor for a couple of hours.<sup>1519</sup> Members of Bureau Two later killed the woman.<sup>1520</sup>

514. During the *ratissage* operation, looted goods included household items such as chairs, beds, mattresses, radio and television sets, clothing, food items,<sup>1521</sup> as well as gold.<sup>1522</sup> Vehicles were also looted.<sup>1523</sup> There was no limit on what could be

<sup>1512</sup> **P-0907**: T-90, pages 10 to 12; and **P-0963**: T-78, page 86; and T-79, page 20. *See also* **P-0768**: T-33, page 42; and **P-0002**: DRC-OTP-2060-0002-R03, from 0005 to 0006, para. 30.

<sup>1513</sup> **P-0768**: T-33, page 42 (testifying that Hema ‘civilians’, who had been committing crimes after the First Operation in Mongbwalu admitted that they had received orders from Mr Ntaganda); and **P-0963**: T-78, page 86; and T-79, page 20 (testifying that Hema ‘civilians’ took advantage of the situation and looted in Mongbwalu and that UPC/FPLC ‘commanders and leaders’ were looting on behalf of, *inter alia*, Mr Ntaganda and Salumu Mulenda). In this regard, the Chamber also notes that P-0898 and P-0017 both testified that Hema ‘civilians’ were following orders of a person referred to as Roy Gangi who, according to P-0898, reported to Mr Ntaganda (**P-0898**: T-154, pages 13, and 21 to 22; and T-154, pages 34 to 35; and **P-0017**: T-59, pages 11 to 12).

<sup>1514</sup> **P-0898**: T-154, page 14.

<sup>1515</sup> **P-0898**: T-154, pages 13, and 21 to 22.

<sup>1516</sup> **P-0898**: T-154, pages 18 to 19. *See also* section IV.B.7.d)(5)(c) *Appartements* camp.

<sup>1517</sup> **P-0017**: T-59, pages 35 to 36.

<sup>1518</sup> On Bureau Two, *see* above para. 319.

<sup>1519</sup> **P-0017**: T-59, pages 35 to 36.

<sup>1520</sup> **P-0017**: T-59, pages 35 to 36.

<sup>1521</sup> **P-0859**: T-51, pages 26, and 32 to 33; **P-0887**: T-93, page 28; **P-0888**: T-105, pages 82 to 83; **P-0892**: T-83, page 37; **P-0898**: T-155, page 57; **P-0901**: T-29, pages 21 to 22; **P-0907**: T-90, page 36; and **P-0912**: T-148, pages 57 to 58.

<sup>1522</sup> **P-0768**: T-33, pages 61 to 64. The Chamber notes the Defence arguments that although Mongbwalu is a gold mining town, gold was not an issue during the Mongbwalu attack and that, in any event, gold could not have been extracted at the time (Defence Closing Brief, para. 768, referring to DRC-OTP-2058-0251, from 00:30:11 to 00:37:00 and DRC-OTP-2102-3766, from 3781 to 3782, lines 452 to 522). In this respect, the Chamber takes into account that the referred excerpt is inconclusive on whether the gold could have been looted in

looted and the members of the UPC/FPLC took anything that they wanted.<sup>1524</sup> The UPC/FPLC soldiers also looted medical equipment from the Mongbwalu hospital.<sup>1525</sup> Some UPC/FPLC members and Hema ‘civilians’ took over abandoned houses whose owners had fled Mongbwalu during and/or after the UPC/FPLC assault.<sup>1526</sup>

515. Within the UPC/FPLC, looted items which were considered of high quality or value were usually given to the commanders, including Salumu Mulenda, under threat of punishment, while the soldiers could keep other goods.<sup>1527</sup> Other items that the UPC/FPLC soldiers looted were either sold off for money or used by the soldiers themselves.<sup>1528</sup> Mr Ntaganda testified that he never heard of UPC/FPLC superiors taking ‘war booty’ from more junior soldiers and that if somebody tried to do that, they would have been sanctioned, and that such information would have been important to him as senior UPC/FPLC commander, so as to be able to react to those under him failing to carry out their mission to protect members of the population; however the Chamber does not consider him credible on this point.<sup>1529</sup>

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Mongbwalu, but rather shows the post-attack condition of the Kilo-Moto gold mining company. The Chamber also notes that P-0768 testified that the UPC/FPLC had a group of people who would go into ‘the quarries to retrieve the gold from the gold diggers’ (**P-0768**: T-33, page 61). The Chamber considers that given that the testimony of P-0768 is sufficiently clear and detailed on the matter, it is able to make a finding that looting of gold took place in Mongbwalu.

<sup>1523</sup> **P-0055**: T-72, pages 11 and 13; **P-0888**: T-105, pages 82 to 83.

<sup>1524</sup> **P-0055**: T-72, page 11; **P-0768**: T-33, page 64; **P-0907**: T-90, pages 10 and 36; and **P-0963**: T-79, page 20.

<sup>1525</sup> **P-0017**: T-58, pages 81 to 82; **P-0768**: T-33, pages 59 to 60, and 64. The Chamber notes that both P-0017 and P-0768 testified that they saw Mr Ntaganda with looted medical equipment from the Mongbwalu hospital. While the Chamber is not convinced that it was Mr Ntaganda who personally looted the hospital (on his role in looting and respective Defence challenges *see* below), the Chamber is satisfied that, given the eyewitnesses’ accounts on the looted medical equipment and the fact that the UPC/FPLC soldiers were looting in Mongbwalu at the relevant time, the only reasonable conclusion is that the UPC/FPLC also looted the Mongbwalu hospital. The Chamber notes that it has not received any evidence concerning killings at the Mongbwalu hospital and therefore is unable to make a finding in this regard.

<sup>1526</sup> **P-0907**: T-90, page 50; and **P-0963**: T-79, pages 19 to 20.

<sup>1527</sup> **P-0017**: T-59, page 20; **P-0888**: T-105, page 82; and **P-0963**: T-82, page 87. *See also* DRC-OTP-0109-0136, at 0140.

<sup>1528</sup> **P-0888**: T-105, page 83; and **P-0963**: T-82, page 87. *See also* DRC-OTP-0109-0136, at 0140.

<sup>1529</sup> **D-0300**: T-234, pages 3 to 4. When confronted with DRC-OTP-0109-0136, providing that soldiers were complaining that war booty of junior soldiers was taken away by superiors, and the related suggestion that this was the system of payment for commanders and soldiers, Mr Ntaganda stated that he did not receive this report and that when such events occurred, those who had looted were always punished (T-234, page 5). He also

516. In addition, some looted goods were brought to Mr Ntaganda's residence in Bunia.<sup>1530</sup>

517. The looting lasted for about a week.<sup>1531</sup> Many inhabitants of Mongbwalu who subsequently returned to their houses did not find anything left there as everything had been looted.<sup>1532</sup>

*(ii) Acts of sexual violence*

518. During and in the immediate aftermath of the assault on Mongbwalu, UPC/FPLC soldiers forced women and girls to have sexual intercourse with them.

519. On one occasion, a 13-year-old girl<sup>1533</sup> was taken to a house in the Depot neighbourhood of Mongbwalu by UPC/FPLC soldiers.<sup>1534</sup> The girl had been taken

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stated that he had not heard from Kitembo or Mbabazi that soldiers were complaining of superiors taking their war booty (T-234, page 8). Taking into account Mr Ntaganda's position in the UPC/FPLC, the Chamber does not consider plausible that Mr Ntaganda did not know about such instances which were relatively common as attested by several eyewitnesses. The Chamber therefore does not consider Mr Ntaganda to be credible on this point and relies on the evidence of other witnesses in this respect.

<sup>1530</sup> **P-0888**: T-105, pages 83 to 84; **P-0768**: T-33, pages 61 to 63; **P-0901**: T-28, pages 57 to 58; and T-32, pages 28 to 33; **P-0963**: T-79, pages 20 to 21. In light of this evidence, and recalling further its finding that P-0901 and P-0963 are credible witnesses whose testimony can be relied upon, and that P-0888's evidence on his participation in certain operations can generally be relied upon, the Chamber considers that this finding is not affected by the Defence challenge (Defence Closing Brief, para. 765). The Chamber also heard evidence on the alleged looting by Mr Ntaganda in Mongbwalu, including evidence on him looting the hospital (*see* **P-0017**: T-58, pages 81 to 82; **P-0768**: T-33, pages 59 to 60, and 64; and **P-0898**: T-155, page 58). Mr Ntaganda, on the other hand, testified that he never looted himself and that if others were discovered looting, they were punished (**D-0300**: T-234, pages 5 to 8; and T-239, pages 85 to 86). Considering that neither of the witnesses was an eyewitness to looting by Mr Ntaganda personally and, at best, they saw Mr Ntaganda in a jeep with some pillaged goods, and also noting its finding that other UPC/FPLC members were looting in Mongbwalu, the Chamber does not consider that the only reasonable conclusion is that Mr Ntaganda personally looted in Mongbwalu and in particular, in the Mongbwalu hospital (*see also* Defence Closing Brief, paras 411 to 417, and 765).

<sup>1531</sup> **P-0907**: T-90, page 34.

<sup>1532</sup> **P-0805**: T-26, page 30; **P-0859**: T-51, pages 26 and 32; and T-52, page 6; **P-0894**: T-103, pages 103 to 104; **P-0892**: T-83, pages 39 to 41, and 43 to 44. *See also* **P-0017**: T-58, page 81.

<sup>1533</sup> The Chamber refers to P-0892. With regard to the Defence challenges based on discrepancies between P-0892's victim application form and her subsequent testimony regarding where the girl was taken from, and on the timing of the alleged rape, arguing that it happened in around 1998 or 1999, which is outside the temporal scope of the charges (Defence Closing Brief, paras 444 to 449; and Defence Reply Brief, paras 130 to 134), the Chamber notes that: (i) P-0892 testified that her victim application form was not read back to her and once acknowledged that she immediately corrected the mistake and provided explanations (*see* **P-0892**: T-86, pages 9 and 15); (ii) the electoral card of the girl indicates her date of birth, which would make her 13 years old at the time of the relevant events (*see* DRC-OTP-2092-0053-R01; **P-0892**: T-85, pages 5 and 35; and T-86, pages 12 to 13; and **P-0912**: T-148, pages 33 to 34, 94 to 95, and 97 to 98; and T-149, page 18) and, in any event, her precise age at the time of the rape is not a material issue at hand. In light of the circumstances, the

by an armed soldier from the house where she was staying with her relatives.<sup>1535</sup> This armed soldier said he would give her some work.<sup>1536</sup> Upon arrival at another house, a UPC/FPLC commander named Saidi ordered the soldiers to undress the girl; the soldiers then violently ripped off her skirt and underwear and threw her onto the bed.<sup>1537</sup> Saidi then penetrated the girl with his fingers, saying that she was a minor who had not ‘known a man’, after which he got on top of her and penetrated her vagina with his penis.<sup>1538</sup> The girl started screaming, after which Saidi put a cloth over her mouth and continued.<sup>1539</sup> After he finished, he said that she now was a ‘woman’, after which one of UPC/FPLC soldiers got on top of the girl and also penetrated her.<sup>1540</sup> When another UPC/FPLC soldier wanted to get on top of her, the girl said that she had to urinate and the soldier accompanied her outside; when she started to urinate she was bleeding profusely and when the soldier saw that, he allowed her to flee.<sup>1541</sup>

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Chamber does not consider that the aforementioned discrepancies impact the credibility of P-0892 and P-0912 on this matter.

<sup>1534</sup> **P-0912**: T-148, pages 32, and 60 to 62; and **P-0892**: T-85, pages 5 to 8. The Chamber considers the Defence arguments in support of its submission that P-0912 and P-0892 ‘concocted a false narrative concerning the alleged rape’ of the Kakwaze girl, which renders all evidence they provided unreliable (Defence Closing Brief, paras 443, and 447 to 448) to be unsubstantiated. In this regard, the Chamber notes that the testimony of P-0912 and P-0892 provides a consistent account on many aspects, *inter alia*, the location of the abduction, consequences of the sexual intercourse and the description of the soldiers. With regard to the soldiers, the Chamber further notes that both witnesses testified that the soldiers wore *tache-tache* military uniforms, spoke Swahili and Lingala and were carrying weapons (*see* **P-0912**: T-148, pages 60 to 63; and **P-0892**: T-85, page 5). As to the argument that P-0912 could not have been able to see the ranks of the UPC/FPLC soldiers as they ‘did not have ranks on the uniforms before 2004’ (Defence Closing Brief, para. 448, referring to **P-0912**: T-148, page 104), the Chamber notes that P-0912 insisted that she was able to see the ranks; and, in any event, the Chamber finds this possible discrepancy insufficient to affect P-0912’s credibility on the matter, given her other consistent and corroborated account on the issue of perpetrators. In this regard, P-0892 concluded that the soldiers were members of UPC/FPLC based on the fact that the UPC/FPLC troops took over Mongbwalu at the time (*see* **P-0892**: T-85, page 5; *see also* **P-0912**: T-148, page 61 to 65; and T-149, pages 7 to 8) and that the APC – the only other armed group present in Mongbwalu at the time of the relevant events – had fled the town. Accordingly, considering the UPC/FPLC’s military control of Mongbwalu at the time as discussed above and the fact that Saidi is reported to be a UPC/FPLC commander (*see e.g.* **P-0012**: T-164, page 35; and **P-0901**: T-29, page 12), the Chamber is satisfied that these soldiers were UPC/FPLC soldiers.

<sup>1535</sup> **P-0892**: T-83, pages 44 to 45; and T-85, pages 5 to 6; and **P-0912**: T-148, page 60.

<sup>1536</sup> **P-0892**: T-83, page 45; and **P-0912**: T-148, pages 60 and 62.

<sup>1537</sup> **P-0912**: T-148, pages 63 to 64; and T-149, pages 7 to 8; *see also* **P-0892**: T-85, pages 5 and 7.

<sup>1538</sup> **P-0912**: T-148, pages 64 to 65. *See also* **P-0892**: T-85, page 7.

<sup>1539</sup> **P-0912**: T-148, page 65.

<sup>1540</sup> **P-0912**: T-148, pages 65 to 66. *See also* **P-0892**: T-85, page 7.

<sup>1541</sup> **P-0912**: T-148, pages 65 to 66. *See also* **P-0892**: T-85, pages 7 to 8.

520. When the girl returned to her house, her clothes were soaked in blood, she had difficulty walking, and was unable to speak for a day.<sup>1542</sup> The wounds took several months to heal and required surgery years later.<sup>1543</sup> The girl incurred a long-lasting fear, which caused her to drop out of school.<sup>1544</sup> The girl and her family did not report forced sexual intercourse to the commander of the soldiers out of fear.<sup>1545</sup>

521. Other women and girls, some of whom were Lendu,<sup>1546</sup> were also taken away by UPC/FPLC soldiers and raped, sometimes under similar circumstances: P-0892 testified<sup>1547</sup> that one girl, who was approximately 14 years old at the time, told her that she had been taken away by the soldiers on the premise that she would help them cook some food. She was then forced to enter a bedroom, asked to lie down, and as she refused, the soldiers started hitting her. Subsequently, two people ‘raped’ her; upon return to her house she was crying and her body was swollen in certain parts, including her cheeks.<sup>1548</sup> P-0892 further testified that UPC/FPLC soldiers took away another young woman and her mother, who went looking for her daughter. The young woman then told the witness that both her and her mother had been ‘raped’.<sup>1549</sup> Lastly, in line with P-0892, P-0912 testified that she overheard that the 14-year-old girl and the young woman had been taken from the same house by soldiers who mentioned that they were taking girls to prepare food at the military camp. These girls later told P-0912 that they had been ‘raped’ and injured, and one of the girls showed the witness her injury, which was in the same place as another girl’s injury after she had been raped.<sup>1550</sup> Considering the similar circumstances in which these girls and women were taken away, the

<sup>1542</sup> **P-0892**: T-83, pages 45 to 46; and T-85, page 8.

<sup>1543</sup> **P-0912**: T-148, pages 67 to 68, and 76; and T-149, page 5.

<sup>1544</sup> **P-0912**: T-148, pages 77 to 78, and 84 to 85. *See also* **P-0912**: T-148, pages 85 to 86.

<sup>1545</sup> **P-0892**: T-86, pages 16 to 17.

<sup>1546</sup> **P-0888**: T-105, page 81.

<sup>1547</sup> *See also* **P-0912**: T-148, page 47.

<sup>1548</sup> **P-0892**: T-85, pages 10 to 12.

<sup>1549</sup> **P-0892**: T-83, pages 44 to 45; and T-85, page 12.

<sup>1550</sup> **P-0912**: T-148, pages 69 to 71.



pretext of working for the soldiers, the temporal proximity ,and the observation of similar injuries, the Chamber concludes that they were raped by the UPC/FPLC soldiers. Furthermore, P-0887 testified that the UPC/FPLC soldiers committed ‘rapes’ and abductions of girls in Mongbwalu and referred to one particular instance in which she saw a girl from the neighbourhood being chased and pushed by a UPC/FPLC soldier with a gun, who then spent a night with the soldier.<sup>1551</sup>

522. On another occasion, a woman from Mongbwalu was forced to have sexual intercourse with a UPC/FPLC soldier at ‘Salumu’s camp’.<sup>1552</sup> The woman’s screams alarmed P-0017, who intervened and spoke to the soldier in question; the

<sup>1551</sup> According to the witness, she knew that since the girl was grabbed and taken away by the soldier in this way for the night, and she learned that she had certainly been raped (**P-0887**: T-93, pages 19, and 22 to 25). In this respect, the Chamber notes the Defence submissions (Defence Closing Brief, para. 693; and Defence Reply Brief, para. 120 ) that P-0887 provided implausible evidence and that what she could have heard or observed does not establish that her neighbour was raped, noting that P-0887 never discussed what happened with the neighbour. Further, the Defence argues that P-0907, who would have been there, did not provide evidence on this incident. First, considering that the rape could have happened without P-0907’s knowledge, the Chamber considers that the fact that he did not provide evidence on this incident does not affect P-0887’s testimony on this issue. Second, the Chamber considers the circumstances described by P-0887, including the fact that she was pushed forward when being taken from the house by an armed soldier, in front of her father, and brought elsewhere for the night. In light of the other evidence on the record regarding the conduct of UPC/FPLC soldiers *vis-à-vis* young female inhabitants in the aftermath of the assault on Mongbwalu, the Chamber finds that the only reasonable conclusion is that the girl who was seen by P-0887 had sexual intercourse with soldiers during that night. P-0888 also testified that he personally saw soldiers and commanders who raped ‘little girls’, although he could not provide their names (**P-0888**: T-105, page 81). *See also* **P-0963**: T-79, pages 31 to 35 (testifying that he heard soldiers telling one another about what they did during the ‘check area operation’, including soldiers stating that they raped girls). Lastly, P-0898 testified that he heard ‘all around’ that the ‘civilians’, especially the ‘civilian combatants’, were raping women, in particular Lendu women, young Nyali girls, and those women who were cooperating with the Lendu, although he did not see it personally (**P-0898**: T-154, page 16; *see also* **P-0898**: T-154, pages 16 to 17, referring to ‘people’ taking women). Considering that the witness testified that he had heard of rapes being committed by ‘civilians’, but neither provided any information in relation to the source or the circumstances in which he had heard of this fact nor was questioned further in this regard, the Chamber, absent any other relevant evidence, is unable to make a finding on the participation of ‘civilians’ in the rapes in Mongbwalu. The Chamber considers that this does not affect the credibility or reliability of other aspects of his account.

<sup>1552</sup> **P-0017**: T-59, pages 32 to 33. P-0017 testified that he saw a woman lying down half-naked in the presence of a soldier who was bare-chested. The soldier who was with the woman promised to ‘quickly finish’ and let the woman go when it was suggested to him that they were in a ‘military camp’ and, if the superior commanders were ‘to intervene’, that would ‘cost him heavily’. P-0017 understood that the soldier wanted to have ‘sexual relations’ with the woman before letting her go. On the basis of these descriptions based on P-0017’s direct observations alone, the Chamber finds that the only reasonable conclusion is that the soldier had sexual intercourse with this woman.

latter promised to the witness that he would ‘quickly finish’ and let the woman go.<sup>1553</sup>

523. During the assault on Mongbwalu, one of Safari’s escorts in the UPC/FPLC, referred to as Basara,<sup>1554</sup> who was drunk, grabbed a Lulu girl from a house in Mongbwalu where Lulu and Nyali girls were staying and took her to a house close to Mongbwalu market.<sup>1555</sup> He then ordered her to take her clothes off; the girl was scared so Basara took out his weapon after which the girl undressed and Basara forced her to have sexual intercourse with him.<sup>1556</sup> Afterwards, Basara told her that if anyone would come after her and start asking questions, she would have to say that she was ‘Basara’s wife’.<sup>1557</sup>

### *(iii) Placing of anti-personnel landmines in Mongbwalu*

524. After Mongbwalu was taken over, Mr Ntaganda ordered anti-personnel mines to be placed at the entry and exit points of the town that were not guarded by the UPC/FPLC soldiers.<sup>1558</sup> When one of his subordinates reported this to

<sup>1553</sup> **P-0017**: T-59, pages 32 to 33.

<sup>1554</sup> **P-0907**: T-89, page 42; and T-92, page 16. In this regard, the Chamber considers P-0907’s testimony on rape to be reliable as it relates to an event that he witnessed and is not connected to experiences at the *Appartements* which the Chamber has chosen not to rely on (as discussed further below).

<sup>1555</sup> **P-0907**: T-90, pages 39 to 40.

<sup>1556</sup> **P-0907**: T-90, pages 40 to 41 (testifying that he and another person saw the ‘rape’ with their own eyes as it was happening only a few metres away). In relation to the Defence’s challenge that no probative value can be attached to P-0907’s evidence of this event because he made up his evidence of participating in the First Operation (Defence Closing Brief, para. 694), the Chamber recalls that it considers P-0907 to be a credible witness in respect of his participation in the First Operation.

<sup>1557</sup> **P-0907**: T-90, page 40. *See also* footnote 1156 above, on the meaning of the term ‘wife’.

<sup>1558</sup> **P-0768**: T-33, pages 59, and 65 to 66. *See also* **P-0768**: T-35, pages 71 to 74; logbook entries DRC-OTP-2102-3854, at 3863, and 4031, referring to a message from Salongo Ndekezi asking Mr Ntaganda about the placement of mines, in response to which Mr Ntaganda enquired about the type of mines needed. **P-0769**: T-120, pages 68 to 69; **P-0963**: T-78, pages 57 to 58; **P-0907**: T-89, pages 69 to 70. The Chamber also notes that Mr Ntaganda himself confirmed that the UPC/FPLC had anti-personnel mines within their inventory (*see* **D-0300**: T-218, page 40; and T-226, page 90), however, he denied the use of these mines in Mongbwalu (**D-0300**: T-218, page 41). With regard to the Defence argument that P-0768 provided a false narrative on the issue (Defence Closing Brief, paras 256 to 258 and Defence Reply Brief, paras 70 to 72), the Chamber recalls its finding in the witness’s credibility assessment, as well as its finding that Mr Ntaganda is not credible on this point in para. 75 above.

Mr Ntaganda, suggesting that the landmines be removed, Mr Ntaganda did not express any desire to do so.<sup>1559</sup>

**(b) Sayo**

525. Armed members of the UPC/FPLC detained persons in a guarded, covered pit near a place in Sayo referred to as the ‘canteen’.<sup>1560</sup> On one occasion, a Bira farmer was captured by the UPC/FPLC and put in the pit for three days as the UPC/FPLC suspected his children to be members of the FNI.<sup>1561</sup>

526. In the immediate aftermath of the assault on Mongbwalu and the surrounding areas, members of the UPC/FPLC and Hema ‘civilians’ continued the *ratissage* operation in Sayo, looting and killing people during house-to-house searches.<sup>1562</sup> Houses in Sayo were looted<sup>1563</sup> and, like in Mongbwalu, looted items in Sayo mostly included household items, livestock, as well as corrugated roofing sheets.<sup>1564</sup> Some of the looted items were transported by two villagers to Camp Goli under the supervision and per orders of the UPC/FPLC soldiers.<sup>1565</sup> Furthermore, some time after the assault on the village, the UPC/FPLC set up a

<sup>1559</sup> **P-0768**: T-33, pages 66 to 67.

<sup>1560</sup> **P-0886**: T-38, pages 20 to 21, and 23.

<sup>1561</sup> **P-0886**: T-38, pages 18 to 20, and 21 to 22.

<sup>1562</sup> **P-0017**: T-58, pages 79 to 80; and T-61, page 105; **P-0768**: T-33, pages 50 to 51; and **P-0963**: T-79, pages 14 to 16. *See also* **P-0886**: T-37, pages 12 to 18; and T-40, pages 18 to 19. Noting the Defence arguments in this regard (Defence Closing Brief, paras 657 and 769), the Chamber considers that it has been presented with detailed and consistent accounts on the matter, including from eyewitnesses, and further recalls its above finding on the UPC/FPLC looting in Mongbwalu, which demonstrates a similar *modus operandi*. In these circumstances, the Chamber finds beyond reasonable doubt that UPC/FPLC soldiers looted in Sayo. The Chamber also observes that the Prosecution alleged that rapes were committed in Sayo (*see* the heading preceding paras 419 to 427 of the Prosecution Closing Brief). However, as also noted by the Defence (*see* para. 691 of the Defence Closing Brief), the Prosecution did not provide any relevant evidence in this regard and the Chamber is therefore not in a position to make a finding on any rapes committed in Sayo.

<sup>1563</sup> **P-0886**: T-37, pages 17 to 18; and T-40, pages 18 to 19. P-0800 testified that the health centre in Sayo was looted (**P-0800**: T-68, pages 52 and 81). However, the Chamber notes that P-0800, the only witness who testified in this respect, returned to Sayo only in or around March 2003 (**P-0800**: T-69, page 67) and that his testimony on looting in Sayo is based on hearsay evidence (**P-0800**: T-69, page 68), which is not corroborated by any other evidence. Under these circumstances, the Chamber is unable to establish who were the perpetrators of the looting of the health centre in Sayo.

<sup>1564</sup> **P-0017**: T-58, pages 79 to 80 (testifying that the ‘civilians’ looted, *inter alia*, bags and pagnes); and **P-0886**: T-37, pages 17 to 18; and T-40, pages 18 to 19 (testifying that UPC/FPLC soldiers took clothing, goats, chicken, beans and pots, mattresses, radios, generators and corrugated roofing sheets).

<sup>1565</sup> **P-0886**: T-37, pages 19 to 20.

base inside the church in Sayo; they broke the doors of the church, removed the furniture, dug trenches around the church, and started a fire inside to prepare their food.<sup>1566</sup>

(c) *Appartements camp*

527. The *Appartements* were a collection of buildings in Mongbwalu<sup>1567</sup> originally used to house employees of the Kilo-Moto gold mining company.<sup>1568</sup> Upon taking control of the area during the First Operation, the UPC/FPLC used the buildings and their immediate surroundings as a camp and headquarters.<sup>1569</sup> The *Appartements* camp was Mr Ntaganda's base in Mongbwalu.<sup>1570</sup> Weapons were also stored there.<sup>1571</sup>

(i) *Persons detained at the camp*

528. UPC/FPLC troops detained several persons, including Lendu,<sup>1572</sup> at the *Appartements* during the First Operation.<sup>1573</sup> This finding is unaffected by

<sup>1566</sup> **P-0768**: T-33, page 51; **P-0815**: T-76, page 56; and **P-0886**: T-37, pages 16, 18, 53, and 63. *See also* **P-0894**: DRC-OTP-2076-0194-R02, at 0199, para. 28, and 0202, para. 41. In relation to the evidence of P-0768 that the church in Sayo was looted (**P-0768**: T-33, pages 46 and 50), the Chamber notes that the witness did not specify what items, if any, were missing from the church. It also did not receive any other evidence indicating that any items were appropriated from the Sayo church, including by Mr Ntaganda. Accordingly, the Chamber cannot make any finding on the looting of the church in Sayo.

<sup>1567</sup> **P-0768**: T-35, page 63; and **P-0963**: T-79, page 24.

<sup>1568</sup> **P-0894**: DRC-OTP-2076-0194-R02, at 0196, para. 12; T-103, pages 102 to 103; and DRC-OTP-2076-0211; **P-0768**: T-33, pages 38 to 39; DRC-OTP-2058-0664-R02 (letter B corresponds to the *Appartements*); and T-35, page 63; **P-0887**: T-93, page 30; and **P-0898**: T-154, pages 19 to 20.

<sup>1569</sup> **P-0017**: T-61, pages 88 to 89, referring to DRC-D18-0001-0491, at 0496; T-61, pages 89 to 90, referring to DRC-D18-0001-0491, at 0497; **P-0894**: DRC-OTP-2076-0194-R02, at 0199, para. 28; T-103, pages 102 to 103; T-104, page 35; and DRC-OTP-2076-0211; and **P-0963**: T-79, page 11.

<sup>1570</sup> **P-0010**: T-47, pages 12 to 13, and 19; **P-0017**: T-61, pages 88 to 89, referring to DRC-D18-0001-0491, at 0496; T-61, pages 89 to 90, referring to DRC-D18-0001-0491, at 0497; **P-0768**: T-34, pages 7 and 46, referring to DRC-OTP-2058-0251, from 00:46:04 to 00:46:23; **P-0963**: T-78, page 89; **D-0300**: T-217, pages 44 and 73; DRC-REG-0001-0068 (Mr Ntaganda annotated a map of the Mongbwalu area, marking the *Appartements* with the number '3'); and T-218, page 4.

<sup>1571</sup> **P-0017**: T-59, page 16; **P-0907**: T-90, pages 43 to 44; and **P-0963**: T-78, page 88.

<sup>1572</sup> **P-0898**: T-154, pages 18 to 19; **P-0907**: T-90, page 34; and **P-0963**: T-79, pages 21 to 22. *See also* **P-0017**: T-59, page 24 (testifying that two persons held at the *Appartements* were accused of being members of the APC).

<sup>1573</sup> **P-0907**: T-90, pages 33 to 34; **P-0963**: T-79, pages 21 to 22, and 24; **P-0017**: T-59, pages 21 to 23; **P-0887**: T-93, pages 33 to 34; and **P-0898**: T-154, pages 18 and 20. *See also* **P-0315**: DRC-OTP-2058-0990, at 1014, para. 132; and T-108, pages 26 to 27. In relation to the Defence challenges to the credibility of P-0907, P-0963, P-0017, P-0898 on this issue (Defence Closing Brief, paras 302 to 308, 353, 632 and 635), including based on

Mr Ntaganda's contradictory testimony on this subject, which the Chamber finds not credible.<sup>1574</sup> Lendu who could provide valuable information, such as community and military leaders were captured and brought to the *Appartements* for interrogation.<sup>1575</sup> Those questioned were not only Lendu, but most Lendu were killed afterwards, while members of other ethnic groups were released.<sup>1576</sup> Mr Ntaganda himself would sometimes come to the *Appartements* and take persons held there away.<sup>1577</sup> On one occasion, Mr Ntaganda ordered UPC/FPLC soldiers to tie up and kill two persons detained there, who were accused of being

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the presence of P-0963 and P-0017 at the *Appartements*, the Chamber recalls its findings in the credibility assessments of these witnesses. In relation to the Defence assertion that no weight should be given to P-0887's testimony about prisoners brought to the *Appartements* because she, *inter alia*, concocted evidence with P-0907 as part of a scheme to obtain financial benefits (Defence Closing Brief, paras 419 to 424 and 634), the Chamber notes that P-0887 did indeed deny discussing P-0907's meetings with the Defence with him, which appears inconsistent with P-0907's account in this regard (compare **P-0887**: T-94, pages 96 to 97 with **P-0907**: T-92, pages 65 to 66). However, the Chamber also notes that P-0887 was not asked any questions on alleged benefits she would have obtained from being a Prosecution witness during her testimony, and recalls its finding in P-0907's credibility assessment that contradictions between P-0907's and P-0887's testimony point to the absence of collusion between the two. Accordingly, the Chamber concludes that the Defence challenge does not raise doubt concerning P-0887's credibility.

<sup>1574</sup> Mr Ntaganda, contrary to the evidence of P-0907, P-0963, P-0017, P-0898 and P-0887, testified that only one person was taken 'prisoner' during the First Operation, in Sayo, and that this person was released (**D-0300**: T-235, pages 84 to 85; *see also* in this regard Defence Closing Brief, para. 636). The Chamber considers that Mr Ntaganda's evidence on this issue is not credible, noting first, that it is contradicted by his admission that Abbé Boniface Bwanalunga was captured and interrogated at the *Appartements* (*see below*), and by what Mr Ntaganda's statement shortly after the takeover of Mongbwalu that many people were captured and that a significant number of them were killed (DRC-OTP-2058-0251, at 00:12:04 to 00:12:40 (translation DRC-OTP-2102-3766, at 3774, lines 201 to 202)). Mr Ntaganda's explanation for the latter contradiction – which was that his statement was intended as a military tactic to intimidate the 'enemy' (**D-300**: T-235, pages 86 to 87) – is unconvincing, in the Chamber's view, when viewed in light of the other unexplained contradiction, and the competing, consistent evidence from P-0907, P-0963, P-0017, P-0898 and P-0887.

<sup>1575</sup> **P-0963**: T-79, pages 15 to 16, and 21 to 23.

<sup>1576</sup> **P-0017**: T-63, page 50 (testifying that for a Lendu who had been taken 'prisoner', there was a '99 percent chance' they would be killed); **P-0898**: T-154, pages 18 (testifying that some 'prisoners' who were captured were interrogated and killed and others were freed), 19 (testifying that most 'prisoners' were Lendu and in most cases the Lendu 'prisoners' did not come back), and 20 to 21 (testifying that there was a '90 percent chance' that 'prisoners' from the Mulendu ethnic group would be killed, and that it was UPC/FPLC soldiers or the 'civilian combatants' who killed these 'prisoners', as well as to hearing gunfire behind the camp at a time when UPC/FPLC soldiers were saying that they were 'cleaning up the dirt', the Lendu being the dirt, and using the slogan 'a good Lendu is a dead Lendu'); and **P-0963**: T-79, pages 15 to 16 (testifying that of persons interrogated by Pigwa, 'if you were Lendu person you were dead' and that no distinction was made between a Lendu 'civilian or combatant'), and 21 to 22 (referring to the questioning of 'prisoners' by Pigwa, including Lendu 'civilians', at the *Appartements*). *See also* **P-0315**: DRC-OTP-2058-0990, at 1014, para. 132; **P-0859**: T-51, page 39 (testifying that the Hema would talk about the Lendu saying they were 'dirt' and that they needed to be rid of this 'dirt'); **P-0887**: T-93, page 33; and **P-0907**: T-90, pages 34 to 35 (testifying that some 'hostages' would be killed, and if a 'hostage' was Lendu, that 'hostage' would be killed if they resisted or tried to flee).

<sup>1577</sup> **P-0017**: T-59, pages 22 to 23. The Chamber recalls its conclusion in P-0017's credibility assessment on P-0017's testimony on his presence at the camp at the same time as Mr Ntaganda, and finds his account of having been a guard at the 'prison' at *Appartements* to be credible and reliable, noting that it is detailed and consistent with evidence of P-0963, P-0887, and P-0898.

members of the APC.<sup>1578</sup> Those two persons were beaten and killed subsequent to the order.<sup>1579</sup>

**(ii) Capture and killing of Abbé Boniface Bwanalonga**

529. Another person captured during the First Operation was *Abbé* Boniface Bwanalonga. At the time of the First Operation, *Abbé* Bwanalonga, a Lendu man of advanced age,<sup>1580</sup> was serving as a Catholic priest at the Mongbwalu parish.<sup>1581</sup>

530. After the takeover of Mongbwalu,<sup>1582</sup> the UPC/FPLC captured *Abbé* Bwanalonga at the Mongbwalu parish,<sup>1583</sup> and took him, as well as three Lendu nuns,<sup>1584</sup> to the *Appartements*. Based on the evidence provided, it cannot be

<sup>1578</sup> **P-0017**: T-59, pages 23 to 24.

<sup>1579</sup> **P-0017**: T-59, pages 23 to 24.

<sup>1580</sup> **P-0859**: T-51, page 34; **P-0894**: DRC-OTP-2076-0194-R02, at 0204, para. 48; and **P-0963**: T-79, page 24. See also **P-0768**: T-33, pages 55 and 58.

<sup>1581</sup> **P-0859**: T-51, pages 34 to 35; **P-0894**: DRC-OTP-2076-0194-R02, at 0204, para.48; **P-0963**: T-79, page 22. See also DRC-OTP-2058-0251 from 01:13:15 to 01:17:11 (translation DRC-OTP-2102-3766, at 3798).

<sup>1582</sup> **P-0859**: T-52, page 26 (testifying that although he could not specifically recall the date, he saw the *Abbé* in the vehicle with the UPC/FPLC soldiers shortly after Mongbwalu was captured, a few days after, or a week or two after the witness returned to Mongbwalu); and **D-0300**: T-217, pages 67, and 70 to 71 (testifying that the *Abbé*'s capture occurred on 25 November 2002).

<sup>1583</sup> **P-0859**: T-51, pages 35 and 37; and **D-0300**: T-217, page 72; and T-237, pages 4 to 5. The Chamber considers the Defence challenge to P-0859's evidence regarding the *Abbé*'s capture on the basis that there was no white four-by-four Hilux in Mongbwalu at that time (Defence Closing Brief, para. 646) unsubstantiated and does not consider it further. The Chamber further notes that there is inconsistent evidence as to the place of the capture and that all accounts are based on hearsay. One set of accounts indicates that *Abbé* and the nuns were taken from the parish (see **P-0768**: T-33, page 55; and T-35, page 62, who said his source was Thomas Kasangaki; **P-0315**: DRC-OTP-2058-0990, from 1014 to 1015, para. 134, whose sources were several purported eyewitnesses, and, by implication, do not include Thomas Kasangaki; DRC-OTP-2058-0251 from 00:59:31 to 01:01:08, and from 01:13:15 to 01:17:11 (translation DRC-OTP-2102-3766, at 3793, 3798, and from 3798 to 3799); **P-0859**: T-51, pages 34 to 35; and **P-0963**: T-79, pages 22 to 24). Mr Ntaganda testified that they were taken in the bush, after having initially fled Mongbwalu with the APC troops, based on a conversation he said he overheard on the Motorola between Salumu Mulenda and Thomas Kasangaki (**D-0300**: T-217, pages 70 to 72, and 74; and T-237, page 3). His account corresponds to what Floribert Kisémbé contemporaneously told the *Servantes de Dieu* Nuns in DRC-OTP-2058-0251 (from 00:59:31 to 01:01:08 (translation DRC-OTP-2102-3766, from 3793 to 3794)), but the Chamber considers the corroborating value of this statement undermined by the fact that Floribert Kisémbé provided demonstrably false information to the *Servantes de Dieu* Nuns, telling them that although the three nuns were at the *Appartements*, the fourth person (i.e. the *Abbé*) had not been found yet and it was not known where he was (DRC-OTP-2058-0251 from 00:59:31 to 01:01:08 (translation DRC-OTP-2102-3766, at 3794)), despite already having been informed that the *Abbé* was at the *Appartements* (**D-0300**: T-217, page 81). The Defence statement that Kisémbé 'opted not to provide this information, which is linked to operations' (Defence Closing Brief, para. 641), is unsupported by any evidence. Noting that the majority of the evidence (including from different hearsay sources) consistently indicates that *Abbé* and the nuns were taken from the parish, the Chamber finds that the *Abbé* and the nuns were taken there.

<sup>1584</sup> **P-0768**: T-33, pages 55, and 57 to 58; and T-35, pages 66 to 67; DRC-OTP-2058-0251 from 00:59:31 to 01:01:08 (translation DRC-OTP-2102-3766, at 3794); and **D-0300**: T-217, pages 70 to 72, and 74; and T-237,

established whether other persons were also taken with *Abbé* Bwanalunga and the three nuns.<sup>1585</sup> Mr Ntaganda was not present at the Mongbwalu parish for the capture of *Abbé* Bwanalunga.<sup>1586</sup>

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pages 3 to 6 (testifying that three nuns were taken with the *Abbé* and brought back to the *Appartements*, that he spoke to the nuns at the *Appartements* after they had been brought there, and that the nuns could have been Lendu). The Chamber notes that as well as the precise circumstances of the capture (addressed in the footnote above) it is disputed whether the nuns were captured along with the *Abbé* or whether they accompanied him to the *Appartements* of their own free will. Mr Ntaganda testifies to the latter (**D-0300**: T-217, page 72; and T-237, page 5), but this is hearsay based on what he says he was told by Thomas Kasangaki. This is contradicted by the hearsay evidence of P-0768 and P-0315, which is that the nuns were taken at the parish/their houses (see above), and what the *Servantes de Dieu* Nuns told Kisembo, which is that the nuns were taken from the parish (DRC-OTP-2058-0251 from 00:59:31 to 01:01:08, (translation DRC-OTP-2102-3766, at 3793), although the basis for their knowledge of this is not clear. Noting the consistency of the evidence supporting the accounts of P-0768, and P-0315 the Chamber concludes that the nuns were captured along with the *Abbé*.

<sup>1585</sup> Several purported eyewitnesses interviewed by P-0315 indicated that *Abbé* Bwanalunga and the three nuns were taken with other members of the parish (**P-0315**: DRC-OTP-2058-0990, at 1014, para. 134; *see also* DRC-OTP-0074-0628, at 0669). The Chamber gives low weight to P-0315's evidence and DRC-OTP-0074-0628 on this particular point, noting that neither is corroborated by direct testimonial evidence. A letter dated 18 January 2003 purportedly reporting on, *inter alia*, the capture of *Abbé* Bwanalunga, provides that two cooks were taken along with *Abbé* Bwanalunga and two nuns (DRC-OTP-0127-0118, from 0118 to 0119, para. 8). While P-0041 stated that he received and knows the letter (**P-0041**: DRC-OTP-0147-0002, at 0006, para. 27, and at 0015 to 0016, para. 80), the Chamber notes that this letter is unsigned, that there is no other information about the letter's author, or the basis of the account contained therein, and that certain details in the letter are inconsistent with other evidence on the event, for instance, that only two nuns were taken. For all these reasons, the Chamber affords no weight to this document (*see also* Defence Closing Brief, para. 644).

<sup>1586</sup> In this regard, it is recalled that Mr Ntaganda denies his presence and that the only evidence supporting his presence is hearsay evidence from P-0768. The Defence further challenges P-0768's account on this point, stating that it is inconsistent with evidence related to Thomas Kasangaki having taken the *Abbé* to the *Appartements* provided by Mr Ntaganda and by P-0315, and video evidence showing Kisembo and Mr Ntaganda visiting two congregations on the day following the arrival of the UPC/FPLC delegation (DRC-OTP-2058-0251 from 00:55:00 to 00:56:06), which was Mr Ntaganda first presence there (*see* Defence Closing Brief, para. 284). The Chamber does not consider the video evidence relied upon by the Defence to conclusively indicate whether or not this was Mr Ntaganda's first presence at the parish. However, noting the other consistent hearsay evidence from P-0859 and persons interviewed by P-0315 corroborating Mr Ntaganda's account that it was Thomas Kasangaki who took the *Abbé* and the nuns, the Chamber finds that Mr Ntaganda was not present for the capture of the *Abbé*.

531. Around this time, the UPC/FPLC also took possession of a vehicle belonging to *Abbé Bwanalonga*.<sup>1587</sup>

532. Shortly after he was detained at the *Appartements*<sup>1588</sup> *Abbé Bwanalonga* was interrogated there by Mr Ntaganda. P-0768 witnessed Mr Ntaganda personally interrogating the *Abbé*: he testified that he was in Nzebi when Mr Ntaganda called him to the *Appartements*, that he travelled to the *Appartements* from Nzebi by foot, and that when he got to the *Appartements*, he saw Mr Ntaganda interrogating the *Abbé* while hitting him with a piece of wood, in his apartment at the *Appartements* camp, in the presence of his bodyguards.<sup>1589</sup>

533. Mr Ntaganda then shot the *Abbé* dead: P-0768 testified that after the interrogation, Mr Ntaganda ordered his bodyguards to take the *Abbé* behind the *Appartements*, where Mr Ntaganda shot the *Abbé*. He testified to having heard one shot and then going outside, seeing the priest lying on the ground and

<sup>1587</sup> **P-0017**: T-63, page 62; **P-0768**: T-33, pages 60 and 64; and T-36, pages 14 to 15; **P-0859**: T-51, pages 35 and 37. While noting the inconsistencies in P-0859 and P-0768's evidence concerning the model and colour of the vehicle, the Chamber, in light of the time passed since the events and the overall similarities between both descriptions, does not consider this inconsistency to affect the overall reliability of the evidence. Further, although P-0768's evidence that the jeep belonged to *Abbé Bwanalonga* is based on hearsay, and no basis is provided for P-0017's knowledge that the vehicle was taken from 'the sisters', the Chamber has relied on this evidence, noting its general consistency with the reliable evidence of P-0859 (*see* Defence Closing Brief, para. 293).

<sup>1588</sup> **P-0768**: T-33, page 55 (the witness testified that it was one day); P-0963 testified that that he saw the *Abbé* at the *Appartements* and learned that the *Abbé* had been killed in Mongbwalu (**P-0963**: T-79, pages 23 to 24), from other soldiers (**P-0963**: T-79, page 25), during the operation while he himself was still in Mongbwalu (**P-0963**: T-79, page 25). On the basis of this evidence the Chamber is satisfied that the interrogation occurred shortly after the *Abbé* was brought to the *Appartements*.

<sup>1589</sup> **P-0768**: T-33, pages 55 to 56; and T-35, pages 63 to 64. Mr Ntaganda admits the capture of the *Abbé*, the transfer of him and three nuns to the *Appartements* by UPC/FPLC troops, and that he authorised Thomas Kasangaki to interrogate the *Abbé*, but denies personal involvement in the interrogation (**D-0300**: T-217, pages 72 to 73; and T-237, pages 2 to 3). He testified that he was angry about the *Abbé* being taken to the *Appartements*, but nevertheless authorised the interrogation on the basis of information that the *Abbé* had collaborated with 'combatants' and the APC to mistreat the population (**D-0300**: T-217, pages 72 to 73; and T-237, pages 2 to 3). He further testified that after authorising the interrogation, he reassured the *Abbé* and the nuns that they would be returned home after the *Abbé*'s statement (**D-0300**: T-217, page 72), and that he returned to his home which was elsewhere at the *Appartements* (**D-0300**: T-217, page 73), and did not see the *Abbé* or the nuns again before leaving Mongbwalu three days later (**D-0300**: T-218, page 6; and T-237, page 11). P-0963 testified that the *Abbé* was questioned at the *Appartements* by Pigwa, and that he did not know whether Mr Ntaganda had himself interrogated the *Abbé* (**P-0963**: T-79, pages 23 and 25). The Chamber is satisfied that the evidence establishes that the *Abbé* was interrogated at the *Appartements*, noting Mr Ntaganda's admission that he authorised the interrogation, and evidence from P-0768 and P-0963 that an interrogation occurred. Noting he detailed and coherent evidence provided by P-0768, and recalling its conclusion in P-0768's credibility assessment, the Chamber relies on P-0768's evidence on this issue and considers Mr Ntaganda's testimony on this point not credible.



Mr Ntaganda ‘finishing him off’, ‘with his pistol shooting the priest’.<sup>1590</sup> P-0768 further testified that after he was killed, the *Abbé*’s body was thrown into the bush below the *Appartements*, and ‘civilians’ were asked to bury him.<sup>1591</sup> The Chamber considers his testimony on this event to be credible<sup>1592</sup> and reliable.<sup>1593</sup> The Chamber further finds Mr Ntaganda’s denial of having committing this killing,<sup>1594</sup> and his associated assertion that he only learned about *Abbé* Bwanalunga’s name

<sup>1590</sup> **P-0768**: T-33, pages 55 to 56; and T-35, pages 64 to 65.

<sup>1591</sup> T-33, page 56.

<sup>1592</sup> While P-0768 is the only alleged eyewitness to the event, the Chamber considers his account to be strong: he gave a detailed, step-by-step account of the event (*see* T-33, pages 55 to 56; and T-35, pages 60 to 66), which was consistent between direct and cross-examination. In this respect, the Chamber notes that despite the attempts by Defence to destabilise him on issues of small detail (exact times of day, distances between locations etc.), the witness maintained his version of events and provided additional details (*see e.g.* T-35, pages 61, and 63 to 66). The witness also stated when he did not remember details about the event (*see e.g.* T-35, pages 65 to 66).

<sup>1593</sup> P-0768’s account is also partly corroborated on aspects other than Mr Ntaganda’s direct involvement in the interrogation and killing: (i) insider P-0963 testified that that he saw the *Abbé* at the *Appartements* and learned that the *Abbé* had been killed in Mongbwalu (T-79, pages 23 to 24), from other soldiers (T-79, page 25), during the operation while he himself was still in Mongbwalu (T-79, page 25). While he said did not know who shot the *Abbé*, and could not answer whether the *Abbé* was shot while he was still held by the UPC/FPLC (T-79, pages 23 to 24), his evidence confirms the detention and killing of the *Abbé* during the attack, and the fact that the killing was discussed by UPC/FPLC soldiers at the time; (ii) contrary to the Defence assertion that the *Abbé*’s body was not removed and buried by parishioners in 2002 (Defence Closing Brief, para. 648), two other witnesses provided hearsay evidence generally supporting P-0768’s account that after the *Abbé* was killed, his body was thrown into the bushes below the *Appartements*, civilians were asked to bury him the next day and he was buried just next to the *Appartements* (P-0901, who testified that after a few days, the *Abbé*’s body was removed and buried by the parishioners (**P-0901**: T-28, pages 56 to 57, and P-0315, who testified that witnesses gave her detailed information about where the *Abbé* was buried (DRC-OTP-2058-0990, at 1015, para. 135); (iii) other witnesses provide hearsay evidence that the *Abbé* was killed, some also about the UPC/FPLC’s contemporaneous awareness of that fact: P-0859, who testified that the *Abbé* was killed by UPC/FPLC soldiers, although the basis for his knowledge is not explained (**P-0859**: T-51, pages 34 to 35); P-0901, who although said that he never learned the truth about who within the UPC/FPLC was involved in the *Abbé*’s death (T-28, page 57), testified that the *Abbé* was killed during the attack (T-28, pages 56 to 57). P-0901 also testified that the diocese of Bunia was in contact with the UPC/FPLC as to the death of the *Abbé* (T-28, page 56; and T-32, page 55), because they found out that it was FPLC soldiers who killed him (T-28, page 57), and that when the Catholic church followed up on the issue, everybody within the UPC/FPLC was aware of it (T-28, page 27), although (as noted in Defence Closing Brief, para. 648, contrary to Prosecution Closing Brief, para. 359), does not give an indication of when these questions were first raised with the UPC/FPLC (T-28, pages 56 to 57; and T-32, page 55). He said that the Catholic Church to this day continues to accuse the UPC/FPLC of the killing (T-28, page 57); and P-0041, who testified that he was informed by letter that a priest named Boniface Bwanalunga had been killed by UPC/FPLC soldiers in Mongbwalu in November 2002 (DRC-OTP-0147-0002, at 0006, para. 27, and from 0015 to 0016, para. 80; and DRC-OTP-0127-0118, letter dated 18 January 2003), which the Chamber relies on it to establish the fact that questions about the *Abbé* were raised with the UPC/FPLC as early as January 2003. Noting that the Defence arguments against P-0768’s credibility on this subject are only supported by Mr Ntaganda’s own testimony (*see* Defence Closing Brief paras 284 and 637 and the references to Mr Ntaganda’s testimony therein), the Chamber does not consider them to affect its assessment of P-0768’s evidence as fully credible and reliable on this point.

<sup>1594</sup> **D-0300**: T-223, page 31; and T-237, page 7. In addition to testifying, as noted above, that he did not see the *Abbé* or the nuns again after leaving the *Appartements*, he further testified that he had no reason to believe that Thomas Kasangaki would harm the *Abbé* or the nuns (T-217, page 73).

when he arrived at the Court<sup>1595</sup> not credible in the circumstances.<sup>1596</sup> The Chamber's finding on the *Abbé's* killing is also unaffected by the Defence argument that the Prosecution has failed to prove that the *Abbé* was killed by the UPC/FPLC, which the Chamber finds unsubstantiated.<sup>1597</sup>

534. After the *Abbé* was killed, Mr Ntaganda ordered that the three nuns locked in a room at the *Appartements* be killed.<sup>1598</sup> This order was not executed and the nuns were later on released.<sup>1599</sup>

<sup>1595</sup> **D-0300**: T-223, pages 6 to 7.

<sup>1596</sup> Underlying Mr Ntaganda's explanation is his account that at the end of 2003 he learnt about the death of a priest in Mongbwalu in November 2002, and although he did consider the possibility of a link between this information and his own experience in Mongbwalu in November 2002, he did not have exact information about it (T-223, pages 3 and 5), and did not have time to seek further information because it was a difficult period due to Floribert Kisembo having just defected (T-223, pages 3, and 5 to 6) and because Thomas Kasangaki had already died (T-223, page 6), and that he never had a chance to discuss the priest's disappearance with anyone in the UPC/FPLC (T-223, page 6; and T-237, pages 7 to 8). The Chamber considers Mr Ntaganda's denial on this subject to be implausible and obviously evasive. Critical to Mr Ntaganda's denial is his assertion that he never asked the *Abbé's* name or ethnicity when he spoke to him at *Appartements* after his capture (T-237, pages 5 to 7). Mr Ntaganda testified that Thomas Kasangaki had already informed him that this person was a priest, so the *Abbé* did not have to introduce himself (T-237, page 6), that at a first meeting, Mr Ntaganda would not have normally taken an interest in such a person (T-237, page 7), that nobody explained to him that the priest was Ngiti (T-237, page 6), and that Mr Ntaganda himself did not usually try to get to know people's ethnic groups (T-237, page 6). The Chamber finds this explanation implausible given Mr Ntaganda's position of authority, and his own admission that his authorisation was required for the interrogation, and notes that his assertion that he only learned the *Abbe's* name when arriving at the Court is contrary to P-0963's evidence that soldiers were talking about the death of the priest during the Mongbwalu attack itself (as noted above); evidence from P-0041 that questions were raised as early as 2003 with the UPC/FPLC about the killing of the priest, by name, and the evidence from P-0315 that during her interview with Mr Ntaganda in 2010 she expressly asked him about the *Abbé* by name, and Mr Ntaganda claimed that he did not know him (T-107, page 78; and T-108, pages 64 to 65) (regarding the arguments in para. 650 of the Defence Closing Brief, the Chamber considers it unnecessary to address them, noting that the Chamber has only used this evidence to establish that she asked Mr Ntaganda about the *Abbé* by name in 2010). For the reasons set out in this and the previous footnote, the Chamber accepts P-0768's account on this issue (with the abovementioned associated evidence), and finds Mr Ntaganda's denial of this killing not credible.

<sup>1597</sup> Defence Closing Brief, para. 637. *See also* paras 640 and 683 to 684. The Chamber finds this argument unsubstantiated, noting the evidence referred to above, and evidence suggesting that the *Abbé's* body was exhumed from the *Appartements* in 2013 and reburied by the Catholic Church (*see* **P-0859**: T-51, pages 35 to 36); **P-0894**: DRC-OTP-2076-0194-R02, at 0204 to 0205, paras 49 to 50; **P-0901**: T-28, page 57; and **P-0800**: T-69, pages 80 to 81. *See also* DRC-OTP-2066-0537).

<sup>1598</sup> **P-0768**: T-33, page 57. This is contradicted by Mr Ntaganda who testified that after authorising the interrogation of the *Abbé*, he returned to his home which was elsewhere at the *Appartements* and did not see the *Abbé* or the nuns again before leaving Mongbwalu three days later (**D-0300**: T-218, page 6; and T-237, page 11). However, recalling its finding on P-0768's credibility, the Chamber considers Mr Ntaganda's version of events not credible and does not rely on it.

<sup>1599</sup> **P-0768**: T-33, page 57. *See also* **P-0315**: DRC-OTP-2058-0990, from 1014 to 1015, para. 134. P-0768 testified that before they were freed, the nuns were raped by Mr Ntaganda's bodyguards (**P-0768**: T-33, page 57). Mr Ntaganda denies that this occurred (**D-0300**: T-237, page 8). Noting that this evidence is hearsay based on what P-0768 heard from the troops who were guarding the *Appartements* (**P-0768**: T-33, pages 57 to 58),

(iii) *Women at the Appartements camp*

535. UPC/FPLC soldiers and commanders, including Mr Ntaganda, who were openly carrying their weapons, brought women that witnesses referred to as ‘civilians’ back to the *Appartements* camp.<sup>1600</sup> The soldiers and commanders had sexual intercourse with most of them on these occasions.<sup>1601</sup> After a few hours or a few days, these women were thrown out by the soldiers, who would later go get

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and absent any other evidence on this matter, the Chamber is unable to make a finding on this point (*see also* Defence Closing Brief paras 284 and 692).

<sup>1600</sup> **P-0907**: T-90, pages 40, and 42 (testifying that UPC/FPLC soldiers brought women to the *Appartements*); **P-0017**: T-59, pages 21 to 22, and 27 to 28; and T-59-FRA, page 28 (testifying that after returning from drinking places in the centre of Mongbwalu Mr Ntaganda, Salongo Ndekezi, and sometimes Thomas Kasangaki would sometimes return to the *Appartements* with women dressed in civilian attire). In relation to the Defence’s assertion that P-0017’s evidence cannot be relied on here because he was not present at the *Appartements* (Defence Closing Brief, para. 692), the Chamber recalls its conclusion on this matter in P-0017’s credibility assessment; and **P-0887**: T-93, pages 31 to 32 (testifying that UPC/FPLC soldiers living at the *Appartements* went to the centre of town and find women and bring them back to where they were staying). In relation to the Defence’s assertion that P-0907 and P-0887 cannot be relied on because they concocted evidence together (Defence Closing Brief, paras 375 to 377, and 692), the Chamber recalls its conclusion on this submission in P-0907’s credibility assessment as well as its aforementioned finding on the Defence challenge to P-0887’s credibility in this regard. The Chamber notes that P-0010 testified that no women came in to the *Appartements* camp (**P-0010**: T-50, pages 24 to 25). Noting that P-0010 as a low-ranking member of the UPC/FPLC had a correspondingly limited opportunity to know about what happened at the *Appartements*, the Chamber, in light of the other evidence cited above, does not accept P-0010’s denial of the fact. By the same token, the Chamber considers that it is possible for women to have been brought to the *Appartements* without P-0010’s knowledge, and finds therefore that P-0010’s evidence on this point does not affect its finding that women were brought to the camp.

<sup>1601</sup> The Chamber finds that the only reasonable conclusion is that UPC/FPLC soldiers and commanders had sexual intercourse with the women they brought back to the camp, on the basis of: (i) the fact that these women only stayed at the camp for a short time and then left or were ‘thrown out’ by the UPC/FPLC soldiers (**P-0907**: T-90, pages 40, and 42 to 43; and **P-0887**: T-93, page 32); (ii) witness testimony to the effect that women were brought to the camp to ‘sexually satisfy’ the soldiers (**P-0907**: T-90, page 81); (iii) the fact that women were seen crying when they left (**P-0887**: T-93, page 32); (iv) the pattern of conduct in other UPC/FPLC camps in Mongbwalu during this period in similar circumstances (*see* section IV.B.7.d)(5)(a)(ii) Acts of sexual violence and (v) P-0888’s testimony that he heard that rapes were committed by high-ranking officers at Mr Ntaganda’s residence in Mongbwalu, although he did not see it with his own eyes, and could he not remember the commander’s names (**P-0888**: T-105, page 82). The Chamber notes certain discrepancies between P-0907’s in-court testimony and his prior statement (**P-0907**: T-90, page 83 *versus* T-90, page 90; and **P-0907**: T-90, pages 82, 83, and 89 *versus* T-90, page 91), and P-0887’s testimony (*see* **P-0907**: T-90, pages 79, and 88 *versus* **P-0887**: T-94, page 72; **P-0907**: T-90, pages 41 to 42, 80, and 88 to 89 *versus* **P-0887**: T-94, page 74; and **P-0907**: T-90, page 83 *versus* T-93, page 10). However, given the personal and subjective nature of this particular evidence, the Chamber does not consider the inconsistencies to impact the credibility of P-0907 (or P-0887) on the other evidence they provide about the treatment of ‘civilian’ women at the *Appartements* camp (*see* Defence Closing Brief, paras 375 to 377, and 692). Lastly, the Chamber notes that Mr Ntaganda was among the soldiers and commanders who brought women back to the *Appartements*. In light of the fact that Mr Ntaganda is not charged with rape as a direct perpetrator, the conduct of Mr Ntaganda is not addressed in the present analysis. However, the Chamber gives due consideration, for the purpose of determining the facts underlying the charges, to the fact that Mr Ntaganda was present when women were brought to the *Appartements*, and that he brought women there himself.

other women.<sup>1602</sup> Some of these women appeared ‘intimidated’: they were in the presence of many soldiers, remained completely silent during their entire stay, or were seen crying when they left.<sup>1603</sup>

**(d) Return of the population to Mongbwalu and Sayo**

536. Sometime in December 2002, after the First Operation, inhabitants of Mongbwalu and Sayo from various groups who had fled during the UPC/FPLC assaults, except the Lendu, started to return to their houses.<sup>1604</sup> The UPC/FPLC had been trained to regard the Lendu as their enemy so any Lendu person would be killed if they returned to Mongbwalu.<sup>1605</sup> The Lendu did not go back to either Mongbwalu or Sayo while the UPC/FPLC was present there in the aftermath of the UPC/FPLC assault.<sup>1606</sup>

<sup>1602</sup> **P-0017**: T-59, page 31; **P-0887**: T-93, page 32; and **P-0907**: T-90, page 42.

<sup>1603</sup> **P-0017**: T-59, page 31; and **P-0887**: T-93, page 32.

<sup>1604</sup> **P-0886**: T-36, page 66; T-37, pages 7, and 12 to 13; and T-38, pages 13 to 15; **P-0887**: T-93, pages 7 to 8, 19, and 27; **P-0859**: T-51, pages 7 to 8, and 25 to 26; and T-52, pages 17, and 20 to 21). Concerning the Defence argument that P-0859 was able to return to Mongbwalu (Defence Closing Brief, para. 716), the Chamber notes P-0859’s testimony on his reasons to go back to Mongbwalu (**P-0859**: T-51, pages 25 to 26), and therefore considers that P-0859’s testimony does not contradict its overall finding that the Lendu did not generally go back to neither Mongbwalu nor Sayo while the UPC/FPLC were present there in the aftermath of the attack. **P-0907**: T-90, pages 50 to 51; and **P-0901**: T-29, pages 8 to 9. *See also* DRC-OTP-0074-0628, at 0666. Lastly, the Chamber considers that the Defence assertion that not only Hema were able to return to Mongbwalu is consistent with the Chamber’s finding on the matter (Defence Reply Brief, para. 194).

<sup>1605</sup> **P-0907**: T-90, page 51; and **P-0963**: T-79, page 18. *See also* DRC-OTP-0074-0628, at 0666.

<sup>1606</sup> **P-0017**: T-59, page 11; **P-0886**: T-38, pages 13 to 15; and **P-0901**: T-29, pages 8 to 9. As for the Defence challenges based on alleged discrepancies between the testimony of P-0907 and P-0963 on the one hand, and P-0800 on the other (Defence Closing Brief, paras 716, 786, and Defence Reply Brief, para. 182), the Chamber notes that it does not rely on evidence provided by P-0800 because he only returned to Sayo three months after the attack (*see* **P-0800**: T-69, page 67), and would therefore not have been able to provide relevant account of events, and because he is not of Lendu ethnicity (*see* **P-0800**: T-68, page 13). Further, the Chamber notes that both P-0907 and P-0963 provided accounts which are consistent with other witness, including eyewitnesses, such as P-0886, P-0887, and P-0017. The Chamber is therefore satisfied that the accounts of both P-0907 and P-0963 are reliable on this matter.

## (6) Events in Kilo

### (a) Unfolding of the attack on Kilo

537. Kilo is a village located in the Banyali-Kilo *collectivité*.<sup>1607</sup> Members of different ethnic groups lived in Kilo, including Nyali and Lendu, with the Nyali constituting the majority.<sup>1608</sup> Following the assault on Mongbwalu, a number of people had fled to Kilo.<sup>1609</sup> Prior to the assault, Lendu fighters were also present in Kilo and had a camp on a hill.<sup>1610</sup>

538. On 5 December 2002, Salongo Ndekezi sent Mr Ntaganda a request for mines to be placed on the road from Kilo to Kobu.<sup>1611</sup> Mr Ntaganda responded a few hours later, asking whether the request concerned anti-personnel mines or anti-tank mines.<sup>1612</sup>

539. After taking over Mongbwalu, Sayo, and Nzebi, on or about 6 December 2002, the UPC/FPLC attacked Kilo.<sup>1613</sup> The assault on Kilo was carried out with regular

<sup>1607</sup> Agreed Fact 5.

<sup>1608</sup> **P-0963**: T-80, page 7; **P-0805**: T-25bis, page 11; and **P-0877**: DRC-OTP-2069-2086-R03, at 2090, para. 22.

<sup>1609</sup> See para. 497.

<sup>1610</sup> **P-0877**: DRC-OTP-2069-2086-R03, at 2090, para. 22. According to the witness, there were many soldiers but there but they were not organized in the same way as the Hema. The commanders of the camp were Kabuli, Longangi, and Kung Fu.

<sup>1611</sup> Logbook DRC-OTP-2102-3854, at 3863. See also **D-0300**: T-226, pages 85 to 88.

<sup>1612</sup> Logbook DRC-OTP-2102-3854, at 4031. See also **D-0300**: T-218, pages 39 to 40; and T-226, pages 88 to 89. For more information on the use of anti-personnel mines within the UPC/FPLC see para. 524.

<sup>1613</sup> In relation to the date of the attack, the Chamber received evidence from P-0877 that the UPC/FPLC attacked Kilo on 6 December 2002 (**P-0877**: T-109, page 45; T-110, page 10; DRC-OTP-2069-2086-R03, at 2090, para. 23; and DRC-OTP-2077-0118-R03, at 0122, para. 21; DRC-OTP-2077-0140, at 0210 (translation DRC-OTP-2081-0507, at 0578), and from P-0963 that the event occurred one or two weeks after the attack on Mongbwalu (**P-0963**: T-80, page 5), which would also place the attack either on or about 1 December 2002 or on or about 8 December 2002. This is further corroborated by DRC-OTP-0074-0628, at 0666, also placing the UPC/FPLC attack on Kilo on 6 December 2002. See also **P-0907**: T-90, page 43 (testifying that Commander Americain went to Kilo after the Mongbwalu takeover). On the other hand, P-0850 testified that Kilo was attacked two or three days after he arrived there after having fled the attack on Mongbwalu (**P-0850**: T-112, page 74; and DRC-OTP-2067-1825-R02, at 1830, paras 35 to 36), which would place the attack on Kilo shortly after 20 November 2002, while V-3 testified that the war reached Kilo-État at the end of 2002, during Christmas festivities (**V-3**: T-203, pages 7 and 10). Considering the time elapsed since the relevant events, and the potential impact of this passage of time on the witnesses' ability to remember specific dates, the Chamber considers that these slight inconsistencies do not affect the reliability of the witnesses' testimony. Further considering the discrepancies in relation to the dates provided, the Chamber relies on the evidence of P-0877, which is also corroborated by P-0963, P-0907, and DRC-OTP-0074-0628.

assault weapons and heavy weapons.<sup>1614</sup> As soon as they heard shots being fired, members of the population fled Kilo, to the bush and to other places.<sup>1615</sup> After taking over the village, the UPC/FPLC set up a military camp in Kilo.<sup>1616</sup>

**(b) The aftermath of the attack**

540. Shortly after they fled, the population of Kilo was called upon via megaphone to return to the village.<sup>1617</sup> Following the call, some of those who were still in the bush returned to the village.<sup>1618</sup> According to Nyali villagers who returned to Kilo, the Lendu were not amongst those who returned.<sup>1619</sup> Once these persons had returned from the bush, Thomas Kasangaki spoke to the population, saying: 'You are not our enemies, even the Lendus not holding a gun or *arme blanche* are not our enemies, we are just chasing those who hold the guns and have fetishes upon them.'<sup>1620</sup> Members of the UPC/FPLC also told the population to tell those who were still in hiding to return to Kilo, as otherwise they would be considered as enemies.<sup>1621</sup>

<sup>1614</sup> **P-0022**: DRC-OTP-0104-0026, at 0030, para. 22, and at 0031, para. 25. The Chamber addresses the Defence challenges in paras 672 to 676 of the Defence Closing Brief below. **P-0963**: T-80, pages 5 to 6; and **V-3**: T-203, page 14. See also **P-0017**: T-59, page 38.

<sup>1615</sup> **P-0022**: DRC-OTP-0104-0026, from 0030 to 0031, paras 22 to 23; **P-0850**: T-112, page 75; and DRC-OTP-2067-1825-R02, at 1830, paras 36 to 37; **P-0877**: DRC-OTP-2069-2086-R03, at 2090, paras 23 to 24; and **V-3**: T-203, pages 14 to 15, 97, and pages 100 to 101. The Chamber further notes that while P-0877 stated that he heard the Lendu soldiers shooting back (**P-0877**: DRC-OTP-2069-2086-R03, at 2090, para. 23), P-0850 and V-3 testified that the UPC/FPLC did not fight when entering Kilo, because the people fled as soon as they heard gunfire (**P-0850**: T-112, page 75; and DRC-OTP-2067-1825-R02, at 1830, para. 37; and **V-3**: T-203, page 97). The Chamber notes that both P-0877 and P-0850 fled Kilo when the UPC/FPLC attacked and were therefore not in a position to know whether the UPC/FPLC encountered resistance when entering the village. Under these circumstances, and in the absence of any other evidence in this respect, the Chamber will not make a finding on the matter.

<sup>1616</sup> **P-0877**: DRC-OTP-2069-2086-R03, at 2090, para. 26. See also **P-0017**: T-59, page 40; **P-0103**: DRC-OTP-0104-0170-R02, at 0175, para. 26; and **P-0850**: DRC-OTP-2067-1825-R02, at 1830, para. 38, and at 1831, para. 41.

<sup>1617</sup> **P-0850**: T-112, pages 74 to 75, and 78; and DRC-OTP-2067-1825-R02, at 1830, para. 37; and **P-0877**: DRC-OTP-2069-2086-R03, at 2090, para. 25.

<sup>1618</sup> **P-0850**: DRC-OTP-2067-1825-R02, at 1830, para. 37; and **P-0877**: DRC-OTP-2069-2086-R03, at 2090, para. 25.

<sup>1619</sup> **P-0850**: DRC-OTP-2067-1825-R02, at 1830, para. 38; and **P-0877**: DRC-OTP-2069-2086-R03, from 2090 to 2091, para. 27.

<sup>1620</sup> **P-0877**: DRC-OTP-2069-2086-R03, from 2090 to 1091, para. 27; DRC-OTP-2077-0118-R03, at 0120, para. 14.

<sup>1621</sup> **P-0877**: DRC-OTP-2069-2086-R03, from 2090 to 2091, para. 27.

541. Other people who had fled, including P-0022, who was a Lendu, were prompted to return by members of the UPC/FPLC themselves, who told them that they did not have any quarrel with the civilian population, only with the Lendu fighters.<sup>1622</sup> They also told them that if they did not come out of the bush, they would be bombed.<sup>1623</sup> Following the threat, some returned, while others chose to flee further.<sup>1624</sup> When coming out of the bush, the people were not attacked by members of the UPC/FPLC and were able to return to their homes.<sup>1625</sup>

542. One person who returned to the village saw that, while the buildings had not been damaged,<sup>1626</sup> members of the UPC/FPLC had looted the stores in the village, taking items such as cigarettes, food, clothing and shoes, and various appliances.<sup>1627</sup> Moreover, during the time that they controlled Kilo, the members of the UPC/FPLC demanded that everyone take part in the *effort de guerre* by regularly providing items such as money, water, wood, and bananas.<sup>1628</sup>

543. On or about 9 December 2002, the UPC/FPLC made the men and boys from Kilo, including Lendu, dig trenches outside the UPC/FPLC camp.<sup>1629</sup> They also began going after the Lendu in the village, killing some of them.<sup>1630</sup> The bodies of

<sup>1622</sup> **P-0022**: DRC-OTP-0104-0026, from 0030 to 0031, para. 23.

<sup>1623</sup> **P-0022**: DRC-OTP-0104-0026, at 0031, para. 24.

<sup>1624</sup> **P-0022**: DRC-OTP-0104-0026, at 0031, para. 24.

<sup>1625</sup> **P-0022**: DRC-OTP-0104-0026, at 0031, para. 25.

<sup>1626</sup> **P-0877**: T-109, page 44; DRC-OTP-2069-2086-R03, at 2090, para. 25.

<sup>1627</sup> **P-0877**: DRC-OTP-2069-2086-R03, at 2090, para. 25; DRC-OTP-2077-0118-R03, at 0122, para. 21; and DRC-OTP-2077-0140, at 0210 (translation DRC-OTP-2081-0589, at 0661). *See also* **P-0963**: T-80, page 6.

<sup>1628</sup> **P-0877**: DRC-OTP-2069-2086-R03, at 2091, para. 29.

<sup>1629</sup> **P-0022**: DRC-OTP-0104-0026, at 0031, paras 26 to 27; **P-0877**: DRC-OTP-2069-2086-R03, at 2091, para. 28; and **P-0850**: T-112, page 54; and DRC-OTP-2067-1825-R02, at 1830, para. 39.

<sup>1630</sup> In this respect, the Chamber received evidence from P-0022 that, approximately one week after they came out from the bush, the UPC 'militia' began to go after the Lendu in the village, including at night in their homes (**P-0022**: DRC-OTP-0104-0026, at 2091, para. 28). It also received evidence from P-0850 that the UPC/FPLC committed killings in Kilo, other than the one which he witnessed: P-0850 heard people talking about such killings committed by members of the UPC/FPLC who would go on patrols outside Kilo, capture Lendu, kill them, and bury them right after; the witness however did not see these incidents himself and did not know the names of the people killed (**P-0850**: DRC-OTP-2067-1825-R02, at 1831, para. 46). P-0850 further stated that the UPC/FPLC was not killing Nyali people, they were after the Lendu; it was a 'manhunt' for the Lendu by the UPC/FPLC, whether they were 'civilians' or 'fighters' (**P-0850**: DRC-OTP-2067-1825-R02, at 1832, para. 47). The Chamber further received evidence from P-0877 that, every day, he saw UPC/FPLC soldiers going to the bush and coming back with two or three Lendu male adult 'prisoners' who were tied up, whom he never saw again; the witness knew that those who had been captured were Lendu based on their appearance, their way of speaking, and the fact that the direction from which they were brought was in the

those killed<sup>1631</sup> were thrown into mass graves, some of which had been previously dug by those who were later killed.<sup>1632</sup>

544. In one instance, UPC/FPLC soldiers found three Lendu men and one Lendu woman, all wearing civilian clothing, and brought them back to their camp in Kilo with their hands tied behind their backs.<sup>1633</sup> The three were taken inside the camp and asked whether they were Lendu.<sup>1634</sup> Some of the persons who were digging trenches outside the UPC/FPLC camp were saying that one of the men was not a Lendu because he was married to a Nyali and was a driver for the

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Lendu area (**P-0877**: T-109, pages 45 to 46; DRC-OTP-2069-2086-R03, at 2091, para. 30; and DRC-OTP-2077-0118-R03, at 0124, para. 32). *See also* DRC-OTP-0074-0628, from 0666 to 0668.

<sup>1631</sup> The Chamber also received evidence from V-3 that members of Bureau Two were trying to identify those suspected of working with the Lendu ‘combatants’, who would be subsequently captured and taken to the UPC/FPLC camp (**V-3**: T-203, pages 36 to 38) and that the UPC /FPLC captured Lendu, as well as persons who were suspected of collaborating with the Lendu ‘combatants’ in Kilo and took them to their camp where they were asked to dig their own grave and were then killed and buried (**V-3**: T-203, pages 32 to 33, 35 to 36, and 38). According to V-3, this included a family member who was suspected of cooperating with the Lendu and whom the witness saw digging his own grave but whose release the witness and another influential individual managed to obtain, all of which happened in the presence of both Mr Ntaganda and Kitembo (**V-3**: T-203, pages 36 to 38). However, the exact timing of which was unspecified in direct examination. The witness’s answers provided in cross-examination were initially not sufficiently precise in relation to the timing of the meetings (**V-3**: T-203, pages 57 to 58). Towards the end of cross-examination, the Defence put to the witness a potential timing of the meetings, which the witness appeared to agree to. According to this, the first meeting would have taken place after the UPC/FPLC’s arrival in Kilo, without any further specificity; the second meeting, three days after the first (**V-3**: T-203, page 82); the third, two days after the second (**V-3**: T-203, page 83) and approximately four days after the third meeting, the witness and another family member received the news about the first family member’s capture by the UPC/FPLC (**V-3**: T-203, pages 83 to 84). Approximately one week later, the other family member’s alleged abduction took place (**V-3**: T-203, page 84). Noting that, according to the witness, the alleged abduction of the other family member took place on 28 December 2002, ‘after Christmas’ (**V-3**: T-203, page 41), the aforementioned timing would place V-3’s evidence concerning abductions and killings by the UPC/FPLC in Kilo between on or about 12 December and on or about 28 December 2002 and therefore outside the temporal scope of the First Operation. Under these circumstances, the Chamber does not consider V-3’s aforementioned evidence for the purpose of its findings concerning alleged killings committed in Kilo during the First Operation. In light of the foregoing, the Chamber does not consider it necessary to address the Defence’s arguments concerning the alleged unreliability of V-3’s evidence concerning the alleged abduction and killing of his other family member (*see* Defence Closing Brief, paras 677 to 679) and the Legal Representative of the Victims of the attacks’ related arguments in this respect (*see* CLR2 Response Brief, paras 42 to 44).

<sup>1632</sup> **P-0022**: DRC-OTP-0104-0026, at 0031, para. 26; **P-0877**: T-109, pages 46 to 47; DRC-OTP-2069-2086-R03, from 2091 to 2092, para. 33; **P-0850**: DRC-OTP-2067-1825-R02, at 1832, paras 48 to 49; and **P-0877**: T-109, page 47; T-110, pages 11 to 12; DRC-OTP-2069-2086-R03, at 2092, para. 34; DRC-OTP-2077-0118-R03, at 0124, para. 33. *See also* DRC-OTP-0074-0628, at 0666 to 0668. With reference to the Defence argument that P-0850 and P-0877’s evidence regarding the finding of a mass grave in Kilo long after the events is not probative of murders committed by the UPC/FPLC (*see* Defence Closing Brief, para. 682 and the references contained therein), the Chamber notes that its finding that the UPC/FPLC soldiers killed Lendu in Kilo is not based on the evidence of the two witnesses concerning the finding of a mass grave in Kilo long after the events, which is only used in support of its finding that the bodies of those who were killed were subsequently thrown into mass graves.

<sup>1633</sup> **P-0850**: DRC-OTP-2067-1825-R02, from 1830 to 1831, paras 40 to 41.

<sup>1634</sup> **P-0850**: DRC-OTP-2067-1825-R02, at 1831, para. 42.



Nyali.<sup>1635</sup> The UPC/FPLC soldiers searched the man and, after finding an armband of the kind worn by Lendu soldiers on him, the UPC/FPLC soldiers took all four perceived Lendu down the hill close to the camp; one of the people digging trenches then heard them scream ‘I’m dying, I’m dying’, followed by the sounds of blows.<sup>1636</sup>

545. In another instance, two Lendu women, including P-0022,<sup>1637</sup> were stopped by a UPC/FPLC soldier<sup>1638</sup> while fetching water from the river; the UPC/FPLC soldier tied their hands behind their backs and took them to a makeshift prison, which consisted of a pit in the ground, too shallow to stand upright in and covered with

<sup>1635</sup> **P-0850:** DRC-OTP-2067-1825-R02, at 1831, para. 42.

<sup>1636</sup> **P-0850:** DRC-OTP-2067-1825-R02, at 1831, paras 42 to 43. Noting that the Chamber has not made a finding on the actions of the UPC/FPLC soldiers on the basis of P-0850’s evidence, the Chamber considers it unnecessary to address the Defence challenge to the witness’s evidence as an indication of the UPC/FPLC soldiers having killed these individuals on the grounds of low probative value and lack of corroboration (Defence Closing Brief, para. 681).

<sup>1637</sup> With reference to the Defence challenges to P-0022’s prior recorded testimony (Defence Closing Brief, paras 672 to 676 and 699), the Chamber notes, first, that while the witness’s evidence is indeed not corroborated by the evidence of any witness, the witness’s account, in particular in relation to the injuries she suffered, is consistent with the photographs of her scars (*see* DRC-OTP-0104-0050, DRC-OTP-0104-0051, DRC-OTP-0104-0052, DRC-OTP-0104-0043, DRC-OTP-0104-0044, DRC-OTP-0104-0045, DRC-OTP-0104-0046, DRC-OTP-0104-0047, DRC-OTP-0104-0048, and DRC-OTP-0104-0049). It further notes that her initial version of events as included in her screening note appears to constitute a shorter account of the same series of events – with the exception of the forced sexual acts – which appears consistent with the different nature of the two documents and the circumstances of their creation. In relation to the fact that the forced sexual acts are not referred to in the screening note, the Chamber notes that, according to the screening note, a single question is recorded as having been put to the witness, namely to describe the events leading up to her escape. Combined with the sensitive nature of the alleged crime at stake, the Chamber considers that this omission does not affect the credibility of the witness’s account. The Chamber also notes that the witness’s evidence relied upon by the Chamber concerns events which the witness herself experienced, particularly her alleged abduction, detention, rape, and attempted killing, and not information which she may have gained from other sources and that the witness’s family connection with a well-known Lendu fighter does not constitute, in itself, a sufficient basis to affect the credibility of the witness’s incriminating evidence. The Chamber also considers that the Defence did not specifically indicate why the events described by the witness – which, in the view of the Chamber, fit into the narrative concerning the First Operation as established by the Chamber on the basis of the evidence of numerous witnesses – would point to the end of 2001, rather than November/December 2002. Lastly, as for certain inconsistencies referred to by the Defence between the witness’s evidence and certain events on the ground, the Chamber notes that the witness was an illiterate farmer living in, *inter alia*, Mongbwalu and then in Kilo at the time of the relevant events and was therefore not in a position to possess information about existing potential political alliances or about the precise manner in which the UPC/FPLC advanced and carried out its assaults. In these circumstances, the Chamber considers P-0022’s testimony in this regard credible and reliable.

<sup>1638</sup> The Chamber notes that the witness stated that she was stopped by a Gegere soldier who was wearing a *tache-tache* military uniform and whom the witness also referred to as a ‘militiaman’. In paragraphs 37 and 47 of her statement, P-0022 specifically referred to the same militiamen as being members of the UPC/FPLC. Considering the uniforms worn by the UPC/FPLC at that time, as well as the fact that the UPC/FPLC was in Kilo at the time, the Chamber is satisfied that P-0022 was stopped by a UPC/FPLC soldier.

wooden boards, in the Kilo-État neighbourhood of Kilo.<sup>1639</sup> One of the soldiers hit P-0022 on the back of her head with his rifle butt and then pushed her into the pit.<sup>1640</sup> Seven others, including a pregnant Lendu woman, were also detained in the same pit.<sup>1641</sup> On at least three occasions, UPC/FPLC soldiers entered the pit and beat the detainees using their fists and wooden truncheons.<sup>1642</sup> During the time that P-0022 was in the pit, the soldiers also ordered the male detainees to have sex with the female detainees, which the male detainees tried but failed to do while some of the soldiers were watching and made fun of them.<sup>1643</sup> One of the male detainees then inserted his hand twice into P-0022's vagina, however he stopped when she began to struggle.<sup>1644</sup>

546. The next day, the UPC/FPLC soldiers took the detainees out of the pit and brought them to a person who referred to himself as the head of operations;<sup>1645</sup> one of the women was released on account of the fact that she had a child with a Gegere.<sup>1646</sup> One of the soldiers then cut P-0022's neck and threw her into another pit; the witness survived and woke up a few hours later.<sup>1647</sup> The UPC/FPLC

<sup>1639</sup> **P-0022:** DRC-OTP-0104-0026, from 0031 to 0032, paras 29 to 30.

<sup>1640</sup> **P-0022:** DRC-OTP-0104-0026, at 0032, para. 32. *See also* DRC-OTP-0104-0026, at 0035, para. 49 and DRC-OTP-0104-0050, DRC-OTP-0104-0051, DRC-OTP-0104-0052.

<sup>1641</sup> **P-0022:** DRC-OTP-0104-0026, at 0032, para. 31.

<sup>1642</sup> **P-0022:** DRC-OTP-0104-0026, at 0032, para. 33.

<sup>1643</sup> **P-0022:** DRC-OTP-0104-0026, from 0032 to 0033, paras 34, and 36. On the issue of whether any of the soldiers involved in this incident were under the age of 15, the Chamber notes that while in DRC-OTP-0104-0026, at 0033, para. 36, P-0022 stated that she was certain that those who had ordered the men to have sex with the women in the pit were 'children', the witness did not provide an estimate as to how old they would have been or any further details in this respect. The Chamber further received evidence from P-0850 that, during the UPC/FPLC control, he noticed that there were fewer than ten persons of 14-18 years of age among the UPC soldiers; they were carrying weapons and wearing UPC/FPLC uniforms, although some were wearing civilians trousers because the uniform trousers were too big for them (*see* **P-0850:** DRC-OTP-2067-1825-R02, at 1832, para. 51). However, the witness does not distinguish between those he considered to be 14 and those in the range of 14-18 years of age. Having regard to the aforementioned, the Chamber does not consider this evidence sufficient to make a finding that any of those soldiers described by P-0022 or P-0850 were under the age of 15.

<sup>1644</sup> **P-0022:** DRC-OTP-0104-0026, at 0033, para. 35.

<sup>1645</sup> The Chamber notes that, while Mr Ntaganda was the UPC/FPLC Deputy Chief of Staff in Charge of Operations at that time (see section IV.A.2.c) Position of Mr Ntaganda), in the absence of more specific evidence on the matter, the Chamber cannot establish that the only reasonable conclusion is that the people were brought to Mr Ntaganda himself.

<sup>1646</sup> **P-0022:** DRC-OTP-0104-0026, at 0033, para. 38.

<sup>1647</sup> **P-0022:** DRC-OTP-0104-0026, at 0034, paras 41 to 42. *See also* DRC-OTP-0104-0026, at 0035, para. 49 and DRC-OTP-0104-0043, DRC-OTP-0104-0044, DRC-OTP-0104-0045, DRC-OTP-0104-0046, DRC-OTP-0104-0047, DRC-OTP-0104-0048, DRC-OTP-0104-0049. The Chamber notes that, other than the

soldiers also killed the Ngiti man and the pregnant Lendu woman who had been detained with P-0022 and threw them into the same pit.<sup>1648</sup>

547. A Nyali man was shot and killed by a member of the UPC/FPLC while fetching water for singing an anti-Hema song.<sup>1649</sup>

548. Some UPC/FPLC soldiers and commanders, including Commander Eric Kazungu and Commander Americain, used their influence on girls in Kilo to have sexual intercourse with them.<sup>1650</sup> In two or three instances, the commanders

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incidents referred to above, it did not receive evidence concerning acts which may amount to the attempted killing of individuals in Kilo, other than P-0022.

<sup>1648</sup> **P-0022**: DRC-OTP-0104-0026, at 0034, para. 41.

<sup>1649</sup> P-0877 testified that she witnessed Commander Americain killing a man known as ‘Robot’ who suffered from epilepsy and had a speech impediment; the man was fetching water that day and started singing that the Hema should leave and the Lendu recover the territory after which Commander Americain shot him twice; the witness and other people subsequently recovered the man’s body (**P-0877**: T-110, pages 13 to 15; DRC-OTP-2069-2086-R03, at 2091, para. 31; DRC-OTP-2077-0118-R03, at 0124, para. 31). P-0850 stated that he heard from ‘many different people’ that, during the first or second week of the UPC/FPLC control of Kilo, a UPC/FPLC soldier shot and killed a Nyali man who had mental problems. The man was selling water and when a customer did not pay him, he followed him to a restaurant and started making a lot of noise. The witness also saw the body of the Nyali man before he was buried (**P-0850**: T-113, pages 11 to 14; DRC-OTP-2067-1825-R02, at 1832, para. 47). While P-0850 initially testified that the man was killed by a certain Commander David (**P-0850**: DRC-OTP-2067-1825-R02, at 1832, para. 47), when it was put to him that the person who killed the Nyali man was Commander Americain, he stated that that would have been possible and that he was not very good with the names of the commanders, but he knew that the man had been killed by a UPC/FPLC soldier (*see* **P-0850**: T-113, pages 13 to 14). Considering the similarities between the two accounts, which the Chamber considers credible, the Chamber considers that they refer to the same incident, notably the shooting and killing of a Nyali man by a member of the UPC/FPLC.

<sup>1650</sup> **P-0017**: T-59, pages 40 to 41. The Defence argues that P-0017’s evidence concerning commanders Eric Kazungu, and Americain who would have sexually abused women in the UPC/FPLC camp in Kilo must be disregarded, noting that: (i) P-0017’s evidence in relation to alleged rapes is not corroborated by reliable evidence (ii), the Prosecution omits to mention P-0017’s evidence concerning a rape complaint addressed to Commander Americain which was rapidly investigated within his unit, leading to the identification of the perpetrator; (iii) P-0017’s testimony that the local population had no choice but to endure sexual exploitation by the UPC/FPLC is not more than his opinion, while Americain’s investigation of a rape complaint and the immediate measures taken thereafter must be attributed full probative value (Defence Closing Brief, para. 700 ). In this respect, the Chamber notes that in relation to the rape complaint addressed to Commander Americain, P-0017 also testified that this occurred after Floribert Kisembo, whose mother was a Nyali, came to Kilo and invited the elders to encourage their children to join the UPC/FPLC so that they would no longer be victims of this form of crime and specifically stated that such an investigation would not have been possible before Kisembo’s arrival (**P-0017**: T-59, pages 42 to 43). In any event, in the view of the Chamber, this evidence does not impact the reliability of the witness’s evidence concerning whether the alleged conduct occurred in the first place. With regard to the above finding, the Chamber notes that the witness clearly distinguished between what he had heard and incidents which he observed himself (*see e.g.* **P-0017**: T-59, page 40). Further, although he described a pattern of behaviour against women in general terms (**P-0017**: T-59, page 40), he also referred to specific events which illustrate the described pattern (**P-0017**: T-59, page 40). When asked what happened to the girls who were brought to the bedrooms, P-0017 reported that, after returning from the bedroom, Commander Eric Kazungu joked with him about what had happened, noting that it was just to have a sexual intercourse with them (**P-0017**: T-59-FRA, page 41). The Chamber also notes that the witness explained how antibiotics were sent from Mongbwalu to Kilo in the aftermath of the attack because of the high number of soldiers suffering from sexually transmitted diseases (**P-0017**: T-59, pages 38 to 39). In light of the

saw girls whose appearance they liked on the road in front of the camp and ordered soldiers to call the girls.<sup>1651</sup> A UPC/FPLC soldier who was present reported that the girls had no choice but to come and that they were directed to the bedrooms inside the camp.<sup>1652</sup>

## 8. Second Operation: Assaults on a number of villages in the Walendu-Djatsi *collectivité* in February 2003

### a) Situation in the area before the Second Operation

549. A great number of the people who fled Mongbwalu during the First Operation arrived in the Walendu-Djatsi *collectivité*; they were concentrated in Lipri, Kobu and Bambu.<sup>1653</sup> At the time, the inhabitants of the villages of this *collectivité*, notably Kobu,<sup>1654</sup> Bambu,<sup>1655</sup> Lipri,<sup>1656</sup> Tsili,<sup>1657</sup> Jitchu,<sup>1658</sup> Dhekpa,<sup>1659</sup> and Nyangaray,<sup>1660</sup> were predominantly Lendu. Prior to the start of the Second Operation, Lendu fighters were also present in the area, notably in Kobu,<sup>1661</sup> Bambu,<sup>1662</sup> Lipri,<sup>1663</sup> Buli<sup>1664</sup> and Gutsi.<sup>1665</sup>

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above, and having found P-0017 to be a generally credible witness, the Chamber relies on the testimony of P-0017 alone for a finding that some UPC/FPLC soldiers and commanders, including Commander Eric Kazungu and Commander Americain, had sexual intercourse with girls in Kilo.

<sup>1651</sup> **P-0017**: T-59-FRA, page 40.

<sup>1652</sup> **P-0017**: T-59-FRA, page 41.

<sup>1653</sup> **P-0863**: T-180, pages 9, 11, and 12; **P-0105**: T-133, page 41; **P-0901**: T-29, page 17; and **P-0963**: T-78, page 87; and T-79, pages 40 to 41, and 46.

<sup>1654</sup> **P-0301**: T-149, pages 30 to 31; **P-0017**: T-59, page 74; **P-0121**: T-172, page 61; **P-0127**: T-139, page 13; and **P-0963**: T-79, page 16. *See also* **P-0768**: T-34, page 61.

<sup>1655</sup> **P-0018**: T-110, page 45; and **P-0127**: T-139, page 13.

<sup>1656</sup> **P-0127**: T-139, pages 7, and 11 to 13; and **P-0005**: T-185, page 25.

<sup>1657</sup> **P-0127**: T-139, pages 7, and 11 to 12.

<sup>1658</sup> **P-0108**: T-185, page 44.

<sup>1659</sup> **P-0127**: T-139, pages 8, and 11 to 12.

<sup>1660</sup> **P-0127**: T-139, page 13.

<sup>1661</sup> **P-0790**: T-53, page 41; **P-0805**: T-25*bis*, pages 14 and 34; and **P-0121**: T-172, pages 65 to 66.

<sup>1662</sup> **P-0863**: T-180, page 13; T-181, pages 56 to 58. The location of the front according to P-0863 is shown on DRC-REG-0001-0050 (*see* **P-0863**: T-180, pages 61 to 62); and **P-0105**: T-135, page 12. The Chamber notes that V-1 testified that Lendu ‘combatants’ had been driven out and were no longer in the village towards the end of 2002, around November (**V-1**: T-201, pages 8 and 60). The Chamber does not consider this inconsistent with the evidence of P-0863 and P-0105, noting V-1’s testimony that the Lendu ‘combatants’ had been driven out but ‘were living in the forest’, suggesting they could still be present around Bambu.

<sup>1663</sup> **P-0127**: T-139, pages 4, 31, 81, and 83 to 84; and T-140, pages 4 and 11. *See also* DRC-OTP-2055-1346, at 1347; **P-0300**: T-166, page 35; **P-0105**: T-135, pages 8, and 10 to 11; and **P-0017**: T-60, page 30.

<sup>1664</sup> **P-0105**: T-135, pages 13, and 15 to 16; **P-0027**: DRC-OTP-0096-0052-R04, at 0057, para. 25; **P-0300**: T-167, pages 69 to 70; and **P-0790**: T-54, pages 7 to 8.

## b) Planning of the Second Operation

550. As indicated above, the UPC/FPLC wanted to open the Main Road, which best connected Mongbwalu to Bunia.<sup>1666</sup> Preparations for this operation, referred to as the ‘Second Operation’, and constituted of a series of assault on the Walendu-Djatsi *collectivité*,<sup>1667</sup> were undertaken in or around the first half of February 2003<sup>1668</sup> during two separate meetings in Thomas Lubanga’s office in Bunia.<sup>1669</sup>

551. The first part of the meeting<sup>1670</sup> was attended by persons including Thomas Lubanga, Floribert Kisembo,<sup>1671</sup> Mr Ntaganda – despite his testimony denying his

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<sup>1665</sup> **P-0805**: T-26, pages 40 to 41.

<sup>1666</sup> See para. 442 above.

<sup>1667</sup> The Chamber concludes that the UPC/FPLC attacked at the same time as Kobu and Lipri in February 2003, and as such that this was a coordinated operation (**P-0017**: T-59, page 46; and T-63, page 16; **P-0055**: T-71, pages 43, and 59 to 60; **P-0907**: T-90, page 62; and **P-0963**: T-78, pages 86 to 87; and T-79, pages 43 and 46). See also section IV.B.8.c)(1) Coordinated nature of the Second Operation.

<sup>1668</sup> **P-0055**: T-71, pages 31 to 32, 35 to 36, and 40; T-74, pages 41 to 42 (testifying that the meetings occurred one or three days before the failed assault on Lipri). Regarding the Defence’s challenges related to the timing of these preparation meetings (Defence Closing Brief, paras 1023 to 1031), the Chamber notes its finding that the failed Lipri assault took place on 17 February 2003 and considers, based on P-0055’s testimony in this regard, that the preparation meetings took place in the days before the Second Operation started. Considering that, as explained below, on 13 February 2003 a request for ammunition for the Second Operation was sent by a commander on the ground and that this request of an operational nature could not have been sent without conceiving beforehand the operation itself, the Chamber finds that the only reasonable conclusion is that the preparatory steps were undertaken at a higher hierarchical level on or before 13 February 2003. The Chamber considers this compatible with P-0055’s estimation of the date of the meetings, noting that P-0055 provided two different dates, and recalling that this witness had obvious difficulties remembering dates or timeframes (see para. 123 above).

<sup>1669</sup> **P-0055**: T-74, page 29.

<sup>1670</sup> **P-0055**: T-71, pages 31 to 32, and 34; and T-72, page 7.

<sup>1671</sup> In relation to Floribert Kisembo’s presence, the Defence submits (Defence Closing Brief, paras 1041, 1047 to 1048, and Defence Reply Brief, paras 208, 240, 242 to 245, and 247) that he was in Bunia only twice between January and March 2003, namely on 1 January and from 6 to 8 February and makes several arguments in relation to the logbook in this regard. The Chamber assesses P-0963 and P-0017’s evidence in this context. P-0963 testified that Kisembo was in Mongbwalu around the time he joined Salumu Mulenda’s group, when they started to prepare the Kobu operations (**P-0963**: T-82, pages 46 to 47). The witness also testified he knew about the operation and its preparation *before* Kisembo addressed the troops in Mongbwalu on 17 February 2003. P-0963 also testified that Kisembo was in Mongbwalu when he ordered them to leave for Kobu (**P-0963**: T-79, page 43). P-0017 testified that in a briefing, Salumu Mulenda talked about the need for the Second Operation and promised to go and see the chief of staff because he was coming back from Bunia. The witness testified that ‘if I remember correctly’ Salumu Mulenda went to Mongbwalu, where Kisembo was located, and thereafter he returned to organise his troops and carry out that operation (**P-0017**: T-63, pages 12 to 23). It is not entirely clear which period in time the witness refers to here, also noting that he said they were informed about the failed Lipri attack in this briefing (**P-0017**: T-63, page 13). The Chamber is of the view that the evidence given by P-0017 and P-0963 shows that Kisembo appears to have been based in Mongbwalu, not necessarily, however, that he could not have travelled to Bunia shortly before the start of the Second Operation for the meeting. The Chamber thus finds P-0017 and P-0963’s evidence not to be in contradiction to the evidence provided by P-0055 on the meetings, and therefore relies on this witness to establish that Floribert Kisembo attended these meetings.

presence, which the Chamber finds not to be credible<sup>1672</sup> - Rafiki Saba, Salongo Ndekezi,<sup>1673</sup> and Nduru Tchaligonza. In the meeting, Thomas Lubanga gave the instruction to open the Main Road.<sup>1674</sup>

552. The second part of the meeting was held shortly after in Thomas Lubanga's office in the presence of persons including Mr Ntaganda, Floribert Kisembo, Salongo Ndekezi, Nduru Tchaligonza.<sup>1675</sup> In the meeting, the division of work was discussed: Floribert Kisembo said that he would go prepare the troops in Mongbwalu and attack Kobu,<sup>1676</sup> Floribert Kisembo and Mr Ntaganda asked

<sup>1672</sup> In relation to Mr Ntaganda's presence, the Chamber notes that he denied having participated in the meeting, and stated that he was 'not aware of the attack', that 'nobody informed [him] about the fact that [the UPC/FPLC was] going to attack. [He] did not receive this information' (**D-0300**: T-238, pages 11 and 14). He also testified that he was not in Bunia between 14 and 17 February 2003 due to a visit to his son in Kigali (**D-0300**: T-220, pages 44 to 59; *see also* **D-0300**: T-238, pages 25 to 38, Defence Closing Brief, paras 1039 to 1047, and Defence Reply Brief, para. 241). The Chamber notes that Mr Ntaganda's account of this trip is not supported by any other testimonial evidence. Regarding the purportedly corroborative evidence from D-0017 cited in para. 1043 of the Defence Closing Brief, the Chamber recalls that it did not find D-0017 to be credible, and notes in any event that his evidence does not clearly relate to the same event. Further, the Chamber does not consider Mr Ntaganda's account to be supported by an absence of outgoing logbook entries during this period, nor by the fact that DRC-D01-0003-5896 dated 16 February 2003 is signed 'P/O' (*see* Defence Closing Brief, para. 1042). The Chamber does not consider credible Mr Ntaganda's categorical denial of knowledge of the Second Operation in the days prior to its beginning, in light of P-0055's specific and contextualised account (*see also* below), as well as other related findings in the present section. Accordingly, the Chamber does not consider credible Mr Ntaganda's evidence on his whereabouts in the days leading up to the Second Operation. The Chamber notes further that, in any event, even had Mr Ntaganda left Bunia between 14 and 17 February 2003 as he testified, such travel would not be incompatible with him having attended the preparatory meetings on or before 13 February 2003.

<sup>1673</sup> In relation to Salongo Ndekezi's presence (Defence Reply Brief, paras 208, 240, 246 to 247 and 260), the Chamber considers that the logbook entries referenced in support of the Defence arguments (DRC-OTP-0017-0003, at 0168 second, at 0175 second, and at 0176 third), which had been sent on 18 and 21 February 2003 respectively, have no relevance in its assessment of whether Salongo Ndekezi could not have been at the preparation meetings in the first half of February 2003. As regards the Defence submission that P-0907 confirms Salongo Ndekezi's presence in Mongbwalu (Defence Reply Brief, para. 260), the Chamber notes that P-0907 referred to Salongo Ndekezi's actions in Mongbwalu immediately before and during the execution of the Second Operation (**P-0907**: T-90, pages 58-59), which is not in contradiction with P-0055's evidence of the preparation meetings. Accordingly, the Chamber considers P-0055's evidence on this point to be credible.

<sup>1674</sup> **P-0055**: T-72, page 7. *See also* **P-0055**: T-71, pages 29 to 30; and T-74, page 29. Having considered P-0055's overall testimony, the Chamber finds that his statement concerning Thomas Lubanga's instruction referred to the Second Operation, notwithstanding the fact that he mentioned villages which are not located on the Main Road as such (**P-0055**: T-71, page 29). In relation to the challenges to P-0055's basis of knowledge (Defence Reply Brief, para. 257, and Defence Closing Brief, para. 1031), the Chamber notes P-0901's testimony on this point (**P-0901**: T-29, pages 11 to 12), but considers that it is not immediately apparent from P-0901's evidence which order he refers to. The immediate context of the witness's testimony makes clear that the witness was speaking about the very commencement of the Second Operation and the events on the ground, and not about the preparations by the UPC/FPLC leadership in advance of the commencement of the operation. For these reasons, the Chamber considers that P-0901's evidence has no bearing on P-0055's evidence on the preparation meetings.

<sup>1675</sup> **P-0055**: T-71, page 32; T-72, page 4; and T-74, pages 29 to 30.

<sup>1676</sup> **P-0055**: T-71, page 32; T-72, page 5; and T-74, page 30.

Salongo Ndekezi and Nduru Tchaligonza to handle the Lipri road;<sup>1677</sup> and a commander was instructed to go to Bambu to determine how the fighting would be conducted along the Bambu road and which difficulties the troops faced.<sup>1678</sup> Mr Ntaganda gave instructions to go by Centrale to pick up ammunition and bring it to the troops in Bambu.<sup>1679</sup> Mr Ntaganda was to go to Fataki for a graduation ceremony.<sup>1680</sup> He asked Floribert Kisembo to take a plane in order not to raise any suspicion about the operation.<sup>1681</sup> Thomas Lubanga, who did not attend the second meeting, was subsequently informed by Floribert Kisembo about the needs of the operation in terms of fuel and rations for the troops.<sup>1682</sup>

553. As discussed during the preparation meetings, the Second Operation was ‘planned’ by Floribert Kisembo from Mongbwalu.<sup>1683</sup>

554. In the days before the Second Operation was launched, Mr Ntaganda contacted commanders in the field via the UPC/FPLC radio communications systems as follows:

- On 12 February 2003, Mr Ntaganda sent out a message to all stations of the UPC/FPLC announcing the new operational structure of the

<sup>1677</sup> **P-0055**: T-71, page 32; T-72, pages 4 to 5; and T-74, page 30; and **P-0017**: T-60, page 7. *See also* **P-0907**: T-90, pages 60 to 62. Although noting that the witness at times refers to the ‘Kobu operation’ or the ‘operation in Kobu’, the Chamber, based on a full reading of the relevant parts of his testimony, considers that P-0907 referred to the entire Second Operation (*see specifically* **P-0907**: T-90, pages 58, to 59, and 62). While P-0907 was not able to provide evidence on how Salongo Ndekezi precisely received orders from Mr Ntaganda (**P-0907**: T-90, page 61), the Chamber considers that P-0907 was in a position to know who appointed Salongo Ndekezi for the execution of the Second Operation due first to his position and physical location at the time (**P-0907**: T-90, page 59); second, given the Second Operation was announced at a parade near the *Appartements* in P-0907’s presence (**P-0907**: T-90, page 59); and third, since P-0907 testified that it was known that the order came ‘from Bunia’ (**P-0907**: T-90, page 61), which, in P-0907’s interpretation, appears to mean that it was received from Mr Ntaganda (*see* **P-0907**: T-90, page 62).

<sup>1678</sup> **P-0055**: T-71, page 32; T-72, page 6; and T-74, page 30.

<sup>1679</sup> **P-0055**: T-71, pages 32, 34, and 41; T-72, page 5; and T-74, pages 38 and 43). In relation to the Defence challenge to this instruction (Defence Reply Brief, para. 236), and Mr Ntaganda’s testimony that he never gave such a mission (**D-0300**: T-238-FRA, page 14), the Chamber considers Mr Ntaganda’s evidence to be not credible, in particular when assessed against P-0055’s detailed testimony. The Chamber notes that P-0055 was able to describe why and when Mr Ntaganda gave instruction to get the ammunition and how things unfolded after.

<sup>1680</sup> **P-0055**: T-71-FRA, page 33. *See also* **P-0055**: T-72, page 5; and T-74, pages 30, and 33 to 34.

<sup>1681</sup> **P-0055**: T-71, page 33.

<sup>1682</sup> **P-0055**: T-71, page 33.

<sup>1683</sup> **P-0055**: T-71, pages 31 to 32; and **P-0963**: T-79, page 43.

brigades and battalions in the South East and North East sectors<sup>1684</sup> and their respective commanders, and indicated that controls of its implementation would be organised.<sup>1685</sup>

- On 13 February 2003, Mr Ntaganda sent two messages on disciplinary matters, one to Jérôme Kakwavu, copying all stations of the UPC/FPLC, and one to the commander of the 505<sup>th</sup> battalion, copying Jérôme Kakwavu, in which he ensured that the chain of command was followed.<sup>1686</sup> On the same day, Mr Ntaganda sent another message to Jérôme Kakwavu and Salongo Ndekezi, copied to all UPC/FPLC stations, instructing them to urgently provide '*LES NOMS DE L'ETAT MAJOR DE HQ SECTEUR (-) BRIGADES JUSQU'AU BN*'.<sup>1687</sup>
- On 17 February 2003, Mr Ntaganda sent out a message informing Jérôme Kakwavu, *inter alia*, that he was controlling the implementation of the *mise en place* in the Djugu area, and mentioned ongoing operations.<sup>1688</sup> On the basis of the evidence before it, the Chamber does

<sup>1684</sup> See section IV.A.2.d) Command structure and effectiveness of the military apparatus.

<sup>1685</sup> Logbook entries DRC-OTP-2102-3854, from 4004 to 4006. For related discussions, see above para. 329.

<sup>1686</sup> With regard to the logbook entry DRC-OTP-2102-3854, at 4003, the Chamber notes at the outset that, although the logbook records the message as sent by Kisembo, this appears to be a mistake in the logbook, as the message itself makes it evident that Mr Ntaganda sent it ('*JE SUIS CHEF EMG ADJOINT OPS & ORG*' (emphasis added)). In this message, Mr Ntaganda, reprimanded Jérôme Kakwavu, the Sector Commander of the North East Sector, to ensure that his subordinate commanders followed the chain of command and sent a message, through Jérôme Kakwavu, to the battalion commander ordering him to retrieve the lost weapons. This message is a response to a request sent on 12 February 2003 in logbook entry DRC-OTP-2102-3854, from 3978 to 3979, in which the battalion commander provided a Sitrep on the UPDF and the lost weapons, and requested new weapons. Noting that the message is copied to the commander of the 505<sup>th</sup> brigade, which is part of the North East Sector (logbook DRC-OTP-2102-3854, from 4006 to 4005), the Chamber finds that the message concerned operations conducted in the North East Sector. On the same day, Mr Ntaganda sent another related message to the brigade commander (logbook DRC-OTP-2102-3854, at 4002), in which he instructed the commander of the 505<sup>th</sup> brigade to retrieve the lost weapons, emphasising that he does not want subordinates to directly address him, copying Jérôme Kakwavu. Moreover, the Chamber notes that both the request (logbook DRC-OTP-2102-3854, at 3978), as well as Mr Ntaganda's message (logbook DRC-OTP-2102-3854, at 4003) make reference to hostilities with the UPDF, and that all three messages were sent/copied exclusively to commanders of the North East Sector.

<sup>1687</sup> Logbook entry DRC-OTP-2102-3854, at 4003.

<sup>1688</sup> Logbook entry DRC-OTP-2102-3854, at 3999. While Mr Ntaganda acknowledged having sent this message on 17 February 2003, he testified that he had not yet circulated the area at this point, but rather was going to do so in the future (D-0300: T-228, page 61). The dates provided by Mr Ntaganda in this regard varied between 19 February to 21 February 2003 (D-0300: T-228, pages 61, and 64 to 65). The Chamber finds Mr Ntaganda's



not consider that the only reasonable conclusion is that Mr Ntaganda circulated through the area close to the villages assaulted during the Second Operation, nor that the operation mentioned in this message is the Second Operation, but considers that this message shows Mr Ntaganda's general awareness of operations undertaken by the UPC/FPLC in other areas at the time of the Second Operation.<sup>1689</sup>

555. On 13 February 2003, Mr Ntaganda was copied on a message sent by Salumu Mulenda to Salongo Ndekezi reporting confrontations in Kilo, which included a request for ammunition, including for RPGs, for the upcoming Second Operation.<sup>1690</sup>

556. Prior to the Mongbwalu briefing discussed below, Salumu Mulenda went to the Mongbwalu airstrip on several occasions to retrieve ammunition and heavy weapons arriving from Rwanda, and took them to the *Appartements*.<sup>1691</sup> On each of

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testimony to be incompatible with the documentary evidence on this point. Having found that the contemporaneous message he sent out clearly indicate that he went and circulated in the area, the Chamber did not find this part of his testimony credible.

<sup>1689</sup> Mr Ntaganda indicated in this message '*NOUS SOMMES DANS OPS*', which the Prosecution alleges to be a reference to the Second Operation (Prosecution Closing Brief, para. 459). To determine whether the '*ZONE DE DJUGU*' concerns areas attacked during the Second Operation, and whether the operation referred to in the message relates to the Second Operation, the Chamber considers this message as a whole read in the context of other messages. The message concerns the 12<sup>th</sup> battalion, which was not yet listed as a separate battalion, but the establishment of which under the 505<sup>th</sup> brigade was apparently already envisaged in the *mise en place*, to be put under the command of commander Lyevin and to take over the Djugu part (*see* logbook entry DRC-OTP-2102-3854, at 3986) of the '*DJUGU ET FATAKI*' area, which was previously covered by the 11<sup>th</sup> battalion (logbook DRC-OTP-2102-3854, at 4005; *see also* **D-0300**: T-228, page 61). Information about the commanders put in charge of the battalion was also later communicated to the commander of the 505<sup>th</sup> brigade by Jérôme Kakwavu (logbook DRC-OTP-2102-3854, at 3989 '*12 BN DJUGU EST DIRIGE PAR COMD LYEVIN*'). The Chamber also notes that the message was only sent to the Sector Commander of the North East Sector. In light of the above, the Chamber considers that the message relates to the implementation of the reorganisation in Djugu and is not directly related to the Second Operation.

<sup>1690</sup> Logbook entry DRC-OTP-2102-3854, at 3982. Noting that Salumu Mulenda, who later led the operation in Kobu, sent the message, the Chamber considers that the wording of the message ('*pour les attaques*') indicates that several assaults were planned. Further noting the timing of the message, the Chamber considers that the only reasonable conclusion is that it relates to the Second Operation (*see also* Defence Closing Brief, para. 1052). Mr Ntaganda confirmed having received this message (**D-0300**: T-238, pages 17 to 18; *see also* T-220, pages 11 to 12; *see also* Defence Closing Brief, paras 1052 to 1053).

<sup>1691</sup> **P-0963**: T-79, page 48; and T-82, pages 46 to 47. *See also* **P-0963**: T-79, pages 25 to 26; and **P-0907**: T-90, pages 47 to 49).

these trips, Salumu Mulenda told P-0963 that the troops would be leaving to Kilo or Kobu upon order.<sup>1692</sup>

557. At some point before the start of the Second Operation, Salumu Mulenda and other individuals collected weapons and ammunition from the *Appartements* depot; and ammunition was collected from Centrale when the fighting began in Bambu, as instructed by Mr Ntaganda.<sup>1693</sup> The weapons and the ammunition were subsequently used in the Second Operation.<sup>1694</sup>

558. In a briefing to UPC/FPLC troops in Kilo prior to the Second Operation, Salumu Mulenda explained that the objective of the operation in Kobu, Lipri, and Bambu was to ‘destroy that triangle which was a pocket of resistance to the UPC’.<sup>1695</sup> P-0017, a UPC/FPLC soldier attending this briefing, understood this to mean ‘destroying [the] enemy force which occupied these three places’.<sup>1696</sup> He testified that for him, the ‘enemy’ at that time included members of the APC as well as the Lendu people, clarifying that all individuals belonging to the Lendu ethnic group, whether a child, a woman or a man, were considered by the UPC as their enemy.<sup>1697</sup> He further testified that ‘we wanted to have them hand over the area which was no longer under our control’,<sup>1698</sup> and that, if the UPC had settled

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<sup>1692</sup> **P-0963**: T-79, page 48.

<sup>1693</sup> See above para. 552.

<sup>1694</sup> **P-0907**: T-90, page 59; and **P-0963**: T-79, page 26. See also **P-0055**: T-71, pages 32, 34, and 36; T-72, pages 5 to 6; and T-74, pages 38, and 41 to 43. The Chamber does not consider P-0055’s evidence on this point inconsistent (see Defence Reply Brief, para. 223), noting that the issue of ‘weapons’ versus ‘ammunition’ was reasonably explained by way of translation mistake (T-74, page 37), considering that P-0055’s explanations of the different objectives on this mission are not *per se* in conflict, and noting that the fact that the witness called the troops in question ‘Bambu troops’ does not necessarily mean they were already in Bambu at the time.

<sup>1695</sup> **P-0017**: T-59, pages 46, and 60 to 61; and T-63, page 57. See also **P-0901**: T-29, page 17.

<sup>1696</sup> **P-0017**: T-59, page 61.

<sup>1697</sup> **P-0017**: T-59, page 62; and T-59-FRA, page 63. See also **P-0017**: T-63, pages 41, and 47 to 48. In relation to the Defence submissions on this and related testimony of P-0017, that the Prosecution is ‘egregiously wrong that P-0017’s testimony was that “[t]he orders were also that all Lendu were the enemy”’ (see Defence Closing Brief, paras 835 to 841), the Chamber considers the witness’s answer in relation to his understanding of what was said to him at this briefing to be sufficiently clear on its face, for the purpose of this finding.

<sup>1698</sup> **P-0017**: T-63, pages 44 to 45.

in Lipri, Bambu, and Kobu, he did not believe that any Lendu ‘civilian’ could have returned to those areas.<sup>1699</sup>

559. In a briefing in Mongbwalu at the *Appartements* camp prior to the Second Operation, Salongo Ndekezi addressed some soldiers, explaining that there was a plan in place for Kobu to be attacked, and that all escorts needed to be ready to be able to open up the Bambu- Lipri axis.<sup>1700</sup>

560. In another briefing in Mongbwalu, on or about 17 February 2003, Floribert Kisembo spoke to troops about the objectives of the upcoming UPC/FPLC assault on Kobu.<sup>1701</sup> He said that they were going to Kobu to destroy Lendu headquarters, bring back the lost weapons system, open the road, and that they were to drive out all the Lendu.<sup>1702</sup> P-0963’s understanding was that the Lendu ‘civilians’ at Kobu, Bambu, and Lipri were to be driven out by the UPC/FPLC, and that it was up to the UPC/FPLC to ‘occupy’ the location, and for ‘civilians’ to either leave or be killed.<sup>1703</sup>

561. In a further briefing in Kilo, on or about the morning of 18 February 2003, just before the assault on Kobu,<sup>1704</sup> Salumu Mulenda further explained the objective of the assault on Kobu to the troops, provided details about their positioning on the front, and gave orders, including ‘[ku]piga na kuchaji’.<sup>1705</sup> In relation to what, if

<sup>1699</sup> **P-0017**: T-63, pages 45 to 46.

<sup>1700</sup> **P-0907**: T-90, pages 59, and 61 to 62.

<sup>1701</sup> **P-0963**: T-79, pages 45 to 46. In relation to the Prosecution’s allegation that Mr Ntaganda briefed the troops on how to conduct the operations (Prosecution Closing Brief, para. 454, referring to **P-0055**: T-72, page 9), the Chamber considers that the basis of knowledge for P-0055’s evidence is not clear, and notes the contrasting evidence of P-0963 who, on the other hand, had a solid basis of knowledge in relation to the briefing and gave detailed testimony on this point. The Chamber thus relies on P-0963’s testimony in this regard and makes no findings on Mr Ntaganda’s involvement in briefings to troops prior to the Second Operation.

<sup>1702</sup> **P-0963**: T-79, page 46. *See also* **P-0963**: T-78, page 87; and T-79, pages 40 to 41.

<sup>1703</sup> **P-0963**: T-79, page 43. Contrary to the suggestions in Defence Closing Brief, para. 842, the Chamber notes that P-0963 also testified about being briefed about *other* objectives at this meeting, namely the opening of the road, weapon retrieval, and destroying Lendu headquarters, and notes that the witness was explicit that his evidence was just ‘his summary’ of what was said at the briefing (**P-0963**: T-79 pages 40 to 43), and the Chamber thus considers his testimony reliable and credible.

<sup>1704</sup> **P-0963**: T-79, page 46. P-0963 places the briefing as having occurred at 6am on the day of the attack on Kobu (**P-0963**: T-79, pages 46 to 47). *See also* **P-0017**: T-63, pages 12 to 13.

<sup>1705</sup> **P-0963**: T-79, pages 46 to 47. *See also* **P-0963**: T-79, page 79; and T-81, page 89. Contrary to the Defence submission in Defence Closing Brief, para. 848, the Chamber notes that P-0963 corroborates P-0017’s

anything, troops were to do when they encountered the civilian population, P-0963 said: ‘We were fighting the Lendu. The orders were clear: Shoot at everyone.’<sup>1706</sup> Ammunition was also distributed on this occasion.<sup>1707</sup>

### c) Unfolding of the Second Operation

#### (1) Coordinated nature of the Second Operation

562. The Second Operation was a coordinated operation consisting of several assaults on villages in the Walendu-Djatsi *collectivité*.<sup>1708</sup> Different UPC/FPLC units attacked from different sides, notably: Salumu Mulenda’s brigade attacked Kobu from Kilo,<sup>1709</sup> Salongo Ndekezi and Nduru Tchaligonza’s troops attacked Lipri from Bunia,<sup>1710</sup> and Nduru Tchaligonza’s troops attacked Bambu from Nizi and Mabanga.<sup>1711</sup>

563. During the Second Operation, Floribert Kisembo, who was based in or around Mongbwalu and Kilo at this time,<sup>1712</sup> received updates about how the operation in Kobu was unfolding, and issued operational orders to UPC/FPLC troops involved in the operation.<sup>1713</sup>

564. During the Second Operation, the UPC/FPLC communicated using Motorolas,<sup>1714</sup> Thurayas,<sup>1715</sup> and *radiophonie*.<sup>1716</sup> Salumu Mulenda communicated with the commanders who carried out the assaults on Lipri and Bambu, which

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testimony that the ‘*kupiga na kuchaji*’ phrase was used at the start of the Second Operation. For more information on the term ‘*kupiga na kuchaji*’, see para. 415 above.

<sup>1706</sup> **P-0963**: T-79, page 47. See also pages 43 and 79.

<sup>1707</sup> **P-0963**: T-79, page 47.

<sup>1708</sup> See para. 550 above.

<sup>1709</sup> See para. 572 above.

<sup>1710</sup> See para. 567 above.

<sup>1711</sup> See para. 583 above.

<sup>1712</sup> **P-0963**: T-79, pages 43 to 44; and **P-0017**: T-59, page 78; and **D-0300**: T-220, page 55.

<sup>1713</sup> **P-0963**: T-79, pages 49 to 50; **P-0017**: T-59, pages 78 to 79; and T-63, pages 28 to 29, and 31. See also generally, section IV.B.8.b) Planning of the Second Operation.

<sup>1714</sup> **P-0017**: T-59, page 64 to 65; and **P-0963**: T-79, page 45.

<sup>1715</sup> **P-0963**: T-79, page 45. See also evidence that Salongo Ndekezi had a Thuraya, **P-0901**: T-28, page 20; **P-0907**: T-90, page 46; and **D-0300**: T-222, page 33.

<sup>1716</sup> **P-0907**: T-90, pages 59 to 63.

occurred on or about the same time.<sup>1717</sup> He also communicated with Floribert Kisembo about the unfolding of the assault on Kobu, including almost every night while the UPC/FPLC was present in Kobu.<sup>1718</sup>

565. Using the UPC/FPLC radio communications systems, Mr Ntaganda was in contact with commanders and was informed about issues related to the unfolding of the Second Operation:<sup>1719</sup>

- Mr Ntaganda was informed by the commanders on the ground about the failed assault on Lipri.<sup>1720</sup>
- On 18 February 2003, at 09:10, Salumu Mulenda, informed Salongo Ndekezi by way of *radiophonie*, copying Mr Ntaganda, that Commander

<sup>1717</sup> **P-0017**: T-59, page 66; and **P-0963** : T-79, pages 45 and 49.

<sup>1718</sup> **P-0017**: T-59, page 66; and **P-0963**: T-79, pages 45 to 49.

<sup>1719</sup> P-0907 stated that he overheard *radiophonie* messages being relayed between Salumu Mulenda and Salongo Ndekezi through Salongo Ndekezi's signaller Mbale (**P-0907**: T-90, pages 59 to 60), and overheard oral reports being given between Salumu Mulenda and Salongo Ndekezi in person (**P-0907**: T-90, pages 62 to 63), and that all the information would end up being forwarded to Bunia to Mr Ntaganda by *radiophonie* (**P-0907**: T-90, pages 62 to 63). When confronted with the suggestion that he never heard Mr Ntaganda's voice on any radio conversation he may have heard, the witness stated that Tiger One communicated every day with Bosco Ntaganda in Kinyarwanda, that Mbale would submit reports to Salongo Ndekezi, but that he did not know what they talked about (**P-0907**: T-92, page 64), and confirmed that he heard these conversations on the *radiophonie* (**P-0907**: T-92, page 64). With regard to the Defence argument that the absence of records in the logbooks shows that the evidence of P-0907 is unreliable (Defence Closing Brief, para. 1118), the Chamber notes the witness's explanation that operators would communicate by using codes, but if a commander submitted a report to the operator, he would be speaking normally (**P-0907**: T-92, page 64). Based on this explanation, the Chamber accepts the witness's testimony that he overheard radio conversations, even if they may not be recorded in the logbooks. It is noted that, in any case, as discussed, the logbook contains an exchange of messages between Mr Ntaganda and Salumu Mulenda on 18 February 2003. Nevertheless, considering that P-0907 testified to radio communications generally, not only those including Mr Ntaganda, and considering that his knowledge is based on overheard communications in a language he did not understand, supplemented by discussions with Mbale, the Chamber cannot determine conclusively that it was indeed Mr Ntaganda to whom the reports were given over the *radiophonie*. For this reason, the Chamber does not base any finding in relation to Mr Ntaganda's involvement on the cited evidence of P-0907.

<sup>1720</sup> **P-0055**: T-71, page 42. P-0055 testified that Mr Ntaganda followed the developments relating to the failed attack on Lipri, from Fataki before he returned to Bunia, and that Salongo Ndekezi and Tchaligonza said that they had transmitted this information to Ntaganda through the Thuraya. Considering P-0055's position within the UPC/FPLC, and noting that he explained the circumstances in which he obtained the information, the Chamber considers the testimony in this respect reliable. With respect to the timing of the failed assault on Lipri (*see also* Defence Closing Brief, para. 1120), the Chamber recalls its finding that the failed assault on Lipri occurred on 17 February 2003, and therefore finds not credible Mr Ntaganda testimony that the failed Lipri assault occurred between 26 and 28 January 2003, relying *inter alia* on the consistent evidence of P-0127, P-0105, and P-0055. Contrary to the Defence argument that Tchaligonza did not have a Thuraya, put forward against the testimony of P-0055 (Defence Closing Brief, para. 1120), the Chamber notes that P-0055 did not testify that it was Tchaligonza's Thuraya which was used, and that the evidence establishes that Salongo Ndekezi did have a Thuraya at this time (*see* **D-0300**: T-222, page 33; **P-0901**: T-28, page 20; and **P-0907**: T-90, page 46).

Américain, who was a battalion commander in Salumu Mulenda's brigade,<sup>1721</sup> had refused to depart for the Kobu operation because he was afraid of the way the Lendu had taken the *saba saba* weapon during the failed Lipri assault.<sup>1722</sup> On the same day, at 16:44, Mr Ntaganda responded to this message, also copying Salongo Ndekezi, emphasising that no commander could refuse an order from his superiors and that this had never occurred before.<sup>1723</sup>

- On 19 February 2003, at 14:30, Mr Ntaganda was aware that the troops arrived in Lipri, Kobu, and Bambu and that further reports would follow.<sup>1724</sup> The Chamber cannot establish whether Mr Ntaganda sent or received this message, but considers it established that Mr Ntaganda was aware of the message's content at the time.<sup>1725</sup>

<sup>1721</sup> Logbook entry DRC-OTP-2102-3854, at 4004. *See also* **P-0017**: T-59, page 66; and T-63, page 14.

<sup>1722</sup> Logbook entry DRC-OTP-2102-3854, at 3990. Noting its finding below (*see* para. 566), the Chamber considers that the message relates to the *saba saba* weapon lost in the failed Lipri attack. Given Americain's position within Salumu Mulenda's brigade, and the fact that his brigade who attacked Kobu, the Chamber also considers that the message relates to troops advancing towards Kobu on 18 February 2003. The Chamber further notes that Americain's refusal to advance is corroborated by P-0017 (**P-0017**: T-59, page 66; and T-63, page 14).

<sup>1723</sup> Logbook entry DRC-OTP-2102-3854, at 3998. Mr Ntaganda confirmed having sent this message to Salongo Ndekezi (**D-0300**: T-228, page 3), indicated that the message relates to the previous message sent by Salumu Mulenda (T-220, page 74), and also stated that it concerns Americain's refusal to advance (T-228, page 5). He further testified that it was a disciplinary matter, and that when he was made aware of a case of indiscipline, he did not hesitate (T-220, page 74 and T-228, page 4). Having considered the parties' submissions (Prosecution Closing Brief, paras 460 to 461, and 1086, and Defence Closing Brief, paras 1061 to 1063), the Chamber finds that the message shows that the highest levels of authority within the UPC/FPLC, including Mr Ntaganda, were involved in disciplinary matters related to the behaviour of the commanders deployed for the Second Operation.

<sup>1724</sup> Logbook entries DRC-OTP-2102-3854, at 3993 (first) and 3998 (fourth).

<sup>1725</sup> The Chamber notes that an identical message, including the address header, is recorded in both the incoming and outgoing sections of the logbook (DRC-OTP-2102-3854, at 3993 and 3998). The Chamber notes that a separate 'IN' section of the logbook records the incoming messages and a separate 'OUT' section records, primarily, but not exclusively, the messages sent by Mr Ntaganda (*see* **P-0290**: T-66, pages 46 to 47). The only significant difference between the two messages is that the 'OUT' message contains an annotation indicating that the message was 'PASSED', *i.e.* transmitted (**P-0290**: T-66, pages 23 to 24). The Defence however submits that Mr Ntaganda did not send the message and that it is erroneously recorded for various reasons (Defence Closing Brief, paras 1064 to 1071). Mr Ntaganda testified that he did not send this message and that it was erroneously recorded in the 'OUT' section by the signaller and that there was an 'error from the "to" and "information"' (T-220, pages 76 to 78; and T-238, pages 48 to 51). Mr Ntaganda further stated that the message did not speak about fighting but simply that the forces had arrived in Bambu and Lipri (T-238, page 51). While Mr Ntaganda said he was not surprised about the Second Operation by virtue of his knowledge about the UPC/FPLC's 'intention to open the main road' (T-220, page 79), he claimed having learned about it only when he received this message (T-220, page 78). While the addressee header of the message suggests that

- Two informed insiders, P-0901<sup>1726</sup> and P-0055,<sup>1727</sup> affirmed that Mr Ntaganda was able to follow and supervise the Second Operation. The Chamber notes that while P-0901 and P-0055 did not discuss specific examples of the interaction between Mr Ntaganda and the commanders and mainly talked about how Mr Ntaganda was generally involved in the unfolding of the Second Operation based on the position that he occupied within the UPC/FPLC at that time, they both

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Mr Ntaganda was the sender of the message, the Chamber considers that it has not been provided with sufficient explanation as to why the message was recorded twice in both the incoming and outgoing section of the Logbook. Notably, although **P-0290** recalled the context of this message and the operations it related to (**P-0290**: T-66, pages 53 to 54), the Chamber notes that the witness was not asked for an explanation for the identical messages in the 'IN' and 'OUT' section of the logbook, nor whether he remembered that Mr Ntaganda sent this message.

<sup>1726</sup> P-0901 testified that as deputy chief of general staff responsible for operations and organisation, Mr Ntaganda was supervising the operation' (T-29, page 13). He testified that he did not know where Mr Ntaganda was but that he would call the commanders using the Motorola, and monitor closely all the developments in the operations and give them orders so that operations would unfold smoothly (T-29, page 13). Asked whether he heard any orders over the Motorola, P-0901 did not give any example but responded: '[w]hen a commander gives orders over the Motorola calling a particular unit to determine where that unit is, I could hear all of that sort of thing' (T-29, page 13). He further explained that he was able to recognise people over the Motorola by their voice or call sign (T-29, page 13; *see also* T-28, pages 21 to 22). The witness testified that he was himself using/listening over Motorola during the unfolding of the Second operation when he was travelling back to Bunia from Aru (T-29, page 11), and while in Bunia (T-29, pages 16 and 32; T-31, pages 47 to 50). As for the Defence argument that P-0901 could not hear any such communications from Bunia, and that he only arrived in Bunia after the Second Operation was over (Defence Closing Brief, para. 1114), the Chamber recalls first its finding on the technical possibility of communicating between Bunia and the area of the Second Operation by Motorola radio (*see* sections III.D.2.k) P-0901, and IV.A.2.g) Communication system). Second, the Chamber notes the witness's statement that when he arrived in Bunia 'two or three days later around 6 March, that is when clashes occurred with the Ugandans' (T-29, page 12), and his insistence that he was in Bunia when he listened to radio communications related to the Second Operation (T-31, pages 49 to 50). The Chamber also notes that parts of an audio recording (DRC-OTP-0162-0115) which the witness claimed to have listened to live over Motorola from Bunia (T-29, pages 32 and 39; and T-31, page 47), were placed by the witness and other witnesses as having occurred during the Second Operation (**P-0017**: T-60, page 40; on other parts of the audio, *see also* **P-0963**: T-79, page 90). In these circumstances, the witness's testimony that he was in Bunia when he listened to some radio communications during the Second Operation is reliable. This conclusion is further supported by the details of the witness's journey from Aru to Bunia (**P-0901**: T-29, pages 11 to 12; and T-31, page 49), which demonstrate that he passed through the relevant area during the Second Operation. Also, in the absence of any mention of facts supporting the possibility that the witness would then have taken around 10 days for the relatively short journey to Bunia, the Chamber considers that the only reasonable conclusion from P-0901's evidence is that he returned to Bunia during the Second Operation, was able to follow some radio communications related to the operation from that location, and inaccurately estimated the amount of time between his arrival to Bunia and the clashes of 6 March 2003.

<sup>1727</sup> P-0055 testified that Mr Ntaganda went to Fataki when the Second Operation had already started, was following the developments relating to the battle, was the deputy chief of staff in charge of operations, and the 'operations commander' during the Lipri-Kobu-Bambu operation (T-71, pages 41 to 43). The Chamber notes that P-0055 clarified that he could not say what type of orders he gave because he was not always present, but explained that no major operation such as Kobu, Lipri and Bambu could be planned without Ntaganda, and, that wherever he was positioned, Ntaganda had to have information through Motorola or Manpack, enabling him to follow operations on a regular basis, and further communicated with the people who were in Kobu and in Mongbwali (T-71, pages 43 to 44).

confirmed that Mr Ntaganda used radio devices to communicate during the Second Operation.<sup>1728</sup> Based on their informed knowledge of the functioning of the UPC/FPLC at the time, and having had regard to the positions they held at the time, the Chamber concludes that Mr Ntaganda was monitoring the unfolding of the Second Operation.

## (2) Assault on Lipri and surrounding villages

566. Lipri is located in the Tsili *groupement* of the Walendu-Djatsi *collectivité*.<sup>1729</sup> It is surrounded by the villages or *groupements* Tsili, Ngongo, Djuba, Katho, Avetso, and Dhepka.<sup>1730</sup> The persons living in Lipri and surrounding villages at the relevant time were, as found above, predominantly Lendu.<sup>1731</sup> Before the UPC/FPLC launched its assault on Lipri, the village was controlled by the APC.<sup>1732</sup> Following a failed attempt to take over the village on or about 17 February 2003, the UPC/FPLC withdrew its soldiers from Lipri.<sup>1733</sup> During the fighting, the Lendu were able to capture some of the UPC/FPLC's heavy weapons, including a

<sup>1728</sup> See, in particular, **P-0901**: T-29, page 13; and **P-0055**: T-71, pages 43 to 44.

<sup>1729</sup> Agreed Fact 25; and **P-0790**: T-53, page 21. Lipri is neighbouring Ngongo, Djuba, and Tsili (**P-0105**: T-133, pages 47 to 48; and T-135, page 21; and **P-0127**: T-138, page 110; and T-139, pages 5, 7, and 58). Nyangaray and Kobu are approximately within a 30km radius from Lipri (**P-0105**: T-134, page 69; and **P-0300**: T-166, page 46).

<sup>1730</sup> The Prosecution submits that Tsili, Avetso, Djuba, Katho, and Nyarara 'are "in or around Lipri" as per Count 11' (Prosecution Closing Brief, para. 534, footnote 1560), however provides no basis or justification for its submission. CLR2, relying on the testimony of P-0105 and P-0127, makes a similar submission (CLR2 Closing Brief, para. 273, referring to 'smaller Lendu villages that were around Lipri and Tsili, such as Avetso, Djuba, Nyarara and Katho'). Noting P-0105's testimony in this regard, the Chamber considers, for the purpose of the factual findings in this section, the villages Tsili, Ngongo, Djuba, Katho, Avetso, Dhepka are in such close proximity to Lipri that some witnesses may consider them as part of it. The Chamber therefore accepts that witnesses may sometimes have referred only to Lipri, while the relevant conduct in fact took place in one of the aforementioned locations. Nevertheless, the Chamber notes that para. 36 of the Confirmation Decision, besides to Lipri, explicitly refers to, *inter alia*, Tsili, Ngongo, Djuba, Katho, Avetso, and Dhepka. The Chamber therefore makes separate findings on these individual locations.

<sup>1731</sup> See section IV.B.8.a) Situation in the area before the Second Operation.

<sup>1732</sup> **P-0017**: T-59, page 46. See also P-0055, who testified about 'troops' being stationed in Lipri, but did not identify them as APC and instead referred to them as 'Lendu' (**P-0055**: T-71, pages 29 to 30). P-0127 testified that to his knowledge there were no APC soldiers in Lipri at the time of the Second Operation, but referred to 'Lendu combatants' being present (**P-0127**: T-139, page 11).

<sup>1733</sup> **P-0105**: T-133, pages 44 and page 53; and T-135, page 13; and **P-0127**: T-139, pages 3 to 4. See also **P-0317**: T-191, page 50; and DRC-OTP-0152-0286, from 0301 to 0302, para. 57. The Chamber notes the arguments of the Prosecution and the Defence regarding the date of the failed attack on Lipri and considers that it is reasonable to rely on eye-witnesses' accounts in this respect, *i.e.* P-0105 and P-0127, who both testified that the attack happened on 17 February 2003.



weapon referred to as *saba saba*.<sup>1734</sup> Regaining the *saba saba* weapon was one of the objectives of the UPC/FPLC during the Second Operation.<sup>1735</sup>

567. On or about 18 February 2003, the UPC/FPLC returned to attack Lipri, Tsili, and other villages in the area.<sup>1736</sup> UPC/FPLC Commanders Salongo Ndekezi and Nduru Tchaligonza participated in this assault.<sup>1737</sup> The UPC/FPLC used a weapon referred to as a 'rocket launcher' during the assault on Lipri.<sup>1738</sup> The village was taken over by the UPC/FPLC in approximately one hour.<sup>1739</sup> Bodies were found in and near Lipri and Tsili shortly after the attack.<sup>1740</sup> The UPC/FPLC set up a base in

<sup>1734</sup> **P-0105**: T-135, page 13; **P-0127**: T-139, pages 11 and 80; **P-0963**: T-79, page 42; **P-0017**: T-59, page 46; **P-0055**: T-74, page 47; and **P-0106**: T-45, page 52. *See also* **P-0317**: DRC-OTP-0152-0286, from 0301 to 0302, para. 57.

<sup>1735</sup> **P-0963**: T-79, pages 41 to 42, 46, and 79; **P-0017**: T-59, page 46; and T-63, pages 13 and 44. *See also* **P-0105**: T-134, page 13; and T-135, page 13; **P-0790**: T-53, pages 48 to 50; and T-54, page 12; **P-0121**: T-172, pages 66 to 67; and **P-0027**: DRC-OTP-0096-0052-R04, at 0062, para. 45. While the Defence argues that the *saba saba* was instead lost in an operation in late January 2003 (*see* Defence Closing Brief, paras 1020 to 1023), the Chamber notes that the evidence on the record, including both insider and crime base witnesses, consistently indicates that the *saba saba* was lost in mid-February 2003.

<sup>1736</sup> The Chamber observes that several witnesses and exhibits indicate the same date for the assaults on Lipri, Kobu, and Bambu. While noting minor discrepancies or lack of precision as to the date of the assaults, the Chamber does not find them to be significant since most of the evidence places the assaults on Lipri, Kobu, and Bambu on or about 18 February 2003. *See e.g.* **P-0105**: T-133, pages 44 to 45 and 53 to 56, and 70; and **P-0127**: T-139, pages 4, and 33 to 35; logbook DRC-OTP-2102-3854, at 3998; DRC-OTP-0074-0422, at 0444, paras 68 to 69; DRC-OTP-0152-0286, at 0301 to 0302, paras 56 and 58; **P-0963**: T-78, page 87; T-79, pages 40 and 43. *See also* **P-0317**: T-191, pages 49 to 51; and DRC-OTP-0152-0286, at 0302, para. 58; **P-0301**: T-149, pages 30 and 32; **P-0790**: T-53, pages 37 to 38; **P-0857**: T-193, page 69; **P-0901**: T-29, page 10; **P-0805**: T-25*bis*, page 15; **P-0046**: T-100, pages 63 to 64; and **P-0907**: T-90, page 69. With regard to P-0113 who places the assault on Bambu sometime before Christmas 2002 (**P-0113**: T-118, page 13), the Chamber observes that her account of events corresponds to those provided by other witnesses in relation to events found to have occurred in February 2003 and that she specifically stated not to have a clear recollection of the timing of the event (**P-0113**: T-118, pages 13 to 14; and T-119, pages 28 to 54). Accordingly, the Chamber is of the view that P-0113 misplaced the events in time, but that her account relates to the events of the Second Operation. The Chamber therefore concludes that the evidence shows that the UPC/FPLC launched a coordinated assault on Bambu, Kobu and Lipri on or about 18 February 2003.

<sup>1737</sup> **P-0055**: T-71, page 35.

<sup>1738</sup> **P-0127**: T-139, pages 4 and 80.

<sup>1739</sup> **P-0055**: T-71, page 43.

<sup>1740</sup> P-0127 testified about bodies having been found in Lipri and Tsili upon return to these villages shortly after the assault, although it is not clear who found the bodies (**P-0127**: T-139, page 16), and about having been told about persons killed by the UPC/FPLC during this assault (**P-0127**: T-133, pages 15 to 16). The Chamber further notes DRC-OTP-2078-0551, from 0561 to 0562, paras 26 to 29; DRC-OTP-0195-2366-0001; and DRC-OTP-0152-0286. As the first two of these items refer to a broad time frame and do not differentiate between the individual villages, and the third does not provide the underlying sources, the Chamber gives limited probative value to these documents. However, together they provide for corroboration of P-0127's account. P-0105 also testified about killings taking place during the assault (**P-0105**: T-133, page 54), but indicated that he obtained this information from the Lendu 'combatants', and did not provide further details in this respect. In relation to any alleged killings having occurred in Lipri and the surrounding villages, the Chamber notes the respective arguments of the parties on this issue (*i.e.* Prosecution Closing Brief, paras 587 to 589, and Defence Closing Brief, paras 899 to 903). On the basis of the evidence before it, the Chamber cannot find that the only reasonable conclusion is that these people were killed in the course of the UPC/FPLC

Lipri from where it carried out operations against surrounding villages<sup>1741</sup> and controlled the Main Road.<sup>1742</sup>

568. Lendu fighters were present in Lipri as a group of armed individuals under the command of a person referred to as Kabuli.<sup>1743</sup> Most of the Lendu fighters did not wear uniforms and were using firearms, arrows and machetes.<sup>1744</sup> Once the UPC/FPLC assault had commenced, the predominantly Lendu population of Lipri and Tsili, including the Lendu fighters, fled and sought refuge in the bushes.<sup>1745</sup> The population of Djuba, Katho, and Dyalo took refuge on hills nearby.<sup>1746</sup> People who fled found themselves in difficult conditions as they had very limited access to food and slept outside.<sup>1747</sup>

569. During its control of the area, UPC/FPLC troops looted and burned down houses in Lipri and burned down houses in Tsili.<sup>1748</sup> The houses with metal roofs

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assault on Lipri discussed in the present section and/or by whom, due to the absence of further information on the circumstances of their deaths. The Chamber further notes that the Confirmation Decision refers to the alleged killing of a Bira woman in Ngongo on 18 February 2003 by the UPC/FPLC (Confirmation Decision, para. 44). The Chamber has not received any evidence on this alleged killing. Notably, P-0105, on whose witness statement the finding in the Confirmation Decision was based, did not mention this incident (*see* however **P-0105**: T-133, page 53). Generally, in relation to alleged killings in the context of the Second Operation, the Chamber notes that some witnesses (*e.g.* **P-0105**: T-133, pages 53 to 55) referred to persons having been killed in a time frame that would match that of the Second Operation, at places that are not referred to in the Confirmation Decision, or otherwise discussed by the parties, and the location of which is not clarified in the relevant evidence. In these circumstances, and given the lack of information provided as to the circumstances of these alleged killings, the Chamber does not make any findings in this regard.

<sup>1741</sup> **P-0105**: T-133, pages 44 to 46.

<sup>1742</sup> **P-0105**: T-133, page 50. For explanations about the Main Road, *see* para. 442.

<sup>1743</sup> **P-0105**: T-135, pages 10 to 11; **P-0127**: T-139, pages 83 to 84; **P-0300**: T-166, page 35. *See also* **P-0317**: T-192, pages 97 to 98.

<sup>1744</sup> **P-0105**: T-135, pages 10 to 11; and **P-0127**: T-139, pages 4 and 81; and T-140, pages 11 to 12. *See also* **P-0317**: T-192, page 98.

<sup>1745</sup> **P-0019**: T-115, page 20; **P-0113**: T-118, pages 18, 19, and 22; **P-0105**: T-133, pages 41, 45 to 55, and 70 to 71; and **P-0127**: T-139, pages 4 to 5, and 11. *See also* **P-0055**: T-71, page 45; and – albeit of limited weight – DRC-OTP-0152-0286, at 0302, para. 58. Regarding the Defence submission that the population of Lipri had fled in advance of the fighting on or around 18 February 2003 (Defence Closing Brief, para. 1006), the Chamber notes that while some insider witnesses testified that the population had already fled by the time the UPC/FPLC arrived in the villages (*e.g.* **P-0017**: T-59, page 67; and **P-0790**: T-57, page 40), this is not incompatible with the aforementioned evidence which demonstrates that at least part of the Lendu population started fleeing only once the UPC/FPLC had commenced its assault on Lipri.

<sup>1746</sup> **P-0105**, T-133, pages 49 and 70. *See also* **P-0127**: T-139, pages 7 and 10.

<sup>1747</sup> **P-0127**: T-133, pages 70 to 71; and T-139, page 12; and **P-0113**: T-118, page 22.

<sup>1748</sup> **P-0127**: T-139, pages 7 to 10, 57 to 64, and 78 to 79; and **P-0105**: T-133, page 41 to 47, and 50 to 51. The Chamber notes that the aforementioned evidence is not contradicted by the account of P-0317, who stated that she stayed at the market of Lipri (**P-0317**: T-191, pages 30, and 90 to 91). P-0121 refers to houses having been burned down in Lipri, but he appears to place the timing of the burning at an earlier point in time (**P-0121**: T-173, page 82). However, in light of the specific evidence provided by P-0127 and P-0105, and the fact that any

were not burned down.<sup>1749</sup> The UPC/FPLC looted harvests and crops in Lipri and its surrounding area.<sup>1750</sup>

570. The UPC/FPLC left Lipri in early March 2003.<sup>1751</sup>

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previous burning of houses does not exclude that houses were also burned on a later occasion, the Chamber does not consider that P-0121's evidence on this point contradicts that of P-0127 and P-0105. P-0810, who analysed satellite images of Lipri, concluded that on 20 May 2003, there were cleared areas where certain structures and rooftops appear to be missing. According to P-0810, about 17 to 20 areas in Lipri showed signs of possible destruction (**P-0810**: T-176, page 11 read together with DRC-OTP-2099-0166, at 0198). The Chamber notes paras 967 to 973 of the Defence Closing Brief and, in particular, the Defence's reference to the video of panoramic views of Lipri (DRC-OTP-1033-0221) and the satellite image (DRC-OTP-2099-0166). As to the cause of the burning, the Chamber considers, on the basis of the description given by P-0127, that the setting on fire of the thatched buildings was done purposely, and that the manner in which the houses were set on fire, as described by the witness, shows that it was not the accidental or unintended result of combat activities. The Chamber observes that both the video and the satellite image were taken more than a month after the Lipri attack, and are therefore of limited use to establish whether, and if so how, any destruction took place during the events that are subject to the charges. Further, the Chamber heard evidence that those living in Lipri tried to quickly restore their houses after the assault (**P-0127**: T-139, pages 73 to 75; and **P-0121**: T-173, page 82). Mindful of the possibility that Lipri inhabitants restored some of the houses prior to the video or satellite image being taken, the Chamber considers it appropriate to rely on the most contemporaneous evidence, namely the witnesses' accounts and observations, including eye-witnesses, who were present during the attack on 18 February 2003 or came to Lipri immediately after to witness the destruction.

<sup>1749</sup> **P-0127**: T-139, pages 61 to 65.

<sup>1750</sup> **P-0105**: T-133, pages 44 to 46. *See also* **P-0127**: T-139, page 61. The Chamber notes the Defence submission that P-0105's testimony is unreliable, but observes that the Defence bases its argument on the allegedly 'false' evidence by P-0105 on destruction in Lipri (Defence Closing Brief, para. 973). However, contrary to the Defence allegation, the Chamber does not consider P-0105's evidence to be 'false', and notes that his evidence on both the burning of houses in Lipri and the looting is corroborated by other witnesses.

<sup>1751</sup> **P-0127**: T-139, pages 34 to 35. The Chamber notes that the Prosecution alleges that rapes have also occurred in or around Lipri on or about 18 February 2003 (Prosecution Closing Brief, para. 571; *see also* Confirmation Decision, para. 36; and Defence Closing Brief, para. 939). The Chamber notes that the evidence brought forward by the Prosecution with respect to this charge is limited to hearsay evidence by P-0105 and two general reports, by the UN (DRC-OTP-1061-0212, at 0588, para. 756) and by MONUC (DRC-OTP-0152-0286, at 0301, para. 53). In relation to P-0105's evidence, leaving aside any considerations with regard to the quality of the witness's hearsay evidence, the Chamber notes that the incidents described by the witness do not clearly establish that rapes occurred in Lipri. His evidence in relation to the abduction of two pregnant women (**P-0105**: T-134, page 24) does not clearly indicate whether these women were raped in Lipri. The witness testified that the women were captured in Nyarara, and that the UPC/FPLC forces 'took them as sexual slaves, [...] took them to Lipri[,] [a]nd they held them as their wives' (**P-0105**: T-134, page 24). His evidence in relation to three women being raped in the fields before being executed (**P-0105**: T-134, pages 23 to 24) suggests that the incident occurred in Nyangaray, a village that is at a considerable distance from Lipri, and not 'in or around Lipri'. The Chamber notes in this regard that neither rape nor murder in Nyangaray has been charged (*see* Confirmation Decision, para. 36). As regards the two reports, the Chamber notes that the MONUC report indicates that 30 women have been *abducted* by UPC forces in the military operations carried out, *inter alia*, in Lipri (DRC-OTP-0152-0286, at 0301, para. 53). There is however no mention that these women have been raped. The UN report only generally mentions that the UPC raped a number of civilians, *inter alia*, in Kobu, Lipri, Nyangaray and Bambu in February 2003 (DRC-OTP-1061-0212, at 0588, para. 756). The information contained in the report, which is based on anonymous sources (*see also* Defence Closing Brief, para. 942) can thus only be considered as corroboratory evidence. In light of the abovementioned deficiencies of the evidence presented on alleged rapes in or around Lipri, the Chamber concludes that this part of the charge has not been established.

### (3) Assault on Kobu

571. Kobu is located in the Tchudja *groupement* of the Walendu-Djatsi *collectivité*.<sup>1752</sup>

As found above, at the relevant time, most of the inhabitants of Kobu were Lendu.<sup>1753</sup> In the period prior to the assault, following violence in the region, members of the Lendu population and members of the APC had sought refuge in Kobu.<sup>1754</sup>

572. On or about 18 February 2003, the UPC/FPLC launched an assault on Kobu.<sup>1755</sup>

The UPC/FPLC soldiers involved in the assault came from Kilo<sup>1756</sup> and belonged to the infantry and heavy weapons units that were part Salumu Mulenda's brigade.<sup>1757</sup> Salumu Mulenda was in charge of the Kobu assault.<sup>1758</sup> Lendu fighters were present in Kobu at the start of this part of the operation.<sup>1759</sup> The Chamber also notes P-0790's evidence that he saw Mr Ntaganda with Salumu Mulenda in Kobu prior to the 'pacification meeting',<sup>1760</sup> which is further supported by hearsay evidence provided by other witnesses.<sup>1761</sup> However, the Chamber also notes that:

- (i) P-0790 is not an insider witness, and that he had never met Mr Ntaganda;<sup>1762</sup>
- (ii) Mr Ntaganda's testified that, at no time during the Second Operation, he visited Kobu;<sup>1763</sup>
- (iii) the Prosecution does not allege the presence of Mr Ntaganda

<sup>1752</sup> Agreed Fact 23; and **P-0790**: T-53, pages 12 to 13. As to the location, witnesses clarified that Kobu is next to Sangi and Ngabuli (**P-0106**: T-45, page 14); Bambu, Kilo and Gutsi are also nearby; approximately within an 11km radius from Kobu (**P-0963**: T-79, page 79; and **P-0103**: DRC-OTP-0104-0170-R02, at 0175, para. 26, and at 0176, para. 32); and Kobu is about 20 to 25 km from Lipri (**P-0300**: T-166, page 46).

<sup>1753</sup> See section IV.B.8.a) Situation in the area before the Second Operation.

<sup>1754</sup> **P-0019**: T-115, page 20; and **P-0017**: T-59, pages 46 to 47, and 67. See also **P-0027**: DRC-OTP-0096-0052, at 0057, para. 25; and **P-0055**: T-71, pages 29 to 30.

<sup>1755</sup> On the date of the assault, see footnote 1736 above.

<sup>1756</sup> **P-0017**: T-59, pages 66 to 67. See also **P-0790**: T-53, page 38; **P-0106**: T-44, pages 27 to 28; and **P-0301**: T-149, page 30.

<sup>1757</sup> **P-0017**: T-59, pages 48 and 58. See also **P-0055**: T-74, page 31. P-0017 also testified that the two battalions were led by commanders Echo Charlie and Pascal Okito (**P-0017**: T-59, pages 58 to 59).

<sup>1758</sup> **P-0963**: T-79, page 43; and T-82, page 89; and **P-0055**: T-71, page 54. See also **P-0046**: T-100, page 76.

<sup>1759</sup> **P-0017**: T-59, page 67. On the presence of Lendu fighters in Kobu, see also para. 549.

<sup>1760</sup> **P-0790**: T-53, pages 50 to 61; T-57, pages 13 to 21. The Chamber notes that the witness's testimony in this regard is consistent with his prior statement and that he further maintains his testimony in cross-examination (**P-0790**: T-57, pages 16 to 19).

<sup>1761</sup> **P-0877**: T-110, pages 19 to 20; **P-0106**: T-44, pages 34 to 35; and T-45, pages 48 and 50; and **P-0046**: T-100, pages 76 to 77; and T-103, pages 27, and 29 to 31.

<sup>1762</sup> **P-0790**: T-53, page 54.

<sup>1763</sup> See Defence Closing Brief, paras 1035 to 1047, and 1055 to 1089.

in Kobu as part of its case;<sup>1764</sup> and (iv) the two insider witnesses who were based in Kobu during the Second Operation did not testify that Mr Ntaganda was present in Kobu during this operation.<sup>1765</sup> In these circumstances, the Chamber does not rely on P-0790's evidence and the aforementioned hearsay evidence to make a finding beyond reasonable doubt that Mr Ntaganda was seen in Kobu during the Second Operation. Considering the circumstances, the Chamber does not consider this to impact the credibility and/or reliability of P-0790's in other respects.

573. The UPC/FPLC used heavy weapons during the assault in Kobu.<sup>1766</sup> There was minimal resistance from the Lendu, as they quickly fled once the UPC/FPLC started shooting.<sup>1767</sup> At least two young children were killed by UPC/FPLC soldiers when they attempted to flee.<sup>1768</sup> The villagers who managed to flee were hiding on the hills and in the bushes in the area surrounding Kobu, including Buli.<sup>1769</sup>

574. During the assault, Salumu Mulenda communicated with Floribert Kisembo via Motorola.<sup>1770</sup> Kobu was taken over by the UPC/FPLC within a few hours.<sup>1771</sup> Upon its arrival in Kobu, the UPC/PFLC set up a camp at the Kobu market.<sup>1772</sup>

<sup>1764</sup> See Prosecution Closing Brief, paras 441 to 662. See also Defence Closing Brief, para. 933.

<sup>1765</sup> **P-0017**: T-63, pages 5, 10, and 53; and **P-0963**: T-79, pages 43 to 44.

<sup>1766</sup> **P-0017**: T-59, pages 63 to 64; and T-63, page 18; and **P-0963**: T-79, pages 49 to 51.

<sup>1767</sup> **P-0805**: T-25*bis*, page 16; and T-26, page 42; **P-0017**: T-59, page 67; and T-63, page 18; and **P-0963**: T-79, pages 50 to 51; see also **P-0790**: T-53, pages 38, and 40 to 44; and T-54, pages 67 to 68. Regarding the Defence submission that the population of Kobu had fled in advance of the fighting on or around 18 February 2003 (Defence Closing Brief, para. 1006), the Chamber notes that while some witnesses testified that the population of Kobu fled from it, the evidence provided in this regard, including eye-witnesses' accounts, demonstrates that at least part of the Lendu population started fleeing only once the UPC/FPLC had started its assault on Kobu. Further, while P-0963 testified that some 'civilians' were killed during the attack (**P-0963**: T-79, page 51), noting that the witness provided no further information about how he learned about civilians having been killed and, in the absence of further information about the circumstances in which they were killed, the Chamber does not reach a finding in this regard.

<sup>1768</sup> **P-0790**: T-53, pages 44 to 48; T-54, pages 43 to 44; T-57, pages 42 to 44; and DRC-OTP-2078-2407. According to P-0790, the children were three and six years old. See also **P-0857**: T-193, page 75.

<sup>1769</sup> **P-0017**: T-59, pages 67 to 68; **P-0105**: T-133, pages 46 and 71; **P-0113**: T-118, page 22; **P-0106**: T-44, pages 28 to 29; and **P-0301**: T-149, page 30. See also **P-0857**: T-193, page 69.

<sup>1770</sup> **P-0017**: T-63, pages 28 to 31; and **P-0963**: T-79, pages 49 to 50.

<sup>1771</sup> **P-0017**: T-63, pages 18 to 19. See also **P-0963**: T-79, pages 50 to 51.

<sup>1772</sup> **P-0017**: T-59, page 65.

575. The Lendu initiated a 'counteroffensive' on the second day involving two groups.<sup>1773</sup> One group consisted of Lendu fighters and members of the APC, who were armed with rifles and fired at the UPC/FPLC camp.<sup>1774</sup> The second group was dressed in civilian clothing and consisted mostly of women who were singing, shouting, and hitting on pans.<sup>1775</sup> Upon the order of Salumu Mulenda, the UPC/FPLC fired at the people who were singing and making noise, after which those people dispersed.<sup>1776</sup>

576. Salumu Mulenda also ordered to shoot with a 12.7 at any fire that could be seen around Kobu.<sup>1777</sup> This was done 'to keep exerting pressure so that nobody could even light a fire to cook or to warm themselves'.<sup>1778</sup>

577. After the UPC/FPLC took control over Kobu, it carried out a *ratissage* operation for two or three days.<sup>1779</sup> During the *ratissage* operation, at least two persons were captured by the UPC/FPLC and brought to the camp in Kobu, where they were killed the same day.<sup>1780</sup> Fighting between the UPC/FPLC and the Lendu continued in the villages around Kobu.<sup>1781</sup>

<sup>1773</sup> **P-0017**: T-59, pages 68 to 70; and T-63, page 20.

<sup>1774</sup> **P-0017**: T-59, page 68; and T-63, pages 20 to 21.

<sup>1775</sup> **P-0017**: T-59, pages 69, and 70 to 72.

<sup>1776</sup> **P-0017**: T-59, pages 72 to 73; and T-63, pages 23 to 25. Regarding the Defence argument that P-0017's account in this regard is 'highly implausible' (Defence Closing Brief, para. 838), including because of the supposed choice made by Salumu Mulenda to fire on a group that was further away, instead of a group that was closer by and firing at the UPC/FPLC, the Chamber: (i) observes that P-0017's testimony does not exclude that the nearer group was not fired on, or that other measures were taken; (ii) considers that there may have been operational reasons for Salumu Mulenda to give the order as reported by P-0017; and (iii) recalls that the Defence put a different version of events to P-0017, based on information supposedly provided by a named individual who was not called as a witness, nor was the information presented as evidence in any other way before the Chamber. Noting that the Defence does not provide any further explanation as to why the account as given by P-0017, whom the Chamber has found to be credible and who had specific knowledge about the matters he testified to, is implausible, it will not further address this challenge.

<sup>1777</sup> **P-0017**: T-59, page 73.

<sup>1778</sup> In this regard, the Chamber considers the Defence suggestion that P-0017's testimony shows that he understood the persons to be targeted by firing at the cooking fires to be 'fighters' (Defence Closing Brief, para. 1004) to be a misrepresentation of P-0017's testimony on the 'fleeing Lendu', which he clarified were 'all people Lendu, children, women, old people [...] all of those Lendu people who were on the other side were considered to be the enemies of the UPC/FPLC' (**P-0017**: T-59, page 74).

<sup>1779</sup> **P-0017**: T-59, pages 74 to 75; T-59-FRA, page 76.

<sup>1780</sup> See **P-0017**: T-60, page 29, who referred to these persons as 'civilians'. The Chamber notes that the Confirmation Decision refers to 'Mr Mulenda's compound' (Confirmation Decision, para. 42). However, the Chamber observes that witnesses generally referred to buildings and locations in Kobu, without indicating whether these were in or associated with any compound of Salumu Mulenda. Although the Chamber cannot

578. The UPC/FPLC torched some of the houses in and around Kobu, and houses in or around Kobu were found by returning villagers to have been burned down.<sup>1782</sup> The UPC/FPLC soldiers also conducted house-to-house searches looking for the *saba saba* weapon and other weapons.<sup>1783</sup> They brought back personal belongings, as well as the metal roofs of the houses.<sup>1784</sup> Salumu Mulenda and Pascal Okito brought back a goat and a motorcycle.<sup>1785</sup>

579. While in Kobu, UPC/FPLC soldiers detained several women and girls, in some instances for hours, in others over the course of several days; during these periods, UPC/FPLC soldiers raped them and otherwise subjected them to sexual violence on one or more occasions.<sup>1786</sup> This included an 11-year-old captured by

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assess whether various buildings in Kobu that are mentioned in its findings were part of Mulenda's compound, noting the size of Kobu and the situation prevailing at the time, it will not enter specific findings on the charged killings at 'Mr Mulenda's compound' but instead make findings on the killings it considers established beyond reasonable doubt in Kobu as such.

<sup>1781</sup> **P-0963**: T-79, pages 77 to 78; and **P-0790**: T-53, page 34.

<sup>1782</sup> **P-0017**: T-59, pages 75 to 76; and **P-0857**: T-193, pages 71 to 72. *See also* **P-0300**: T-167, page 40; and **P-0121**: T-173, pages 11 to 12, and 79 to 81. The Chamber notes that the evidence of P-0121 and P-0300 is of limited relevance to the determination whether it was the UPC/FPLC who set fire to other houses, as neither witnessed the actual burning of the houses but only saw that they were burned when coming back to the area. However, their evidence is relevant for the question whether the houses that were set on fire indeed burned down. In relation to the Kobu area in general, P-0810 testified that around 20 structures could possibly have been removed (**P-0810**: T-176, page 10 together with DRC-OTP-2084-0443, at 0466; and DRC-OTP-2099-0166, page 0197). Noting that P-0810 was only provided with one image of the centre of Kobu (of 22 May 2003), which was taken approximately three months after the alleged assault, and that he had no earlier images of the same location to compare with, the Chamber considers P-0810's evidence in relation to Kobu to be of limited value, and considers it appropriate to instead rely on the more contemporaneous evidence, namely the witnesses' accounts, including eye-witnesses present during the attack on 18 February 2003, or those who came to Kobu immediately after the assault (*see* in this regard Prosecution Closing Brief para. 555, and Defence Closing Brief para. 975). Further, the Chamber considers that neither P-0963's account that no houses were torched, but also indicating that there were no thatched roof houses (**P-0963**: T-79, page 78), nor P-0113's statement that the houses in the city centre had not been burned (**P-0113**: T-53, pages 52 to 53), are incompatible with the accounts of P-0017 and P-0857.

<sup>1783</sup> **P-0017**: T-59, page 75.

<sup>1784</sup> **P-0017**: T-59, pages 75 to 77; **P-0963**: T-79, page 77; and **P-0901**: T-29, page 18. *See also* **P-0805**: T-25*bis*, pages 20 to 21; and T-26, pages 29, 42 to 43, and 50 to 51; and *see* **P-0790**: T-53, pages 35 to 36; and T-54, pages 31 to 38. In relation to the Defence argument that '[c]laims of lost building supplies, houses or gold by individuals who are also claiming compensation for those losses must be assessed with particular caution' (Defence Closing Brief, para. 976), the Chamber notes that the present finding is first and foremost based on evidence given by insider witnesses, and not solely on that of dual status witnesses.

<sup>1785</sup> **P-0017**: T-59, pages 76 to 77; and T-63, pages 25 to 26.

<sup>1786</sup> **P-0790**: T-54, page 32, referring to women having been captured, 'raped' and 'used as slaves'. P-0790 further testified that three women whose names he did not know were captured in Kobu by the UPC/FPLC and later freed. He indicated that they were used to transport the personal belongings of the soldiers and were raped by those soldiers. One of them was abandoned in Centrale, far away from Kobu, but she returned and told her story to people in the village. P-0790 explained that he 'chanced upon' a conversation in which the woman was talking to other people about her experience and that this is how he learned about her and the other women's

Commander Simba during a mop-up operation in Kobu whom he brought with him to Bunia where she stayed until the Bunia operation and forced her to sleep with him; according to P-0017, she was forced to have ‘sexual relationships’ with Simba to save her life.<sup>1787</sup>

#### (4) Assault on Bambu

580. Bambu is a town located on the Main Road connecting Mongbwalu to Bunia.<sup>1788</sup> The Main Road leads over a bridge crossing the Shari River, which forms a natural barrier between Bambu and Nizi.<sup>1789</sup> Camp Yalala – also referred to as Yalala – is located in or next to Bambu.<sup>1790</sup>

581. At the time of the charged events, Bambu was the seat of the headquarters of the Kilo-Moto mining company.<sup>1791</sup> Other buildings situated in Bambu included a hospital,<sup>1792</sup> several schools and institutes,<sup>1793</sup> a nutrition centre, and a location referred to as the ‘stadium’.<sup>1794</sup> There were also two parishes in or around Bambu,

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detention and abuse (**P-0790**: T-54, page 34). Regarding the Defence challenges to P-0790’s account based on P-0790’s own acknowledgement that women would usually not discuss these things openly (Defence Closing Brief, para. 962), the Chamber notes that while victims of sexual crimes may tend to hide their rapes from their community and family (*see* para. 88 above on delayed reporting of rape), this may not always be the case and this particular person may have trusted the other individuals with her story. Although P-0790 does not clearly indicate the duration of these women’s forced stay with the UPC/FPLC, the Chamber considers that the only reasonable conclusion is that it lasted for a certain time, as P-0790 indicated that they were freed ‘at a later stage’, and that at least one of them was abandoned far away from Kobu.

<sup>1787</sup> **P-0017**: T-60, pages 28 to 29. Regarding the Defence statement that P-0017’s evidence on Simba is ‘infected by his profound unreliability’, that the incident is uncorroborated and that P-0017 gave no name or identity of the victim (Defence Closing Brief, para. 963), the Chamber refers to its credibility assessment of P-0017, and considers that in light of the fact that women were brought to the camps on a regular basis, and that the witness was not asked about the girl’s identity, the lack of this information does not affect the witness’s credibility on this point. Although P-0017 did not indicate a precise timeframe, the Chamber notes that his testimony means that the girl was with Commander Simba for several days, given his indication that she was captured in a ratissage operation in Kobu and kept until a subsequent operation in Bunia.

<sup>1788</sup> DRC-OTP-2099-1066, at 0181, and at 0185; and DRC-OTP-2084-0443, at 0455.

<sup>1789</sup> **P-0863**: T-180, page 13; DRC-REG-0001-0050; **P-0113**: T-110, page 48; and T-111, page 54; **P-0907**: T-92, page 31; and **V-1**: T-201, page 81.

<sup>1790</sup> **P-0018**: T-111, page 58; and T-112, page 26; **P-0105**: T-135, page 17; and **P-0863**: T-180, pages 27 to 28.

<sup>1791</sup> **P-0018**: T-111, page 53; and DRC-OTP-0065-0006, at 0006. *See also* **P-0010**: T-47, page 26, referring to Bambu as a mining area; **P-0317**: T-191, page 30; and DRC-OTP-0152-0286, at 0303, para. 64.

<sup>1792</sup> **P-0863**: T-180, page 8. *See also* **P-0317**: T-191, page 30; and DRC-OTP-0152-0286, at 0303, para. 64.

<sup>1793</sup> **P-0863**: T-180, pages 49 to 50; and **P-0113**: T-118, pages 27 to 28 read together with T-118-FRA, pages 28 to 29. *See also* DRC-OTP-0152-0286, at 0303, para. 64.

<sup>1794</sup> **P-0863**: T-180, pages 26, 49, and 66; DRC-REG-0001-0050; DRC-D18-0001-2928; and DRC-D18-0001-2929.



one being the Sainte Thérèse parish located about three kilometres from Bambu.<sup>1795</sup>

582. A number of short-lived assaults were advanced by the UPC/FPLC on Bambu before the assault subject to the charges.<sup>1796</sup>

583. As part of the military operation to re-open the Main Road connecting Mongbwalu to Bunia, which included, as found above, assaults on various villages in the Walendu-Djatsi *collectivité*, UPC/FPLC troops attacked Bambu – at the same time or shortly following the assaults on Kobu and Lipri – on or about 18 February 2003.<sup>1797</sup> The troops involved were part of Nduru Tchaligonza's brigade.<sup>1798</sup> They arrived in the morning,<sup>1799</sup> from the direction of Nizi, taking the Main Road across Shari Bridge.<sup>1800</sup>

584. Lendu fighters were present in Bambu at the time of the assault, which caused the UPC/FPLC forces some difficulties but – reinforced by another unit located in Mabanga – the UPC/FPLC was able to overcome the resistance by the Lendu fighters.<sup>1801</sup> By 19 February 2003, the UPC/FPLC was present in Bambu.<sup>1802</sup>

<sup>1795</sup> **P-0863**: T-180, pages 20 and 62; and DRC-REG-0001-0050.

<sup>1796</sup> **P-0863**: T-180, pages 11 to 14, and 30 to 31. *See also* **P-0857**: T-193, pages 75 to 76; **P-0317**: T-192, pages 94 to 95; **P-0901**: T-29, page 10; and **P-0055**: T-72, page 9; DRC-OTP-0152-0286, at 0301, para. 54. Other than noting that these earlier clashes took place, the Chamber need not make findings on these assaults which occurred outside the temporal scope of the charges (Confirmation Decision, paras 29 and 36; *see also* UDCC, para. 77; *see also* Prosecution Closing Brief, paras 182 and 537). Accordingly, the Chamber does not rely on the witness's evidence relating to the unfolding of these assaults (**P-0863**: T-180, pages 13 to 16 and 29 to 32; and T-181, page 65; **V-1**: T-201, pages 9 to 14, 19 to 20, 49, 55 to 56, and 68).

<sup>1797</sup> *See* paras 567 and 572 above.

<sup>1798</sup> **P-0055**: T-74, page 42; and **P-0017**: T-59, pages 59 to 60; and T-63, pages 16 to 17.

<sup>1799</sup> **P-0963**: T-79, page 46; **P-0018**: T-110, page 49; and **P-0863**: T-181, page 20.

<sup>1800</sup> **P-0963**: T-79, pages 43 to 45; and **P-0017**: T-59, page 59. *See also* **P-0018**: T-110, pages 47 to 49; and T-111, pages 53 to 54; **P-0113**: T-118, page 16; and T-119, page 39; and **P-0019**: T-115, pages 19 to 20.

<sup>1801</sup> **P-0863**: T-180, pages 16 to 19, and 56; and T-181, pages 19 to 21, 55 to 58, and 65 to 66 (testifying that Lendu militiamen put up resistance or set up a counterattack, and that at the time most young boys in Bambu were 'combatants'); **P-0017**: T-59, page 59; and T-63, pages 16 to 17; **P-0963**: T-79, pages 41, and 79 to 80. *See also* **P-0055**: T-71, page 36; and **P-0105**: T-135, page 12.

<sup>1802</sup> Logbook DRC-OTP-2102-3854, at 3993 (first) and 3998 (fourth). For discussions on this message, *see* para. 565.

585. Heavy weapons were used, at least to some extent, during the assault.<sup>1803</sup>

When they realised that Bambu was being attacked, most of the members of the local population fled from this locality, including to Buli.<sup>1804</sup> They were unable to return until after the UPC/FPLC had left the area.<sup>1805</sup>

586. A shell hit a civilian compound in Yalala and killed six people – amongst them two children<sup>1806</sup> – on or shortly prior to 18 February 2003.<sup>1807</sup> The kitchen building

<sup>1803</sup> **P-0863**: T-180, page 26; and T-181, pages 7 to 12. The use of heavy weapons during the assault on Bambu is further corroborated by V-1 (**V-1**: T-201, pages 20, 23 to 24, 63, and 82); and to a limited extent by P-0019 (**P-0019**: T-115, page 19). *See also* **P-0963**: T-79, page 79; and DRC-REG-0001-0050). The Chamber notes that the pictures of the stadium tribune taken on 16 January 2017 (DRC-D18-0001-2928; and DRC-D18-0001-2929) show a relatively large hole to the roof of the stands. While these pictures were taken almost 14 years after the alleged events, they corroborate P-0863's account to the extent that the roof of the stadium was visibly damaged at a certain time. P-0810 testified that a satellite image of Bambu of 22 May 2003 shows some structural remains from which the rooftops were removed, which can be an indicator of burning or explosives (**P-0810**: T-175, pages 108 to 109; DRC-OTP-2099-0166, at 0190; and DRC-OTP-2084-0443, at 0459). However, noting that the satellite image was taken approximately three months after the alleged assault, and recalling its finding that several assaults took place on Bambu, as well as the general violence in the relevant time period, the Chamber considers that the 22 May 2003 satellite image showing a certain amount of damage to be of low probative value.

<sup>1804</sup> **P-0018**: T-110, pages 48 to 52, 56 to 57, and 59; and T-111, page 58; **P-0863**: T-180, pages 14 to 15, 24, 32 to 34, and 36; **P-0113**: T-118, pages 13, and 16 to 18; and T-119, page 39; **P-0901**: T-29, page 15; and **P-0963**: T-79, pages 79 to 80. *See also* **P-0055**: T-71, pages 41 to 42, and 45; **P-0019**: T-115, page 20; and **P-0790**: T-53, page 52. The Defence, relying on the testimony of D-0038, argues that the civilian population in Bambu fled in advance of the fighting (Defence Closing Brief, para. 1006). However, according to the circumstances described by D-0038 – in particular the fact that the UPC/FPLC did not reach the town of Bambu and that they retreated after a short while – and in light of the fact that he did not specifically mention when this operation took place (**D-0038**: T-249, pages 72 to 74), the Chamber concludes that D-0038's evidence refers to an assault on Bambu prior to the charged assault on or about 18 February 2003.

<sup>1805</sup> Insider witnesses stated that the Lendu were not allowed to return, **P-0017**: T-63, pages 45 to 46; **P-0963**: T-79, page 43. Lendu confirmed that they indeed were not able to return until the UPC/FPLC had left the area, **P-0113**: T-118, page 58; **P-0863**: T-180, pages 46 to 47; and T-181, pages 12 to 13; and **P-0127**: T-139, pages 33 to 35.

<sup>1806</sup> **V-1**: T-201, pages 20 to 24, 27 to 28, 30 to 31, 35, 44 to 45, 63, and 82 and DRC-PCV-0001-0086 and DRC-PCV-0001-0126; *See also* **P-0863**: T-180, pages 27 to 29. The Chamber notes that V-1's and P-0863's accounts of the event are detailed and mostly consistent, with the exception of the number of victims; V-1 testified that six people died, while P-0863 said it was only five. Given V-1's proximity to the event and considering that he was able to list the victims in detail, the Chamber finds it appropriate to rely on V-1's account regarding the number of victims, and therefore finds that six people were killed by a mortar shell. The Chamber further notes that the Confirmation Decision refers to three other alleged killings in Bambu by the UPC/FPLC, namely the killing of a woman and her child on 25 February 2003, and the 'capture and slaughter' of a woman (Confirmation Decision, para. 44). The Chamber has not received evidence of these killings and notes that they are not specifically mentioned by the Prosecution in its closing brief. In these circumstances, the Chamber does not make any findings in respect of those three alleged killings.

<sup>1807</sup> **V-1**: T-201, pages 68, 76 to 77, and 81. The Chamber notes that, in light of the content of his previous statements, V-1 was not entirely consistent with regard to the sequence of events. In his written statement, V-1 stated that he was abducted and taken to Nizi during the first week of March 2003, *i.e.* following the shelling of the compound (DRC-PCV-0001-0093, at 101, and DRC-PCV-0001-0105, at 109, para. 34), but he testified in court that the arrest occurred prior to the shelling of the compound (**V-1**: T-201, pages 68 to 78). The Chamber notes that, although the account given by V-1 in his written statement appears more consistent with other evidence, and considering that he may not accurately recall the exact sequence of events, this does not affect the overall credibility of his testimony. The Chamber further notes that V-1 did not amend his account

of the compound was significantly damaged by the shell.<sup>1808</sup> During the month of April 2003, and afterwards, destroyed structures were observed in the area surrounding Bambu.<sup>1809</sup>

587. Nine hospital patients – who had been left unattended by fleeing health care personnel because they were too weak to also flee – were killed by gunshots or bladed weapons.<sup>1810</sup> One patient – whose leg had been amputated the same morning – was shot at but survived; however, he later died of tetanus.<sup>1811</sup> There

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regarding the shelling of the compound, which he consistently testified as having occurred on 19 February 2003. P-0863 does not provide a specific date of the event, but places it in January 2003, before the main and final attack on Bambu (**P-0863**: T-180, pages 27 to 28). The Chamber notes that P-0863 also places the main and final attack in January 2003 (**P-0863**: T-180, page 14). Considering V-1's statement that the event occurred on 19 February 2003, and P-0863's testimony, according to which the event occurred around the same time of the main assault on Bambu – found to have occurred on or about 18 February 2003 – the Chamber concludes that the event took place during or shortly prior to the assault on or about 18 February 2003.

<sup>1808</sup> **V-1**: T-201, page 24. *See also* DRC-PCV-0001-0089; and DRC-PCV-0001-0092. Even if the Chamber cannot establish that all the damage seen on the pictures is the result of the shell explosion, it notes that V-1 recognised DRC-PCV-0001-0089 as showing the front of the house of the compound hit by the shell and indicated that the visible marks were caused by the explosion (**V-1**: T-201, pages 32 to 33), and also recognised the damaged kitchen building on DRC-PCV-0001-0092 (**V-1**: T-201, pages 33 to 34).

<sup>1809</sup> The Chamber notes that there is evidence indicating that many buildings in the area surrounding Bambu were destroyed. In particular, P-0317 and P-0046 testified about extensive destruction they personally witnessed when they went on a mission to Kobu, Bambu, Lipri on 3 April 2003 on behalf of MONUC (*see* DRC-OTP-0152-0286, at 0300, para. 51); **P-0317**: T-191, pages 30, 42, and 55 to 56; and T-192, pages 96 to 97; **P-0046**: T-100, pages 63 to 65). However, this mission took place about a month after the assault by the UPC/FPLC. Furthermore, P-0317 testified that she could not personally ascertain when the destruction was caused (**P-0317**: T-192, page 96; *see also* DRC-OTP-0152-0286, at 0287, paras 3 to 6, and from 0300, para. 51 to 0304, para. 66; and DRC-OTP-0074-0422, from 0444, para. 68 to 0445, para. 70). P-0810, who analysed and compared satellite images of areas close to Bambu, concluded that on 22 May 2003 these areas showed extensive destruction compared to the state on 26 January 2003 (**P-0810**: T-175, pages 108 to 109; and T-176, pages 8 to 9; DRC-OTP-2084-0443, at 0455, from 0459 to 0460, and from 0464 to 0465; and DRC-OTP-2099-0166, at 0181, and from 0190 to 0191, and at 0196). The Chamber – taking into account that Bambu was attacked several times prior to the assault on or about 18 February 2003 – finds that the evidence is insufficient to show that the destruction ascertained by these witnesses was caused by UPC/FPLC troops during the charged assault on Bambu.

<sup>1810</sup> **P-0863**: T-180, pages 20 to 21; and T-181, pages 17 to 30.

<sup>1811</sup> **P-0863**: T-180, pages 19 to 23; and T-181, pages 17 to 30. According to P-0863, this person said that he had been shot at by UPC soldiers and that he lost a tooth from the gunshot. While noting that P-0863 mentioned the patient who survived the gunshot in his 2014 statement without mentioning the other nine people killed at Bambu hospital, the Chamber does not find his in-court testimony to be inconsistent. In the 2014 statement, the patient who survived the gunshot was mentioned in connection with injuries that P-0863 witnessed during the war in Bambu, and not in relation to any specific attack or killings, whereas during his in-court testimony the witness mentioned the patients killed in the hospital when specifically asked whether any patients died as a result of UPC attacks. The reasons given by the witness as to why he did not mention these victims previously appear plausible. Furthermore, the Chamber finds P-0863's testimony to be overall credible and reliable, noting that he gave a detailed and consistent account, clearly distinguishing between what he personally witnessed and what he was told by other people. He further provided neutral evidence, mentioning not only evidence incriminating the UPC/FPLC, but also the Lendu militia, *e.g.* that they forced him to help with burials. The Chamber notes the Defence challenge regarding the absence of forensic evidence despite the witness's precise claim about the location of the mass grave in the courtyard of Bambu hospital (Defence

were bullet marks on the walls where the patient was found.<sup>1812</sup> The patients were shot or killed by UPC/FPLC soldiers.<sup>1813</sup>

588. Sexual violence took place in Bambu during the course of the Second Operation. P-0863 testified that the Lendu militia forced him to bury the body of a Lendu woman. He explained that the woman's pagne was ripped and that he observed mutilations of her genitals and between her thighs, as if a sharp object had been introduced 'into her female genitalia'. He further testified to having seen dried semen on her thighs. On the basis of the latter, P-0863 concluded that this woman had been raped.<sup>1814</sup>

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Closing Brief, para. 906), but does not consider this material necessary to reach the present finding. Further, the Chamber observes that the nine victims at Bambu hospital were first mentioned by the witness during his in-court testimony and notes that this probably explains why the Prosecution did not produce any related forensic evidence.

<sup>1812</sup> **P-0863**: T-180, page 22.

<sup>1813</sup> The Chamber notes that: (i) P-0863 testified that the patient he found alive in the hospital told him personally that it was UPC soldiers who shot him (**P-0863**: T-180, pages 22 to 23); (ii) P-0863 further testified that this event occurred during the charged assault (**P-0863**: T-181, pages 19 to 22 and 29 to 30); and (iii) as previously concluded, this assault was launched by UPC/FPLC soldiers who were present in the town that day. Based on the testimony of P-0863 and the corroborating evidence showing the presence of UPC/FPLC soldiers during this assault, the Chamber concludes that the patient found alive by P-0863 in the hospital was shot at by UPC/FPLC soldiers. Regarding the nine other patients found dead, the Chamber notes that P-0863 testified that he found them at the same time as the patient who was still alive. The Chamber therefore concludes that the only reasonable inference to be drawn is that they were also killed on the same occasion, i.e. by the UPC/FPLC soldiers during the charged assault.

<sup>1814</sup> **P-0863**: T-180, pages 29 to 30, 55 to 59, and 66; and T-181 pages 67 to 68. With reference to the related Defence challenges (Defence Closing Brief, para. 943), the Chamber notes that: (i) P-0863 provided neutral evidence, including incriminating evidence about the Lendu militia, and, as such, did not appear eager to incriminate; (ii) as P-0863 only learned about the woman's injuries after her sexual assault, he could not have given information as to what exactly had happened to this woman; (iii) in light of the witness's professional background and the observations he made in Kobu, his conclusion that the woman was raped appears reasonable; (iv) P-0863's evidence is coherent insofar as he clarified that the woman was wearing a pagne, but that this pagne was torn; (v) P-0863 did not indicate that Lendu militiamen were attempting to cover their own crimes and, as such, was not trying to shield his story from further inquiry; and (vi) while P-0863 appears to have drawn his conclusion that the woman was sick only on the basis of his prior knowledge of her illness (*see* **P-0863**: T-180, pages 58 to 59), and the Chamber therefore does not make any finding on this assumption, his view in relation to the woman's sexual assault does not appear affected by it. In these circumstances, the Chamber considers that P-0863's testimony in relation to the woman is credible and can be relied upon. On the basis of the circumstances described by the witness, namely the ripped pagne, the mutilated genitals, as well as the semen on her thighs, the Chamber finds that the only reasonable conclusion is that the woman was raped or sexually assaulted. However, while the evidence indicates that the UPC/FPLC arrived in the morning and the woman's burial took place that same day, the evidence does not allow the Chamber to infer beyond reasonable doubt that the perpetrator was a member of the UPC/FPLC. On the basis of the evidence provided by P-0863, the Chamber therefore cannot make any definite findings on who perpetrated this rape. The Chamber further notes that P-0863 also testified that on the way to bury the woman, they had left another woman midway. P-0863 clarified that Lendu militia buried this woman and told him that she had been injured around her genital organs and killed by the UPC/FPLC. P-0863 saw this woman and was able to describe her attire and her head injury, but did not further examine her (**P-0863**: T-180, pages 59 to 60; *see also* T-180, page 66). While

589. UPC/FPLC soldiers looted in Bambu, and P-0963 saw soldiers guarding items that appeared to have been looted when he went to Bambu shortly after the assault, such as ‘new foams’ at Commander Mai Mai’s place.<sup>1815</sup> Some Hema civilians also looted items from private homes shortly after the assault.<sup>1816</sup>

## (5) ‘Pacification meeting’

### (a) Invitation to the ‘pacification meeting’

590. On or about 22 February 2003, UPC/FPLC soldiers gave a letter inviting the Lendu community to a ‘pacification meeting’ in Sangi<sup>1817</sup> to a Nyali man referred to as Gombili, a former APC soldier who had been previously captured by the UPC/FPLC.<sup>1818</sup> The letter was written in Swahili and signed by Salumu

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P-0863 provided hearsay evidence that this woman was mutilated around her genitals, and notwithstanding that he observed similar mutilations on another woman on the same day, the Chamber can neither infer from the circumstances described by the witness alone that this woman was sexually assaulted *pre mortem*, nor that this was done by UPC/FPLC soldiers (*see also* Defence Closing Brief, para. 943). A UN Report indicates that UPC troops raped a number of civilians, *inter alia*, in Bambu in February 2003 (DRC-OTP-1061-0212, at 0588, para. 756), but on the basis of this general reference, the Chamber will not make any findings in relation to Bambu.

<sup>1815</sup> **P-0963**: T-79, pages 79 to 80. Noting the Defence submissions that the ‘amount of “foam” [...] was never specified’ (Defence Closing Brief, para. 983), the Chamber considers that the quantity is irrelevant for the question as to whether or not the foam(s) had been looted. The Chamber considers P-0963, who directly observed looting and looted items, to be credible. It also notes that his testimony is corroborated by further evidence. *See also* **P-0863**: T-180, pages 47 to 50, and 70; and T-181, page 65; and **P-0317**: T-191, pages 30, 42 to 44, and 55 to 56; and T-192, pages 89 to 90 and 96 to 97..

<sup>1816</sup> **P-0113**: T-118, pages 52 to 53.

<sup>1817</sup> Sangi is a hill close to Ngabuli, Buli, Bambu, and Kobu (*see* **P-0018**: T-110, pages 74 to 75; **P-0100**: T-132, page 30; **P-0106**: T-44, page 34; and T-45, page 14; **P-0113**: T-118, page 18; **P-0790**: T-53, page 49; and **P-0792**: T-150, page 56. Notwithstanding some discrepancies on the location of the ‘pacification meeting’, the Chamber notes that 15 witnesses testified that it was held in Sangi, that locations other than Sangi were mentioned by a considerably smaller number of witnesses, and that these other locations are close to Sangi. Accordingly, it considers that these inconsistencies do not affect its overall finding on the location of the ‘pacification meeting’ (**P-0103**: DRC-OTP-0104-0170-R02, at 0178, para. 39; **P-0113**: T-118, page 28; **P-0127**: T-139, page 23; **P-0300**: T-166, page 42; **P-0301**: T-149, page 36; **P-0790**: T-54, page 3; and **P-0792**: T-150, page 53).

<sup>1818</sup> **P-0018**: T-110, pages 62 to 65; **P-0027**: DRC-OTP-0096-0052-R04, from 0057 to 0058, paras 26 to 27; **P-0105**: T-134, pages 9 to 10; and T-135, pages 22 to 23; **P-0103**: DRC-OTP-0104-0170-R02, from 0176 to 0178, paras 32 to 39; **P-0121**: T-173, pages 3 to 6; **P-0300**: T-166, pages 37 to 38; **P-0792**: T-150, pages 48 and 53; and **P-0868**: T-177, pages 66 to 67. *See also* **P-0315**: DRC-OTP-2058-0990, at 1010, para. 123; and **P-0317**: T-191, pages 43, 46 to 47, and 76 to 77; and DRC-OTP-0152-0286, at 0302, para. 60. Regarding the Defence arguments in relation to P-0127’s notes (Defence Closing Brief paras 873 to 874, 876, and Defence Reply Brief, paras 322 to 323), the Chamber considers these notes to be of limited probative value and relies on them only for corroboration, noting that P-0127 did not see the original letters from Salumu Mulenda and that his notes are a reproduction of another person’s notebook (**P-0127**: T-140, pages 28 to 29). Nevertheless, the Chamber considers the notes, and Salumu Mulenda’s correspondence in particular, to corroborate information provided by other witnesses, such as that the invitation was sent by Salumu Mulenda and that there was an exchange between Salumu Mulenda and Lendu community leaders, and further considers other alleged

Mulenda.<sup>1819</sup> UPC/FPLC soldiers also came to Sangi telling the local population that they were not looking to fight any further, but wanted to carry out peace negotiations.<sup>1820</sup> The Chamber's aforementioned findings are unaffected by Defence arguments in relation to the testimony of P-0017 and P-0963.<sup>1821</sup>

591. The message about the 'pacification meeting' was conveyed to the Lendu in Buli and passed on to various locations where Lendu people were, including Djuba, Gutsi, and Jitchu.<sup>1822</sup> Some Lendu community leaders responded to Salumu Mulenda's letter, asking him to withdraw his soldiers from the Lendu villages and requesting that a 'pacification meeting' be held in Sangi with all community leaders of Ituri along with government representatives.<sup>1823</sup>

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discrepancies between the notes and other witnesses' accounts, for example on Salumu Mulenda's location before the 'pacification meeting', to be of limited significance.

<sup>1819</sup> **P-0792**: T-150, pages 49 to 50, and 53. *See also* **P-0027**: DRC-OTP-0096-0052-R04, at 0058, para. 28; **P-0105**: T-134, pages 9 to 10; and **P-0127**: T-139, pages 35 to 39.

<sup>1820</sup> **P-0019**: T-115, pages 27 to 28; and T-116, pages 35 to 36; **P-0027**: DRC-OTP-0096-0052-R04, at 0058, para. 27; **P-0100**: T-131, page 40; **P-0113**: T-118, pages 13 to 14, 24, and 26 to 27; **P-0790**: T-53, pages 48 to 49; and **P-0857**: T-193, page 77. *See also* **P-0106**: T-44, pages 34 to 35; and T-45, pages 14 to 15. The Chamber notes that, in the days leading up to the 'pacification meeting', no assaults or other operations were carried out from the UPC/FPLC or the Lendu side (**P-0017**: T-59, page 80; **P-0790**: T-54, pages 4 to 5; and **P-0963**: T-79, pages 52 to 53).

<sup>1821</sup> The Chamber notes the Defence argument that P-0017 and P-0963 provided a different narrative to other witnesses on events surrounding the 'pacification meeting' (Defence Closing Brief paras 877, and 914 to 915). In particular, the Defence relies on P-0017's testimony to argue that the initiative for 'negotiations' came from an emissary sent by the Lendu, negotiations about which Floribert Kisembo was 'very positive' but which ultimately failed (**P-0017**: T-59, pages 78 to 80. *See also* **P-0963**: T-79, page 52), and relies on the evidence of P-0017 and P-0963 about alleged actions of the Lendu before the meeting (which, according to P-0963, prompted a counter attack by the UPC/FPLC on Buli), or actions of Lendu at the meeting, saying they 'either deliberately or unintentionally gave the impression that they were going to attack'. On these points, first the Chamber considers that P-0017 and P-0963 did not provide sufficient information to support an assertion that the emissary Gombili was in fact *sent* by the Lendu to start peace negotiations with the UPC/FPLC. Second, the Chamber considers that all accounts are compatible with its core finding, i.e. that a meeting with Lendu was held, at which prisoners were taken by the UPC/FPLC. Noting that the insider witnesses had different sources of knowledge from the crime base in relation to the surrounding events, and noting the aforementioned consistency on the critical aspect, this does not affect the credibility or reliability of the crime base witnesses' evidence on the meeting, nor of P-0017's or P-0963's evidence. Further, while details between them differ, the Chamber considers the narratives of P-0017 and P-0963 to be essentially consistent (*see* Defence Closing Brief, paras 354 and 355; and Defence Reply Brief, para. 101).

<sup>1822</sup> **P-0027**: DRC-OTP-0096-0052-R04, at 0058, para. 27; **P-0105**: T-134, page 10; and T-135, pages 28 to 29; **P-0108**: T-185, pages 45 to 47; **P-0121**: T-173, pages 3 to 5; **P-0301**: T-149, pages 33 to 34; and **P-0868**: T-178, pages 15 to 16.

<sup>1823</sup> **P-0127**: T-139, pages 21 to 24; and **P-0300**: T-166, pages 36 to 46. Noting P-0300's explanations of discrepancies between his early statements and later testimony regarding the response to Salumu Mulenda's letter (**P-0300**: T-167, pages 13 to 18), the Chamber considers them not to affect his credibility or reliability on this issue (*see* Defence Closing Brief, paras 875 to 876); and **P-0792**: T-150, pages 52 to 53. *See also* **P-0317**: T-191, pages 76 to 77; and DRC-OTP-0152-0286, at 0302, para. 60.

592. The Lendu people accepted the invitation to the ‘pacification meeting’ as living in the bush without access to food, clothes, and medicine was difficult to bear for those who had been displaced.<sup>1824</sup>

**(b) Motorola intercepts**

593. Sometime prior to the ‘pacification meeting’, a device referred to as a ‘Motorola’, which had been lost by the UPC/FPLC during the failed assault on Lipri,<sup>1825</sup> was set up in the Gutsi primary school by Lendu people.<sup>1826</sup> With this device, they managed to intercept UPC/FPLC communications in which UPC/FPLC commanders exchanged details indicating that the ‘pacification meeting’ was meant to be a trap aimed at capturing the Lendu.<sup>1827</sup> The UPC/FPLC also exchanged messages about weapons which were to be redirected in the direction of the valley where members of the population had sought refuge and about the fact that the soldiers were to do ‘community labour’ there.<sup>1828</sup>

594. A few days prior to the ‘pacification meeting’, some Lendu community leaders met to consult about the possibility of going to the ‘pacification meeting’ and wrote a letter to people in Buli warning them about it being a trap.<sup>1829</sup> People

<sup>1824</sup> **P-0018**: T-110, pages 63, and 65 to 66; **P-0300**: T-166, page 38; **P-0301**: T-149, page 34; **P-0790**: T-54, pages 9 to 10; and **P-0868**: T-177, page 67.

<sup>1825</sup> **P-0103**: DRC-OTP-0104-0170-R02, at 0176, para. 30; **P-0121**: T-172, page 79; **P-0301**: T-149, page 35; and T-150, pages 4 to 5; **P-0790**: T-57, pages 29 to 30; and **P-0863**: T-180, page 38.

<sup>1826</sup> **P-0103**: DRC-OTP-0104-0170-R02, from 0175 to 0176, paras 29 to 30; **P-0105**: T-134, pages 15 to 16; **P-0121**: T-172, pages 79 to 81; **P-0301**: T-149, page 35; and T-150, page 5; **P-0790**: T-53, page 61; and T-54, page 6; and **P-0863**: T-180, page 37; and T-181, pages 50 to 51. While noting small discrepancies in the various witnesses’ testimony with respect to the description of the device used to intercept the UPC/FPLC communications, its location, and access to it, the Chamber considers them not to affect the witnesses’ reliability or credibility for the purpose of this section, taking into account that the relevant testimony is consistent on some of the key factual aspects, *inter alia*, the existence of the Motorola device in Gutsi and the fact that Lendu people had taken it from the UPC/FPLC during a battle. The Chamber also notes that P-0301’s testimony is largely consistent with other witnesses’ accounts (*contra* Defence Closing Brief, para. 896).

<sup>1827</sup> **P-0027**: DRC-OTP-0096-0052-R04, at 0065, para.59; **P-0103**: DRC-OTP-0104-0170-R02, at 0178, para. 41; **P-0105**: T-134, pages 10 to 11; **P-0121**: T-172, pages 78 to 80; and T-173, pages 4 to 5; **P-0301**: T-149, pages 34 to 35; and T-150, pages 11, and 13 to 14; **P-0790**: T-53, pages 61 to 62; and T-54, page 6; and **P-0863**: T-180, page 43. *See also* **P-0315**: DRC-OTP-2058-0990, at 1010, para. 123.

<sup>1828</sup> **P-0301**: T-149, pages 37 to 40, 54 to 55, and 77 to 78, referring to the term ‘*salongo*’.

<sup>1829</sup> **P-0027**: DRC-OTP-0096-0052-R04, at 0065, para. 59; **P-0103**: DRC-OTP-0104-0170-R02, from 0178 to 0179, para. 42; **P-0105**: T-134, page 11; **P-0127**: T-139, pages 28 to 29; **P-0300**: T-166, pages 36 to 40, and 60; **P-0790**: T-53, page 61; T-54, pages 6 to 7; and T-57, pages 31 to 32; and **P-0792**: T-150, pages 51 to 52; and T-151, pages 30 to 31, 39. *See also* **P-0315**: DRC-OTP-2058-0990, at 1010, para. 123. While there is some information before the Chamber that the letter was read out to the people of Buli (**P-0790**: T-54, pages 7 to 8),

from Gutsi did not attend the ‘pacification meeting’.<sup>1830</sup> Some Lendu in other locations also realised or learnt from others that the meeting was meant to be a trap and did not attend.<sup>1831</sup>

### (c) ‘Pacification meeting’ in Sangi

595. On or about 25 February 2003,<sup>1832</sup> following the invitation, unarmed Lendu dignitaries, community leaders, young people, and women from various locations attended the ‘pacification meeting’ in Sangi.<sup>1833</sup> Lendu community leaders referred to as Burombi, Dyikpanu,<sup>1834</sup> and Jean Mbau were among the

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in light of the evidence provided by P-0027 and P-0113, and other inconclusive testimony on this issue, the Chamber cannot establish whether the letter indeed arrived in Buli and was read out there to warn the population about the ‘pacification meeting’ being a trap.

<sup>1830</sup> **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 44; and **P-0301**: T-149, page 53.

<sup>1831</sup> **P-0100**: T-131, pages 44 to 46.

<sup>1832</sup> **P-0105**: T-133, pages 59, and 70 to 71; and T-134, page 9. *See also* **P-0127**: T-139, pages 24 to 25, and 35 to 39 also referring to DRC-OTP-0065-0003; **P-0317**: T-191, page 49; and **P-0877**: DRC-OTP-2077-0118-R03, at 0122, para. 23. The Chamber further received evidence that the ‘pacification meeting’ took place on a Tuesday (**P-0027**: DRC-OTP-0096-0052-R04, at 0057, para. 26, and from 0059 to 0060, para. 34, at 0061, para. 39, and at 0062, para. 45; **P-0113**: T-118, page 28; and **P-0792**: T-150, page 50; and T-151, pages 5, 23 to 24), and notes that 25 February 2003 was a Tuesday. The Chamber notes that there are certain discrepancies in the various witnesses’ testimony with respect to the date as well as the exact day of the week of the ‘pacification meeting’ (*see e.g.* **P-0301**: T-149, page 34 referring to a Friday). Considering the time elapsed since the relevant events, the likely impact of the events on the witnesses’ ability to remember specific dates or weekdays, as well as the fact that some witnesses had been living in very difficult conditions in the bush for some time prior the ‘pacification meeting’ which could also affect their perception of time, the Chamber considers that these inconsistencies do not affect its overall finding on the date of the ‘pacification meeting’ or the credibility and reliability of the aforementioned witness accounts. The Chamber further considers that the aforementioned testimony does not give rise to the assertion that the witnesses were coached or that their evidence was contaminated on this particular issue. For more general discussion in this respect (*see* Defence Closing Brief, paras 892 to 894), *see* section III.D.3 Defence’s allegations of collusion of witnesses and use of intermediaries.

<sup>1833</sup> **P-0018**: T-110, pages 63, 67 to 69; **P-0019**: T-115, page 27 to 28; **P-0105**: T-134, pages 9 to 10; and T-135, pages 33 to 35; **P-0790**: T-534, pages 10 to 11; and **P-0868**: T-177, pages 68 to 69. *See also* **P-0315**: DRC-OTP-2058-0990, at 1010, para. 123; and **P-0976**: T-152, pages 70 to 71. In relation to the attendees on the UPC/FPLC side, *see* **P-0017**: T-59, pages 81 to 82.

<sup>1834</sup> The Chamber notes various spellings of Dyikpanu’s name (‘Dhikpanu’, *see e.g.* **P-0106**: T-45, pages 55 to 56; and ‘Dikpanu’, *see e.g.* **P-0121**: T-173, page 8) and considers that they all refer to the same person. In relation to the Defence argument that, amongst others, P-0301 and P-0790, tried to conceal the fact ‘that Dyikpanu was a combatant’ (Defence Closing Brief, para. 934. The Defence’s reference to P-0898 in this context is not on point, *see* footnote 2684 of the Defence Closing Brief), the Chamber considers that the witnesses appear to have testified to the best of their knowledge in relation to Dyikpanu’s role and does not consider their testimony to be misleading (*see* **P-0301**: T-150, page 11; and **P-0790**: T-54, page 8; compared with **P-0300**: T-167, pages 69 to 70), and thus considers their evidence on Dyikpanu’s role not to affect the credibility and reliability of their accounts. The Chamber further notes that given that Dyikpanu was captured and subsequently killed (discussed further below), his role is irrelevant for the purpose of this finding.



attendees.<sup>1835</sup> Once in Sangi, some people remained outside, while others went inside a building.<sup>1836</sup>

596. At the meeting, Salumu Mulenda, accompanied by a large number of UPC/FPLC soldiers, addressed those present.<sup>1837</sup> He allowed at least one Lendu man to leave the meeting so as to retrieve the *saba saba* weapon<sup>1838</sup> – the return of which the UPC/FPLC was demanding<sup>1839</sup> – from the Lendu.<sup>1840</sup>

597. In the meantime, armed UPC/FPLC soldiers began capturing the Lendu people and those who were outside tried to flee; others were locked and tied up inside the building, while the UPC/FPLC soldiers began beating and injuring them with, *inter alia*, rifles, bayonets, and machetes.<sup>1841</sup> The UPC/FPLC soldiers also chased people down Sangi Hill and into the bush.<sup>1842</sup>

598. Only few people managed to escape,<sup>1843</sup> while others were captured, tied up, and later taken to Kobu by the UPC/FPLC.<sup>1844</sup> Most people who went to Sangi for

<sup>1835</sup> **P-0105**: T-135, pages 33 to 35; **P-0106**: T-44, pages 36 to 37; **P-0121**: T-173, pages 6 to 7; and **P-0300**: T-166, pages 46 to 47.

<sup>1836</sup> **P-0018**: T-110, pages 81 to 82; **P-0019**: T-115, page 30; **P-0100**: T-131, pages 40 to 41; and **P-0105**: T-134, page 13. *See also* **P-0127**: T-139, page 30.

<sup>1837</sup> **P-0105**: T-134, pages 9 to 10.

<sup>1838</sup> In this regard, *see* section IV.B.8.c)(2) Assault on Lipri and surrounding villages.

<sup>1839</sup> **P-0027**: DRC-OTP-0096-0052-R04, at 0062, para. 45; **P-0300**: T-166, pages 35 to 36; and **P-0790**: T-53, pages 49 to 50, and 56; and T-54, page 3. *See also* **P-0106**: T-45, pages 52 to 53; and **P-0315**: DRC-OTP-2058-0990, at 1010, para. 123.

<sup>1840</sup> **P-0105**: T-134, pages 14 to 15; and **P-0127**: T-139, pages 29 to 30.

<sup>1841</sup> **P-0018**: T-110, pages 81 to 82; and T-111, pages 7 to 9; **P-0019**: T-116, page 4; and **P-0106**: T-44, pages 31, and 39 to 40. *See also* **P-0100**: T-132, pages 30 to 31; **P-0121**: T-173, page 7; **P-0868**: T-177, pages 69 to 70; and T-178, pages 20 to 22.

<sup>1842</sup> **P-0027**: DRC-OTP-0096-0052-R04, at 0062, para. 46; and **P-0106**: T-44, pages 41 to 42. *See also* **P-0100**: T-131, pages 40 to 42; and T-132, pages 30 to 31; and **P-0300**: T-166, pages 47 to 52.

<sup>1843</sup> **P-0105**: T-134, pages 11 to 12 and 14 to 15; and T-135, pages 35 to 39; **P-0121**: T-173, pages 6 to 7; **P-0127**: T-139, page 32; **P-0300**: T-166, page 48; **P-0301**: T-149, pages 69 to 70; **P-0790**: T-54, page 10; **P-0868**: T-177, pages 69 to 72; and **P-0877**: T-110, page 20.

<sup>1844</sup> **P-0018**: T-111, page 22; **P-0019**: *see* below; **P-0027**: DRC-OTP-0096-0052-R04, at 0062, para. 45; **P-0100**: T-132, pages 30 to 31; **P-0106**: T-44, pages 34 to 35; **P-0121**: T-173, page 7; **P-0127**: T-139, pages 32 to 33; **P-0301**: T-149, page 53; **P-0790**: T-54, page 10; and **P-0792**: T-150, page 56. *See also* **P-0315**: DRC-OTP-2058-0990, at 1010, para. 123. For the events in Kobu, *see* section IV.B.8.c)(10) Events in Kobu on or about 25 or 26 February 2003.

this ‘pacification meeting’ were either never seen again<sup>1845</sup> or their corpses were later found in Kobu.<sup>1846</sup>

599. P-0019, a Lendu woman,<sup>1847</sup> was among those captured by the UPC/FPLC in Sangi,<sup>1848</sup> together with other women; those other women were taken to the bush and raped.<sup>1849</sup> The women were screaming and some did not return.<sup>1850</sup> P-0019 heard UPC/FPLC soldiers say: ‘Lendu are useless wild animals and we can do with them anything we want. They are not humans’,<sup>1851</sup> and that they would ‘exterminate’ the Lendu within three days.<sup>1852</sup> UPC/FPLC troops then used P-0019 and others to carry luggage and various items to Wadza.<sup>1853</sup>

600. P-0018, after having been forced to carry the UPC/FPLC soldiers’ ‘booty’, was taken to Sangi, where she and others were brought to a building.<sup>1854</sup> P-0018 and other women were later separated from the group, taken outside and gathered at a tree.<sup>1855</sup> The next morning,<sup>1856</sup> armed UPC/FPLC soldiers<sup>1857</sup> came to the group of women, forcing them to come with them by pulling and hitting them and

<sup>1845</sup> **P-0018**: T-110, page 63; **P-0113**: T-118, pages 14, and 27 to 29; and **P-0790**: T-57, page 32.

<sup>1846</sup> For the Chamber’s findings in relation to the bodies found in Kobu, *see* section IV.B.8.c)(10) Events in Kobu on or about 25 or 26 February 2003.

<sup>1847</sup> **P-0019**: T-115, page 12.

<sup>1848</sup> **P-0019**: T-115, pages 27 to 28, and 30.

<sup>1849</sup> **P-0019**: T-115, page 30; and T-116, pages 4 to 5. Noting that P-0019 was captured together with individuals she did not know, and by UPC/FPLC soldiers she did not know, the Chamber finds it reasonable that P-0019 did not provide further details with respect to their identities and does not consider this to affect the credibility of the witness’s testimony. Concerning P-0019’s deduction that these women were raped, the Chamber notes the witness’s testimony that she heard women screaming ‘I don’t want you to rape me’ (**P-0019**: T-115, page 30) and that afterwards, she heard UPC/FPLC soldiers speak about the fact that women had been raped in Sangi (**P-0019**: T-115, page 31). The Chamber therefore finds that the only reasonable conclusion is that these women were raped. However, in relation to P-0019’s statement that she saw some individuals who had their genitals cut off and hung around their necks like necklaces, and that some had their ears cut off and were forced to eat them (**P-0019**: T-116, pages 5 and page 47), the Chamber is of the view that an incident of such a specific nature would likely have been remembered by other witnesses. The Chamber considers that it cannot make a finding in this regard based on P-0019’s testimony alone, but considers that this point does not affect P-0019’s credibility as a whole (*see also* Defence Closing Brief, paras 950 and 952).

<sup>1850</sup> **P-0019**: T-115, page 30.

<sup>1851</sup> **P-0019**: T-115, pages 31 and 51.

<sup>1852</sup> **P-0019**: T-115, page 51; and T-116, page 5.

<sup>1853</sup> **P-0019**: T-115, pages 29, 32, and 35.

<sup>1854</sup> **P-0018**: T-110, pages 64, and 79 to 81.

<sup>1855</sup> **P-0018**: T-110, pages 80 to 81; and T-112, page 8.

<sup>1856</sup> **P-0018**: T-111, page 16.

<sup>1857</sup> **P-0018**: T-111, page 11.

threatening to kill them.<sup>1858</sup> The UPC/FPLC soldiers took three women to the bush and raped them.<sup>1859</sup> They then brought the three women back, after which another group of armed soldiers<sup>1860</sup> took two other women to the bush and raped them.<sup>1861</sup> One woman tried to defend herself and the same soldiers who had raped the women shot her dead.<sup>1862</sup> Subsequently, these soldiers took P-0018's sister-in-law, raped her and shot her dead.<sup>1863</sup>

601. An armed UPC/FPLC soldier then told P-0018 to put down her child, who she was carrying, pulled her into the forest and raped her.<sup>1864</sup> P-0018 fought back as the soldier raped her.<sup>1865</sup> As a result she injured her arm and back.<sup>1866</sup> The soldier

<sup>1858</sup> **P-0018**: T-111, pages 17, and 19 to 20.

<sup>1859</sup> **P-0018**: T-111, pages 10 to 12. Noting the circumstances as described by the witness, and considering that the witness did not contradict herself by first saying that she heard the women scream and then, in response to the question whether which body part the soldiers used to rape the women, stated that they 'used the penis' without saying that she personally saw them using their penis (*see* Defence Closing Brief, para. 945), the Chamber considers that the only reasonable conclusion is that these women were raped.

<sup>1860</sup> **P-0018**: T-111, page 14.

<sup>1861</sup> **P-0018**: T-111, pages 10, and 14 to 15. While it does not follow from P-0018's evidence that the witness observed the penetration, the Chamber is of the view that the witness was in a position to conclude from the circumstances that these women were raped. The Chamber therefore finds that the only reasonable conclusion is that these women were raped and bases this conclusion on the specific circumstances described by the witness, namely the fact that these women screamed, which P-0018 would have been able to hear, since the women were taken only a short distance away, as well as the fact that P-0018 was raped herself, shortly thereafter in similar circumstances.

<sup>1862</sup> **P-0018**: T-111, pages 10 and 15.

<sup>1863</sup> **P-0018**: T-111, page 10. *See also* **P-0018**: T-111, pages 15, 20, and 30 to 31. The Chamber notes that the witness clarified that it was the act of her sister *being taken away* that she observed with her own eyes, rather than the rape, and therefore does not consider her testimony in this regard to be inconsistent (**P-0018**: T-111, pages 30 to 31). While the Chamber is thus of the view that P-0018 did not observe the penetration or the shooting, it considers that P-0018 was in a position to conclude from the circumstances that her sister-in-law was raped and shot, and thus finds her evidence credible in this regard (*see* Defence Closing Brief, para. 945). The Chamber therefore finds that the only reasonable conclusion, on the basis of the specific circumstances described by the witness, is that her sister-in-law was raped and killed.

<sup>1864</sup> **P-0018**: T-111, page 10. *See also* **P-0018**: T-111, page 20.

<sup>1865</sup> **P-0018**: T-111, page 10.

<sup>1866</sup> **P-0018**: T-111, pages 10 and 20. The arm injury can be seen in photographs DRC-OTP-2059-0173 and in Ms Sophie Gromb-Monnoyeur's (P-0939) expert report DRC-OTP-2059-0231-R01, at 0239. The back injury can be seen in photographs DRC-OTP-2059-0174 and DRC-OTP-2059-0175, as well as in DRC-OTP-2059-0231-R01, at 0239. The Chamber notes that the expert confirmed that the back injury was compatible with P-0018's statement (**P-0939**: T-143, page 17; and DRC-OTP-2059-0231-R01, from 0240 to 0241), but was not able to confirm whether the scar on P-0018's arm was caused by the incident described by the witness, which does not exclude that the wound derived from this incident (**P-0939**: T-143, pages 17, 37 to 38; and DRC-OTP-2059-0231-R01, from 0240 to 0241). The expert also generally confirmed that the wounds are consistent with the 10-year period passed since 2002/2003 (**P-0939**: T-143, page 42). In these circumstances, the Chamber considers that P-0939's evidence corroborates the relevant parts of P-0018's testimony (*see* Defence Closing Brief, para. 948).

threatened to kill her, showed her his weapon and eventually shot her through her cheek and mouth.<sup>1867</sup> P-0018 subsequently lost consciousness.<sup>1868</sup>

602. Sometime after the ‘pacification meeting’, the UPC/FPLC burned down houses in or around Sangi.<sup>1869</sup>

## (6) Assault on Buli

603. Buli is a small village located near the villages of Jitchu and Sangi.<sup>1870</sup> Following the UPC/FPLC assaults on Kobu and Bambu on or about 18 February 2003, a large number of individuals, comprised in part of persons of Lendu ethnicity, fled to Buli.<sup>1871</sup>

<sup>1867</sup> **P-0018**: T-111, pages 10 and 20. The wound can be seen in photographs DRC-OTP-0096-0133 to DRC-OTP-0096-0136, DRC-OTP-0096-0138 to DRC-OTP-0096-0142, DRC-OTP-0096-0144, DRC-OTP-0096-0145, DRC-OTP-2052-0207 as well as in DRC-OTP-2059-0231-R01, at 0238. P-0939 concluded that P-0018’s wound was consistent with her account (**P-0939**: T-143, pages 15 to 17; and DRC-OTP-2059-0231-R01, from 0240 to 0241). Regarding the Defence challenges based on alleged contradictions concerning P-0018’s testimony on the incident causing the wound to her face (Defence Closing Brief, para. 947), the Chamber notes that: (i) the witness appeared to first refer to the situation where she was taken away by the soldier, and then to the general situation where she was initially approached by a group of soldiers, suggesting that there was no contradiction between her statements that her attacker raped and shot her on his own and that there were ‘lots of’ soldiers; (ii) the witness herself acknowledged the discrepancy between her written statement that it was ‘one of the attackers’ who shot her and her testimony that it was ‘the rapist himself’, and explained that the storyline as captured in her previous statement appeared to be incorrect due to an interpretation error; (iii) the inconsistency between P-0939’s report stating that P-0018 was shot with a handgun and P-0018’s testimony that she was shot with an SMG can be plausibly explained by the fact that P-0018 is not a weapons expert and that she acknowledged knowing SMGs but not knowing ‘all the different types of firearms’ (**P-0018**: T-111, page 80), and that P-0939 clarified that the term used in the report was based on a general description given by P-0018 rather than the exact words used by the witness, and that there was double interpretation (**P-0939**: T-143, page 39).

<sup>1868</sup> **P-0018**: T-111, pages 10, and 20 to 21. P-0018 testified that she was told afterwards by ‘others’ that ‘soldiers’ who defended the villages saw that she was still breathing and brought her to her parents’ house in Petsi, T-111, page 22.

<sup>1869</sup> **P-0018**: T-110, page 80; **P-0019**: T-115, pages 32, and 34 to 35; **P-0105**: T-134, page 18; **P-0113**: T-118, pages 43 to 44; **P-0790**: T-54, pages 15 to 16. *See also* **P-0103**: DRC-OTP-0104-0170-R02, para. 27; and **P-0857**: T-193, pages 70 to 72. Satellite Imagery Expert Lars Bromley (P-0810) testified that aerial images of Sangi dated 22 May 2003 show ‘several cleared areas which [...] could have had structures removed just prior’ (**P-0810**: T-176, pages 13 to 14; and DRC-OTP-2099-0166, at 0204). However, the Chamber considers that, given that the images were taken approximately three months after the events in Sangi referred to in this section, it is possible that the relevant area had changed during this period. The Chamber therefore finds it appropriate to rely on the witnesses’ accounts, including eyewitnesses, who were present in Sangi at the relevant time, but does not rely on P-0810 in this regard.

<sup>1870</sup> **P-0127**: T-139, page 20; **P-0300**: T-166, page 22; **P-0792**: T-150, page 56; **P-0901**: T-29, pages 13 to 14; **P-0963**: T-79, page 53; and **P-0976**: T-152, page 22. *See also* DRC-OTP-2052-0188, DRC-OTP-2055-1328, DRC-OTP-2069-2097, DRC-OTP-2077-0128, DRC-OTP-2078-2408, and DRC-OTP-2079-0316.

<sup>1871</sup> *See above.*

604. On or about 25 February 2003, the UPC/FPLC advanced into Buli, shooting and firing heavy weapons, including at those present in the village, and chased individuals into the surrounding bush; the UPC/FPLC soldiers also fired their rifles at those fleeing.<sup>1872</sup>
605. The UPC/FPLC subsequently searched the bush, including into the next day, and captured individuals who they found;<sup>1873</sup> this included P-0039, a Lendu man who was captured at gunpoint.<sup>1874</sup> At least one person was killed by a member of the UPC/FPLC in the surrounding bush.<sup>1875</sup>
606. P-0113, a Lendu woman<sup>1876</sup> who had been forced to flee from Bambu, was also one of those captured by UPC/FPLC forces<sup>1877</sup> in the bush surrounding Buli<sup>1878</sup>

<sup>1872</sup> **P-0039**: DRC-OTP-0104-0015-R03, at 0020, para. 26 and DRC-OTP-2062-0244-R02, at 0252, para. 33; **P-0105**: T-133, page 46; **P-0127**: T-139, page 31; **P-0300**: T-166, pages 46 to 51; and **P-0963**: T-79, pages 64 to 66, 85, 87, and 89 to 91, also referring to DRC-OTP-0162-0115. *See also* **P-0792**: T-150, page 15; DRC-OTP-0152-0286, at 0303, para. 63; and DRC-OTP-1061-0212, at 0456. P-0901 testified that, after villages such as Kobu and Bambu were attacked, ‘civilians’ fled from these locations, headed towards Buli, and took refuge on the hill. He stated that the President ordered that the hill not be attacked and that the troops should go back to Bunia (**P-0901**: T-29, pages 13 to 15). The Chamber notes, in this regard, its finding that the UPC/FPLC troops withdrew to Bunia the day after the events in Kobu on or about 25 or 26 February 2003. The Chamber also notes that P-0300, who was hiding in the bush at the time, also explained that the day after attacking Buli, the troops unexpectedly left for Bunia, which saved them (T-166, page 49). According to the Chamber, the testimony of P-0901 is not in essence incompatible with the above finding, notably in light of the explanations provided by P-0300. The Chamber further notes that P-0901 was not present in the area and testified to having obtained this information from commanders who had been present, as well as from unidentified people in Bunia who had witnessed the events (**P-0901**: T-29, pages 14 to 16). As such, the Chamber is satisfied that, while the UPC attacked the village of Buli, UPC/FPLC troops were soon after asked to retreat. The Chamber further notes that the Confirmation Decision refers to civilians living in Buli being forced to take refuge in the forest or on hills following the assault by the UPC/FPLC on or around 25 February 2003 (Confirmation Decision, para. 67). In its closing brief, the Prosecution alleges that UPC/FPLC troops ‘continued to forcibly transfer and displace non-Hema civilians in or around’ a number of areas, including Buli (para. 515), but refers to no specific evidence of person fleeing from Buli. Noting this, and that the other evidence before the Chamber refers to persons fleeing to rather than from Buli, the Chamber does not make any findings regarding persons fleeing from Buli.

<sup>1873</sup> **P-0027**: DRC-OTP-0096-0052-R04, from 0062 to 0063, paras 46 to 50; **P-0039**: DRC-OTP-0104-0015-R03, at 0020, para. 27; **P-0113**: *see above*; **P-0792**: T-150, pages 15, 56 to 58, and 63 to 64; and **P-0907**: T-90, pages 63, 65, and 67 to 69, also referring to DRC-OTP-0162-0115.

<sup>1874</sup> **P-0039**: DRC-OTP-0104-0015-R03, at 0017, para. 11 and at 0020, para. 27; and DRC-OTP-2062-0244-R02, from 0252 to 0253, paras 34 to 35.

<sup>1875</sup> **P-0027**: DRC-OTP-0096-0052-R04, at 0063, para. 50.

<sup>1876</sup> **P-0113**: T-118, page 8.

<sup>1877</sup> **P-0113**: T-118, pages 30 to 31. *See also* **P-0113**: T-118, pages 21 to 22.

<sup>1878</sup> **P-0113**: T-118, pages 21, 24, 26, and 30. The Chamber notes that sexual slavery (Counts 7 and 8) is also confirmed for Ngabuli (Confirmation Decision, para. 36), but that the Prosecution Closing Brief, para. 573 does not mention Ngabuli, while the preceding heading and footnote 1667 of the Prosecution Closing Brief do mention this village. The Chamber notes that it has not received any evidence that individuals were subjected to sexual slavery in Ngabuli, the only reference in this regard being the submission that P-0113 was ‘abducted [...] around Ngabuli’ (Prosecution Closing Brief para. 578), which is not on point, noting that P-0113 stated

around the time of the UPC/FPLC assault on Buli.<sup>1879</sup> She lied to the UPC/FPLC soldiers about her ethnicity to save herself, as the soldiers were looking for Lendu.<sup>1880</sup> The soldiers then took her to Buli.<sup>1881</sup> P-0113 testified that she did not know whether they would shoot her or let her live.<sup>1882</sup>

607. After being captured, P-0113 and three other women were forced to cook.<sup>1883</sup> They were not free to leave.<sup>1884</sup> The UPC/FPLC soldiers also told the women to get water from the houses.<sup>1885</sup> When P-0113 attempted to carry water from a house, a soldier stopped her.<sup>1886</sup> He undressed P-0113, pushed her to the ground, said that she was 'his wife' and raped her.<sup>1887</sup> He threatened that he would kill her if she cried out and then told her to go back and do her work.<sup>1888</sup>

608. P-0039 was made to carry a mattress, which he believed to have been looted, from the bush around Buli to Jitchu.<sup>1889</sup> He was then taken to Kobu by the UPC/FPLC.<sup>1890</sup> P-0113 was also made to carry a double mattress, which she believed to have been looted, to Kobu.<sup>1891</sup>

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that she was captured in Buli, rather than Ngabuli (*see further* below). The Chamber is thus not able to make a finding on Counts 7 and 8 in relation to the location Ngabuli.

<sup>1879</sup> **P-0113**: T-118, pages 21, and 23. The Chamber recalls its observations above on P-0113's timing of these events (*see* footnote 1736), but bears this in mind in evaluating her testimony. Regarding the Defence arguments related to the death of P-0113's daughter (Defence Closing Brief, para. 957), the Chamber considers that neither the absence of any reference to the death of her daughter in the witness's 2005 written statement (T-118, page 64), nor the reference in her 2013 written statement that her daughter died in 1989 (T-119, page 14, referring to DRC-OTP-2058-1074, at 1076) generally undermine the credibility of the witness's account, noting her acknowledgement concerning her difficulties in remembering dates (T-119, page 14. *See also* T-118, pages 9, and 62; and T-119, pages 28, and 55), the impact of the loss of her daughter (T-118, page 64), and the fact that she was consistent throughout her testimony that her daughter disappeared in the context of the events (T-118, pages 9, and 58; and T-119, pages 13 to 15). Further, the Chamber accepts as plausible the witness's explanation that some of her daughters had more than one name, and that some of the names were shared by different daughters (T-119, pages 13 to 17).

<sup>1880</sup> **P-0113**: T-118, page 31.

<sup>1881</sup> **P-0113**: T-118, pages 24 and 32.

<sup>1882</sup> **P-0113**: T-118, page 32.

<sup>1883</sup> **P-0113**: T-118, pages 14 to 15, 33, 35, and 37 to 39.

<sup>1884</sup> **P-0113**: T-119, page 61.

<sup>1885</sup> **P-0113**: T-118, page 33.

<sup>1886</sup> **P-0113**: T-118, page 36.

<sup>1887</sup> **P-0113**: T-118, page 36.

<sup>1888</sup> **P-0113**: T-118, page 36.

<sup>1889</sup> **P-0039**: DRC-OTP-0104-0015-R03, at 0020, paras 27 to 28; and DRC-OTP-2062-0244-R02, at 0253, para. 36.

<sup>1890</sup> **P-0039**: DRC-OTP-0104-0015-R03, from 0020 to 0021, paras 29 to 31.

<sup>1891</sup> **P-0113**: T-118, pages 42 to 43. *See also* **P-0113**: T-119, page 40.

609. UPC/FPLC soldiers also burned down houses in Buli<sup>1892</sup> and destroyed part of the Catholic church in the village.<sup>1893</sup> Salumu Mulenda had given the troops orders to torch the village.<sup>1894</sup> A soldier who participated in this assault explained that the reason why the houses were burned down was for the Lendu not to return.<sup>1895</sup>

610. After the UPC/FPLC assault, dead bodies of persons killed by the UPC/FPLC were found in Buli.<sup>1896</sup>

611. On the way to Kobu, P-0113's group rested in the middle of the road in Sangi.<sup>1897</sup> When P-0113 went to relieve herself, a UPC/FPLC soldier armed with a

<sup>1892</sup> **P-0018**: T-110, page 79; and T-111, page 71; **P-0027**: DRC-OTP-0096-0052-R04, from 0063 to 0064, para. 52; **P-0105**: T-133, pages 46, and 51; and T-134, page 18; **P-0300**: T-166, page 48; **P-0790**: T-54, pages 14 to 16; **P-0963**: T-79, pages 66 to 67, and 78. *See also* **P-0857**: T-193, pages 70 to 72; and DRC-OTP-0152-0286, at 0303, para. 63. In a satellite imagery expert report, aerial images of Buli dated 26 January 2003 show multiple areas of possibly destroyed structures, as well as some apparent structural remains (DRC-OTP-2099-0166, at 0192). However, the Chamber notes that, first, the image was taken approximately one month before the events in Buli referred to in the present Judgment and, second, that, according to the report, the area was analysed with a single image. Under these circumstances, the Chamber does not rely on the aforementioned evidence in its assessment of whether any structures were destroyed in Buli during the events discussed in the present section. In respect of the Defence argument that satellite imagery shows a substantial number of apparently undamaged buildings with thatched and metal roofs alike and that P-0810 managed to identify only four clearings and two examples of 'apparent structural remains', which do not even necessarily indicate destruction, which indicates that witnesses lied about destruction in Buli (Defence Closing Brief, paras 988 to 989, referring to DRC-OTP-2099-0166, at 0192; in relation to P-0963 specifically, *see also* Defence Reply Brief, para. 101), the Chamber notes that the aerial image of Buli referred to by the Defence is dated 26 January 2003 and thereby predates the relevant events.

<sup>1893</sup> The Chamber received evidence from P-0027 that upon returning to Buli after approximately three days in the bush, he saw that part of the Catholic church had been destroyed by a bomb (**P-0027**: DRC-OTP-0096-0052-R04, from 0063 to 0064, para. 52). Considering that the UPC/FPLC entered the village, firing, *inter alia*, with heavy weapons (**P-0127**: T-139, page 31, lines 2 to 25; and **P-0963**: T-79, page 65, line 7 to page 66, line 2), and given the Chamber's finding on the opposing armed group at the time in the area, the Chamber finds that the only reasonable conclusion is that the UPC/FPLC caused the destruction of the Catholic church in Buli.

<sup>1894</sup> **P-0963**: T-79, pages 67, and 78 to 79.

<sup>1895</sup> **P-0963**: T-79, page 79.

<sup>1896</sup> **P-0027**: DRC-OTP-0096-0052-R04, at 0063, para. 51; **P-0963**: T-79, page 66; DRC-OTP-0152-0286, at 0303, para. 63. In light of the aforementioned evidence, the Chamber is satisfied beyond reasonable doubt that, while members of the UPC/FPLC may have also been killed during the fighting in Buli, at least some of the bodies found in Buli by P-0027 belonged to persons killed by the UPC/FPLC. Contrary to the Defence argument that the only Lendu encountered by P-0963 in Buli were fighters (*see* Defence Closing Brief, para. 842), the Chamber notes that while P-0963 testified that resistance was encountered in Buli (*see* **P-0963**: T-79, page 66), he also referred to '[c]ivilians' having been taken as 'prisoners' and having been brought back to Kobu (*see* **P-0963**: T-79, page 66). Contrary to the Defence argument that P-0963's evidence that Salumu Mulenda gave instructions to target everyone indiscriminately contradicts his own testimony that prisoners were taken at Buli rather than killed (*see* Defence Closing Brief, para. 842), the Chamber notes that P-0963 testified that those found by the UPC/FPLC were *either* killed or captured (*see* **P-0963**: T-79, page 66, *emphasis added*).

<sup>1897</sup> **P-0113**: T-118, page 46.

rifle followed her and raped her, threatening to kill her if she shouted.<sup>1898</sup> On the road between Sangi and Kobu, P-0113 saw the body of a Lendu woman she had met preparing food in Buli, whose throat had been cut.<sup>1899</sup>

## (7) Assault on Gola

612. Part of the population of Bambu,<sup>1900</sup> Kobu,<sup>1901</sup> and Camp P.M.,<sup>1902</sup> fled towards Mpetsi and Gola<sup>1903</sup> due to fighting in the Walendu-Djatsi *collectivité*. They were forced to endure harsh conditions, living in the bush without adequate food or shelter.<sup>1904</sup>

613. At around the same time as the ‘pacification meeting’, UPC/FPLC soldiers arrived in Gola and the surrounding bush.<sup>1905</sup> Lendu people fled,<sup>1906</sup> and a number of persons were captured by the soldiers.<sup>1907</sup> Some of those captured were taken to Kobu.<sup>1908</sup> The father of a Lendu man was found dead outside his home in Gola with a gunshot wound in his back.<sup>1909</sup> Upon his return, a villager saw that houses in Gola had been burned down.<sup>1910</sup>

<sup>1898</sup> **P-0113**: T-118, page 46.

<sup>1899</sup> **P-0113**: T-118, pages 46 to 47. *See also* **P-0113**: T-118, page 35.

<sup>1900</sup> **P-0018**: T-110, pages 48 to 49, 52, 56 to 57, and 59; and T-111, page 58.

<sup>1901</sup> **P-0019**: T-115, page 19; and **P-0106**: T-44, page 27.

<sup>1902</sup> **P-0100**: T-131, pages 31 to 32.

<sup>1903</sup> According to P-0018, Gola is between Sangi and Buli (**P-0018**: T-110, page 71). P-0100 testified that Sangi and Gola are neighbouring localities (**P-0100**: T-132, page 30), while P-0106 indicated that Gola is close to Buli (**P-0106**: T-44, page 32). In addition to being a settlement, Gola is also the name of a small river nearby (**P-0106**: T-44, page 32; and T-45, page 13; and **P-0018**: T-110, page 71). Other witnesses also used the name Gola in relation to the nearby forest (**P-0100**: T-131, page 32; and **P-0106**: T-44, page 27) or valley (**P-0100**: T-131, page 42; and **P-0106**: T-44, pages 32 to 33).

<sup>1904</sup> **P-0018**: T-110, pages 60 to 61; and **P-0106**: T-44, page 30.

<sup>1905</sup> **P-0100**: T-131, pages 32 to 33, and 39 to 42.

<sup>1906</sup> **P-0100**: T-131, page 43.

<sup>1907</sup> **P-0100**: T-131, pages 39 to 43. *See also* **P-0106**: T-44, pages 41 to 42.

<sup>1908</sup> **P-0100**: T-131, pages 20, and 40 to 41; and **P-0106**: T-44, pages 44 to 45.

<sup>1909</sup> **P-0106**: T-44, pages 42 to 43. Other witnesses testified to persons being killed at the relevant time (**P-0100**: T-131, pages 39 to 43; and **P-0106**: T-44, pages 41 to 42). The Chamber observes that these two witnesses referred to persons having been killed, but notes that they did not provide information as to the specific circumstances, including on what the persons who were killed were doing at the relevant time. As a result, no findings can be made in this regard.

<sup>1910</sup> **P-0106**: T-44, pages 43 to 44, and 48. The witness acknowledged that he did not know the precise circumstances under which the houses were burned down, but testified that he could see that all of the houses in the village had been burned down, including his own. The Chamber also notes that Gola does not feature in the satellite image report prepared by expert witness P-0810 (DRC-OTP-2099-0166; *see also* Defence Closing



## (8) Situation in Gutsi

614. Gutsi is a village located near the Shari River, a few kilometres north of Bambu.<sup>1911</sup> At the relevant time, the community of Gutsi was comprised of individuals of Lendu ethnicity.<sup>1912</sup>
615. Following the UPC/FPLC assaults on Kobu and Bambu on or about 18 February 2003, a number of individuals of Lendu ethnicity fled in the direction of Gutsi.<sup>1913</sup>
616. Those hiding in the bush were staying in difficult conditions with limited shelter and food.<sup>1914</sup>

## (9) Assault on Jitchu

617. Jitchu<sup>1915</sup> is a Lendu village<sup>1916</sup> in the Petsi *groupement*,<sup>1917</sup> located near Buli.<sup>1918</sup> Following the aforementioned UPC/FPLC assaults on Kobu and Bambu, individuals fled to, *inter alia*, Jitchu and hid in the bush surrounding the

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Brief, paras 993 and 994) because it is one of the location which could not be identified. Therefore, the absence of any observations by P-0810 on Gola does not impact on the credibility or reliability of P-0106's account. However, on the basis of the evidence before it, the Chamber it is unable to determine who had caused the houses to burn down and as such it cannot be attributed to the UPC/FPLC.

<sup>1911</sup> **P-0863**: T-180, page 24. *See also* DRC-OTP-2069-2097; DRC-OTP-2077-0128; and DRC-OTP-2055-1328.

<sup>1912</sup> **P-0301**: T-150, pages 9 to 10; and **P-0805**: T-26, pages 40 to 41. *See also* DRC-OTP-2055-1328.

<sup>1913</sup> **P-0857**: T-193, pages 69 to 71; **P-0301**: T-149, pages 30 to 32; **P-0863**: T-180, pages 15, 24, and 32 to 35; **P-0805**: T-25*bis*, pages 15 to 17; and T-26, page 28; **P-0103**: DRC-OTP-0104-0170, para. 38; and **P-0790**: T-57, pages 5 to 12. *See also* **P-0790**: T-53, page 32. The Chamber further notes that the Confirmation Decision refers to civilians living in Gutsi being forced to take refuge in the forest or on hills following the assault by the UPC/FPLC on or around 25 February 2003 (Confirmation Decision, para. 67). In its closing brief, the Prosecution alleges that UPC/FPLC troops 'continued to forcibly transfer and displace non-Hema civilians in or around' a number of areas, including Gutsi (para. 515), but refers to no evidence of persons fleeing from Gutsi specifically. Noting this, and that the other evidence before the Chamber refers to persons fleeing *to* rather than *from* Gutsi, the Chamber does not make any findings regarding persons fleeing *from* Gutsi.

<sup>1914</sup> **P-0863**: T-180, page 34; and **P-0805**: T-26, pages 28 to 29; and T-25*bis*, page 34.

<sup>1915</sup> The Chamber notes that various spellings of Jitchu have been used by witnesses, such as 'Jicho', or 'Jitsu' as used in DRC-OTP-2069-2097 and DRC-OTP-2077-0128. The Chamber understands these variations to refer to Jitchu.

<sup>1916</sup> **P-0108**: T-185, page 44; **P-0106**: T-45, page 37; and **P-0018**: DRC-OTP-2052-0176, at 0181, para. 51.

<sup>1917</sup> P-0790 sketched a map of the Petsi *groupement*, in which 'Jichu' is included, DRC-OTP-2079-0316; *see further* **P-0106**: T-45, page 12.

<sup>1918</sup> **P-0018**: T-110, page 71; **P-0300**: T-166, page 22; **P-0127**: T-139, page 31; and **P-0863**: T-180, page 24. *See also* **P-0039**: DRC-OTP-2062-0244-R-02, at 0253, para. 37. *See also* DRC-OTP-2069-2097 and DRC-OTP-2077-0128, which show 'Jitsu' as located near Buli; and DRC-OTP-2055-1328 which shows Jitchu to be located near Buli.

village.<sup>1919</sup> After the outbreak of violence at the ‘pacification meeting’ on or about 25 February 2003, villagers again fled to Jitchu and the surrounding forest, where the UPC/FPLC soldiers continued to chase them, and shot at them.<sup>1920</sup> UPC/FPLC soldiers captured individuals in and around Jitchu, while others were detained in other nearby locations and taken to Jitchu.<sup>1921</sup> The UPC/FPLC detained some of those captured in churches in Buli and Jitchu.<sup>1922</sup> UPC/FPLC soldiers looted in Jitchu.<sup>1923</sup>

618. P-0018, a Lendu woman<sup>1924</sup> who had been forced to flee from Bambu, was captured in Jitchu by UPC/FPLC forces<sup>1925</sup> around the time Jitchu was attacked,<sup>1926</sup> together with her sister-in-law and an elderly woman.<sup>1927</sup> Afterwards, she was forced to carry the soldiers’ ‘booty’, including mattresses and cases of clothing, to Buli.<sup>1928</sup>

<sup>1919</sup> **P-0863**: T-180, page 24; and **P-0805**: T-25bis, page 17. The Chamber notes that the Confirmation Decision refers to civilians living in Jitchu having been ‘forced to take refuge in the forest or on the hills following the assault by the UPC/FPLC on or around 25 February 2003’ (Confirmation Decision, para. 67), but on the basis of the evidence before it, it can only make a finding on people who came from elsewhere having fled to the forest surrounding Jitchu, and not on what happened to the civilians living in Jitchu itself.

<sup>1920</sup> **P-0127**: T-139, pages 29 to 31 (*see also* DRC-OTP-0065-0003, at 0004); **P-0113**: T-118, pages 14, 21 to 23, and 31; and **P-0106**: T-44, pages 34 to 35, and 41 to 42. *See also* P-0790 and P-0027, who are – respectively – unclear about the timing and place the ‘pacification meeting’ on 2 March 2003, but appear to refer to the same situation of persons being chased by the UPC/FPLC in and around Jitchu (**P-0790**: T-54, pages 8 to 11; **P-0027**: DRC-OTP-0096-0052-R04, from 0061, para. 42 to 0062, para. 49; and T-118, pages 22, and 31).

<sup>1921</sup> **P-0100**: T-132, page 31; **P-0106**: T-44, page 39; **P-0857**: T-193, pages 85 to 86; **P-0113**: T-118, page 28, 30 to 31, and 33; *see also* **P-0127**: T-139, page 45 to 46, together with DRC-OTP-1033-0221, starting at 34:00, and associated transcript, DRC-OTP-2055-0261, at 0268.

<sup>1922</sup> **P-0027**: DRC-OTP-0096-0052-R01, at 62, para. 47.

<sup>1923</sup> **P-0018** T-110, pages 63 to 64, 76, and 78 to 79.

<sup>1924</sup> **P-0018**: T-110, page 42.

<sup>1925</sup> **P-0018**: T-110, pages 76 to 77. The Chamber notes that the witness explained that she concluded it was the ‘UPC’ on the basis of the soldiers entering Jitchu, and starting to fire, that the soldiers came from Kobu, and based on her understanding that it was not possible in her view for a Lendu to take a rifle and start firing. She further testified that the soldiers spoke Swahili (**P-0018**: T-111, page 17). As to the abduction of women in Jitchu, *see* **P-0863**: T-180, pages 54 to 55.

<sup>1926</sup> **P-0018**: T-110, pages 76 to 77.

<sup>1927</sup> **P-0018**: T-110, pages 63, and 77 to 78.

<sup>1928</sup> **P-0018**: T-110, page 78.

619. The day after the ‘pacification meeting’, the UPC/FPLC burned down houses in Jitchu.<sup>1929</sup> After the ‘pacification meeting’, a number of corpses were found in Jitchu, with a number of the bodies bearing gunshot wounds.<sup>1930</sup>

#### (10) Events in Kobu on or about 25 or 26 February 2003

620. Persons captured in Sangi,<sup>1931</sup> Gola,<sup>1932</sup> Buli,<sup>1933</sup> and the surrounding bush<sup>1934</sup> were brought to Kobu-Wadza<sup>1935</sup> by UPC/FPLC soldiers<sup>1936</sup> following the

<sup>1929</sup> **P-0857**: T-193, pages 70 to 71; **P-0790**: T-54, pages 8 to 9, and 12 to 13; and **P-0300**: T-166, pages 43 to 48. See also DRC-OTP-2055-1346, at 1352; DRC-OTP-0152-0286, at 0303, para. 63; and DRC-OTP-0074-0422, at 0444, para. 69. As to the Defence submissions on the absence of images of Jitchu from expert witness P-0810’s findings (Defence Closing Brief, para. 994), the Chamber notes that P-0810 was unable to obtain satellite imagery for certain locations, for example, due to issues with coordinates and cloud cover (**P-0810**: T-175, pages 92 to 93) and It also notes that the Defence did not seek clarification from P-0810 on this point. recalls its above finding that the mere absence of a location from the satellite image report cannot, in and of itself, lead to the conclusion that property in the region was not damaged. P-0027 testified that the Catholic church in Jitchu had been burned (**P-0027**: DRC-OTP-0096-0052-R04, from 0063 to 0064, para. 52). While the burning of buildings in Jitchu finds support in the aforementioned evidence, the Chamber notes that the specific references to the UPC/FPLC having set buildings on fire only relate to houses. P-0027’s statement on the church in Jitchu is based on his observations made after the actual burning took place. In these circumstances, although it considers P-0027’s evidence that the church was destroyed by fire reliable, the Chamber cannot make any findings on how this building was burned, including whether, and, if so, by whom, it was purposely set on fire.

<sup>1930</sup> Several witnesses testified about bodies being found in Jitchu following the UPC/FPLC assault (**P-0027**: DRC-OTP-0096-0052-R02, from 0063 to 0064, para. 52; **P-0790**: T-54, pages 13 to 14; and **P-0113**: T-118, pages 60 to 61). In this regard, the Chamber notes that P-0127 testified about persons who were killed in and around Jitchu at the relevant time (**P-0127**: DRC-OTP-0065-0003, at 0004; and T-139, pages 14 to 17), and attributes these deaths to the UPC/FPLC. However, the witness’s basis of knowledge is unclear. He only refers to ‘information’ that ‘was evaluated’, and no further specification was sought of the witness what kind of information it was and how he obtained it. In the absence of information as to P-0127’s basis of knowledge, and without evidence on the circumstances in which these persons were killed, the Chamber is unable to find that they were killed by the UPC/FPLC.

<sup>1931</sup> See **P-0019** above. See also section IV.B.8.c)(5) ‘Pacification meeting’.

<sup>1932</sup> **P-0100**: T-131, pages 20, 32 to 34, 39 to 41, and 46; and T-132, pages 30 to 31; and **P-0106**: T-44, pages 24 to 36. As noted below, P-0100 and P-0106 later found the bodies of the members of their families who had been captured in the banana field in Kobu.

<sup>1933</sup> See P-0963 below. See also section IV.B.8.c)(6) Assault on Buli.

<sup>1934</sup> See P-0039 and P-0113 above.

<sup>1935</sup> Some witnesses have referred to the events discussed in this section as having taken place in Kobu (see e.g. **P-0108**: T-185, page 49; **P-0113**: T-118, page 48), others in ‘Wadza’/‘Wasa’/‘Watsa’ (see e.g. **P-0790**: T-54, page 68; and **P-0106**: T-44, page 47; and T-45, page 9). Regarding the spelling of ‘Wadza’, the Chamber considers that references to, *inter alia*, ‘Wadza’, ‘Wasa’, and ‘Watsa’, all pertain to the same location. Noting evidence that ‘Wadza’ is in or near the centre of Kobu (**P-0019**: T-115, page 29; **P-0790**: T-53, page 21; and **P-0106**: T-45, pages 7, and 9), the Chamber considers that they refer to approximately the same location and uses these terms interchangeably.

<sup>1936</sup> **P-0017**: T-59, pages 77 to 78m 80 to 82; and T-60, pages 7 to 12, 14, and 19 (testifying that he saw two groups of ‘prisoners’ arrive in Kobu, escorted by UPC soldiers); **P-0019**: see para. 599 above; **P-0039**: see para. 605 above; **P-0113**: see para. 606 above; **P-0963**: T-79, pages 66, and 68 to 69 (testifying that he was present during the UPC attack on Buli, where 46 or 47 persons were captured and brought back to Kobu and that he subsequently saw these persons in Kobu). P-0108 also testified to being in Kobu during the events in question, but testified that he went to Kobu on invitation with the population of Jitchu to meet with the Hema

‘pacification meeting’.<sup>1937</sup> Those people arrived in Kobu in different groups and were at least 50 in number.<sup>1938</sup> They were a mix of men, women, young boys, and young girls.<sup>1939</sup> They were dressed in civilian attire,<sup>1940</sup> were not armed,<sup>1941</sup> and

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to reach agreements on peace, and was only subsequently detained there by Hema people (**P-0108**: T-185, pages 45 to 47, 49 to 52, 57 to 58). P-0108’s account of voluntarily going to Kobu for the ‘peace discussions’ differs from the accounts of P-0019, P-0039, and P-0113, who testified that they were brought to Kobu by the UPC/FPLC under capture, and from the accounts of P-0017 and P-0963, who testified to seeing ‘prisoners’ being brought to Kobu, and gave no evidence about any voluntary peace negotiations having taken place there. Notwithstanding these inconsistencies, the Chamber notes that the remainder of P-0108’s account of the events in Kobu is otherwise generally compatible and consistent with the accounts of P-0017, P-0963, P-0019, P-0039, and P-0113, as illustrated below. It also notes P-0108’s advanced age at the time he testified, and that fact that he had sustained a serious head injury (*see* para. 628 below), and had general difficulties during his testimony with his memory, including in recalling specific dates and places. Although his testimony was given in very simple terms, the Chamber considers him very credible with respect to the overall narrative of the assault of which he was a victim. It therefore relies on P-0108’s evidence of what occurred at Kobu at the time of the alleged massacre, but only to the extent that it is generally consistent with the direct accounts of P-0017, P-0963, P-0019, P-0039, and P-0113. The Chamber does not therefore rely on him to make the finding that captured persons were brought to Kobu, but considers that this does not affect the credibility or reliability of other aspects of his account relied upon below.

<sup>1937</sup> The Chamber heard inconsistent evidence on what day captured persons were brought to Kobu: either the same day as, respectively, the negotiations with the ‘enem[y]’, and the attack on Buli (**P-0017**: T-60, pages 10 to 12, and 19; *see also* T-59, pages 77 to 78, and 80 to 82; and T-60, pages 7 to 9; and **P-0963**: T-79, page 66), or the day *after* the attack on Buli/the ‘pacification meeting’ (**P-0019**: T-116, page 41; **P-0113**: T-118, pages 21, 28, 32 to 33, and 42, although her evidence on the timing is unclear; and **P-0039**: DRC-OTP-0104-0015-R03, from 0020 to 0021, paras 26 to 30). Considering that P-0113, P-0019, and P-0039 described fleeing UPC/FPLC attacks sometimes multiple times over multiple days and in highly stressful circumstances (*see in particular* **P-0113**: T-118, pages 13, 16 to 18, and 32; **P-0019**: T-116, pages 4 to 7, and 13 to 15; and DRC-OTP-0104-0015-R03, from 0020 to 0021, paras 26 to 30; and DRC-OTP-2062-0244-R02, at 0253, para. 36), and that the narratives of P-0113, P-0019, and P-0039 as to what they experienced in Kobu broadly fit with the military insiders’ narratives (as illustrated above and set out in more detail in this section), the Chamber concludes that the fact that the narratives of arrival in Kobu do not precisely match does not *per se* affect the credibility or reliability of the accounts of P-0017, P-0963, and P-0113, P-0019, and P-0039 (*see* Defence Closing Brief, para. 934). For the same reasons the Chamber also does not consider significant the discrepancies on the time of day that persons arrived in Kobu (**P-0019**: T-116, page 42, the afternoon; **P-0039**: DRC-OTP-0104-0015-R03, page 0021, para. 30, at around 19:00).

<sup>1938</sup> **P-0017**: T-60, pages 11 to 12, and page 19. On P-0113’s evidence of the number of persons taken to Kobu, *see* section III.D.3.c) Allegation of collusion related to the ‘Kobu massacre’ and related events. Further evidence from P-0019 and P-0039 suggests that other, smaller groups also arrived in Kobu: **P-0019**: T-115, pages 34, and 36; **P-0039**: DRC-OTP-0104-0015-R03, from 0020 to 0021, paras 29 to 30. *See also* **P-0963**: T-79, pages 66, and 68 to 69. The Chamber does not rely on this part of P-0108’s account (**P-0108**: T-185, page 48), although it notes its consistency with other accounts that many people came/were brought to Kobu.

<sup>1939</sup> **P-0017**: T-60, pages 12 to 13, and 19 to 20; **P-0019**: T-115, page 28; **P-0039**: DRC-OTP-0104-0015-R03, from 0020 to 0021, paras 29 to 30; **P-0113**: T-118, page 34; and **P-0963**: T-79, pages 69 to 70. Although the Chamber does not rely on P-0113 to establish the number of persons in the group, it considers her credible and reliable as to the gender and age makeup of the group, noting consistency with the other accounts on this point. Although not relying on this part of P-0108’s account, the Chamber considers that his evidence that there were no women or children amongst the people who went with him to the ‘peace talk’ (**P-0108**: T-185, page 50; and T-186, pages 54 to 55), remains compatible with evidence of P-0017, P-0019, P-0113, and P-0963 noting that persons arrived in Kobu in more than one group.

<sup>1940</sup> **P-0017**: T-60, page 12; **P-0113**: T-118, page 34; and **P-0963**: T-79, page 70.

<sup>1941</sup> **P-0017**: T-60, pages 12, and 20; **P-0963**: T-79, page 69.

were mostly Lendu.<sup>1942</sup> They arrived guarded by soldiers.<sup>1943</sup> Some were screaming, saying that they were ‘civilians’.<sup>1944</sup>

621. Following their arrival, the captured people were held in a number of different houses in Kobu,<sup>1945</sup> including a building known as ‘Paradiso’.<sup>1946</sup> Some of the houses were guarded by UPC/FPLC soldiers whom witnesses referred to as ‘kalogos’.<sup>1947</sup>

622. P-0019, who was one of the people brought to Kobu, saw armed UPC/FPLC troops holding Lendu captive in more than one house and surrounding the entire neighbourhood.<sup>1948</sup> She was first taken to a house near the Paradiso building, which was full of Lendu people who had been captured,<sup>1949</sup> where she observed Lendu women<sup>1950</sup> being forced to cook for the UPC/FPLC troops.<sup>1951</sup> P-0019 was

<sup>1942</sup> **P-0017**: T-60, pages 12 to 13, and 20; **P-0019**: T-115, page 27 to 28 and 36 to 37; **P-0039**: DRC-OTP-0104-0015-R03, from 0020 to 0021, paras 29 to 30; **P-0108**: T-185, pages 57 to 58; and **P-0113**: T-118, pages 34 and 49. *See also* **P-0113**: T-118, page 48; **P-0963**: T-79, page 73. *See also* section IV.B.8.c)(5)(c) ‘Pacification meeting’ in Sangi.

<sup>1943</sup> **P-0017**: T-60, page 14; **P-0113**: T-118, page 42; and **P-0963**: T-79, page 70. The Chamber notes that P-0113’s evidence is consistent with that of P-0963 and P-0017, who make no mention of persons having been bound when they arrived in Kobu (*see* Defence Closing Brief, para. 925).

<sup>1944</sup> **P-0963**: T-79, page 69.

<sup>1945</sup> **P-0017**: T-63, pages 33 to 34; and T-60, page 11. Despite a slight inconsistency between P-0017’s direct and cross-examination, the Chamber is satisfied with regard to P-0017’s basis of knowledge for his statement; **P-0019**: *see below*; **P-0039**: DRC-OTP-0104-0015-R03, at 0021, para. 3, and DRC-OTP-2062-0244-R02, at 0254, para. 42; **P-0113**: *see below*; and **P-0963**: T-79, pages 69 to 70. Contrary to the Defence argument that P-0963 is the only witness who claimed that prisoners were initially detained in a house near Kobu market, instead of in a house near the Hotel Paradiso (Defence Reply Brief, para. 101), the Chamber notes that both P-0039 and P-0963 testified to persons being held in a house near the Kobu market. *See also* **P-0121**: T-173, page 13.

<sup>1946</sup> **P-0108**: T-185, pages 49 to 52 and 57 to 58. Notwithstanding that some witnesses referred to Paradiso as a hotel (*see e.g.* **P-0019**: T-115, page 37), some as a bar (*see e.g.* **P-0106**: T-44, page 47), and some simply as a building (*see* P-0108 aforementioned), the Chamber considers that all refer to the same building, and refers to this as the Paradiso building.

<sup>1947</sup> **P-0039**: DRC-OTP-0104-0015-R03, at 0021, para. 31 (testifying that the house he was locked inside in Kobu was guarded by two ‘*enfants soldats*’, ‘kalogo’ aged 14 or 15). *See also* **P-0019**: T-115, pages 39 and 45 (describing the bodyguards of Commander Linganga in Kobu as ‘children’ – young people who were less than 18 years old, the youngest of whom she described as a ‘small child’); **P-0113**: T-118, pages 50 to 51 (testifying that a ‘kalogo’ accompanied them to Salumu Mulenda’s house, and that ‘as a parent’, she thought the ‘kalogo’ was between 14 and 15 years old). Noting that P-0039 and P-0113 referred to individuals considered to be either 14 or 15, and that P-0019 referred to individuals of less than 18 years without providing further specifics concerning the individual described as a ‘small child’, the Chamber finds that while some of those who guarded captured individuals in Kobu were under the age of 18, it cannot, on the basis of the evidence, establish beyond reasonable doubt that any of them were under 15 years of age.

<sup>1948</sup> **P-0019**: T-115, pages 36 to 37.

<sup>1949</sup> **P-0019**: T-115, pages 36 to 37.

<sup>1950</sup> **P-0019**: T-115, page 44.

<sup>1951</sup> **P-0019**: T-115, pages 36 to 37.

then taken to another house,<sup>1952</sup> where she was vaginally and anally penetrated by a named UPC/FPLC commander.<sup>1953</sup> The named UPC/FPLC commander told her that she and others were not human beings, but ‘beasts or animals’, and ‘hostages’.<sup>1954</sup> P-0019 testified that she felt ‘as if [she] were dead’.<sup>1955</sup>

623. P-0019 also saw other women being raped inside and outside the house, including with sticks.<sup>1956</sup> P-0019 further witnessed UPC/FPLC soldiers anally penetrate men with their penises or by using ‘bits of wood’.<sup>1957</sup> Following the rapes, the men ‘suffered a great deal’ and then they died.<sup>1958</sup>

<sup>1952</sup> **P-0019**: T-115, page 37. Contrary to the Defence argument that P-0019 contradicted herself in relation to the setting in which she was raped (Defence Closing Brief, para. 952), the Chamber notes that P-0019 did not speak of multiple rooms in her statement, but rather indicated that other women were raped in the same house and that she could hear them scream (**P-0019**: T-116, page 45), and coherently testified that the other house with multiple rooms was not the one where she stayed and where the rape occurred (**P-0019**: T-116, page 46).

<sup>1953</sup> **P-0019**: T-115, pages 38 and 46. *See also* **P-0019**: T-117, page 29. P-0019 testified that she heard the UPC/FPLC commander’s bodyguards referred to him by his name (**P-0019**: T-115, page 39. *See also* **P-0019**: T-116, page 7). The Chamber considers that P-0019’s testimony that she saw the commander’s face while he was raping her (**P-0019**: T-116, page 6), is not incompatible with her general statement that she was afraid to look the commanders directly in the face (**P-0019**: T-116, page 62) (*see* Defence Reply Brief, para. 336), and does not consider an inconsistency between her written statement (**P-0019**: T-116, page 44) and in court testimony on the number of times she was raped to undermine the credibility of her evidence on that point, noting that she consistently stated in court that the commander raped her only once (**P-0019**: T-115, page 38; T-116, pages 44 to 45, *see* Defence Closing Brief, para. 951). Further the Chamber does not consider the witness’s inability to recognise the commander in a photo board affects the credibility of her account (*see* Defence Closing Brief, para. 951, referring to DRC-D18-0001-1753), noting that the photo board referred to by the Defence contains pictures of 12 individuals, some pictures being of rather poor quality, that 11 out of these 12 individuals, including the named UPC/FPLC commander, are dressed in military gear, including hats, and that the witness testified that it was difficult to remember commanders’ faces after a long time (**P-0019**: T-116, page 62). On rapes in Kobu, *see also* **P-0863**: T-180, pages 54 to 55; **P-0963**: T-79, pages 74 to 76; **P-0127**: T-139, page 33; T-139-FRA, page 33; and DRC-OTP-1061-0212, at 0588, para. 756.

<sup>1954</sup> **P-0019**: T-115, pages 38 to 39.

<sup>1955</sup> **P-0019**: T-115, page 39.

<sup>1956</sup> **P-0019**: T-115, pages 40, and 49; and T-116, page 46. The Chambers also notes that the use of sticks to penetrate or mutilate the sexual organs of victims is also referred to by P-0121 (**P-0121**: T-173, pages 13 to 14, and 17) (*see* Defence Closing Brief, para. 952).

<sup>1957</sup> **P-0019**: T-115, page 45. The Chamber considers that the witness satisfactorily clarified an apparent contradiction with her written statement in relation to the number of men being raped (*see* Defence Closing Brief, para. 952), as she explained that the number of three men mentioned in her statement referred to the ones who were killed in front of her, but the overall number of men who were raped was higher (**P-0019**: T-116, page 48). Although it is not clear from P-0019’s testimony whether these men were raped inside or outside the house (*see* **P-0019**: T-115, page 45 *versus* page 49), the Chamber does not consider this minor uncertainty to affect P-0019’s testimony, noting that: (i) she clarified that this is ‘what I told you before’; (ii) the Prosecution’s first question in this regard was not limited to rape inside the house (**P-0019**: T-115, page 45); (iii) the witness herself did not testify that the rapes occurred *inside* the house; (iv) the otherwise consistent nature of her testimony overall; and (v) that the distance between the house and the outside area was small. *See also* **P-0019**: T-115, page 49; and T-116, page 47.

<sup>1958</sup> **P-0019**: T-115, pages 45 to 46; and T-116, page 48.

624. Some of those held were questioned by UPC/FPLC soldiers on the location of UPC/FPLC weapons.<sup>1959</sup> In one house, the questioning started with those identified by the UPC/FPLC as ‘soldiers’ or ‘combatants’,<sup>1960</sup> whom those conducting the questioning attempted to distinguish by looking for marks on their bodies indicating that they had carried weapons.<sup>1961</sup> At least one person was beaten during questioning.<sup>1962</sup>
625. Some people, including an Alur boy, were released.<sup>1963</sup> Salumu Mulenda told his subordinates that anyone who was not ‘combatants’ or not ‘enemies’ – which P-0017 understood to mean not of Lendu ethnicity – were to be released.<sup>1964</sup>
626. Floribert Kisembo had a conversation with Salumu Mulenda over the Motorola where he told him ‘*ubatendeye*’, which P-0017 explained meant ‘show them what you are capable of’.<sup>1965</sup>
627. P-0113, who was in one of the last groups to arrive in Kobu, was also brought together with other Lendu to a house in Kobu and then to the Paradiso building, where she and the others were lined up.<sup>1966</sup>
628. At night, UPC/FPLC soldiers took groups of captured people out of the houses and killed them at or close to a banana field near the Paradiso building.<sup>1967</sup> The

<sup>1959</sup> **P-0017**: T-60, pages 11, and 13 to 14; and T-63, page 34. *See also* **P-0963**: T-79, pages 69 and 71. In relation to the Defence challenge to the evidence of P-0963 on this point and in relation to the Second Operation in general (*see*, in particular, Defence Closing Brief, para. 355 and Defence Reply Brief, para. 102), the Chamber refers to its general assessment of P-0963’s credibility.

<sup>1960</sup> **P-0017**: T-60, pages 13 to 14.

<sup>1961</sup> **P-0017**: T-60, page 14; and T-63, page 34.

<sup>1962</sup> **P-0017**: T-60, page 14.

<sup>1963</sup> **P-0017**: T-60, pages 13 to 15.

<sup>1964</sup> **P-0017**: T-60, pages 14 to 15.

<sup>1965</sup> **P-0017**: T-60, pages 16 to 17; and T-63, pages 29 to 30. In relation to the related Defence allegations (Defence Closing Brief, para. 327; *see also* generally Defence Closing Brief, paras 327 to 329, and Defence Reply Brief, para. 96), the Chamber refers to its assessment of P-0017’s credibility.

<sup>1966</sup> **P-0113**: T-118, pages 48 to 49; and T-119, page 51. Noting that P-0113 testified that she was in the last group to arrive, the Chamber does not consider P-0113’s evidence that executions started almost immediately upon arrival to be incompatible with P-0963’s and P-0019’s accounts (*see* Defence Closing Brief, para. 959).

<sup>1967</sup> **P-0113**: T-118, pages 48 to 49; and T-119, pages 31, and 51 to 52 (testifying that lined up at Paradiso, she saw people being ‘execut[ed]’). P-0113’s evidence implies that the killings occurred during the night (**P-0113**: T-118, pages 28 to 29, *see* reference to the full moon). Noting her otherwise coherent narrative of what she witnessed here, the Chamber does not consider her contradictory answers concerning whether she could see the killings taking place from Salumu Mulenda’s house in Kobu (**P-0113**: T-119, page 51) to affect the credibility

UPC/FPLC soldiers who carried out the killings included Commander Simba,<sup>1968</sup> who later bragged about the number of people they had killed.<sup>1969</sup> People were killed using sticks and batons,<sup>1970</sup> knives and machetes<sup>1971</sup> and pounders.<sup>1972</sup> Some people were shouting and crying.<sup>1973</sup> P-0108 was struck on the head with a machete by a UPC/FPLC soldier<sup>1974</sup> as he tried to flee one of the houses.<sup>1975</sup> P-0113,

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or reliability of her account (*see* Defence Closing Brief, para. 958). While P-0017 testified that he did not see the actual killings, his narrative strongly supports P-0113's, him testifying that he saw persons being escorted away during the evening and heard that those people were going to be 'executed' (**P-0017**: T-60, pages 15, and 17 to 18; and T-63, pages 34 to 35). The witness also testified that in relation to the second group of 'prisoners' he saw (the one of more than 20, made up of more women and children than men), he heard from two different named sources that those persons were 'executed' by Commander Mugisa's group (**P-0017**: T-60, pages 21 to 24). In relation to the place where the killings had taken place, he referred to hearsay about a banana farm (**P-0017**: T-60, pages 18 and 24). While P-0963 also testified that he did not actually see the killings, his evidence further strongly supports the narratives of P-0113 and P-0017, in particular, his testimony that 'prisoners' were killed at night by UPC soldiers, that Simba was in charge of the executions (**P-0963**: T-79, pages 71 to 72), and that although it was night-time and dark, he saw people passing, being taken away by groups of soldiers and heard shouting and crying (**P-0963**: T-79, pages 73 to 74). In relation to his vantage point in the Kobu market (**P-0963**: T-79, page 71), the Chamber heard evidence that the Kobu market is located on a hill, with a view in all directions (**P-0039**: DRC-OTP-2062-0244-R02, at 0254, para. 42; and **P-0963**: T-79, page 51), and therefore considers his testimony of seeing people passing 'to and from' in the dark and hearing shouting and crying credible. P-0963 also testified that the next morning he went with Salumu Mulenda and saw dead bodies in the banana field behind 'hotel Paradiso' (**P-0963**: T-79, pages 71 to 73).

<sup>1968</sup> **P-0017**: T-60, page 17; **P-0963**: T-79, pages 70 to 71.

<sup>1969</sup> **P-0017**: T-60, pages 15, and 17 to 18; and T-63, pages 34 to 35.

<sup>1970</sup> **P-0113**: T-118, page 49; and T-119, page 52. The Chamber also takes into account the corroborating evidence from those witnesses who saw bodies in the banana field together with sticks lying amongst the corpses, and testified that some people looked like they had been beaten to death, and that the heads of some bodies had been crushed (*see below*), and the expert evidence that exhumed bodies in Kobu died from blunt force trauma (*see below*).

<sup>1971</sup> **P-0113**: T-118, page 49; and T-119, page 52; **P-0017**: T-60, page 18; and T-63, pages 34 and 63; and **P-0963**: T-79, page 72. The Chamber also takes into account corroborating evidence from those witnesses testified that they saw bodies with slit throats knife cuts, and who looked like they had been killed by machete, as well as decapitated bodies (*see below*). In relation to the Defence argument that evidence of people being killed by bladed weapons is irreconcilable with the forensic evidence, where zero bodies exhumed at Kobu had sharp force trauma (Defence Closing Brief, paras 909 to 911), the Chamber does not consider, the expert evidence (*see below*) to be incompatible with the witness testimony in this regard, noting Dr Martrille's evidence that cutting trauma can leave no trace on the bones, including that if a throat is slit, it may not be visible on the skeleton (**P-0935**: T-133, pages 21 to 24, and 26), and Dr Uhlin-Hansen's evidence that sharp injuries by, for instance, a knife or a machete may cut large blood vessels without hitting the bones (**P-0937**: T-127, page 32).

<sup>1972</sup> Based on: (i) the evidence of witnesses who said they found pounders/pestles amongst the bodies in the banana field the day the UPC/FPLC left Kobu: **P-0805**: T-26, pages 7 to 8, and 10; and **P-0857**: T-193, pages 79 to 80; and (ii) expert evidence that exhumed bodies in Kobu were persons who had died from blunt force trauma (*see below*), the Chamber finds that the only reasonable conclusion is that pounders were used to kill people.

<sup>1973</sup> **P-0113**: T-118, pages 49 to 50; and **P-0963**: T-79, pages 73 to 74.

<sup>1974</sup> While P-0108 testified to being hit on a head with a machete by the 'Hema' (*see below*), the Chamber finds that the only reasonable conclusion is that P-0108 was also struck on the head with a machete by a UPC/FPLC soldier, considering that it was the UPC/FPLC soldiers who were taking groups of captured people out of the houses and killing them with, *inter alia*, machetes.



who had previously lied to UPC/FPLC soldiers about her ethnicity, and a Bira woman were taken out of the line of those being killed because Salumu Mulenda called for them.<sup>1976</sup> In finding that UPC/FPLC soldiers killed people at or close to the banana field near the Paradiso building, the Chamber also takes into account corroborating evidence from witnesses returning to Kobu,<sup>1977</sup> and expert evidence which, while heavily qualified in many respects, is generally consistent with the above-mentioned eyewitness testimony.<sup>1978</sup>

<sup>1975</sup> **P-0108**: T-185, pages 49, 51 to 52, and 57 to 59. *See also* **P-0108**: T-185, pages 59 to 61. P-0108's head injuries can be seen in DRC-OTP-0108-0112, DRC-OTP-0108-0113, DRC-OTP-0108-0114, and DRC-OTP-0108-0115 (*see* **P-0108**: T-185, pages 62 to 63), as well as in Ms Sophie Gromb-Monnoyeur's (P-0939) expert report DRC-OTP-2059-0146-R02, at 0152 and 0153. The Chamber notes that Ms Sophie Gromb-Monnoyeur, an expert in forensic medicine and clinical examination (**P-0939**: T-143, page 10), noted that P-0108's skull was significantly deformed, and provided details on the various scars on the witness's skull (**P-0939**: T-143, pages 25 to 27; and DRC-OTP-2059-0146-R02, at 0155). She also found that P-0108 exhibited memory loss, vertigo, and that the neurological elements on the left side were disturbed (**P-0939**: T-143, page 27; *see also* **P-0939**: T-143, pages 30 to 32) and concluded that the scarring above P-0108's ear was caused by an extremely violent blow with a sharp and blunt instrument (**P-0939**: T-143, page 30). The expert confirmed that the injuries examined are compatible with the witness's statement (DRC-OTP-2059-0146-R02, from 0155 to 0156). While the Chamber considers the corroboration by expert P-0939 to be useful auxiliary evidence, it is convinced that P-0108's account and the photographs in themselves establish that the injuries result from the incident described by the witness.

<sup>1976</sup> **P-0113**: T-118, pages 49 to 50. The Chamber also notes P-0017's testimony in this regard, testifying that Salumu Mulenda indicated that those who are not the enemy or 'combatants' should be 'withdrawn from the group' and that an Alur boy was subsequently released (**P-0017**: T-60, pages 14 to 15. *See also* **P-0017**: T-60, pages 13 and 17).

<sup>1977</sup> *See below* in respect of P-0100, P-0103, P-0106, P-0121, P-0301, P-0790, P-0792, P-0805, and P-0857.

<sup>1978</sup> A total of 16 bodies were exhumed in 2014: 14 bodies were exhumed in six graves in Kobu in the site designated as KOB1, and two bodies in a single grave in Tchudja (**P-0420**: DRC-OTP-2072-0211-R01, from 0214 to 0216, and from 0220 to 0226, and at 0232; and T-123, page 71). *See also* the evidence provided by Adrien Sivignon, expert on the collection of evidence from crime scenes: **P-0934**: DRC-OTP-2075-0056-R02; and DRC-OTP-2075-0094. The Chamber addresses the bodies in Tchudja below. In relation to the 14 bodies exhumed in Kobu, Forensic Anthropology Expert Dr Derek Congram (P-0420) concluded that the remains had been buried for a minimum of one year and up to a maximum of 20 years prior to exhumation (**P-0420**: T-123, pages 71 to 72), and that there were indications strongly suggesting that the four graves known as F1 to F4 were dug at the same time (**P-0420**: T-123, pages 72 to 73). Forensic Pathology Expert P-0935, Dr Laurent Martrille, and Forensic Pathology and Genetics Expert P-0937, Dr Lars Uhlin-Hansen, conducted post-mortem examinations of the exhumed bodies. Dr Martrille examined eight of the Kobu corpses and concluded that their general state was compatible with them having been dead for around 11 years (*i.e.* since 2003), although he noted that it could also have been compatible with other dates (**P-0935**: T-132, pages 68 to 69 and 80 to 81), and that the bodies had been buried before they decomposed (**P-0935**: T-132, page 75; and T-133, pages 24 to 26). Dr Martrille concluded that of the eight Kobu corpses he examined, seven showed signs of blunt force trauma to the head and homicide was the most plausible manner of death (KOB1-F1-B1: **P-0935**: T-132, pages 82 to 84; and DRC-OTP-2081-0674, from 0679 to 0682. *See also* DRC-OTP-2067-0165; DRC-OTP-2067-0166; and DRC-OTP-2067-0168. KOB1-F1-B2: **P-0935**: T-132, pages 85 to 86; and DRC-OTP-2081-0674, from 0683 to 0686. *See also* DRC-OTP-2067-0202; DRC-OTP-2067-0203; DRC-OTP-2067-0205; and DRC-OTP-2067-0206. KOB1-F1-B3: **P-0935**: T-132, pages 87 to 88; and DRC-OTP-2081-0674, at 0687 to 0690. *See also* DRC-OTP-2067-0246; and DRC-OTP-2067-0252. KOB1-F2-B3: **P-0935**: T-133, pages 5 to 7; and DRC-OTP-2081-0674, from 0691 to 0694. *See also* DRC-OTP-2067-0431; and DRC-OTP-2067-0433. KOB1-F2-B4: **P-0935**: T-133, pages 7 to 9; and DRC-OTP-2081-0674, from 0695 to 0699. *See also* DRC-OTP-2067-0475; DRC-OTP-2067-0476; and DRC-OTP-2067-0479. KOB1-F3-B1: **P-0935**: T-133, pages 10 to 12; and

629. After she was removed from the line, a UPC/FPLC soldier brought P-0113 to a UPC/FPLC commander's place in Kobu.<sup>1979</sup> That night, a soldier was sent to wake P-0113 up.<sup>1980</sup> The soldier woke P-0113 up, telling her that a named UPC/FPLC commander as calling for her.<sup>1981</sup> She went towards that commander who told her that she would be spending the night with him.<sup>1982</sup> The named UPC/FPLC commander had sexual intercourse with P-0113 that night, which she stated she could not refuse.<sup>1983</sup>

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DRC-OTP-2081-0674, from 0700 to 0704. *See also* DRC-OTP-2067-0539; DRC-OTP-2067-0540; DRC-OTP-2067-0542; DRC-OTP-2067-0544; and DRC-OTP-2067-0599. KOB1-F3-B2: P-0935: T-133, pages 12 to 13; and DRC-OTP-2081-0674, from 0711 to 0715. *See also* DRC-OTP-2067-0612). Dr Uhlin-Hansen concluded that of the six Kobu corpses he examined, three died from blunt force trauma to the head (**P-0937**: T-127, pages 14 to 16. KOB1-F2-B1: P-0937: T-127, pages 20 to 21; and DRC-OTP-2075-0140, from 0143 to 0145. *See also* DRC-OTP-2067-0312; DRC-OTP-2067-0316; DRC-OTP-2067-0319; DRC-OTP-2067-0333; DRC-OTP-2067-0335; DRC-OTP-2067-0336; and DRC-OTP-2075-0158. KOB1-F2-B2: P-0937: DRC-OTP-2075-0173, from 0176 to 0177. *See also* DRC-OTP-2067-0374; DRC-OTP-2067-0382; DRC-OTP-2067-0384; DRC-OTP-2067-0386; DRC-OTP-2067-0387; DRC-OTP-2067-0388; DRC-OTP-2067-0389; and DRC-OTP-2075-0190. KOB1-F4-B1: P-0937: DRC-OTP-2075-0205, from 0208 to 0209. *See also* DRC-OTP-2067-0658; DRC-OTP-2067-0688; DRC-OTP-2067-0690; DRC-OTP-2067-0691; and DRC-OTP-2075-0222), one may have died from blunt force trauma (KOB1-F4-B2: P-0937: T-127, pages 13 to 14; and DRC-OTP-2075-0235, from 0238 to 0239. *See also* DRC-OTP-2067-0756; and DRC-OTP-2075-0252), one cause of death could not be determined but the remains showed fractures at the base of the skull which might have happened post-mortem, but could also have happened peri-mortem and may have enlarged post-mortem (KOB1-F4-B3: P-0937: T-127, pages 13 to 14, and 32; and DRC-OTP-2075-0265, from 0268 to 0269. *See also* DRC-OTP-2067-0787; DRC-OTP-2067-0790; DRC-OTP-2067-0794; and DRC-OTP-2075-0282). The Chamber notes in particular that the evidence regarding deaths caused by blunt force trauma is consistent with the eyewitness evidence that people were killed using sticks and batons (*see above*), and also with evidence from witnesses who came to Kobu in the aftermath of the killings (*see below*). Dr Martrille concluded that the last remaining Kobu corpse he examined showed a burnt skull possibly related to a firearm projectile, and concluded that the manner of death was compatible with homicide (KOB1-F5-B1: P-0935: T-133, pages 14 to 19; and DRC-OTP-2081-0674, from 0705 to 0710. *See also* DRC-OTP-2067-0848; DRC-OTP-2067-0852; DRC-OTP-2067-0856; and DRC-OTP-2067-0859). In relation to the difference between compatibility and plausibility, *see* **P-0935**: T-133, page 9. Dr Uhlin-Hansen concluded for the last remaining Kobu corpse he examined that gunshot to the neck was the likely cause of death (KOB1-F6-B1: P-0937: T-127, pages 24 to 26; and DRC-OTP-2075-0312, from 0315 to 0317. *See also* **P-0937**: T-127, pages 14 to 16 and 24 to 26; DRC-OTP-2069-0852; DRC-OTP-2069-0854; DRC-OTP-2069-0856; and DRC-OTP-2075-0330). Although eyewitnesses testified that people were not killed in Kobu using guns (*see above*), the Chamber does not consider the expert evidence of possible gunshot injuries on two of the bodies exhumed in Kobu to be inconsistent with the testimonial evidence, noting that P-0019 testified that she and another person were shot while fleeing Kobu the next day (*see below*), and that P-0790 testified that at least one corpse seen in the banana field in the aftermath of the killings had signs of a bullet wound (*see below*).

<sup>1979</sup> **P-0113**: T-118, page 50. *See also* **P-0017**: T-59, page 65.

<sup>1980</sup> **P-0113**: T-118, page 51.

<sup>1981</sup> **P-0113**: T-118, page 51.

<sup>1982</sup> **P-0113**: T-118, page 51.

<sup>1983</sup> **P-0113**: T-118, page 51. Regarding the Defence challenges to P-0113's 'description of her relationship' with and the rape by the named UPC/FPLC commander (Defence Closing Brief, para. 958), the Chamber: (i) finds that the witness's description of her prior knowledge of the commander was coherent throughout her testimony (**P-0113**: T-118, pages 37 to 38; and T-119, pages 42 and 63); (ii) considers that the Defence claim that the witness was not forthright in the description of her interaction with the commander to be unsubstantiated, and finds the witness's account in this regard coherent and plausible, noting that she conceded having received

630. The next day, the UPC/FPLC left Kobu.<sup>1984</sup> Some of those captured were taken away with the UPC/FPLC soldiers.<sup>1985</sup> Others managed to flee.<sup>1986</sup>

631. The named UPC/FPLC commander told P-0113 that she had to come to Bunia with him because she would be killed if she stayed.<sup>1987</sup> P-0113 indicated that she did not want to go to Bunia, upon which the commander said '[y]ou will come to Bunia and you will live in my house'.<sup>1988</sup> P-0113 testified that she considered that she had no choice other than to obey him as she believed that if she was to remain in Kobu, she would be killed by the UPC/FPLC soldiers.<sup>1989</sup> The commander ordered P-0113 to carry the mattress that she had previously carried from Buli.<sup>1990</sup> She spent one night at the commander's house in Bunia, after which his wife sent

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certain assistance and protection from the commander (**P-0113**: T-118, pages 40 to 41, 50 to 51, and 54 to 56; T-119, pages 40 to 41, and 44), but explained that she said she did not want to go to Bunia, and did not go to 'visit' him, rather that she 'had no choice other than to obey him and go along with him', and had gone with him in order not to be killed (**P-0113**: T-118, page 52; and T-119, page 64); and (iii) does not consider the witness's testimony on having eventually recognised the commander when he talked to her in Buli (**P-0113**: T-118, page 37) to be inconsistent with her written statement that she 'immediately recognised' him but first pretended not to do so, noting that her written statement does not provide whether she recognised him before or after he talked to her (**P-0113**: T-119, pages 43 to 44 referring to DRC-0096-0036, at 0042). *See also* **P-0014**: T-136, page 59 (testifying that he heard about high-ranking commanders and brigade commanders being involved in rapes of non-Hema women, *inter alia*, the UPC/FPLC commander referred to by P-0113).

<sup>1984</sup> **P-0019**: T-115, pages 50 to 52; and T-116, pages 43 and 49; **P-0039**: DRC-OTP-0104-0015-R03, at 0021, paras 31 to 33; and DRC-OTP-2062-0244-R02, at 0255, para. 50; and **P-0113**: *see below*. P-0017 did not provide express evidence of when the UPC/FPLC troops left Kobu, but testified that after Kobu, the UPC/FPLC troops went to Kilo and then to Bunia (**P-0017**: T-60, pages 21 to 22; *see also* T-63, page 62). *See also* **P-0963**: T-79, page 74.

<sup>1985</sup> **P-0039**: DRC-OTP-0104-0015-R03, at 0021, paras 31 to 32; and DRC-OTP-2062-0244-R02, at 0254, para. 46, and at 0255, paras 48 to 49. **P-0113**: *see below*. *See also* **P-0017**: T-60, pages 21 to 22, and 24.

<sup>1986</sup> **P-0039**: DRC-OTP-0104-0015-R03, from 0021 to 0022, paras 33 to 34; and DRC-OTP-2062-0244-R02, from 0255 to 0256, paras 50 to 54. Although P-0039's evidence in relation to leaving Kobu only appears in his later statement, the Chamber notes that this part of his account is corroborated by a number of other witnesses (**P-0301**: T-149, pages 30, and 56 to 57); and **P-0792**: T-150, page 64). *See also* **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 45, although noting that the person referred to by P-0103 had been captured in Sangi and taken to Kobu (*see* **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 45), rather than in the bush surrounding Buli (*see* **P-0039**: DRC-OTP-0104-0015-R03, at 0020, paras 26 to 27), and thus considers P-0039 credible on this point. *See also* **P-0100**: T-131, pages 20, 23, and 47 to 49; and T-132, page 32; **P-0106**: T-44, pages 45 to 46; and T-45, pages 53 to 54; **P-0805**: T-25*bis*, pages 36 to 37; and **P-0857**: T-193, pages 73 to 74.

<sup>1987</sup> **P-0113**: T-118, pages 51 to 52.

<sup>1988</sup> **P-0113**: T-118, page 52.

<sup>1989</sup> **P-0113**: T-118, page 52.

<sup>1990</sup> **P-0113**: T-118, pages 53 to 54.

her away, saying that she did not want P-0113's blood to be shed there,<sup>1991</sup> after which P-0113 spent one month in Bunia, before returning to Ngabuli.<sup>1992</sup>

632. P-0019 fled Kobu upon instruction from Linganga, who told her and other women to run away; as P-0019 was trying to flee, she was shot in her ankle by UPC/FPLC soldiers and fell to the ground.<sup>1993</sup> Another Lendu person who was trying to help P-0019 was also shot dead by the UPC/FPLC.<sup>1994</sup>

633. On or about the day the UPC/FPLC left Kobu,<sup>1995</sup> and the following day,<sup>1996</sup> people came to Kobu-Wadza to see what had happened. Bodies of those killed were discovered in the banana field.<sup>1997</sup> There were bodies of men, women, and

<sup>1991</sup> **P-0113**: T-118, pages 56 to 57.

<sup>1992</sup> **P-0113**: T-118, pages 58 and 60. The Chamber notes that P-0113 was free at this point but remained in Bunia as she was waiting for the Lipri road to be cleared (T-118, page 58). The Chamber further notes different spellings of the location mentioned in the Confirmation Decision, para. 36 ('Ngabuli') and provided by the witnesses (*see e.g.* **P-0113**: T-118, page 18; **P-0790**: T-53, page 49; **P-0300**: T-166, page 35; **P-0106**: T-44, page 34; and T-45, page 14 referring to 'Ngabulo'). The Chamber considers that they refer to the same location.

<sup>1993</sup> **P-0019**: T-115, pages 50 to 51; T-115-FRA, page 50; and T-116, page 49. *See also* **P-0019**: T-116, page 7. The injury can be seen in DRC-OTP-0108-0155 and DRC-OTP-0108-0167 as well as in Ms Sophie Gromb-Monnoyeur's (P-0939) expert report DRC-OTP-2059-0131-R02, from 0137 to 0138. P-0939 concluded that P-0019's injury is consistent with her account (**P-0939**: T-143, pages 22 to 24 and 41 to 42; and DRC-OTP-2059-0131-R02, at 0141). P-0939 clarified in this context that another superficial scar on P-0939's foot seems to have been caused later than the 2002 to 2003 period, but that the large ankle scar, was compatible with the 10-year period passed since the events described by P-0019 (**P-0939**: T-143, pages 41 to 42).

<sup>1994</sup> **P-0019**: T-115, pages 50 to 51. Although P-0039 testified that he could not hear any gunshots the morning after the night he spent locked inside a house in Kobu near the market (**P-0039**: DRC-OTP-2062-0244-R02, at 0255, para. 48; *see also* DRC-OTP-0104-0015-R03, at 0021, para. 31; and DRC-OTP-2062-0244-R02, at 0254, para. 42), the Chamber considers it possible that one or more gunshots may have sounded without necessarily being heard by the witness, noting the state of fear described by him at that time (**P-0039**: DRC-OTP-2062-0244-R02, from 0254 to 0255, para. 47). Supporting such a conclusion is also evidence from P-0790 that at least one corpse seen in the banana field had signs of a bullet wound (*see below*), and the expert evidence regarding gunshot injuries on corpses exhumed at Kobu (*see above*).

<sup>1995</sup> **P-0805**: T-25*bis*, pages 36 to 38; and T-26, page 6 (as for the witness's basis of knowledge, *see* T-26, pages 59 to 60; **P-0790**: T-54, pages 16 to 17; and **P-0301**: T-149, page 63; *see also* pages 80 to 81); **P-0301**: T-149, pages 30, 33, 56 to 57, 59 to 61, and 76; **P-0103**: DRC-OTP-0104-0170-R02, at 0179, paras 45 and 46; **P-0106**: T-44, pages 45 to 47; and T-45, pages 53 to 54; **P-0106**: T-44, pages 31, 38 to 39, 41, and 43 to 46; **P-0790**: T-54, pages 15 to 16; **P-0857**: T-193, pages 72 to 74.

<sup>1996</sup> **P-0857**: T-193, pages 83 to 84; and T-194, page 24 (testified that that when he was in Kobu, on or about the day the UPC/FPLC left, a commander 'Tchima' told the population that the bodies would be buried the next day); **P-0121**: T-173, pages 10, 19 to 24, and 60 to 66 also referring to DRC-REG-0001-0049 (testifying that he went to Kobu from Gutsi the day after 'Dikpanu's' body had been brought to Gutsi (*see* para. 275), and to participating in a burial). Finding P-0121 credible on having gone to the massacre site, the Chamber dismisses the Defence argument in para. 964 of the Defence Closing Brief; **P-0100**: T-131, pages 20, 47 to 53; and T-132, pages 35 to 36 (also testifying to participating in a burial); **P-0792**: T-150, pages 56, 60, and 69 to 71 also referring to DRC-REG-0001-0047 (testifying that he went to Kobu two days after the events, and to participating in a 'big burial'), which is consistent with the evidence from P-0857, P-0121, and P-0100.

<sup>1997</sup> **P-0100**: T-131, page 49; and T-132, page 33; **P-0103**: DRC-OTP-0104-0170-R02, from 0179 to 0180, para. 47; **P-0106**: T-44, pages 46 to 47; T-45, page 9; **P-0121**: T-173, pages 11 to 14, 18 to 19, and 21 to 24; and

children,<sup>1998</sup> including babies.<sup>1999</sup> Some bodies were naked.<sup>2000</sup> Some sticks and pounders were lying amongst the corpses,<sup>2001</sup> but no other weapons.<sup>2002</sup> Some bodies, but not all, had been tied up.<sup>2003</sup> Some looked like they had been beaten to death.<sup>2004</sup> Some bodies had slit throats,<sup>2005</sup> and some had been decapitated.<sup>2006</sup> Some had other knife cuts.<sup>2007</sup> Some looked like they had been killed by

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DRC-REG-0001-0049. While P-0121 testified that bodies were found behind a house and not behind the Paradiso building (*see* **P-0121**: T-173, page 58), the Chamber notes the proximity of these two places on DRC-REG-0001-0049. *See further* in this respect: **P-0301**: T-149, pages 33, and 59 to 60; **P-0790**: T-54, pages 16 and 25; **P-0792**: T-150, pages 60, and 69 to 71; T-151, page 4; and DRC-REG-0001-0047; **P-0805**: T-25*bis*, page 38; T-26, page 6; and DRC-OTP-2058-1105-R02; and **P-0857**: T-193, pages 74, and 77 to 79. The Chamber is satisfied that the bodies of those found in the banana field as described in the aforementioned evidence were of those killed by the UPC/FPLC as described above, noting: (i) the connection between the location where P-0017, P-0113, and P-0963 testified that people were killed (P-0113 naming the location as ‘behind Paradiso’, P-0017 as a ‘banana farm’, and P-0963 as a ‘banana field behind hotel Paradiso’ (*see* above) and the location described by witnesses in the aforementioned evidence; (ii) the brief interval between the UPC/FPLC leaving Kobu and people discovering the bodies in the banana field, *i.e.* six witnesses discovered bodies in the banana field on or about the day the UPC/FPLC left Kobu, as outlined above; and (iii) the fact that at least two of those identified in the field were persons captured at the ‘pacification meeting’ in Sangi (*see* below in relation to Dyikpanu and Burombi).

<sup>1998</sup> **P-0100**: T-131, pages 20 to 23 and 50 to 51; **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 47; **P-0106**: T-44, pages 25, and 46 to 47; and T-45, pages 23 to 24; **P-0121**: T-173, page 15; **P-0301**: T-149, page 60; **P-0790**: T-54, page 16; and **P-0805**: T-26, page 7. *See also* **P-0113**: T-118, page 48.

<sup>1999</sup> **P-0121**: T-173, page 16; and **P-0857**: T-193, page 80.

<sup>2000</sup> **P-0100**: T-131, page 55; **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 47; **P-0106**: T-44, page 48; **P-0121**: T-173, page 17; **P-0790**: T-54, page 18; **P-0805**: T-25*bis*, page 41; and T-26, page 7; and **P-0857**: T-193, page 82.

<sup>2001</sup> **P-0100**: T-131, page 50; and T-132, page 47; **P-0121**: T-173, pages 8, and 13 to 14; **P-0805**: T-26, pages 7 to 8, and 10; and **P-0857**: T-193, pages 80 to 81.

<sup>2002</sup> **P-0106**: T-44, page 48; **P-0805**: T-26, pages 10 and 17; **P-0857**: T-193, page 81; and **P-0963**: T-79, page 72.

<sup>2003</sup> **P-0100**: T-131, page 50; **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 47; **P-0106**: T-44, page 48; **P-0790**: T-54, page 17; **P-0805**: T-26, pages 7, and 10 to 11; and **P-0857**: T-193, page 80. Contrary to para. 925 of the Defence Closing Brief, the evidence that some persons were tied and some not is consistent with the P-0017’s evidence that some of the people being questioned had their shirts taken off and tied behind their backs (**P-0017**: T-60, page 14), and P-0113’s evidence that nobody was tied up when being ‘executed’ (**P-0113**: T-119, pages 51 to 52).

<sup>2004</sup> **P-0100**: T-131, page 50; and T-132, page 47; **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 47; **P-0121**: T-173, pages 8, and 13 to 14; **P-0790**: T-54, pages 16 to 17; **P-0792**: T-150, pages 61 and 72; **P-0857**: T-193, page 80. *See also* **P-0113**: T-118, page 49; and T-119, page 52, the abovementioned evidence that sticks and pounders were lying amongst the corpses, and the abovementioned expert evidence regarding blunt force trauma.

<sup>2005</sup> **P-0100**: T-131, pages 50 to 51; and T-132, page 43; **P-0106**: T-44, pages 47 to 48; **P-0301**: T-149, pages 76 and 78; **P-0805**: T-26, page 10; **P-0857**: T-193, pages 79 to 80. *See also* abovementioned evidence from P-0017, P-0113 and P-0963 corroborating the fact that some persons were killed with knives.

<sup>2006</sup> **P-0121**: T-173, pages 15, 17, and 58; **P-0301**: T-149, pages 62 and 76; **P-0805**: T-26, page 7; and **P-0963**: T-79, page 72. In relation to the Defence point that Dr Martrille found no trace of decapitation on any of the bodies he examined (Defence Closing Brief, paras 912 to 913), the Chamber does not consider the expert evidence to be incompatible with the witness testimony, noting the Chamber’s finding below that the overall number of persons killed in Kobu would be greater than the number of bodies exhumed in Kobu and Tchudja, and considering therefore that the expert evidence does not preclude the possibility of victims having further and additional types of injuries not found by the experts.

<sup>2007</sup> **P-0100**: T-131, page 50; **P-0792**: T-150, pages 61 and 72. *See also* the aforementioned evidence from P-0017, P-0113, and P-0963 relating to the use of knives.

machete.<sup>2008</sup> Some had been disembowelled.<sup>2009</sup> Some were missing their genitals<sup>2010</sup> and some looked like their genitals had been perforated with sticks.<sup>2011</sup> The body of at least one woman looked like she had had a baby cut out of her.<sup>2012</sup> At least one corpse had bullet wounds around the mouth.<sup>2013</sup> The heads of some bodies had been crushed.<sup>2014</sup> Photographs were taken of bodies at the scene.<sup>2015</sup> At least 49 bodies were found there.<sup>2016</sup>

634. Some people who saw the bodies recognised some of the dead.<sup>2017</sup> This included the bodies of two people who had gone to the ‘pacification meeting’, Dyikpanu<sup>2018</sup> and Burombi.<sup>2019</sup>

<sup>2008</sup> **P-0301**: T-149, pages 62 to 63 and 77 to 78; and T-150, pages 2 to 3. *See also* the abovementioned evidence from P-0017, P-0113, P-0963 corroborating the fact that persons were killed with machetes, and P-0108 on being struck on the head with a machete as he tried to flee one of the houses in Kobu.

<sup>2009</sup> **P-0100**: T-131, page 50; **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 47; **P-0106**: T-44, pages 47 to 48; **P-0121**: T-173, pages 14 to 15; **P-0301**: T-149, page 62; **P-0790**: T-54, pages 16 to 17; **P-0805**: T-26, page 7; **P-0857**: T-193, page 80; and **P-0963**: T-79, page 72.

<sup>2010</sup> **P-0121**: T-173, page 17; and **P-0301**: T-149, page 62.

<sup>2011</sup> **P-0121**: T-173, pages 14 and 17. Persons were raped with sticks in Kobu while P-0019 was held there, being the same time that those in the field were killed by the UPC/FPLC (*see above*).

<sup>2012</sup> **P-0100**: T-131, page 50; **P-0301**: T-149, page 62; and **P-0790**: T-54, page 16.

<sup>2013</sup> **P-0790**: T-54, page 17. In relation to the use of firearms, the Chamber also notes the corroborative evidence from P-0019 that she and another person were shot while fleeing Kobu, and the expert evidence of possible gunshot injuries on two corpses exhumed in Kobu (*see above*).

<sup>2014</sup> **P-0100**: T-131, page 50; and T-132, page 47; **P-0106**: T-44, pages 47 to 48; **P-0121**: T-173, pages 17 to 18; **P-0301**: T-149, page 62; **P-0792**: T-150, pages 61 and 72; and **P-0805**: T-26, page 7. *See also* abovementioned evidence that sticks and pounders were lying amongst the corpses and the expert evidence that exhumed bodies in Kobu were of persons who died from blunt force trauma to the head.

<sup>2015</sup> *See* section III.D.3.c) Allegation of collusion related to the ‘Kobu massacre’ and related events.

<sup>2016</sup> While estimates of the number of bodies found in the banana field vary, the Chamber primarily relies on the evidence of P-0805, whose count appears to be the most complete compared to other witnesses, noting the timing of his arrival at the banana field (**P-0805**: T-26, pages 7 to 8 and 10 to 11). His count is generally consistent with others who testified that they counted bodies in the banana field, who gave figures ranging between 45 and 57 bodies: **P-0103**: DRC-OTP-0104-0170-R02, from 0179 to 0180, para. 47; **P-0121**: T-173, pages 12, 16, and 19); **P-0857**: T-193, pages 78 to 79; **P-0790**: T-54, page 18. *See also* DRC-OTP-0152-0286, at 0300, para. 51, and from 0302 to 0303, para. 61; **P-0046**: T-100, pages 64 to 65; and **P-0317**: T-191, pages 43, and 49 to 50. P-0805’s estimate is also generally consistent with the number of captured persons who arrived in Kobu (at least 50). In light of all of the above, the Chamber considers that the Defence allegation that witnesses have exaggerated the scale of the ‘Kobu massacre’ (*see* Defence Closing Brief, paras 933 and 935) is unsubstantiated.

<sup>2017</sup> **P-0100**: T-131, pages 20 to 23 and 49 to 50; and T-132, page 34; **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 47; and **P-0106**: T-44, pages 25 to 26, 31 to 31, and 46 to 47; and T-45, pages 3 to 4; **P-0121**: T-173, page 18; **P-0301**: T-149, pages 60 to 61; **P-0790**: T-54, page 18; **P-0792**: T-150, pages 60 to 61; and T-151, page 4; **P-0805**: T-26, pages 8 to 10; and **P-0857**: T-193, pages 79, 82 to 83, and 85 to 86; and T-194, page 23.

<sup>2018</sup> **P-0103** DRC-OTP-0104-0170-R02, at 0179, para. 47; **P-0301**: T-149, page 60; **P-0790**: T-54, pages 16 to 18; **P-0805**: T-26, pages 9 to 10. *See also* **P-0027**: DRC-OTP-0096-0052-R04, at 0065, para. 58; **P-0106**: T-45, pages 55 to 56; and **P-0792**: T-150, pages 67 to 68. *See also* para. 595.

635. Some bodies were taken elsewhere to be buried,<sup>2020</sup> and others were buried close to where they were found.<sup>2021</sup> The Chamber's assessment of the evidence on the aforementioned burials as credible and reliable is unaffected by differences between expert evidence on the bodies exhumed and eyewitness testimony.<sup>2022</sup>

<sup>2019</sup> **P-0121**: T-173, page 18; **P-0301**: T-149, page 60. *See also* **P-0300**: T-166, page 46 to 47 and 53 to 54; and **P-0863**: T-180, page 10. *See also* para. 595.

<sup>2020</sup> **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 47; **P-0106**: T-44, pages 25 to 26, and 48; and T-45, pages 27 to 29; **P-0121**: T-173, pages 9 to 10, and 33; and T-173, pages 10, and 19 to 21; **P-0301**: T-149, page 60; **P-0857**: T-193, page 85; and **P-0100**: T-131, pages 49 to 52; and T-132, page 47; and T-131, pages 49, and 51 to 53; and T-132, page 34. Expert evidence corroborates P-0100's account of the burial of his wife and is consistent regarding the burial of his young son: two bodies, one of an adult and one of a subadult, in a single grave were exhumed in Tchudja (TCH1) (**P-0420**: DRC-OTP-2072-0211-R01, at 0232). Forensic Science Expert Dr Arnoud Kal (P-0945) concluded that one of the remains showed a DNA match with P-0100's family (**TCH1-F1-B1**: **P-0945**: DRC-OTP-2084-0002, at 0010, para. 2; and DRC-OTP-2069-2166). While Dr Martrille examined the body exhumed in TCH1 and concluded that it showed no sign of peri-mortem trauma (**TCH1-F1-B1**: **P-0935**: DRC-OTP-2081-0674, from 0717 to 0719; and DRC-OTP-2067-0990), he testified that it was possible that the woman's throat had been slit without leaving any trace on the bone (**P-0935**: T-133, pages 19 to 20; *see also* **P-0420**: T-124, pages 27 to 28 compared with **P-0100**: T-131, page 50; and T-132, page 43). The skeletal remains found in the same grave as P-0100's wife were of a child estimated to be between 4 to 6 years old (**TCH1-F1-B2**: **P-0937**: DRC-OTP-2075-0348, at 0350; DRC-OTP-2075-0364, at 0367). Dr Uhlin-Hansen (P-0937) examined the skeleton and concluded that it showed no apparent signs of peri-mortem injuries (**TCH1-F1-B2**: **P-0937**: DRC-OTP-2075-0348, from 0350 to 0351), although explained that sharp injuries by, for instance, a knife or a machete may cut large blood vessels without hitting the bones (**P-0937**: T-127, page 32). Dr Congram (P-0420) testified that two bodies exhumed in Tchudja had been laid out respectfully, indicating a measure of care, which the Chamber notes is consistent with P-0100's testimony that the family members had been brought there for burial (**P-0420**: T-123, pages 117 to 118; *see also* DRC-OTP-2072-0211-R01, at 0215, and 0231). Regarding the Defence challenge to P-0100's evidence on the basis that he testified that his wife's body had been hacked with a bayonet, which the Defence argues is inconsistent with the aforementioned expert evidence, specifically Dr Martrille's testimony that it is very likely for sharp force trauma impact injuries to leave a trace on bones (*see* Defence Closing Brief, paragraph 913; *see also* in particular, **P-0100**: T-131, page 50; and **P-0935**: T-133, pages 23 to 24), the Chamber does not consider this discrepancy to affect the reliability of his evidence on this subject, noting the aforementioned DNA match and the otherwise overall consistency between P-0100's evidence and the expert evidence. Having regard to the evidence in this footnote that bodies were removed and buried elsewhere, together with the evidence from P-0420 about the possibility of additional graves in Kobu (*see below*), the Chamber considers that the overall number of persons killed in Kobu would be greater than the number of bodies exhumed in Kobu and Tchudja.

<sup>2021</sup> **P-0100**: T-131, pages 49 to 53 and 58 to 59, also referring to DRC-OTP-2062-2258; T-132, pages 35 to 36; and T-131, pages 52, and 58 to 59, also referring to DRC-OTP-2062-2258; and T-132, pages 34 to 37; and **P-0121**: T-173, pages 19 to 24 and 60 to 62, also referring to DRC-REG-0001-0049; **P-0792**: T-150, pages 60 to 61 and 69 to 73; and T-151, pages 4 and 7, also referring to DRC-REG-0001-0047; and **P-0857**: T-193, pages 81, and 83 to 85; and T-194, pages 24 to 25, 27 to 34, also referring to DRC-OTP-2068-0031. Three additional witnesses – P-0018, P-0019, and P-0868 – provided secondhand evidence that their relatives were buried in Kobu: **P-0018**: T-111, pages 22 to 23; **P-0019**: T-115, page 54; and T-116, pages 30 to 31; and **P-0868**: T-177, page 77. The Chamber further notes that the conclusions of Dr Derek Congram (P-0420) that the graves he examined differed from routine burial custom, suggesting that the circumstances of burial were irregular and were indicative of multiple people dying at or around the same time (**P-0420**: T-123, pages 27, 67, and 113 to 114), which the Chamber considers to be consistent with the eyewitness testimony that bodies were buried in shallow graves, communally, and quickly.

<sup>2022</sup> The Chamber notes the Defence challenges to the evidence from P-0018, P-0019, P-0100, P-0792, P-0857, and P-0868 on the basis that the age and sex of those exhumed is inconsistent with that testimony (*see* Defence Closing Brief, paras 926 to 930, and Defence Reply Brief, paras 328 to 332). The Defence argues, *inter alia*, that the inference arising from the relevant circumstances, in light of the extensive test-trenching, sonographic testing, and analysis of satellite imagery, is that any other burial locations in or around the areas of KOB1 and KOB2 would have been found. Notwithstanding the Defence arguments in this respect, the Chamber notes that

Members of P-0108's family found him in the banana field and took him home.<sup>2023</sup>

People in the bush also found P-0019 and transported her to a traditional doctor.<sup>2024</sup>

636. Persons who returned to Kobu also found a number of bodies in and around the village, in addition to those found in the banana field.<sup>2025</sup>

637. After the events, in Bunia, sometime before 6 March 2003, Thomas Lubanga received a visit from MONUC staff who asked him about the alleged killings in Kobu.<sup>2026</sup> He asked the G2 to investigate.<sup>2027</sup> An intelligence officer from Salumu Mulenda's brigade was summoned for an oral report and was told that UPC/FPLC soldiers from Salumu Mulenda's brigade had shot Lendu 'civilians' in

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Dr Derek Congram testified about the possibility of additional mass graves in the vicinity, in particular, his report states that '[o]nly a minimum number of possible victims at KOB1 is known because the entire area was not thoroughly investigated due to limitations of time, resources and the nature of testimony of available witnesses and that '[i]t is possible, and perhaps likely considering some witness reports, that more sets of victim remains are buried in the areas of KOB1 and KOB2' (**P-0420**: DRC-OTP-2072-0211-R01, at 0233). He further testified that while there were some areas within KOB1 that were tested thoroughly, there remained some areas around KOB1 which were not thoroughly tested, and that he could not speak to whether or not there were burials in those other parts not thoroughly tested (**P-0420**: T-123, pages 107 to 108). The Chamber also notes the expert's view that variation in the reliability and imprecision of testimony regarding unmarked burials in conflict contexts is entirely normal, particularly so given the traumatic circumstances of the conflict, the deaths and body disposal, as well as the time passed since the burials (**P-0420**: DRC-OTP-2072-0211-R01, at 0233). Taking all of this into account, the Chamber considers it possible that additional graves – including of the relatives of P-0018, P-0019, P-0100, P-0792, P-0857, and P-0868 – were simply not found, and therefore does not consider the issues raised by the Defence to affect the credibility or reliability of the testimony of these witnesses on this issue. In relation to the Defence argument that the expert evidence does not exclude the possibility that the bodies exhumed may relate to an entirely different event than the alleged 'Kobu massacre' (Defence Closing Brief, para. 931), the Chamber considers the expert evidence to be not incompatible with the burial having occurred at the time of the relevant events (**P-0420**: DRC-OTP-2072-0211-R01, from 0232 to 0233; T-123, pages 71 to 72) and further notes it is consistent with the testimony of witnesses present in Kobu at the relevant time. Lastly, regarding the Defence challenge to P-0019's evidence on the burial of the bodies of her relatives (Defence Closing Brief, para. 954), the Chamber recalls its aforementioned consideration concerning the possibility of the existence of additional mass graves in the vicinity of the exhumed ones, as well as the fact that, according to the witness, the bodies had been buried 'behind' houses that are next to the Catholic church (*see* **P-0019**: T-115, page 54), and therefore not in an open field area. In any event, the Chamber notes that the expert evidence and evidence from these witnesses regarding burial is corroboratory and that the findings of the Chamber of persons having been killed in Kobu are based first and foremost on the direct testimonial evidence.

<sup>2023</sup> **P-0108**: T-185, page 49.

<sup>2024</sup> **P-0019**: T-115, pages 51 to 52.

<sup>2025</sup> **P-0121**: T-173, page 16; **P-0301**: T-149, page 69; **P-0790**: T-54, pages 17 to 18; and **P-0805**: T-26, pages 11 to 15. *See also* **P-0103**: DRC-OTP-0104-0170-R02, at 0179, para. 46, and from 0179 to 0180, para. 47.

<sup>2026</sup> **P-0055**: T-71, pages 51 to 53; T-74, pages 15 to 16, 59 to 60, 69, and 84. As to the timing of the meeting, although not dated by the witness, the Chamber considers that in light of the context provided by the witness, it occurred between the 'Kobu massacre' and 6 March 2003.

<sup>2027</sup> **P-0055**: T-74, pages 60, and 69 to 70. *See also* **P-0055**: T-71, page 52.



Kobu under the pretence of negotiations.<sup>2028</sup> Thomas Lubanga was given this information.<sup>2029</sup>

638. Straight afterwards, the G2 went to see Mr Ntaganda and asked him if he heard ‘what happened in Kobu’, discussing the fact that Lendu ‘civilians’ were killed in Kobu by UPC/FPLC soldiers led by Salumu Mulenda.<sup>2030</sup> Mr Ntaganda confirmed that he was already aware of ‘the incident’<sup>2031</sup> and said that he was glad

<sup>2028</sup> **P-0055**: T-71, pages 50 to 52, and 58; T-74, pages 55 to 56, 59, and 61 to 64. *See also* **P-0055**: T-70, page 67; and T-71, page 50.

<sup>2029</sup> **P-0055**: T-71, pages 52 to 53; and T-74, pages 60 to 61, 63 to 65, and 68. On the format of the report *see* **P-0055**: T-74, pages 66 to 68. The Chamber notes that P-0055’s testimony on this subject was clear, rich in detail, internally coherent, and also generally consistent between direct and cross examination. Regarding names mentioned or not by the witness, the Chamber does not consider this to impact on the credibility of his account (*see also* his general credibility assessment), nor is there any indication that the witness provided ‘details to fabricate his story and make it look real’ (Defence Closing Brief, para. 1135). There was an inconsistency between the witness’s prior statement (T-74, pages 66 to 68), but the Chamber does not consider this to impact the credibility of his evidence, noting his consistency on the core aspect, namely that a report was provided to Thomas Lubanga. The Defence submits that P-0055’s testimony is contradicted by P-0317’s testimony that MONUC had no information about the alleged ‘Kobu massacre’ until the end of March (Defence Closing Brief, paras 821, 1128, and 1133 to 1135, *see also* Defence Reply Brief, para. 220), meaning consequently that Thomas Lubanga cannot have obtained information about an alleged massacre in Kobu from MONUC officials and did not convene a meeting on that basis (Defence Closing Brief, para. 1134). The argument is based on the testimony of P-0317, who, however, only arrived in Bunia on 24 March 2003 (DRC-OTP-0152-0286 at 0286, *see also* **P-0317**: T-191, page 38; and T-192, pages 43 to 46). When asked if, once she arrived in Bunia, the military observers or anyone else in MONUC told her that they had information about an attack in Kobu or a massacre in Kobu, the witness testified that there were six military observers at the time in Bunia, who were afraid to leave town, and that they had some ‘vague information’ regarding attacks on the villages, but no direct information (**P-0317**: T-192, page 45), and that she did not think they told her about having received any reports about a massacre in Kobu (**P-0317**: T-192, pages 45 to 46). Based on the witness’s testimony, the Chamber does not believe that she reliably knew what information was or was not available to MONUC before 6 March 2003, and the Chamber does therefore not find a contradiction between her testimony and that of P-0055. The Defence also argues that it is impossible that, in Bunia, Mr Ntaganda could have received information about the alleged crimes while Floribert Kisembo was still in Mongbwalu (Defence Closing Brief, para. 1136). On timing, *see* T-71, page 52; and T-74, pages 71 to 74. The Chamber views the timing of Kisembo’s return to Bunia as peripheral to the core of P-0055’s evidence on this subject, and therefore does not consider any purported inconsistency on this matter to affect the credibility of P-0055’s account. Finally in this regard, the Defence challenges that the report to Thomas Lubanga does not correspond to the alleged ‘Kobu massacre’, but rather to rumours circulating as to what happened at some point during the operation (Defence Closing Brief, paras 1134 and 1145 to 1146, and Defence Reply Brief, para. 297). The Chamber notes that P-0055’s description is limited to what he was told, and that in any case the events described by him are broadly consistent with the Chamber’s findings on killings of civilians in Kobu, namely that UPC/FPLC soldiers from Salumu Mulenda’s brigade killed Lendu ‘civilians’ in Kobu following a pacification meeting. For this reason, the Chamber does not consider that any alleged inaccuracy in the account of the event can cast doubt on P-0055’s credibility on this point.

<sup>2030</sup> **P-0055**: T-71, pages 52, and 56 to 57; and T-74, page 70.

<sup>2031</sup> **P-0055**: T-71, pages 52 and 57. *See also* **P-0768**: T-34, pages 60 to 61 (stating that he learned about these events because the commanders talked about it on the radios, everyone could follow and everyone was talking about what had happened). The Chamber relies on the evidence of P-0768 which shows that these events were discussed amongst the UPC/FPLC. Contrary to the Defence assertion that P-0768’s description of events in Kobu matches neither the evidence nor the Prosecution’s theory in this case (Defence Closing Brief, para. 265), the Chamber notes that his description is broadly consistent with the Chamber’s findings on killings of civilians in Kobu, namely that UPC/FPLC soldiers from Salumu Mulenda’s brigade killed members of the

with how things had turned out.<sup>2032</sup> He also said, in Kinyarwanda, that Salumu Mulenda was a ‘gentleman’, ‘a brave, a fine person’, or a ‘real man’,<sup>2033</sup> which was interpreted to mean that Mr Ntaganda agreed with ‘what had happened’.<sup>2034</sup> These findings are unaffected by Mr Ntaganda’s denial on this matter, which the Chamber finds not credible in the circumstances.<sup>2035</sup>

639. Salumu Mulenda was not ‘disciplined’, including not by Mr Ntaganda, for the killings in Kobu during the Second Operation, in the period before he left the

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population in Kobu following a ‘masquerade’ call for discussions with the population (T-34, page 60). Noting this and the time passed since the events, the Chamber does not consider that any alleged inaccuracy in the account of the event provided by P-0768 can cast doubt on his credibility on this point.

<sup>2032</sup> **P-0055**: T-74, page 70.

<sup>2033</sup> **P-0055**: T-71, page 52, page 56, and page 57, and T-74, page 70. Having regard to the various stages of translation of this phrase, the Chamber understands the various similar renderings of the phrase in the transcript to be reiterations of one and the same utterance by Mr Ntaganda.

<sup>2034</sup> **P-0055**: T-71, page 57. *See also* **P-0055**: T-71, page 57; and T-74, page 70.

<sup>2035</sup> Mr Ntaganda denied having ever discussed or obtained information from the G2 relating to civilians allegedly killed in Kobu by members of the UPC/FPLC in February or March 2003 (**D-0300**: T-223, pages 19 to 20). He testified to the effect that from 17 February 2003 to 6 March 2003, he only had two contacts with the G2, one Thuraya call while he was in Fataki, and again at a meeting on 5 March 2003, at which the Second Operation was not discussed (**D-0300**: T-221, pages 17, 28 to 29, and 36 to 37; T-223, page 19. *See also* Defence Closing Brief, paras 1138 to 1139; **P-0055**: T-74, page 83). Mr Ntaganda also denied having obtained any information about civilians allegedly killed in Kobu by members of the UPC/FPLC in February or March 2003 (**D-0300**: T-221, page 46; and T-223, pages 16 to 22). According to Mr Ntaganda, he first heard allegations about civilians being killed in Kobu in February or March 2003 by the UPC/FPLC in 2004 from media reports (**D-0300**: T-223, page 14) (*see also* Defence Closing Brief, para. 1157). The Chamber, in line with its general assessment of P-0055 as a credible witness, accepts as truthful P-0055’s detailed description, including his testimony to the effect that Mr Ntaganda already knew about the ‘Kobu massacre’, and consequently does not accept Mr Ntaganda’s denial. Considering P-0055’s evidence, and in light of the Chamber’s findings on the involvement of Mr Ntaganda specifically in the Second Operation, and generally in UPC/FPLC operations, it is not necessary to discuss further how and when exactly Mr Ntaganda found out about the ‘Kobu massacre’. In any case, the Chamber notes the evidence indicating that: (i) on 24 February 2003, Thomas Lubanga met with persons including personnel from MONUC and discussed fighting in the area of Kobu, Lipri, and Nyangaray, including allegations that UPC/FPLC troops were chasing fleeing people in forests around Nyangaray and Kobu (DRC-OTP-0127-0061, from 1:29:09 to 1:33:09; **D-0300**: T-238, pages 59 to 61. *See also* **D-0300**: T-230, page 51); (ii) UPC/FPLC soldiers who killed people in ‘Kobu massacre’ discussed rapes and killings with other UPC/FPLC soldiers shortly after the event (**P-0017**: T-60, pages 17 to 18; **P-0963**: T-79, pages 74 to 76), and specifically on this point, the Chamber does not consider any alleged lack of knowledge of the specifics of events by P-0901 or P-0190 (see Defence Closing Brief, paras 1140 to 1146) to affect the evidence from P-0963 and P-0017, or P-0055’s account, noting that P-0901 was simply recounting what he remembered hearing about the operation (**P-0901**: T-29, pages 13 to 16), and recalling that the Chamber did not find P-0190’s evidence credible; and that (iii) a vice-governor heard about the death of Mr Burombi, who was one of the victims in the ‘Kobu massacre’, through Mr Burombi’s family, although he heard about in the context of allegations that a UPC/FPLC group had gone to Lipri on the pretext of pacification and killed Lendu ‘civilians’ there (**P-0041**: DRC-OTP-0147-0002, from 0016 to 0017, paras 82 to 86). The Chamber therefore dismisses the related arguments of the Defence (Defence Closing Brief, paras 1127 to 1129, 1132 to 1158, and Defence Reply Brief, paras 290 to 297). The Chamber also clarifies that it did not rely on P-0016 in relation to this issue, as it did not find his statement sufficiently reliable in this regard (*see* **P-0016**: DRC-OTP-0126-0422-R03, at 0449, paragraph 153, and from 0450 to 0451, paragraph 163; *see also* Defence Closing Brief, paras 1128, and 1130 to 1131).

UPC/FPLC following the 6 March 2003 clashes with the UPDF in Bunia.<sup>2036</sup> To the knowledge of insider witnesses P-0017, P-0768, and P-0963, no other UPC/FPLC soldiers who participated in the Second Operation were ever ‘punished’ for any of their actions during the operation.<sup>2037</sup>

### (11) Assault on Nyangaray

640. Nyangaray is a village in the Walendu-Djatsi *collectivité*,<sup>2038</sup> which initially had a Lendu population.<sup>2039</sup> At the start of the Second Operation, the UPC/FPLC took control over Nyangaray.<sup>2040</sup> The population fled and hid in the bush,<sup>2041</sup> where they stayed in difficult conditions.<sup>2042</sup> In 2004, a witness noticed that houses and other buildings in Nyangaray had been burned down.<sup>2043</sup>

<sup>2036</sup> **P-0055**: T-71, pages 57 to 58. *See also* **P-0055**: T-72, pages 53 to 54; **P-0017**: T-60, pages 26 to 27; **P-0963**: T-79, page 74; **P-0768**: T-34, page 61. On Salumu Mulenda not returning to the UPC/FPLC after 6 March 2003, *see* **D-0300**: T-223, pages 17 to 18; and **P-0014**: DRC-OTP-0165-0999, at 1011, para. 55.

<sup>2037</sup> **P-0017**: T-60, pages 26 to 27; **P-0768**: T-34, page 61; and **P-0963**: T-79, page 74.

<sup>2038</sup> Agreed Fact 32.

<sup>2039</sup> **P-0105**: T-133, pages 41 to 43; and **P-0127**: T-139, page 13.

<sup>2040</sup> **P-0105**: T-133, pages 44 to 45. The witness refers to both 17 and 18 February 2003. P-0127 testified that before reaching Lipri, the UPC already had taken Nyangaray (**P-0127**: T-139, page 13). P-0113 testified that Kilo, Nyangaray, Bambu, Kobu and Lipri were attacked around the same time (**P-0113**: T-118, page 17). *See also* **P-0768**: T-34, pages 59 to 60; and DRC-OTP-0152-0286, at 0301, para. 56. The Chamber notes that Nyangaray is mentioned under Count 3 (*see* Confirmation Decision, para. 36) but, as it has not received evidence on how the assault on this village was carried out, it is unable to make findings on an alleged attack intentionally directed at civilians in this village.

<sup>2041</sup> **P-0868**: T-177, pages 54 to 56; and **P-0105**: T-133, pages 44 and 70. *See also* **P-0768**: T-34, pages 59 to 60. P-0105 testified about three women being raped in the fields before being executed, and appears to suggest that this occurred in fields of or near Nyangaray (**P-0105**: T-134, pages 23 to 24). The Prosecution submits that this took place ‘[n]ear Nyangaray, in or around Lipri’ (Prosecution Closing Brief, para. 571). However, the Chamber notes that: (i) Nyangaray is separately mentioned as a location in the Confirmation Decision, and can therefore not be seen as included in Lipri; (ii) Nyangaray is at least a few kilometres from Lipri, and other villages are situated in between; (iii) rape, sexual slavery, and murder have not been charged for Nyangaray (*see* Confirmation Decision, para. 36); (iv) the notes underlying a later MONUC report (DRC-OTP-0195-2366-0001) refer to several instances of murder (‘meurtre’ in the French original) in Nyangaray, but the Chamber has otherwise not received further information in this regard. In relation to another alleged murder, the Chamber notes that P-0863 testified about having treated a woman who was from a village near Nyangaray, and who was cut with a machete after having been found hiding in the bush, stating that ‘UPC combatants’ had cut the woman, and others with her had died (**P-0863**: T-180, pages 51 to 52; *see* Prosecution Closing Brief, para. 589). However, the witness did not provide any further information about this alleged incident, including not on the timing and specific location. In these circumstances, besides it being unclear whether the alleged incident falls within the scope of the confirmed charges, the Chamber cannot make any finding on the alleged killings and (potential) attempted killing. In addition, the Chamber recalls that as with the other incident, murder is not charged in relation to Nyangaray (*see* Confirmation Decision, para. 36).

<sup>2042</sup> **P-0868**: T-177, pages 61 to 63. On the conditions for those who had fled to the bush in the same area, *see also* **P-0127**: T-133, pages 70 to 71; and T-139, page 12; and **P-0113**: T-118, page 22. P-0868 also testified that the UPC/FPLC were ‘looking for the villagers in the different forests where they were hiding’, and

## (12) Other locations referred to in the Confirmation Decision

641. In addition to the above, charges were confirmed in relation to a number of additional villages.<sup>2044</sup> However, noting that the Prosecution did not produce any evidence for these villages,<sup>2045</sup> the Chamber does not make any findings on these villages. The Chamber further recalls its above finding that some of the locations referred to in the Confirmation Decision may have been understood by witnesses to be part of a larger village or town, because of close proximity to the larger locality.<sup>2046</sup> This may also have been the case for other villages included in the Confirmation Decision but, in the absence of relevant information, the Chamber cannot make any specific findings in this regard. The Chamber also notes that for some locations, no relevant evidence was provided, and the locations were only mentioned by a witness in passing, or in a general way, without specification about any alleged criminal conduct having occurred there.<sup>2047</sup>

642. Furthermore, concerning the allegation that '[t]he UPC burnt civilian homes in [...] Avetso',<sup>2048</sup> the Chamber notes that this allegation is based on a notebook

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explained that this contributed to the living conditions 'getting worse and worse' (**P-0868**: T-177, page 62). In this regard, the Chamber notes that on 24 February 2003, Thomas Lubanga met with personnel from MONUC and discussed fighting in the area of Kobu, Lipri, and Nyangaray, including allegations that UPC/FPLC troops were chasing fleeing people in forests around Nyangaray and Kobu (DRC-OTP-0127-0061, from 1:29:09 to 1:33:09; and **D-0300**: T-238, pages 59 to 61; *see also* **D-0300**: T-230, page 51).

<sup>2043</sup> **P-0868**: T-177, pages 78 to 79. The witness attributes the destruction of the buildings to 'people from the UPC' (**P-0868**: T-177, page 79), but the Chamber notes that he was not present during the alleged destruction, and only first observed that the buildings were destroyed in 2004. P-0105 testified to having witnessed the burning of houses from a hill he had taken refuge on Djuba hill, located approximately 4,5 kilometres from Lipri, after the UPC/FPLC had taken over Lipri. While P-0105 does refer to Nyangaray as one of the places where houses allegedly were burned, when questioned about the villages he could see from 'Djuba hill', he did not include Nyangaray (**P-0105**: T-133, pages 44 to 46 and 48 to 49). The Chamber further notes DRC-OTP-2078-0551, from 0561 to 0562, paras 26 to 29; and DRC-OTP-0152-0286. Besides the fact that the items do not provide the sources they rely on, they refer to a broad time frame (*i.e.* 17 January to 6 March 2003) and do not differentiate between the individual villages. Therefore, on the basis of the information before it, the Chamber cannot establish whether the burning and destruction of buildings in Nyangaray occurred as part of the charged assault, namely during the Second Operation, nor whether it was caused by the UPC/FPLC.

<sup>2044</sup> Confirmation Decision, para. 36, referring to 26 locations.

<sup>2045</sup> *See* Prosecution Closing Brief, para. 441, referring to 22 villages, and not mentioning certain of the villages confirmed in the Confirmation Decision.

<sup>2046</sup> *See* footnote 1730.

<sup>2047</sup> *See e.g.* the evidence of P-0105, relied on in Prosecution Closing Brief, paras 502 and 521, in relation to 'Dyalo'; and Prosecution Closing Brief, footnotes 1430 and 1851, including 'Dyalo' in its allegations with regard to Counts 3 and 10.

<sup>2048</sup> *See* Prosecution Closing Brief, para. 549.

allegedly written by P-0127 but that the witness, who was not questioned about 'Avetso', merely wrote that certain localities, including Avetso, 'were burned', without indicating what was burned and whether this included 'civilian homes'. In addition, the Chamber notes that, in cross-examination when discussing 'Lipri' and 'Tsili', P-0127 referred to a list he stated that he wrote down at the relevant time,<sup>2049</sup> but was not otherwise questioned on this point.

643. With regard to 'Katho', the Prosecution similarly alleges that the UPC/FPLC burned down civilian homes in this village on the basis of a reference made by P-0105,<sup>2050</sup> who was not specifically questioned on this point and only mentioned it in passing as part of villages surrounding Lipri where buildings were allegedly burned. In addition, the Chamber notes that it has been provided with only limited or no information about the actual location of these villages.<sup>2051</sup> In these circumstances, the Chamber cannot determine the reliability of the evidence of P-0105, who was not questioned on these locations specifically.<sup>2052</sup> Similarly, with regard to Mpetsi,<sup>2053</sup> the Chamber notes that the main evidence brought forward by the Prosecution is the testimony of P-0105, who testified that he could see that the UPC/FPLC 'occupied' a number of villages, including Mpetsi, and that '[w]herever they went they would burn down houses upon arrival',<sup>2054</sup> which he could observe while taking refuge on the Djuba hill,<sup>2055</sup> opposite the hill where Mpetsi is located.<sup>2056</sup> However, absent any information as to the proximity of the

<sup>2049</sup> **P-0127:** T-139, page 64 referring to DRC-OTP-0065-0003.

<sup>2050</sup> **P-0105:** T-133, page 49.

<sup>2051</sup> Expert witness P 0810, for example, was not able to locate Avetso, Nyangaray, Thali, and Tchudja, and only found a 'possible match' for Djuba, Katho (see DRC-OTP-2084-0443). P-0790 sketched the Walendu-Djatsi collectivité, which includes an indication of the possible location of Dyalo, Katho, and Djuba, but does not give any insight into the distances between these points, or whether or not it is possible to see them from a specific location, such as Djuba hill.

<sup>2052</sup> This situation must be distinguished from the Chamber's reliance on P-0105's testimony about the population of Djuba, Katho and Dyalo having taken refuge on the same hill (see footnote 1746) as where he was located at the relevant time. He was therefore in a position to observe and meet these persons directly, as opposed to only seeing what occurred from a (potentially large) distance.

<sup>2053</sup> See Confirmation Decision, para. 36; and UDCC, pages 61, 62, and 65.

<sup>2054</sup> **P 0105:** T-133, pages 44 to 45; and T-134, page 18.

<sup>2055</sup> **P-0105:** T-133, page 46.

<sup>2056</sup> **P-0105:** T-135, page 22.

witness to Mpetsi at this time and noting the lack of specificity in the witness's testimony,<sup>2057</sup> the Chamber considers that P-0105's testimony alone is insufficient for a finding on the UPC/FPLC conduct in Mpetsi during the Second Operation. Accordingly, and in the absence of any further sufficiently specific corroborative evidence on this point,<sup>2058</sup> the Chamber cannot make any finding on the UPC/FPLC's conduct in Mpetsi.

644. For its allegation that houses were burned in Mbidjo, Thali, Pili, and Djuba, the Prosecution relies on the fact that these villages are mentioned in one or both of the two documents provided by P-0127, as well as in a report by the MONUC Special Investigations Team of June 2003, which refers to reports that these villages were burned, information that MONUC could only 'partially confirm'.<sup>2059</sup> The aforementioned locations are further included in a footnote of a UN report based on the same information as included in the aforementioned MONUC report. The footnote lists 'the villages destroyed located between Lipri and Nyangaraye' that were reportedly 'destroyed' during a UPC/FPLC operation between 18 February and 3 March 2003.<sup>2060</sup>

645. In light of the foregoing, and in the absence of any further information on the circumstances of the alleged conduct, specifically and *inter alia*, whether fighting took place at the relevant time, or what was burned, the Chamber considers that it cannot make any findings on Avetso, Dhekpa, Thali, Mbidjo, and Pili on the basis of the very limited evidence brought before it. With regard to Djuba, Katho,

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<sup>2057</sup> The witness did not testify specifically about Mpetsi, and instead grouped the village together with Nyangaray and Kobu.

<sup>2058</sup> While P-0017, a UPC/FPLC soldier during the Second Operation, indicated that Mpetsi was 'affected' during the attack on the area around Kobu, Bambu, and Lipri, he does not provide specific examples of any conduct which may be considered as crimes (P-0017: T-59, page 62, read together with T-59-FRA, page 63). P-0113 stated that he heard the sound of gunfire on the road between Kilo, Kobu, Bambu, Mpetsi, and Lipri, but did not testify as to whether the UPC/FPLC carried out any criminal acts specifically within Mpetsi (P-0113: T-118, page 30).

<sup>2059</sup> DRC-OTP-0152-0286, at 0302, para. 59, and 0303, para. 63.

<sup>2060</sup> DRC-OTP-0074-0422, at 0444, footnote 31 or footnote 32.

and Dyalo, the Chamber has limited its findings to the fleeing of the population from these localities.<sup>2061</sup>

646. In these circumstances, and to the extent that the Chamber did not have any evidence to assess alleged conduct by UPC/FPLC troops, it did not make any specific findings in relation to the relevant villages.

## 9. Bunia on 6 March 2003

647. Throughout early 2003, there were growing tensions between the UPC/FPLC leadership and the UPDF forces stationed in Bunia.<sup>2062</sup> The situation deteriorated even more in the first week of March 2003, after two UPC/FPLC members were killed by UPDF soldiers, prompting a crisis meeting between Thomas Lubanga and UPDF General Kale Kayihura.<sup>2063</sup> Following this, on 4 March 2003,<sup>2064</sup> shots from heavy weaponry were fired on Mandro, reportedly by UPDF-backed forces.<sup>2065</sup>

648. Fearing an imminent attack from the UPDF,<sup>2066</sup> a group of UPC/FPLC commanders, including Mr Ntaganda and Floribert Kisembo, met at Thomas Lubanga's residence in Bunia on 5 March 2003, where they planned to oust the UPDF from the city.<sup>2067</sup> The UPC/FPLC believed that they would receive assistance from Rwandan forces to this end.<sup>2068</sup>

<sup>2061</sup> See para. 568.

<sup>2062</sup> **P-0055**: T-74, page 71; **P-0030**: T-145, page 66; and **D-0300**: T-219, pages 17 to 18.

<sup>2063</sup> **P-0055**: T-74, pages 71 to 73. See also DRC-OTP-2067-1976, at 1976 and DRC-OTP-0018-0113.

<sup>2064</sup> **D-0054**: T-244, page 22.

<sup>2065</sup> **P-0055**: T-74, page 81; and **D-0300**: T-221, pages 23 to 26. See also **P-0012**: DRC-OTP-2054-0073, at 0140.

<sup>2066</sup> **P-0055**: T-74, page 83; and **D-0300**: T-221, pages 26 to 27.

<sup>2067</sup> **P-0055**: T-74, pages 81 to 82; and **D-0300**: T-221, pages 27 to 29.

<sup>2068</sup> **P-0245**: T-142, page 74; and **P-0012**: DRC-OTP-2054-0073, at 0143; and DRC-OTP-2067-1989, at 1990, para. 3. The Chamber further notes that P-0055 testified with regard to the attempt to oust the UPDF that Rwanda had put pressure on the UPC/FPLC to fight against the UPDF in order for the UPDF to leave Bunia (**P-0055**: T-74, page 83).

649. The assault began in the early morning of 6 March 2003.<sup>2069</sup> The UPC/FPLC forces were positioned in a manner that allowed them to attack in Dele and at the airport.<sup>2070</sup> Mr Ntaganda was positioned at the general hospital, and led the operations on the airport.<sup>2071</sup> He called the commander of operations and ordered to attack the enemy.<sup>2072</sup> Floribert Kisembo was also present in Bunia, together with one of his bodyguards, a female ‘of no more than 12’ years of age.<sup>2073</sup> The UPC/FPLC also intended to disable the UPDF tanks, but the UPDF had been warned of this in advance.<sup>2074</sup>

650. Upon hearing the sound of gunshots, members of the population fled from the area.<sup>2075</sup> Although the UPC/FPLC made some initial progress, Lendu fighters from nearby villages joined the fighting in support of the UPDF<sup>2076</sup> while the UPC/FPLC was unable to receive assistance from Rwandan forces.<sup>2077</sup>

<sup>2069</sup> Agreed Fact 55. On the timing of the attack, the Chamber relies on the evidence of P-0888 as the Chamber considers his testimony regarding the unfolding of this attack credible and reliable (P-0888: T-105, page 86). The evidence is considered in addition to D-0300: T-221, page 32; P-0002: T-171, page 23; and D-0013: DRC-D18-0001-6475, at 6500; and DRC-OTP-2078-0202, at 0202. *See also* P-0041: DRC-OTP-0147-0002, at 0025.

<sup>2070</sup> D-0300: T-221, pages 29 to 30; P-0012: DRC-OTP-2054-0073, at 0143; and P-0888: T-105, page 88. *See also* P-0245: T-142, page 74; and P-0317: T-192, pages 21 to 22.

<sup>2071</sup> P-0963: T-80, pages 35 to 36.

<sup>2072</sup> P-0888: T-105, pages 87 to 88.

<sup>2073</sup> P-0963: T-80, pages 36 to 37; P-0888: T-105, page 88; and D-0300: T-221, page 30. P-0907 also indicated that one of Floribert Kisembo’s bodyguards, a female of no more than 12 years of age, was also present in Bunia on 6 March 2003. He testified that when the Ugandans attacked in Bunia on that date, she fled along with Kisembo to go to Mongbwalu. The witness first saw her in Mongbwalu (P-0907: T-89, page 55) and does not give more details about how Kisembo’s bodyguards actually participated in the assault, or arrived afterwards in Bunia. In these circumstances, the Chamber cannot conclude beyond reasonable doubt that she participated in the fighting or carried out other combat related activities as part of the assault on Bunia on 6 March 2003.

<sup>2074</sup> P-0012: T-164, pages 29 to 30; and D-0300: T-221, pages 30 to 31.

<sup>2075</sup> P-0002: T-171, page 23.

<sup>2076</sup> P-0002: T-171, pages 23 to 24; P-0012: DRC-OTP-2054-0073, at 0143; P-0300: T-166, page 62; and P-0888: T-105, pages 85 to 86. *See also* P-0317: T-192, pages 21 to 22.

<sup>2077</sup> P-0012: DRC-OTP-2054-0073, at 0143. The Chamber heard evidence from a number of witnesses who believe that the UPC/FPLC attack failed, at least in part, because a UPC/FPLC official had informed the UPDF on 5 March 2003 that they were preparing an attack on the following day. For evidence on this point, *see* D-0300: T-221, page 31; P-0012: DRC-OTP-2054-0073, at 0143; and P-0055: T-74, pages 84 to 85. Furthermore, Mr Ntaganda testified that two UPC/FPLC commanders, Thomas Kasangaki and Nduru Tchaligonza abandoned the UPC/FPLC and joined the UPDF during the attack (D-0300: T-221, pages 32 to 33).



651. At the end of the day, Mr Ntaganda and Floribert Kisembo ordered their subordinates to retreat.<sup>2078</sup> UPC/FPLC soldiers were chased through nearby villages on the road to Kobu and in the direction of Mongbwalu.<sup>2079</sup>
652. Mr Ntaganda, Floribert Kisembo, and Salongo Ndekezi withdrew to Centrale, where they briefly met up with Thomas Lubanga.<sup>2080</sup> Mr Ntaganda and Thomas Lubanga then left for Bule,<sup>2081</sup> while Floribert Kisembo and his bodyguards headed to Mongbwalu.<sup>2082</sup>
653. With no UPC/FPLC presence in Bunia, the city came under the control of pro-Lendu forces<sup>2083</sup> and the UPDF.<sup>2084</sup> Some members of the Lendu population who had been displaced from their villages during the Second Operation were able to find safety in Bunia.<sup>2085</sup>

<sup>2078</sup> **P-0888**: T-105, pages 86 and 88; and **D-0300**: T-221, pages 32 to 33.

<sup>2079</sup> **P-0030**: T-145, page 71; **P-0877**: DRC-OTP-2077-0118-R03, at 0123, para. 25. *See also*: **P-0850**: T-112, page 85; **P-0041**: DRC-OTP-0147-0002, at 0025; and DRC-OTP-2078-0202, at 0202. In para. 50 of the UDCC it is alleged that, during this attack, ‘the UPC/FPLC forces deliberately destroyed homes, pillaged, killed at least 25 civilians and injured others (some through the heavy artillery shelling of homes)’. The Prosecution states that ‘during this assault, several civilians were killed and houses, shops and offices were looted or destroyed’, without mentioning specifically that the UPC/FPLC forces were the perpetrators (Prosecution Closing Brief, para. 185). In any case, based on the evidence, the Chamber is unable to conclude that the UPC/FPLC committed any acts of murder of civilians, attacks against civilians, pillaging, or destruction of property, in Bunia on 6 March 2003. P-0317 testified that that ‘civilians were killed by both sides’ as ‘the aim was to drive them away. There wasn’t time to go and kill civilians on an ethnic basis. They were fighting against the Lendu and the UPDF. So a lot of people died because they were there while there was firing going on. Pillaging was carried out by pretty much everybody’. She added that she did not remember if it was by the UPC/FPLC soldiers (**P-0317**: T-192, page 22), which, according to the Chamber, renders her testimony on this aspect unreliable. *See also* DRC-OTP-0074-0422, at 0045, paras 73 and 74.

<sup>2080</sup> **P-0888**: T-105, pages 86, and 88 to 89; **P-0963**: T-80, pages 36 to 37; and **D-0300**: T-221, pages 37 to 38.

<sup>2081</sup> **D-0013**: DRC-D18-0001-6475, from 6500 to 6501; **P-0963**: T-80, pages 36 to 37; and **D-0300**: T-221, pages 38 to 39.

<sup>2082</sup> **P-0041**: DRC-OTP-0147-0002, at 0025, para. 144; **P-0907**: T-89, page 55; and **P-0963**: T-80, pages 36 to 37.

<sup>2083</sup> **P-0043**: T-190, page 39; **P-0365**: T-147, pages 84 to 85.

<sup>2084</sup> **P-0030**: T-145, pages 76 to 77; DRC-OTP-2078-0202, at 0202. *See also* DRC-OTP-2067-1989, at 1989, para. 1; and DRC-OTP-2067-1994, at 1994, para. 1.

<sup>2085</sup> **P-0976**: T-152, pages 22 to 23.

## 10. Bunia in May 2003

654. As found above, the UPC/FPLC retreated from Bunia in March 2003. On 6 May 2003, the UPDF withdrew its forces from Bunia.<sup>2086</sup> Following the UPDF's withdrawal, Lendu fighters made use of the security vacuum and large-scale killings and looting occurred in the city.<sup>2087</sup> Many persons, including members of the Hema community, sought refuge at the airport or at MONUC base, or fled the town, some of them accompanying the departing Ugandan forces.<sup>2088</sup>

655. The UPC/FPLC started a military operation on the ground led by Floribert Kisembo, and on 12 May 2003 it reached Bunia.<sup>2089</sup> At least one individual under 15 years of age participated in this assault alongside UPC/FPLC troops.<sup>2090</sup>

<sup>2086</sup> **P-0046**: T-103, page 50; **P-0030**: DRC-OTP-0151-0645, at 0645, para. 1; **P-0002**: T-170, pages 78 to 80, and DRC-OTP-0082-0013, at 00:12:36 to 00:13:33; DRC-OTP-2078-0704, at 0704, para. 1; and DRC-OTP-0074-0422, at 0446, para. 77.

<sup>2087</sup> **P-0030**: DRC-OTP-0151-0645, at 0645, para. 4; T-144, page 71; DRC-OTP-2078-0223, at 0224, para. 3; and DRC-OTP-0074-0422, at 0447, para. 81. *See also* DRC-OTP-2078-0704, at 0704, para. 2; DRC-OTP-2078-0223, at 0224, para. 3, and DRC-OTP-2078-0223, at 0224, para. 3; DRC-OTP-1061-0212, at 0458, para. 423; DRC-OTP-2078-0727, at 0728 and 0730; and DRC-OTP-2078-0582, at 0582, para. 1b.

<sup>2088</sup> **P-0012**: T-164, page 34; **P-0300**, T-166, page 70; DRC-OTP-2078-0704, at 0704, paras 4 to 5; and DRC-OTP-2078-0223, at 0225, para. 7. *See also* DRC-OTP-1061-0212, at 0458, para. 423; DRC-OTP-0074-0422, at 0446, para. 77; and DRC-OTP-0164-0910, from 00:02:31 to 00:03:16.

<sup>2089</sup> **P-0898**: T-154, page 29; and **P-0758**: T-161, page 36. *See also* Defence Closing Brief, para. 217. Regarding P-0758's participation in this attack, the Chamber notes that this was the first operation the witness fought in (**P-0758**: T-161, pages 34 and 44,) and that she provided a detailed account of its unfolding, notwithstanding the fact that she could not say in which month or year it took place (**P-0758**: T-161, page 34; and T-162, page 38; *see also* **P-0758**: T-162, pages 38 to 39). Regarding the timing of these events, the Chamber first recalls that other aspects of her testimony generally correspond with events which took place in 2003 (*see* para. 156 above; *see also* Defence Closing Brief, para. 1175, referring to DRC-D18-0001-2439, at 2439). In addition, the Chamber notes that many specifics provided in relation to the assault on Bunia are consistent with the accounts of the operation in May 2003 as reported by other credible witnesses referred to in this section, most importantly the fact that the battle was under the command of Floribert Kisembo, that civilians fled towards MONUC, as well as the conditions of the splitting up of the town when combat ended (*see* **P-0012**: DRC-OTP-2054-0073, at 0147). In light of this, the Chamber finds that the only reasonable conclusion is that the witness's evidence is about the May 2003 assault, as no other operation in Bunia involving the UPC/FPLC matches the details provided by P-0758. Concerning the content of her testimony, P-0758 explained how the troops travelled on foot to Bunia (**P-0758**: T-161, page 38), accompanied by civilian supporters (**P-0758**: T-161, pages 42 to 43; *see also* **P-0758**: T-161, page 43), and provided a precise account of at least two days of fighting. Notably, the Chamber observes that she provided specifics about, for example, the way she was approaching the enemy (**P-0758**: T-161, page 43); having seen the positioning of three heavy weapons by Floribert Kisembo (**P-0758**: T-161, pages 36, and 40 to 41), as well as the type of items she saw being looted by the soldiers during this assault (**P-0758**: T-161, page 40; and T-162, page 37). P-0758 also spontaneously gave candid details which, in the view of the Chamber, increases the reliability of her account, for example she explained that 'at that time, [she] wasn't afraid because [she] was smoking cannabis and [she] wasn't afraid of anything' (**P-0758**: T-161, page 37; *see also* **P-0758**: T-162, page 44). In light of the above, the Chamber considers P-0758's testimony in relation to her participation in this assault as credible and probative evidence

656. Before this operation, people who were in favour of the UPC, notably Hema ‘civilians’, were told to leave Bunia or risk being considered the ‘enemy’.<sup>2091</sup> In line with this, UPC/FPLC troops were specifically ordered to fight both Lendu soldiers and Lendu ‘civilians’, and told that they should kill anyone who remained behind, including children.<sup>2092</sup>

657. When in Bunia, UPC/FPLC troops acted in accordance with this order; they fired whenever they met someone who remained behind, including by deliberately killing fleeing ‘civilians’.<sup>2093</sup> UPC/FPLC soldiers also burned down houses<sup>2094</sup> and looted goods.<sup>2095</sup>

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of the UPC/FPLC assault on Bunia in May 2003. *See also* **P-0030**: DRC-OTP-0151-0645, from 0645 to 0646, paras 1 to 5; and T-144, pages 70 to 71.

<sup>2090</sup> **P-0898**: T-154, pages 29, and 31 to 33, referring to DRC-OTP-0103-0008. The Chamber recalls the conclusions in its general credibility assessment that P-0898’s self-identification in this video excerpt is accurate. Regarding the other individual identified by P-0898 in this video, the Chamber recalls its finding that this person named Tipe was part of Mr Ntaganda’s escort and was manifestly under 15 years of age (*see* para. 388 above). However, in the absence of specific evidence about this person’s participation in the May 2003 assault alongside the UPC/FPLC, and notwithstanding the fact that he is depicted in the video as bearing a weapon, the Chamber considers that it is not in a position to conclude that he was affiliated with the UPC/FPLC in May 2003 when the video was filmed. Concerning DRC-OTP-0164-0910, the Chamber notes that it portrays certain persons who appear to be very young, carrying semi-automatic rifles (DRC-OTP-0164-0910, from 00:05:38 to 00:05:45), and that these persons are referred to by the narrator as members of the UPC/FPLC (DRC-OTP-0164-0910, from 00:05:17 to 00:05:32). However, on the basis of the information before it, the Chamber cannot conclude that the individuals portrayed in the footage were UPC/FPLC soldiers under the age of 15 who participated in the assault on Bunia in May 2003. The Chamber also notes that P-0057 testified that on 12 May 2003, the UPC/FPLC’s troops in Bunia included children of 14 to 15 years old in oversized uniforms (**P-0057**: DRC-OTP-0150-0354, at 0387, para. 138). Since the witness does not distinguish between those under 15 from those of 15 years old, and without any indication, other than the wearing of oversized uniforms, why the witness assessed these persons to be 14 or 15 year old, the Chamber does not rely on P-0057’s testimony to reach the above finding. In addition, the Chamber notes P-0012’s testimony about having seen child soldiers in Bunia in May 2003, many of whom he stated were under the age of 15, and that notably, he described his interaction with one UPC/FPLC child soldier (**P-0012**: DRC-OTP-2054-0172, from 0247 to 0251). In this regard, and having considered the witness’s evidence concerning the group to which this specific soldier belonged in its context (DRC-OTP-2054-0274, from 0311 to 0313, and from 0320 to 0321; *see also* DRC-OTP-2054-0172, from 0244 to 0246), the Chamber is not satisfied beyond reasonable doubt that the child whom P-0012 met on this occasion was in fact affiliated with the UPC/FPLC at the time of their interaction. Finally, regarding DRC-OTP-0151-0665 and P-0030’s related testimony on the kadogos he saw alongside UPC/FPLC soldiers on 13 May 2003 (**P-0030**: T-146, pages 20 to 21, 31, and 33), having notably considered the witness’s evidence on the use of this term (**P-0030**: T-146, pages 59, and 62 to 63, referring to DRC-OTP-0151-0665, from 00:21:25 to 00:21:49), the Chamber is not in a position to determine that the youngest such individuals were manifestly under 15 years of age.

<sup>2091</sup> **P-0758**: T-161, page 39; and T-162, page 40.

<sup>2092</sup> **P-0758**: T-161, pages 35, 39, and 43. *See also* **P-0030**: DRC-OTP-0151-0645, at 0645, paras 2 to 4.

<sup>2093</sup> **P-0758**: T-161, pages 43 to 44. *See also* **P-0030**: DRC-OTP-0151-0645, from 0645 to 0646, paras 2 to 6.

<sup>2094</sup> **P-0758**: T-161, page 40. *See also* **P-0057**: DRC-OTP-0150-0354, at 0386, para. 131; DRC-OTP-0074-0422, at 0447, para. 77. Satellite imagery of Bunia shows that, between 26 January 2003 and 19 June 2003, numerous structures were destroyed and burned (DRC-OTP-2099-0166, at 0209). Satellite Imagery expert Lars Bromley (P-0810) identified ‘about 219 destroyed structures’ in his report (**P-0810**: T-176, page 9), but it is unknown at

658. In the period after the UPDF left the town, numerous persons on both sides of the conflict were raped,<sup>2096</sup> killed, or severely injured in Bunia.<sup>2097</sup>

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what point in time during the period between 26 January and 19 June 2003 the destruction or burning occurred, and what caused it. P-0317 described that with the fighting between the Lendu and Hema, after the departure of the Ugandans, there was a lot of destruction of infrastructure (**P-0317**: T-192, page 21).

<sup>2095</sup> **P-0758**: T-161, page 40; and T-162, page 37; and **P-0030**: DRC-OTP-0151-0645, at 0645, para. 3, and 0647, para. 11; T-144, page 71; T-146, pages 18 to 21, 28 to 42, and 84, referring to DRC-OTP-0151-0665, from 00:11:12 to 00:23:54. Concerning P-0030's testimony regarding the content of this video, the Chamber notes the witness provided much context to the images depicted therein and explained at length his personal recollection of the relevant events, which he witnessed himself. Moreover, it is noted that the witness mentioned at least three UPC/FPLC soldiers which he recognised in the video by name (**P-0030**: T-146, page 37; *see also* the references in the below footnote). The Chamber finds P-0030's account in this regard to be credible, notably his explanation that the video was recorded with the objective to suggest things which were not in fact accurate ('a masquerade', *see* **P-0030**: T-146, page 36), and has therefore retained his explanations in assessing the exhibit. *See also* **P-0012**: T-164, page 36; **P-0300**: T-166, pages 72 to 73. The Chamber notes that P-0031 also testified about the UPC on 12 May 2003 having taken refrigerators from the general hospital and thereby destroyed vaccines (**P-0031**: T-174, pages 108 to 109). The Chamber however notes that, according to a MONUC report, this event took place on 24 and 25 May 2003 (DRC-OTP-0005-0023, at 0023), and accordingly, the Chamber will not rely on P-0031's evidence concerning the alleged looting.

<sup>2096</sup> With regard to the occurrence of rape, the Prosecution relies on P-0030 (Prosecution Closing Brief, para. 188), who referred to being aware of one specific case of rape, which he appeared to attribute to the UPC/FPLC. However, this witness did not explain his basis of knowledge and did not provide information that indicates that the alleged rape was committed by members of the UPC/FPLC. In this regard, the Chamber further notes that according to P-0030, the girl was of Hema ethnicity (**P-0030**: T-144, pages 72 to 73). The Prosecution further refers to a HRW report (Prosecution Closing Brief, para. 188, referring to DRC-OTP-2003-0497, from 517 to 519) that states that after the UPC took control over Bunia in May 2003, '125 women and girls were raped', and includes two excerpts of interviews with persons only identified by their first name. Besides the fact that the report does not provide any basis for the number of rapes reported, the Chamber notes that the two interview excerpts make reference to 'UPC combatants', but do not explain on what basis it was concluded that the persons who committed the reported rapes were members of the UPC. In these circumstances, the Chamber can only attach little weight to this piece of evidence. A report submitted to the UN Security Council, relied on by the Prosecution (Prosecution Closing Brief, para. 188, referring to DRC-OTP-0074-0422, from 0436 to 0437) includes a general allegation that the UPC committed rapes, but with no further explanation or substantiation. Similarly, P-0317 testified that there were some 20 cases of rapes by the UPC (**P-0317**: T-192, page 21). Therefore, while the Chamber considers that the evidence shows that sexual violence took place at the relevant time, in the absence of more specific testimony, it does not make a finding on the perpetrators of the sexual violence which occurred in the context of the fighting in Bunia in May 2003.

<sup>2097</sup> **0758**: T-161, page 40; **P-0057**: DRC-OTP-0150-0354, at 0386, paras 131 and 133. *See also* video footages DRC-OTP-0164-0910, from 00:00:00 to 00:05:16; and DRC-OTP-0151-0665, from 00:11:14 to 00:11:50, and from 00:24:59 to 00:27:00; **P-0030**: T-146, pages 9, 18, 39, and 84; and DRC-OTP-0151-0645, at 0647, para. 11. With regard to the Defence submission that these persons depicted in DRC-OTP-0151-0665 were 'victims of the Lendu combatants' (Defence Closing Brief, para. 129), the Chamber considers that on the basis of the images and the narration, it cannot assess how these persons died or who would have killed them. In this regard, **P-0012**: T-164, pages 35 to 36. **P-0317**: T-192, page 21; **P-0046**: T-103, page 51. *See also* **P-0300**: T-166, pages 70 to 71). It further notes MONUC reports that 'fierce fights' took place between the UPC/FPLC and the Lendu militia, and that the 'fight caused hundreds [of] civilian casualties' (DRC-OTP-0065-0148, at 0149, para. 2; *see also* DRC-OTP-0074-0422, at 0447, para. 78), providing numbers that are based on interviews only. Based on the foregoing, the Chamber concludes that during and after the fighting in Bunia in May 2003, both Hema and Lendu were killed. However, it has not been provided with sufficiently clear and precise evidence to reach specific findings on how and by whom the victims were killed.

## V. LEGAL FINDINGS

659. In the following sections of the Judgment, the Chamber lays out its legal findings. First, the Chamber addresses the contextual elements as they are relevant to all the subsequent analysis and conclusions. Second, the Chamber addresses the charges for which the responsibility of Mr Ntaganda is alleged as that of a direct perpetrator. Third, the Chamber turns to the charges for which the responsibility of Mr Ntaganda is alleged as an indirect co-perpetrator.

### A. CONTEXTUAL ELEMENTS

#### 1. Contextual elements of crimes against humanity

660. The Pre-Trial Chamber confirmed several charges of crimes against humanity.<sup>2098</sup> Under the Statute, crimes against humanity are acts listed in Article 7(1), ‘when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’. For each of the crimes against humanity, as indicated in the Elements of Crimes, the conduct must therefore have been ‘committed as part of a widespread or systematic attack directed against a civilian population’, while the perpetrator knew that this conduct was part of such an attack.<sup>2099</sup> The Chamber sets out below the relevant legal considerations regarding these general contextual elements.

#### a) Existence of an ‘attack directed against any civilian population’

661. Article 7(2)(a) of the Statute defines an ‘attack directed against any civilian population’ as: (i) a ‘course of conduct involving the multiple commission of acts’ mentioned in Article 7(1); (ii) directed ‘against any civilian population’; and (iii)

<sup>2098</sup> Confirmation Decision, paras 12, 36, and 97.

<sup>2099</sup> Elements of Crimes, the last two elements of Article 7(1)(a), (d), (g)-1, (g)-2, and (h).

‘pursuant to or in furtherance of a State or organizational policy to commit such attack’.

**(1) Course of conduct involving the multiple commission of acts referred to in Article 7(1)**

662. An ‘attack’ for the purpose of crimes against humanity is distinct from an ‘attack’ referred to in Article 8 of the Statute for purpose of determining whether a war crime was committed.<sup>2100</sup> It may be, but need not be, part of a military operation.<sup>2101</sup> The requirement that the acts form part of a ‘course of conduct’ indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts.<sup>2102</sup>

663. In addition, the statutory requirement that the ‘course of conduct’ must involve the ‘multiple commission of acts’<sup>2103</sup> sets a quantitative threshold involving a certain number of acts.<sup>2104</sup> Each of the acts must fall within the course of conduct and cumulatively they must satisfy the required quantitative threshold.<sup>2105</sup> To demonstrate the multiple commission of acts, only those acts enumerated in Article 7(1)(a) to (k) may be relied upon, but acts not listed in Article 7(1) may be nevertheless considered for other purposes. For instance, they can assist the determination whether the attack was directed against a civilian population, or whether it was pursuant to, or in furtherance of, a State or organisational policy.<sup>2106</sup>

<sup>2100</sup> Article 7(2)(a) of the Statute; and Elements of Crimes, Introduction to Article 7, para. 3. Other chambers have explained that ‘attack’ refers to ‘campaign or operation carried out against the civilian population’. *Gbagbo Confirmation Decision*, para. 209, and the case law listed in footnote 505 thereof.

<sup>2101</sup> Elements of Crimes, Introduction to Article 7, para. 3.

<sup>2102</sup> *Bemba Trial Judgment*, para. 149, referring to the *Gbagbo Confirmation Decision*, para. 209.

<sup>2103</sup> Article 7(2)(a) of the Statute; and Elements of Crimes, Introduction to Article 7, para. 3.

<sup>2104</sup> Trial Chamber III considered this to be “more than a few”, “several” or “many” acts’ (*Bemba Trial Judgment*, para. 150).

<sup>2105</sup> See ICTY, *Kunarac et al* Appeal Judgment, paras 96, and 100; as also referred to in *Bemba Trial Judgment*, para. 150.

<sup>2106</sup> *Bemba Trial Judgment*, para. 151.

664. As set out in detail below, the Chamber finds that the UPC/FPLC committed several acts constituting murder, rape, sexual slavery, persecution, and forcible transfer of civilians, during the First and Second Operation.<sup>2107</sup> These two operations were part of the same military campaign and constituted a logical succession of events. As such, although separate in place and time, the acts performed by the UPC/FPLC troops during the First and Second Operation are part of one and the same course of conduct.

665. In addition, at the end of August 2002, during the assault on Songolo, soldiers of the emerging UPC/FPLC killed civilians, notably children and babies, and looted from houses and shops.<sup>2108</sup> During the assault and *ratissage* operation in Zumbe in October 2002, UPC/FPLC troops killed civilians and burned houses.<sup>2109</sup> During the assault on Komanda and the related *ratissage* operation in November 2002, they killed civilians, looted goods, and raped women.<sup>2110</sup> Finally, during the assault on Bunia in May 2003, UPC/FPLC soldiers killed civilians, burned down houses and looted goods.<sup>2111</sup> The Defence alleges that the UPC/FPLC conducted its military operations on a quasi-daily basis in 2002-2003, during which no attacks were directed at civilians.<sup>2112</sup> The Defence does not refer to specific events, and the Chamber has not made factual findings going beyond the allegations of the Prosecution. In any case, the fact that the UPC/FPLC may have also conducted operations that were solely serving a military purpose and during which civilians were not attacked has no bearing on the validity of the factual findings of the Chamber that during several specific assaults, on which evidence has been presented to the Chamber, civilians were deliberately attacked. As such, the Chamber's related legal findings are also not affected by the Defence's argument.

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<sup>2107</sup> See section V.C.4 Findings of the Chamber on the crimes charged.

<sup>2108</sup> See para. 453 and 454.

<sup>2109</sup> See para. 457.

<sup>2110</sup> See paras 463 to 465.

<sup>2111</sup> See para. 657.

<sup>2112</sup> Defence Closing Brief, para. 209.

666. Consequently, the Chamber is satisfied beyond reasonable doubt of the existence of a course of conduct which involved the multiple commission of acts referred to in Article 7(1).

## (2) Directed against any civilian population

667. The term ‘civilian population’, within the phrase ‘directed against any civilian population’, denotes a collective, as opposed to individual civilians.<sup>2113</sup> Whereas a civilian population under Article 7(1) cannot constitute a limited and randomly selected group of individuals,<sup>2114</sup> the use of ‘any’ indicates that the provision should not be understood as being limited to populations defined by a common nationality, ethnicity, or other similar distinguishing features.<sup>2115</sup>

668. When crimes against humanity are alleged to have been committed during an armed conflict, as in the present case, the presence within a civilian population of individuals who do not fall under the definition of ‘civilians’ does not deprive the population of its civilian character.<sup>2116</sup> The requirement that the attack be directed against the civilian population however means that the civilian population must be the *primary*, as opposed to an incidental, object of the attack.<sup>2117</sup> The Chamber may therefore consider whether a military operation, alleged to form part of the alleged attack against a civilian population, complied with the requirements of IHL, including the principle of distinction between legitimate targets and protected persons or objects and the duty to take precautionary measures.<sup>2118</sup>

669. Finally, the Chamber notes that, despite the requirement that the attack be directed against a civilian population, there is no requirement that the *individual*

<sup>2113</sup> Bemba Trial Judgment, para. 152.

<sup>2114</sup> Kenya Authorization Decision, para. 81; and Bemba Confirmation Decision, para. 77.

<sup>2115</sup> Bemba Trial Judgment, para. 155; Katanga Judgment, para. 1103; and Bemba Confirmation Decision, para. 76.

<sup>2116</sup> Article 50(3) of Additional Protocol I; *see also* Bemba Trial Judgment, para. 153.

<sup>2117</sup> Bemba Trial Judgment, para. 154; and Katanga Judgment, para. 1105.

<sup>2118</sup> *See* ICTY, Kunarac et al. Appeal Judgment, para. 91.



victims of crimes against humanity be civilians for the purpose of IHL, but may include persons otherwise protected under this body of law.<sup>2119</sup>

670. The Defence alleges that there is no reliable evidence that during the First and Second Operation any non-Hema civilians were targeted as such.<sup>2120</sup> The Defence, relying on its proposition with respect to the UPC/FPLC conduct during these operations, submits therefore ‘that neither the First Attack, nor the Second Attack considered individually or together constituted widespread or systematic attacks against the civilian population.’<sup>2121</sup> Given the fact that the Chamber, based on its assessment of the evidence, found that the UPC/FPLC committed a number of violent acts against the civilian population during these two operations, the premise on which the Defence’s submission is based is not valid.

671. The Chamber recalls that, at the training camps, UPC/FPLC recruits were taught that the Lendu as such, including civilians, were the enemy.<sup>2122</sup> At training camps, recruits sang songs inciting them to attack and kill the Lendu.<sup>2123</sup> During deployment, the expression ‘*kupiga na kuchaji*’, which was understood to mean attacking all the Lendu, including civilians, and to loot their property, was commonly used in UPC/FPLC commanders’ orders to soldiers.<sup>2124</sup> During the assaults that followed these orders, civilians were murdered and raped.<sup>2125</sup> The senior commanders further ordered forcible transfer of the civilian population.<sup>2126</sup> In addition to these acts which are specified in Article 7(1), orders were given to direct fire at civilians.<sup>2127</sup> UPC/FPLC soldiers also looted items belonging to civilians<sup>2128</sup> and destroyed their houses.<sup>2129</sup> As demonstrated below, these acts

<sup>2119</sup> *Bemba Trial Judgment*, para. 156.

<sup>2120</sup> Defence Closing Brief, paras 193 to 207, and 213.

<sup>2121</sup> Defence Closing Brief, para. 192.

<sup>2122</sup> See para. 373.

<sup>2123</sup> See para. 373.

<sup>2124</sup> See paras 415, 484, 488, and 560 to 561.

<sup>2125</sup> See sections Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2) and Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2126</sup> See section Forcible transfer of population as a crime against humanity (Count 12).

<sup>2127</sup> See para. 508.

<sup>2128</sup> See section Pillage as a war crime (Count 11).

formed part of a planned and coordinated military campaign and, as such, they are to be considered as more than a mere aggregate of random acts.

672. Taking into account the above factors, the Chamber finds beyond reasonable doubt that the attack was directed against a civilian population.

### **(3) Pursuant to or in furtherance of a State or organisational policy**

673. In accordance with Article 7(2)(a), the course of conduct involving a multiplicity of acts must be committed ‘pursuant to or in furtherance of a State or organizational policy to commit such attack’, thus requiring a link to be established between the attack and the policy.<sup>2130</sup> The Elements of Crimes specify that the concept of ‘policy’ requires the active promotion or encouragement of an attack against a civilian population by a State or organisation. In exceptional circumstances, such a policy may be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attacks, but the existence of such a policy cannot be inferred solely from the absence of governmental or organisational action.<sup>2131</sup>

674. A policy may consist of a pre-established design or plan, but it may also crystallise and develop only as actions are undertaken by the perpetrators.<sup>2132</sup> The existence of a policy may be inferred from a number of factors, including: (i) the fact that the attack was planned or directed; (ii) the existence of a recurrent pattern of violence, for example, repeated actions occurring according to a same sequence; (iii) the use of public or private resources to further the policy; (iv) the

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<sup>2129</sup> See section Destroying the adversary’s property as a war crime (Count 18).

<sup>2130</sup> See *Katanga Judgment*, paras 1115 to 1116.

<sup>2131</sup> Elements of Crimes, Introduction to Article 7, footnote 6.

<sup>2132</sup> *Katanga Judgment*, para. 1110. As noted by Trial Chamber II ‘[t]he State or organisational policy may therefore become clear to the perpetrators, as regards its modalities, only in the course of its implementation, such that definition of the overall policy is possible only *in retrospect*, once the acts have been committed and in the light of the overall operation or course of conduct pursued. Otherwise stated, the State or organisational policy may be part of an ongoing process whose every aspect is not always predetermined before the operation or course of conduct pursued against the targeted civilian population has commenced or even once it has started’ (emphasis in original).

involvement of the State or organisational forces in the commission of crimes; (v) statements, instructions, or documentation attributable to the State or the organisation condoning or encouraging the commission of crimes; (vi) an underlying motivation;<sup>2133</sup> and (vii) the existence of preparations or collective mobilisation orchestrated and coordinated by that State or organisation.<sup>2134</sup>

675. Given the fact that the present case concerns conduct by an armed group rather than a State, the existence of an organisation behind the policy needs to be demonstrated. Different interpretations of the notion of ‘organisation’ have been used in the Court’s case law.<sup>2135</sup> In light of the Factual Findings, and as set out in the next paragraphs, the Chamber does not consider it necessary to discuss the definition of an organisation, and any required level, for the purpose of Article 7(2)(a) of the Statute, as it is evident that the UPC/FPLC had a well-organised structure.

676. In the present case, the ‘organisation’ that set out the ‘policy’ for the purpose of Article 7(1) existed before the UPC/FPLC was officially constituted. The strategy to achieve its goal was discussed before September 2002 and prepared by a community of people who, despite the different names they used, were all led by Thomas Lubanga<sup>2136</sup> and all had the same claims and motivations.

677. In April 2002, while military leaders of the emerging UPC/FPLC entered into a conflict with the APC,<sup>2137</sup> its political leaders issued a declaration on behalf of the

<sup>2133</sup> See for similar factors *Kenya Authorization Decision*, paras 84 to 88, referring to, *inter alia*, *Katanga and Ngudjolo Confirmation Decision*, para. 396.

<sup>2134</sup> *Katanga Judgment*, para. 1109.

<sup>2135</sup> See *Kenya Authorization Decision*, paras 90 to 93; Dissenting Opinion of Judge Kaul, *Kenya Authorization Decision*, paras 51 to 53; *Bemba Trial Judgment*, para. 158; and Separate Opinion of Judge Ozaki to *Bemba Trial Judgment*, para. 29.

<sup>2136</sup> See paras 286 to 295.

<sup>2137</sup> See para. 313.

FPR.<sup>2138</sup> Members of both the political and military branches of the emerging UPC/FPLC participated in a meeting held in Kasese.<sup>2139</sup>

678. During the temporal scope of the charges, when the ‘organizational policy’ was allegedly implemented, the UPC/FPLC was a well-organised military armed group, consisted of a significant number of trained soldiers and possessed a significant arsenal of weapons, and resembled a conventional army.<sup>2140</sup>

679. The UPC/FPLC had a formal political<sup>2141</sup> and military structure.<sup>2142</sup> Its headquarters were based in Bunia during most of the temporal scope of the charges.<sup>2143</sup> The UPC/FPLC had divided its operation units over three geographical sectors.<sup>2144</sup> The UPC/FPLC made use of various means of communication, including radio networks, with trained radio operators, and satellite communication.<sup>2145</sup>

680. In order to realise its goals, the UPC/FPLC undertook to develop its military capacity. It obtained weapons<sup>2146</sup> and engaged in activities aimed at recruiting a large number of new members.<sup>2147</sup> From May 2002 onwards, the emerging UPC/FPLC had a military training centre in Mandro, where recruits were trained.<sup>2148</sup> Besides Mandro, the UPC/FPLC had other training camps where recruits were trained in a structured manner, including in military skills.<sup>2149</sup> The UPC/FPLC also concluded a military alliance with a group of APC dissidents under the command Jérôme Kakwavu, integrating the latter into its forces.<sup>2150</sup> As

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<sup>2138</sup> See para.287.

<sup>2139</sup> See para.288.

<sup>2140</sup> See paras 314 and 324; and sections IV.A.2.d) Command structure and effectiveness of the military apparatus, and section IV.A.2.f) Weapons, ammunition, and other material.

<sup>2141</sup> See paras 298 and 300 to 301.

<sup>2142</sup> See paras 316 and 319.

<sup>2143</sup> See para. 320.

<sup>2144</sup> See para. 326.

<sup>2145</sup> See paras 341 to 345.

<sup>2146</sup> See section IV.A.2.f) Weapons, ammunition, and other material.

<sup>2147</sup> See section IV.A.3.a) Recruitment.

<sup>2148</sup> See para. 314. See also section IV.A.3.b)(1) Training camps.

<sup>2149</sup> See section IV.A.3.b)(1) Training camps.

<sup>2150</sup> See para. 325.

such, the UPC/FPLC had the capability to carry out large-scale military operations, lasting several weeks and including different fronts at the same time.<sup>2151</sup>

681. The Chamber therefore finds beyond reasonable doubt that the UPC/FPLC constituted an organisation for the purpose of Article 7 of the Statute.

682. As regards the question whether the course of conduct occurred pursuant to an organisational policy, the Chamber recalls that around mid-2002, the leaders of emerging UPC/FPLC took steps to put an end to the power exercised by the RCD-K/ML in the territory of Ituri.<sup>2152</sup> On the military side, this strategy involved liberating Bunia<sup>2153</sup> and taking control of key locations in Ituri.<sup>2154</sup> The First and Second Operation, which form the temporal scope of the relevant charges in the present case, were undertaken by the UPC/FPLC in this context.<sup>2155</sup>

683. In June 2002, the political leaders of the emerging UPC/FPLC indicated in written communications that Ituri must be saved, including by shedding 'our' blood.<sup>2156</sup> In the context of the perceived so-called 'ethnic conflict' between the Hema and the Lendu,<sup>2157</sup> where plans for genocide or control of the territory by a competing ethnic group were recurrent fears,<sup>2158</sup> the enemy, the RCD-K/ML, was criticised by the emerging UPC/FPLC for putting in place discriminatory policies and for failing to properly represent the interests of the 'Iturians', which were opposed to the 'Kivu citizens', designated as 'negative forces'.<sup>2159</sup> The citizens of

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<sup>2151</sup> UPC/FPLC therefore also had the means to carry out an attack against a civilian population, including access to financing, means of transport, weapons and ammunition. *See also* para. 302.

<sup>2152</sup> *See* paras 287 to 294.

<sup>2153</sup> *See* para. 292.

<sup>2154</sup> *See* paras 438 to 439.

<sup>2155</sup> *See* paras 440 to 442.

<sup>2156</sup> *See* para. 292.

<sup>2157</sup> *See* para. 21.

<sup>2158</sup> *See* paras 296 and 303.

<sup>2159</sup> *See* para. 287. *See also* para. 291.

the so-called 'Kivu Holding' were considered to be over-represented within the RCD-K/ML.<sup>2160</sup>

684. Furthermore, as expressed in the relevant documents,<sup>2161</sup> certain ethnic groups were perceived by political leaders of the emerging UPC/FPLC as associated with political and military enemy group. The RCD-K/ML was assimilated to the 'Nande people', who were accused of exploiting Ituri to the benefit of North Kivu.<sup>2162</sup> The APC was also accused of siding with the Lendu combatants.<sup>2163</sup> In June 2002, in Kampala, it was stated that one of the objectives of the emerging UPC/FPLC was to drive out the non-natives; targets were defined as being first, the Nande, and then, the Lendu.<sup>2164</sup>

685. Although the UPC/FPLC denounced the RCD-K/ML's political and administrative management of Ituri as being ethnically biased,<sup>2165</sup> it also worked on an ethnic basis. The Chamber found that following the formalisation of the UPC/FPLC in September 2002, important positions in both the political and military branches were held by Hema and that individuals were excluded from certain discussions and meetings on an ethnic basis.<sup>2166</sup> Furthermore, the political leaders of the UPC/FPLC, by opposing the Iturians to the non-Iturians (the so called 'Kivu Holding'), as indicated above, also contributed to setting certain parts of the population against each other.

686. The Defence submits that the UPC, as a political movement, had the objective to 'restore good governance; promote reconciliation; establish peace; [and] protect all civilians without discrimination'<sup>2167</sup> and that the mutineers organised and set

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<sup>2160</sup> See para. 287.

<sup>2161</sup> See paras 287 to 292.

<sup>2162</sup> See para. 287.

<sup>2163</sup> See para. 291.

<sup>2164</sup> See para. 293.

<sup>2165</sup> Defence Closing Brief, para. 55.

<sup>2166</sup> See paras 302 and 319.

<sup>2167</sup> Defence Closing Brief, para. 44.

up a training camp ‘to defend themselves’.<sup>2168</sup> While recognising that some of the documents produced by the UPC/FPLC indeed promoted peace, or denounced the crimes committed against the local population of Ituri, the Chamber finds that the internal communications and documents as well as military actions undertaken by the UPC/FPLC show that in parallel its goal was to actively chase away the RCD-K/ML, and those who were perceived as non-Iturians.

687. While the Chamber notes the stated ambition of the UPC/FPLC to ‘defend the population’ as a whole, this stated aim was directly contradicted by the planning and unfolding of the group’s military operations. In this regard, the Chamber notes that the UPC/FPLC recruits, during their training, were taught that the Lendu as such were the enemy.<sup>2169</sup> A song inciting recruits to kill the Lendu was recited during training.<sup>2170</sup>

688. Further, the expression ‘*kupiga na kuchaji*’ was commonly used within the UPC/FPLC, and was understood by the soldiers to mean attacking all the Lendu, including civilians, and to loot their property.<sup>2171</sup> UPC/FPLC troops generally acted following a certain *modus operandi*, characterised by an initial assault and the taking of control over the town or village, followed by a *ratissage* operation, extending up to several days after the initial assault, aimed at eliminating any survivors, including civilians, as well as looting. It was found that ‘*kupiga na kuchaji*’ orders were given before the First and Second Operation<sup>2172</sup> and that the troops behaved as instructed; indeed, they committed different types of violent acts targeting the civilians specifically.<sup>2173</sup> In sum, the unfolding of its military operations demonstrates how the UPC/FPLC was not only attempting to chase away the RCD-K/ML, but also the Lendu.

<sup>2168</sup> Defence Closing Brief, para. 59.

<sup>2169</sup> See para. 373.

<sup>2170</sup> See para. 373.

<sup>2171</sup> See para. 415.

<sup>2172</sup> See paras 484 and 488, and 561.

<sup>2173</sup> See section V.C.4 Findings of the Chamber on the crimes charged.

689. The crimes committed against the civilians were not the result of an uncoordinated and spontaneous decision of individual perpetrators acting in isolation, but were the intended outcome of the implementation of a policy which was actively promoted. The Chamber finds that the attack occurred pursuant to a preconceived strategy, in the execution of which the Lendu population was specifically targeted. Accordingly, it concludes beyond reasonable doubt that the course of conduct took place pursuant to a policy of the UPC/FPLC to attack and chase away the Lendu civilians as well as those who were perceived as non-Iturians.

#### **(4) Conclusion**

690. In light of all the above considerations, the Chamber finds beyond reasonable doubt that the UPC/FPLC conducted an attack directed against a civilian population between the assault on Bunia in August 2002 and the assault on the same city in May 2003.

##### **b) Widespread or systematic nature of the attack**

691. The term ‘widespread’ has been understood to mean that the attack is large-scale in nature and targeted at a large number of persons.<sup>2174</sup> Such an attack may be ‘massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims’.<sup>2175</sup> The assessment of whether the attack is widespread is neither exclusively quantitative nor geographical, but must be carried out on the basis of all the relevant facts of the case.<sup>2176</sup>

692. The term ‘systematic’ reflects the organised nature of the acts of violence and the improbability of their random occurrence.<sup>2177</sup> It refers to the existence of

<sup>2174</sup> *Bemba Trial Judgment*, para. 163; and *Katanga Judgment*, para. 1123.

<sup>2175</sup> *Bemba Trial Judgment*, para. 163; and *Bemba Confirmation Decision*, para. 83.

<sup>2176</sup> *Bemba Trial Judgment*, para. 163.

<sup>2177</sup> Pre-Trial Chamber I, *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman*,



‘patterns of crimes’, evidenced by non-accidental repetition of similar criminal conduct on a regular basis.<sup>2178</sup>

693. In considering the systematic character of the attack, the Chamber shall assess whether a series of repeated actions seeking to always produce the same effects on a civilian population were undertaken and, in doing so, it may consider whether: (i) identical acts took place or similarities in criminal practices can be identified; (ii) the same *modus operandi* was used; or (iii) victims were treated in a similar manner across a wide geographic area.<sup>2179</sup>

694. During the attack described above,<sup>2180</sup> the UPC/FPLC committed a series of acts constituting murder, persecution, forcible transfer of civilians, rape and sexual slavery against civilians in a large number of different locations, situated primarily in the area between Bunia and Mongbwalu, and extending to Songolo, Zumbe and Komanda. Accordingly, the Chamber concludes beyond reasonable doubt that the attack was widespread.

695. Further, during the attack as described above, the UPC/FPLC soldiers consistently engaged in similar conduct, producing the same effects on the targeted civilian population, namely the killings, rapes and displacement of Lendu, as well as the looting and destruction of houses. As already stated, the Chamber could identify a repeated *modus operandi*, characterised by an initial assault and the taking of control over the town or village, followed by a *ratissage* operation, extending up to several days after the initial assault, aimed at eliminating any survivors, including civilians, and at looting. Accordingly, the Chamber concludes beyond reasonable doubt that the attack was systematic.

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Decision on the Prosecution Application under Article 58(7) of the Statute, 27 April 2007, ICC-02/05-01/07-1-Corr, para. 62; and *Katanga Judgment*, para. 1123.

<sup>2178</sup> *Katanga Judgment*, para. 1123; and *Katanga Confirmation Decision*, para. 397.

<sup>2179</sup> *Katanga Judgment*, para. 1113.

<sup>2180</sup> See section V.A.1.a)(1) Course of conduct involving the multiple commission of acts referred to in Article 7(1).

**c) Acts committed as ‘part of’ the attack**

696. The individual acts under Article 7(1)(a) to (k) must be committed ‘as part’ of the widespread or systematic attack directed against any civilian population.<sup>2181</sup> The existence of this nexus will be determined on the basis of an objective assessment of the characteristics, aims, nature, and/or consequences of the acts concerned.<sup>2182</sup> The temporal and geographical proximity of the acts are relevant,<sup>2183</sup> but acts that are committed before or after the core of the attack against the civilian population may also, if sufficiently connected, be considered as part of that attack.<sup>2184</sup>

697. In the relevant sections, the Chamber will consider for the each of the charged crimes against humanity whether the acts in question were committed as part of the ‘attack’.

**2. Contextual elements of war crimes**

698. The Pre-Trial Chamber confirmed several war crimes allegedly committed in the context of an armed conflict not of an international character,<sup>2185</sup> pursuant to Articles 8(2)(c) and 8(2)(e) of the Statute.<sup>2186</sup> For each of the war crimes confirmed, the following two requirements must be established: (i) the conduct took place in the context of and was associated with an armed conflict not of an international character; and (ii) the perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>2187</sup>

<sup>2181</sup> Elements of Crimes, Introduction to Article 7, para. 2.

<sup>2182</sup> *Bemba Trial Judgment*, para. 165; and *Katanga Judgment*, para. 1124.

<sup>2183</sup> Christopher Keith Hall and Kai Ambos, ‘Article 7’, in Otto Triffterer and Kai Ambos (eds), *The Rome Statute of the International Criminal Court: A Commentary* (3<sup>rd</sup> ed. C.H. Beck, Hart Publishing and Nomos 2016), para. 16.

<sup>2184</sup> *Kunarac et al. Appeal Judgment*, para. 100.

<sup>2185</sup> In the present Judgment, the Chamber will use the terms ‘armed conflict not of an international character’ and ‘non-international armed conflict’ interchangeably.

<sup>2186</sup> *Confirmation Decision*, paras 31, 36, 74, and 97.

<sup>2187</sup> Elements of Crimes, Introduction to Article 8; and elements 4 and 5 of Article 8(2)(c)(i)-1, Article 8(2)(e)(i), Article 8(2)(e)(iv), Article 8(2)(e)(v), Article 8(2)(e)(vii), Article 8(2)(e)(viii); elements 3 and 4 of Article 8(2)(e)(vi)-1 and Article 8(2)(e)(vi)-2; and elements 6 and 7 of Article 8(2)(e)(xii).

699. The Prosecution submits that a conflict not of an international character existed at the relevant time,<sup>2188</sup> while the Defence avers that the situation is to be classified as an international armed conflict.<sup>2189</sup> The latter indicated that it did not wish to make 'specific submissions on the character of the conflict at this time' or on the Pre-Trial Chamber's 'finding on the contextual elements for war crime[s] pursuant to Art. 8'.<sup>2190</sup> In response, the Legal Representative for Former Child Soldiers requested the Chamber to reject the Defence's submission.<sup>2191</sup> However, noting that the Prosecution did not respond to the Defence's submission, and mindful that the Defence does not bear any burden of proof, as well as the Chamber's duty to independently establish whether the charges are proven, the Chamber will consider whether an international armed conflict or a conflict not of an international character existed in Ituri during the temporal scope of the charges. It recalls in this regard that it previously considered that 'the circumstances of the present case' made it 'appropriate to analyse the applicable law with respect to both non-international and international armed conflicts'.<sup>2192</sup>

700. An international armed conflict arises 'whenever there is a resort to armed force between States'.<sup>2193</sup> Other than the involvement of the Ugandan armed forces, the UPDF, which is discussed below, there is no evidence before the Chamber of clashes involving directly the armed forces of two or more States, nor is such a factual situation alleged or submitted to have taken place. Whether a *prima facie* conflict not of an international character was in fact international in nature as a result of internationalisation will be discussed below.

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<sup>2188</sup> Prosecution Closing Brief, para. 119 and further.

<sup>2189</sup> Defence Closing Brief, para. 563.

<sup>2190</sup> Defence Closing Brief, paras 563 to 564.

<sup>2191</sup> CLR1 Response Brief, paras 42 to 47.

<sup>2192</sup> Second Decision on Counts 6 and 9, para. 34.

<sup>2193</sup> *Tadić* Jurisdiction Decision, para. 70; and Common Article 2 of the 1949 Geneva Conventions.

**a) Existence of an armed conflict not of an international character**

701. Although paragraphs (2)(d) and (f) of Article 8 provide some guidance, the Court's legal framework does not define the term 'armed conflict not of an international character' as referred to in paragraphs (2)(c) and (e). However, noting that paragraph 2(e) and the Elements of Crimes explicitly refers to 'the established framework of the international law of armed conflict',<sup>2194</sup> the Chamber adopts the definition of 'armed conflict not of an international character' introduced by the ICTY Appeals Chamber in 1995,<sup>2195</sup> which has since been accepted by States as authoritative and has become part of State practice.<sup>2196</sup> It will therefore consider that such a conflict exists in case of 'protracted armed violence between governmental authorities and organized armed groups or between such groups within a State'.<sup>2197</sup>

702. An armed conflict not of an international character, commonly referred to as 'non-international armed conflict', is one of two legal types of armed conflict envisaged under IHL. An armed conflict is either international or non-international in nature and each type requires proof of a different set of facts. The existence of an armed conflict is to be determined according to the prevailing circumstances at the relevant time and does not depend on the subjective views of the parties to the conflict.<sup>2198</sup> It is therefore a factual determination to be made by the Chamber upon reviewing the evidence admitted at trial.

703. In order to distinguish situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, or other acts of a similar nature from

<sup>2194</sup> Elements of Crimes, Introduction to Article 8.

<sup>2195</sup> As also done in, *inter alia*, Bemba Trial Judgment, para. 128, and Katanga Judgment, para. 1173; and Lubanga Trial Judgment, para. 533.

<sup>2196</sup> ICRC, *Commentary on Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Cambridge University Press 2016), para. 424.

<sup>2197</sup> ICTY, *The Prosecutor v. Tadić*, Case No. IT-94-1-A, Decision on the defence motion for interlocutory appeal on jurisdiction, 2 October 1995 (*Tadić Jurisdiction Decision*), para. 70.

<sup>2198</sup> ICRC 2016 Commentary, paras 210 to 212.

a non-international armed conflict, (i) at least two organised armed groups need to have been involved in (ii) armed violence of a certain intensity.<sup>2199</sup>

### (1) Organisation requirement

704. In assessing whether the parties involved qualify as *organised* armed groups, the Chamber shall consider the characteristics of the groups concerned, including, *inter alia*, the following factors and indicators: (i) the existence of a command structure, the existence of headquarters, the issuing of political statements, and the use of official spokespersons; (ii) the military (operational) capacity of the armed group, which may be shown by, for example, the ability to define a unified military strategy, the use of military tactics, the ability to carry out (large scale or coordinated) operations, the control of territory, and having a territorial division into zones of responsibility; (iii) the logistical capacity of the armed group, indicated, among others, by the existence of a supply chain for military equipment, as well as by the group's ability to move troops around and to recruit and train personnel; (iv) the existence of an internal disciplinary system and the ability to implement IHL; and (v) the group's ability to speak with one voice, indicated, for example, by the capacity of the leadership to act on behalf of its members in political negotiations and to conclude agreements, such as cease-fire or peace agreements.<sup>2200</sup> These factors and indicators are not individually determinative, and a group may be sufficiently organised if only some of them are present.

705. The UPC/FPLC had headquarters in Bunia<sup>2201</sup> and a formal military structure, including a number of individuals appointed to serve specific functions in its

<sup>2199</sup> ICTY, *Tadić* Trial Judgment, para. 562; ICTR, *Akayesu* Trial Judgment, para. 620; ICTY, *Kordić and Čerkez* Appeal Judgment, para. 341. See also *Bemba* Trial Judgment, para. 137; *Katanga* Judgment, para. 1187; and *Lubanga* Trial Judgment, para. 534.

<sup>2200</sup> See, similarly, *Bemba* Trial Judgment, para. 134; *Katanga* Judgment, paras 1172-1187; and *Lubanga* Trial Judgment, paras 537-538. As identified in *Boškoski and Tarčulovski* Trial Judgment, paras 194 to 203, and the *Boškoski and Tarčulovski* Appeal Judgment, paras 19 to 24.

<sup>2201</sup> Namely, between September 2002 and March 2003. See para. 320.

General Staff.<sup>2202</sup> From at least June 2002, the UPC/FPLC recruited new members in various locations throughout Ituri.<sup>2203</sup> Approximately 1800 recruits were based in Mandro at the time,<sup>2204</sup> where training was provided.<sup>2205</sup> Besides Mandro, the UPC/FPLC had other training camps<sup>2206</sup> where recruits were trained in a structured manner, including in military skills.<sup>2207</sup>

706. While UPC/FPLC members were not paid, the UPC/FPLC had formalised ranks from May 2003 onwards, and its structure followed that of a conventional army.<sup>2208</sup> Although the number of persons within the various units, and therefore the size was different from most conventional armies, the names and order of the units matched those of a conventional army, and the units had identifiable commanders.<sup>2209</sup>

707. The UPC/FPLC divided its operation units over three geographical sectors.<sup>2210</sup> The assault on Mongbwalu at the end of November 2002, whereby troops approached Mongbwalu from two sides in order to jointly attack,<sup>2211</sup> is indicative of the group's ability to devise a military strategy and carry out a coordinated operation. The UPC/FPLC made use of various means of communication, including radio networks, with trained radio operators, and satellite communication.<sup>2212</sup>

708. The UPC/FPLC possessed heavy weapons, such as artillery and heavy machine guns, which were stored, together with ammunition, in weapons depots at various locations, and transported from there to the units that required

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<sup>2202</sup> Until 8 December 2003. *See* paras 316 to 319.

<sup>2203</sup> *See* para. 347.

<sup>2204</sup> *See* para. 365. *See also* para. 314.

<sup>2205</sup> *See* paras 362 and 365 to 366.

<sup>2206</sup> *See* paras 362, 367, and 370.

<sup>2207</sup> *See* para. 371.

<sup>2208</sup> *See* paras 324, 326 to 329.

<sup>2209</sup> *See e.g.* para. 329.

<sup>2210</sup> *See* para. 326.

<sup>2211</sup> *See* paras 478, 486, and 491 to 492.

<sup>2212</sup> *See* paras 341 to 346.

them.<sup>2213</sup> Several of its members were trained in the use of heavy weapons, and subsequently placed in special heavy weapon units.<sup>2214</sup>

709. The UPC/FPLC did not only operate as a well-structured armed force, it also externally acted as such. As President of the UPC, Thomas Lubanga regularly issued decrees on appointments and other matters related to its internal structure,<sup>2215</sup> and press releases and *communiqués*.<sup>2216</sup> The UPC even entered into agreements with private companies on the exploitation of natural resources in the area under its control.<sup>2217</sup>

710. On the basis of the foregoing, the Chamber finds that the UPC/FPLC constituted an organised armed group during the relevant period.

711. The UPC/FPLC was opposed by several armed actors, which formed alliances that changed over time. Moreover, while the emerging UPC/FPLC was initially assisted by the Uganda,<sup>2218</sup> and fought alongside the UPDF in Bunia in August 2002,<sup>2219</sup> it fought against the UPDF in March 2003.<sup>2220</sup> The UPDF, which consisted of uniformed soldiers, *inter alia*, possessed tanks and heavy weapons.<sup>2221</sup> Furthermore, as the official armed forces of Uganda, it must be considered as sufficiently organised for the purpose of the present enquiry.<sup>2222</sup>

712. As to the ‘Lendu fighters’ against whom the UPC/FPLC fought during the temporal scope of the charges, the evidence presented often merely refers to ‘Lendu fighters’, without it being clear whether these fighters belonged to a single unified entity. However, the Chamber notes that these fighters were able to fend

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<sup>2213</sup> See paras 334 to 338.

<sup>2214</sup> See para. 340.

<sup>2215</sup> See e.g. paras 308, 315, and 321.

<sup>2216</sup> See paras 295 and 299.

<sup>2217</sup> See para. 440, footnote 1250.

<sup>2218</sup> See e.g. paras 312 and 336.

<sup>2219</sup> See paras 445 and 447.

<sup>2220</sup> See paras 647 to 650.

<sup>2221</sup> See e.g. paras 433, 447 and 649.

<sup>2222</sup> ICTY, *Haradinaj et al.* Trial Judgment, para. 60; and ICRC, *Commentary on Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Cambridge University Press 2016), para. 429.

off assaults by the UPC/FPLC,<sup>2223</sup> despite the latter being, as determined above, well-organised and in possession of heavy weapons. Moreover, on several occasions, these fighters were able to temporarily defeat the UPC/FPLC and regain control over towns or villages.<sup>2224</sup> While the Chamber is not in a position to conclude that they constituted an organised armed group, the Chamber notes that they often fought alongside other opponents of the UPC/FPLC, whose organisation is discussed next.

713. The APC, the military wing of the RCD-K/ML,<sup>2225</sup> consisted of a large number of soldiers, who wore uniforms.<sup>2226</sup> It was divided into units, such as companies and brigades, had headquarters in different locations and geographical operational zones.<sup>2227</sup> The APC had military camps in several villages or towns in Ituri,<sup>2228</sup> had training facilities,<sup>2229</sup> controlled various locations for prolonged periods of time,<sup>2230</sup> and was able to successfully resist or, on occasion, defeat the UPC/FPLC in battle.<sup>2231</sup> The RCD-K/ML was involved in the political negotiations and signed ceasefire agreements.<sup>2232</sup> On the basis of these facts, the Chamber considers the APC, as the armed wing of the RCD-K/ML, to have been an organised armed group for the purpose of the present assessment.

714. Another opponent of the UPC/FPLC, the alliance of the FNI and the FRPI, was also involved in the political negotiations and signed ceasefire agreements.<sup>2233</sup> The perceived need to involve these groups in ceasefire agreements shows their ability to conduct military operations. The two groups reportedly each had an

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<sup>2223</sup> See para. 477.

<sup>2224</sup> See e.g. paras 477 and 565.

<sup>2225</sup> See para. 19.

<sup>2226</sup> See para. 434.

<sup>2227</sup> See para. 434.

<sup>2228</sup> Such as in Kobu. See further para. 434.

<sup>2229</sup> See para. 434.

<sup>2230</sup> Such as Mongbwalu before November 2002 (see para. 471), Komanda until November 2002 (see para. 462) and Lipri, until the UPC/FPLC's operation in February 2003 during which the UPC/FPLC took over control (see para. 566).

<sup>2231</sup> See para. 477.

<sup>2232</sup> See para. 434.

<sup>2233</sup> See paras 435 to 436.



identifiable leader, and the UN, which appeared to have been able to distinguish these groups as such, reported on them as armed groups actively involved in the conflict at the relevant time.<sup>2234</sup> The FNI/FRPI engaged in combat with the UPC on several occasions.<sup>2235</sup> On the basis of these facts, the Chamber considers the alliance FNI/FRPI to have been an organised armed group for the purpose of the present assessment.

715. The Chamber therefore concludes that at all times during the relevant period at least one of the UPC/FPLC's opponents, namely the UPDF, the APC, and the FNI/FRPI, was sufficiently organised to constitute an organised armed group.

## (2) Intensity requirement

716. In considering whether the intensity requirement has been met, the Chamber may take note of: (i) the seriousness and frequency of attacks and armed clashes; (ii) the spread of clashes over territory and the group's ability to control territory over a period of time; (iii) whether any ceasefire orders had been issued or ceasefires agreed to; (iv) the type and number of armed forces deployed, including any involvement of the government; (v) the type of weapons used; (vi) whether the situation had attracted the attention of the UN Security Council, or involvement of other international organisations; (vii) whether those fighting considered themselves bound by IHL; and (viii) the effects of the violence on the civilian population, including the extent to which civilians left the relevant area, the extent of destruction, and the number of persons killed.<sup>2236</sup>

717. The Chamber further recalls that exercise of control over a part of the territory is not required for a group to meet the minimum level of organisation,<sup>2237</sup> but in

<sup>2234</sup> See paras 435 to 436.

<sup>2235</sup> See paras 435 to 436.

<sup>2236</sup> See similarly *Lubanga Trial Judgment*, para. 538; *Katanga Judgment*, para. 1187; and *Bemba Trial Judgment*, para. 137. See also *Boškoski and Tarčulovski Trial Judgment*, paras 177-178 and *Boškoski and Tarčulovski Appeal Judgment*, paras 19 to 24.

<sup>2237</sup> *Katanga Judgment*, para. 1186; and *Lubanga Trial Judgment*, paras 536-537.

the absence of active hostilities, it may be a determinative factor in assessing whether the intensity threshold is fulfilled.<sup>2238</sup>

718. The Chamber first notes that Ituri was faced with unrest and fighting in the years prior to the temporal scope of the charges.<sup>2239</sup> For the present case, it is relevant whether any armed conflict involving the UPC/FPLC had started prior to, or at the start of the temporal scope of the charges, and continued throughout the relevant time, or was replaced by another conflict involving the UPC/FPLC.

719. It is established that the UPC/FPLC launched a number of military operations during which its troops engaged in combat with the above-mentioned armed groups. In early August 2002, troops of the emerging UPC/FPLC led by Mr Ntaganda fought alongside the UPDF in Bunia against the APC and Lendu fighters.<sup>2240</sup> At the end of August 2002, they also launched an assault in Songolo, where APC soldiers had fled and were reorganising their troops.<sup>2241</sup> In October 2002, the UPC/FPLC troops conducted a military operation targeting the village of Zumbe, a base for Lendu fighters where APC soldiers had retreated after the combats in Bunia.<sup>2242</sup> In November 2002, the UPC/FPLC fought against the APC, Ngiti, and Mai Mai fighters in Komanda, and only '[a]fter intense fighting', it managed to take over this village.<sup>2243</sup> Discussed at length above are also the two prolonged military operations on the Banyali-Kilo and Walendu-Djatsi *collectivités*, namely the First Operation and the Second Operation, during which several armed clashes took place and assaults were launched on at several towns and villages.<sup>2244</sup>

<sup>2238</sup> For a similar consideration, see *Al Mahdi* Trial Judgment, para. 49.

<sup>2239</sup> See section I.

<sup>2240</sup> See paras 445 and 447.

<sup>2241</sup> See paras 451 to 453.

<sup>2242</sup> See paras 455 to 456.

<sup>2243</sup> See paras 463 to 464.

<sup>2244</sup> See sections IV.B.7 and IV.B.8.

720. In addition, it is also established that, between July 2002 and January 2003, the UPC/FPLC and the APC fought each other in other areas, most notably along the Beni-Komanda-Bunia road.<sup>2245</sup>

721. During several moments of the temporal scope of the charges, no active hostilities took place. However, there appears not to have been any lasting absence of armed confrontations between the UPC/FPLC and its opponents. Moreover, throughout this period, the UPC/FPLC was controlling significant parts of the territory of Ituri. As noted above,<sup>2246</sup> in the absence of any direct clashes during certain periods, control by an organised armed group such as the UPC/FPLC, thereby indicating that the DRC government and any groups opposing the UPC/FPLC were either unable or unwilling to challenge the UPC/FPLC's control over the areas concerned, is a relevant factor to assess whether the intensity requirement was fulfilled.

722. The fighting severely impacted the civilian population in the area, which – in addition to individual civilians being killed – was forced to leave its houses in large numbers and flee to the bush, where it had to stay for prolonged periods.<sup>2247</sup>

723. The Chamber further recalls that, in relation to the hostilities at stake, the various parties and the international community considered it necessary to engage in peace negotiations, as part of which ceasefire agreements were signed.<sup>2248</sup> Even if these agreements were not effective in practice,<sup>2249</sup> the Chamber has considered the signing of ceasefire agreements as an indication that the situation being addressed by the agreements was of a significant intensity.

724. The impact of the fighting is further shown by the interest of international community, more specifically the United Nations and the European Union. It

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<sup>2245</sup> See para. 459.

<sup>2246</sup> See para. 717.

<sup>2247</sup> See paras 1052 to 1054.

<sup>2248</sup> See paras 434 to 436.

<sup>2249</sup> E.g. the ceasefire agreement signed on 18 March in Bunia between various groups (not involving the UPC/FPLC) preceded the extensive fighting in Bunia in May 2003.

expressed its concern with the situation in Ituri by setting up peacekeeping forces, and renewing their mandate throughout 2003.<sup>2250</sup>

725. On the basis of the foregoing, the Chamber concludes beyond reasonable doubt that the fighting between the UPC/FPLC and UPDF, as well as the fighting between the UPC/FPLC and the opposing organised armed groups, specifically the APC and its allies, the FNI/FRPI and the Lendu fighters, met the relevant intensity requirement. Accordingly, the Chamber finds beyond reasonable doubt that the UPC/FPLC was, at all times during the relevant period, namely between on or about 6 August 2002 and 31 December 2003, involved in at least one non-international armed conflict with an opposing party.

**b) Whether the non-international armed conflict was instead international in nature**

726. A situation that starts out as a non-international armed conflict may become international, if another State intervenes in the conflict directly, through its troops, or indirectly, when some of the groups involved act on behalf of that other State.<sup>2251</sup> The intervention must be to assist a non-State armed group that is engaged in an armed conflict with the government of a State. In case of an intervention by a third State in support of an armed group fighting on the government's side or with the consent of the host State, the conflict remains non-international. However, intervention by a third State without the consent of the host State may constitute an international armed conflict, because when an organised armed group that is involved in fighting with other non-State entities controls a certain portion of territory, and thereby effectively dispossesses the

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<sup>2250</sup> See para. 433.

<sup>2251</sup> ICTY, *Tadić* Appeal Judgment, para. 84; cited in *Bemba* Trial Judgment, para. 130; *Katanga* Judgment, para. 1178; and *Lubanga* Trial Judgment, para. 541 to 542. An international armed conflict exists when two or more States resort to force against each other, following a declaration of war by a State against another, or in cases of an occupation: Common Article 2 of the Geneva Conventions of 1949; and ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-A, Decision on the defence motion for interlocutory appeal on jurisdiction, 2 October 1995, para. 70.

State authorities of its power, the State where the conflict takes place, albeit not directly involved with its troops, must nevertheless be considered as being opposed by the armed group concerned.

727. To assess whether an international armed conflict exists as a result of such indirect participation of a State, the Chamber must appraise the degree of control exerted by that State over the armed groups in question. In doing so, the Chamber will rely on the ‘overall control’ test,<sup>2252</sup> whereby it must be established that the State had ‘a role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group’.<sup>2253</sup> An international armed conflict therefore exists if a degree of control is exercised by the intervening third State over a non-State actor fighting in opposition to, or without the consent of, the government, that goes ‘beyond the mere financing and equipping’ of the armed group and also involves ‘participation in the planning and supervision of military operations’.<sup>2254</sup> It does not require, however, ‘that such control [...] extend to the issuance of specific orders or instructions relating to single military actions’.<sup>2255</sup>

728. As the fighting took place on the territory of the DRC, the State of the DRC was affected by the conflict. The evidence also indicates that Uganda and Rwanda were to some degree involved in the conflict. The UPC/FPLC initially received material support from Uganda<sup>2256</sup> and fought alongside the UPC/FPLC in

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<sup>2252</sup> Trial Chambers I, II, and III have also applied the ‘overall control’ test, as set out by the ICTY Appeals Chamber in the *Tadić* Appeal Judgment, paras 115-145; *Lubanga Trial Judgment*, para, 541; *Katanga Judgment*, para. 1178; and *Bemba Trial Judgment*, para. 130.

<sup>2253</sup> *Tadić* Appeal Judgment, para. 137 (emphasis omitted). The Chamber notes that the International Court of Justice has applied a different test in this respect, namely of ‘effective control’, to determine whether the intervening State was responsible for the conduct of an armed group engaged in fighting against its government (ICJ, *Military and Paramilitary Activities in and against Nicaragua*, Merits, Judgment, 1986, paras 110 to 116).

<sup>2254</sup> *Tadić* Appeal Judgment, para. 145.

<sup>2255</sup> *Tadić* Appeal Judgment, para. 145. In paragraph 137, the ICTY Appeals Chamber had already stressed that ‘[u]nder international law it is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instructions concerning the conduct of military operations and any alleged violations of international humanitarian law’.

<sup>2256</sup> See para. 336.

August 2002.<sup>2257</sup> The UPC/FPLC subsequently fought against the UPDF, notably in March 2003.<sup>2258</sup> On one side, by virtue of its presence as an occupying force in Ituri, and as it was fighting in the DRC's territory without its consent, the UPDF was engaged in an international armed conflict with the DRC. On the other side, with regard to the clashes between the UPDF and the UPC/FPLC, the Chamber finds that, without evidence to the effect that the UPC/FPLC was fighting under the overall control or on behalf of a State, and given that it cannot be established that said fighting took place within the area of the DRC under effective control of the UPDF, the fighting constituted a non-international armed conflict. In any event, had the fighting taken place within the area considered as occupied by the UPDF, the law of occupation would only apply to the UPDF, and not to the UPC/FPLC.

729. The Chamber recalls that first the Ugandan armed forces, and afterwards the Rwanda armed forces, provided military training for members of the UPC/FPLC and materially supported the group, *inter alia*, with weapons, ammunition, and uniforms.<sup>2259</sup> As to the second element of overall control, the Chamber observes that the UPC/FPLC's contact with the Rwandan armed forces went beyond mere training, and Rwanda reportedly pressured the UPC/FPLC to fight the UPDF, and indeed the UPC/FPLC expected to receive assistance from Rwandan forces during the attempt to oust the UPDF from Bunia in March 2003.<sup>2260</sup> The Chamber also received evidence from a witness about Floribert Kisembo having been appointed Chief of Staff to avoid the UPC being perceived as a 'Rwandan movement',<sup>2261</sup> and that Rwanda had indicated that Mongbwalu ought to be taken over.<sup>2262</sup>

<sup>2257</sup> See paras 445 and 447.

<sup>2258</sup> See paras 647 to 651.

<sup>2259</sup> See paras 334, 336, and 339 to 340.

<sup>2260</sup> See para. 648.

<sup>2261</sup> **P-0055**: T-71, pages 4 to 5.

<sup>2262</sup> **P-0055**: T-70, pages 55 to 56 ('[...] Ntaganda said that the Mongbwalu operation had been planned by Rwanda. He told me that Rwanda had told him that if he were able to capture Mongbwalu, then Rwanda would give them everything they needed. And at the time it was Rwanda that was providing the UPC with whatever they needed such as money, food and weapons.');

and T-70, pages 98 to 99 ('[...] Tango Romeo [...] told me

However, with regard to the latter, no information is available about the reasons or context of this indication. In the witness's understanding, Rwanda desired access to the goldmines and other minerals in the Mongbwalu area.<sup>2263</sup> While this may have been considered a form of repayment for the weapons supplied, the Chamber recalls that Mongbwalu was also of significant strategic importance, because of its location, as well as its airstrip. Control of the Mongbwalu airstrip would assist the UPC/FPLC in receiving military supplies,<sup>2264</sup> so controlling Mongbwalu was important for the UPC/FPLC's objectives.

730. The Chamber therefore finds that despite it being established that a third State, namely Rwanda, assisted the UPC/FPLC and was involved in its activities to a certain level, on the basis of the evidence on the record, the Chamber cannot conclude beyond reasonable doubt that the involvement of Rwanda with the UPC/FPLC rose to the level of overall control. As such, the fighting that the UPC/FPLC was engaged in during the temporal scope of the charges must be classified as a non-international armed conflict.

### **c) The nexus requirement**

731. For conduct to qualify as a war crime, a nexus must be established with the armed conflict in question. The nexus requirement serves to distinguish war crimes from crimes that ought to be treated as purely domestic, and it prevents random or isolated criminal occurrences from being characterised as war crime.<sup>2265</sup> The conduct must have taken place 'in the context of' and have been 'associated with an armed conflict not of an international character'.<sup>2266</sup> The

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why Mongbwalu had to be attacked. He said it was a mission conferred on him by Rwanda. And he had been told that if he was able to capture Mongbwalu, they would receive all the help they needed.'))

<sup>2263</sup> P-0055: T-70, page 99.

<sup>2264</sup> See para. 441.

<sup>2265</sup> *Boškoski and Tarčulovski* Trial Judgment, para. 293.

<sup>2266</sup> Elements of Crimes, Introduction to Article 8; and the last element of Article 8(2)(c)(i)-1, Article 8(2)(e)(i), Article 8(2)(e)(iv), Article 8(2)(e)(v), Article 8(2)(e)(vi)-1 and Article 8(2)(e)(vi)-2, Article 8(2)(e)(vii), Article 8(2)(e)(viii), and Article 8(2)(e)(xii).

perpetrator's conduct need not have taken place as part of hostilities, or at a time or place where fighting was actually taking place,<sup>2267</sup> but must have been closely linked to the hostilities or be related to the control carried out over a certain part of the territory by the relevant party to the conflict.<sup>2268</sup> The existence of an armed conflict must have, at a minimum, played a substantial part in the perpetrator's ability to commit the crime, the decision to commit it, the purpose of the commission, or the manner in which the crime was committed,<sup>2269</sup> as '[w]hat ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed'.<sup>2270</sup>

732. In determining whether this nexus has been established, the Chamber may take into account, *inter alia*: (i) the status of the perpetrator and victim, and whether they had a role in the fighting; (ii) whether the act may be said to serve the ultimate goal of a military campaign; and (iii) whether the crime is committed as part of, or in the context of, the perpetrator's official duties.<sup>2271</sup>

733. Lastly, the perpetrator need not have made a legal evaluation whether an international or non-international armed conflict existed, or have realised that the situation qualified as either of the two,<sup>2272</sup> but he or she must have been aware of

<sup>2267</sup> Katanga Judgment, para. 1176; see also Boškoski and Tarčulovski Trial Judgment, para. 293.

<sup>2268</sup> Kunarac et al. Appeal Judgment, para. 57.

<sup>2269</sup> Appeals Chamber, Judgment on the appeal of Mr Ntaganda against the "Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9", ICC-01/04-02/06-1962, 15 June 2017, para. 68; Second Decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9, 4 January 2017, ICC-01/04-02/06-1707, footnote 130, referring to ICTY, Kunarac et al Appeal Judgment, para. 58; Bemba Trial Judgment, para. 142; and Katanga Judgment, para. 1176.

<sup>2270</sup> Kunarac et al. Appeal Judgment, para. 58.

<sup>2271</sup> See Appeals Chamber, Judgment on the appeal of Mr Ntaganda against the "Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9", ICC-01/04-02/06-1962, 15 June 2017, para. 68, referring to Kunarac et al. Appeal Judgment, para. 59; and Bemba Trial Judgment, para. 143. The geographical location does not necessarily play a role. Although the fact that conduct took place on or near the battlefield may show a nexus, conduct that is geographically removed from the battlefield, even across a border, may still fulfil the nexus.

<sup>2272</sup> Elements of Crimes, Introduction to Article 8 ('There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international'); see also Bemba Trial Judgment, para. 146.



the factual circumstances that established the existence of the armed conflict.<sup>2273</sup> In light of the charges in the present case, the perpetrator must therefore have had sufficient awareness of the factors that indicated the existence of fighting of a certain level of intensity between at least two organised entities. In this regard, his or her position as a member of or within an organised armed group, for example, may be relevant to the Chamber's assessment.

## B. COMMISSION 'AS AN INDIVIDUAL' (DIRECT PERPETRATION)

### 1. The charges

734. Mr Ntaganda is charged with the commission, as an individual, of the following crimes:

- the crime against humanity and the war crime of murder (Counts 1 and 2), during the *First Operation*, specifically of the murder of Priest Boniface Bwanalonga by way of shooting him several times in the head with a revolver behind his apartment in Kilo-Moto;<sup>2274</sup>
- the war crime of intentionally directing attacks against civilians (Count 3), during the *First Operation*, specifically during the advance on Sayo;<sup>2275</sup>
- the crime against humanity of persecution (Count 10), during the *First Operation*, '[b]y way of his direct perpetration of the [crimes under Counts 1 to 3, 11, and 17]';<sup>2276</sup>
- the war crime of pillaging (Count 11), during the *First Operation*, specifically the appropriation of (i) 'a Land Cruiser jeep from Mongbwalu parish and

<sup>2273</sup> Elements of Crimes, Introduction to Article 8 ('There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms "took place in the context of and was associated with"') and Articles 8(2)(c)(i)-(iv) and (e)(i)-(xv).

<sup>2274</sup> Confirmation Decision, para. 138; *see also* UDCC, counts 1 and 2, page 61.

<sup>2275</sup> Confirmation Decision, para. 139; *see also* UDCC, count 3, pages 61 to 62.

<sup>2276</sup> Confirmation Decision, para. 142; *see also* UDCC, count 10, page 63.

other items'; (ii) 'medical equipment and medication from a hospital in Mongbwalu'; (iii) 'audio and video equipment, seen at his residence in Mongbwalu'; and (iv) 'items from the church in Sayo';<sup>2277</sup>

- the war crimes of enlistment and use of children under the age of 15 to participate actively in hostilities (Counts 15-16), specifically by 'recruit[ing] [s]everal children under the age of 15 years' from Bunia, who went on to attend training in Mandro and took part in the *First Operation*; and by using children: (i) to guard his places of residence; (ii) in combat in Zumbe in October 2002, during the *First Operation*, and in Bunia in March 2003;<sup>2278</sup>
- the war crime of intentionally attacking protected objects (Count 17), during the *First Operation*, of the hospital in Mongbwalu and the church in Sayo.<sup>2279</sup>

## 2. Applicable law

735. A person is deemed to have committed a crime 'as an individual' when he or she personally carries out the objective elements of the crime, with the requisite intent and knowledge pursuant to Article 30 of the Statute as well as any *lex specialis*.<sup>2280</sup>

736. The Chamber refers, for the applicable law in relation to the specific elements of the crimes with which Mr Ntaganda is charged as a direct perpetrator, to the analysis below in the section dealing with indirect co-perpetration.<sup>2281</sup>

<sup>2277</sup> Confirmation Decision, para. 140; *see also* UDCC, count 11, page 64.

<sup>2278</sup> Confirmation Decision, para. 143; *see also* UDCC, counts 15 to 16, pages 65 to 66.

<sup>2279</sup> Confirmation Decision, para. 141; *see also* UDCC, count 17, page 66.

<sup>2280</sup> *See also* Ntaganda Confirmation Decision, para. 136; Bemba *et al.* Trial Judgment, para. 58, referring, *inter alia*, to Katanga Confirmation Decision, paras 488, and 527.

<sup>2281</sup> *See* section V.C.4 Findings of the Chamber on the crimes charged.

### 3. Findings of the Chamber

#### a) Murder as a crime against humanity and as a war crime (Counts 1 and 2)

737. The Chamber found that *Abbé* Bwanalunga, a civilian man of an advanced age, serving as a Catholic priest at the Mongbwalu parish,<sup>2282</sup> was captured by the UPC/FPLC at the Mongbwalu parish and taken to be detained at the *Appartements*,<sup>2283</sup> where he was interrogated and shot dead by Mr Ntaganda.<sup>2284</sup>

738. Accordingly, the Chamber finds beyond reasonable doubt that Mr Ntaganda executed the first legal element of the war crime of murder, as well as of the crime against humanity of murder, which is that he killed another person.

739. As established by the evidence, *Abbé* Bwanalunga was held by the UPC/FPLC and interrogated at the time he was killed.<sup>2285</sup> At the time he was shot, he was therefore taking no active part in the hostilities. The Chamber also finds, in light of the fact that Mr Ntaganda interrogated *Abbé* Bwanalunga,<sup>2286</sup> that the only reasonable inference is that Mr Ntaganda knew that *Abbé* Bwanalunga was taking no active part in hostilities.

740. The evidence demonstrates that Mr Ntaganda shot at *Abbé* Bwanalunga and killed him.<sup>2287</sup> The only reasonable inference from the relevant circumstances is that Mr Ntaganda deliberately shot him and, therefore, that he meant to cause his death.

741. Considering that Mr Ntaganda killed *Abbé* Bwanalunga, who was a Lendu,<sup>2288</sup> in the aftermath of the takeover of Mongbwalu,<sup>2289</sup> the Chamber finds beyond

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<sup>2282</sup> See para. 529.

<sup>2283</sup> See para. 530.

<sup>2284</sup> See paras 532 to 533.

<sup>2285</sup> See para. 532.

<sup>2286</sup> See para. 532.

<sup>2287</sup> See para. 533.

<sup>2288</sup> See para.529.

<sup>2289</sup> See para. 530.

reasonable doubt that the killing took place as part of the widespread and/or systematic attack against the civilian population by the UPC/FPLC. In light of the fact that the circumstances just mentioned were known to Mr Ntaganda, who personally interrogated *Abbé Bwanalunga* and was involved in the planning and execution of the *First Operation*,<sup>2290</sup> the Chamber also finds beyond reasonable doubt that Mr Ntaganda knew that the killing of *Abbé Bwanalunga* was part of the aforementioned widespread and systematic attack against the civilian population.

742. The Chamber notes that Mr Ntaganda's killing of *Abbé Bwanalunga* took place in Mongbwalu, a town that the UPC/FPLC took over during the First Operation. As such, and noting that the First Operation has above been found to constitute part of a non-international armed conflict, the Chamber finds beyond reasonable doubt that the killing took place in the context of and was associated with the non-international armed conflict in Ituri. As established below, Mr Ntaganda was aware of factual circumstances that established the existence of the armed conflict.<sup>2291</sup>

#### **b) Intentionally attacking civilians as a war crime (Count 3)**

743. The Chamber found that on or about 24 November 2002, the UPC/FPLC attacked Sayo.<sup>2292</sup> Mr Ntaganda oversaw the assault.<sup>2293</sup> Sayo was attacked by the UPC/FPLC with infantry and heavy weapons which supported the infantry from behind.<sup>2294</sup> They fired heavy weapons on Sayo from the *Appartements* camp.<sup>2295</sup> At the relevant time, Mr Ntaganda was at the *Appartements* camp and communicated

<sup>2290</sup> See paras 478 to 485, 491, and 500.

<sup>2291</sup> See section V.C.5.a) Knowledge of the attack.

<sup>2292</sup> See para. 500.

<sup>2293</sup> See para. 500.

<sup>2294</sup> See para. 501.

<sup>2295</sup> See para. 501.

from there.<sup>2296</sup> He gave orders to and received reports from Salumu Mulenda and Thomas Kasangaki, who were present on the front and led the troops into combat.<sup>2297</sup> As the operation in Sayo was nearing its end and the last houses were being searched by the troops, Mr Ntaganda came to Sayo.<sup>2298</sup> When he was in Sayo, Mr Ntaganda ordered one of Salumu Mulenda's men to fire with a grenade launcher at the slope of the mountain where a number of men and women wearing civilian clothing were walking in a single file.<sup>2299</sup>

744. The crime of intentionally attacking civilians requires that the perpetrator 'direct' an attack against civilians. This means selecting the intended target and deciding on the attack.<sup>2300</sup> On the facts as established, the Chamber determines that Mr Ntaganda did not direct the assault on Sayo as such, within the meaning of the requirements of Article 8(2)(e)(i) of the Statute. On the basis of Mr Ntaganda's overall participation in the First Operation, the Chamber determines that his role is better qualified as indirect co-perpetration, as alternatively charged, and will return to the issue in that context. In this regard, the Chamber notes the specific fact of Mr Ntaganda having ordered a soldier to fire at a group of civilians, as established above. While Mr Ntaganda was the one who directed this attack, the Chamber is of the view that also in respect of this fact, indirect co-perpetration is the applicable mode of liability, as this fact forms part of Mr Ntaganda's overall contribution to the commission of a broader set of crimes against persons not taking a direct part in hostilities or the civilian population as such during the First Operation pursuant to and as a consequence of the common plan between Mr Ntaganda and the other co-perpetrators.

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<sup>2296</sup> See para. 500.

<sup>2297</sup> See para. 500.

<sup>2298</sup> See para. 507.

<sup>2299</sup> See para. 508.

<sup>2300</sup> Compare Article 57(2) of Additional Protocol I, referring to 'those who plan or decide an attack'. Read in conjunction with Article 51, which forms the basis of the present war crime as included in Article 8 of the Statute, the direct perpetrator of any use of artillery must be understood as being the person deciding on the attack (*i.e.* the commander who selected the target and ordered the firing on it), as opposed to the person who operated the weapon system.

**c) Persecution as a crime against humanity (Count 10)**

745. The underlying material acts of the crime against humanity of persecution described in the charges are those underpinning the charges of murder, attacking civilians, and attacking protected objects, for which the responsibility of Mr Ntaganda is alleged as a direct perpetrator.<sup>2301</sup>

746. The Chamber has found that Mr Ntaganda intentionally killed *Abbé Bwanalunga* in Mongbwalu.<sup>2302</sup> By so doing, Mr Ntaganda severely deprived *Abbé Bwanalunga* of a fundamental right, *i.e.* the right to life. As explained above, this act was intentional.<sup>2303</sup>

747. The Chamber also found that Mr Ntaganda does not bear individual criminal responsibility as direct perpetrator for the war crime of intentionally attacking civilians and for the war crime of attacking protected objects.<sup>2304</sup> The Chamber will therefore not consider the alleged underlying acts for the purpose of the determination of the charge or persecution as a direct perpetrator.

748. Accordingly, the Chamber's further analysis of the charge of persecution as a direct perpetrator concerns only the killing of *Abbé Bwanalunga*.

749. The evidence establishes that *Abbé Bwanalunga*, a Lendu,<sup>2305</sup> was detained by UPC/FPLC soldiers in the aftermath of the assault on Mongbwalu,<sup>2306</sup> for which Mr Ntaganda ordered to fight against the Lendu and ordered to attack using the term '*kupiga na kuchaji*'.<sup>2307</sup> *Abbé Bwanalunga* was detained at the *Appartements* where he was interrogated and killed by Mr Ntaganda.<sup>2308</sup> On this basis, and having also taken into account the Chamber's assessment below regarding

<sup>2301</sup> Confirmation Decision, para. 58.

<sup>2302</sup> See section V.B.3.a) Murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2303</sup> See para. 740.

<sup>2304</sup> See sections V.B.3.b) Intentionally attacking civilians as a war crime (Count 3), and V.B.3.f) Attacking protected objects as a war crime (Count 17).

<sup>2305</sup> See para. 529.

<sup>2306</sup> See para. 530.

<sup>2307</sup> See para. 484. See also para. 415.

<sup>2308</sup> See paras 532 to 533.

Mr Ntaganda's state of mind in relation to other comparable charged incidents which occurred in the context of the same military operation,<sup>2309</sup> the Chamber finds beyond reasonable doubt that Mr Ntaganda intentionally targeted *Abbé* Bwanalunga on ethnic grounds, *i.e.* by reason of his identity as a Lendu.

750. In light of its other findings,<sup>2310</sup> the Chamber is also satisfied beyond reasonable doubt that the killing of *Abbé* Bwanalunga was committed in connection with a crime within the jurisdiction of the Court.

751. Considering that Mr Ntaganda killed *Abbé* Bwanalunga, who was a Lendu,<sup>2311</sup> in the aftermath of the takeover of Mongbwalu,<sup>2312</sup> the Chamber finds beyond reasonable doubt that the killing took place as part of the widespread and/or systematic attack against the civilian population by the UPC/FPLC. In light of the fact that the circumstances just mentioned were known to Mr Ntaganda, who interrogated *Abbé* Bwanalunga and was involved in the planning and execution of the First Operation,<sup>2313</sup> the Chamber also finds that Mr Ntaganda knew that the killing of *Abbé* Bwanalunga was part of the aforementioned attack against the civilian population.

752. Accordingly, all the requisite legal elements have been met, and Mr Ntaganda is individually criminally responsible under Articles 7(1)(h) and 25(3)(a) of the Statute, as a direct perpetrator, for the crime against humanity of persecution (Count 10).

#### **d) Pillage as a war crime (Count 11)**

753. The charges specify that Mr Ntaganda appropriated: (i) 'a Land Cruiser jeep from Mongbwalu parish and other items'; (ii) 'medical equipment and medication

<sup>2309</sup> See section V.C.5.d)(1) Crimes committed during the course of the First and Second Operation.

<sup>2310</sup> See section V.C.5.d)(1) Crimes committed during the course of the First and Second Operation.

<sup>2311</sup> See para. 529.

<sup>2312</sup> See para. 530.

<sup>2313</sup> See paras 478 to 485, 491, and 500.

from a hospital in Mongbwalu'; (iii) 'audio and video equipment, seen at his residence in Mongbwalu'; and (iv) 'items from the church in Sayo'.<sup>2314</sup>

754. However, the analysis of the evidence by the Chamber has not resulted in a finding that Mr Ntaganda personally appropriated any of these items during the First Operation.<sup>2315</sup> As it is not established that he personally executed the elements of the war crime of pillaging, the Chamber considers that Mr Ntaganda bears no individual criminal responsibility for this crime as direct perpetrator.

755. To the extent that items, including the items mentioned above, were appropriated by UPC/FPLC soldiers during the First Operation, the relevant facts are addressed within the context of Mr Ntaganda's individual criminal responsibility as indirect co-perpetrator.<sup>2316</sup>

756. Accordingly, Mr Ntaganda does not bear individual criminal responsibility as a direct perpetrator for the charge of pillaging under Articles 8(2)(e)(v) and 25(3)(a) of the Statute (Count 11).

#### **e) Enlisting and using children as a war crime (Counts 15 and 16)**

757. The Chamber recalls that, on the basis of the evidence on the record, it did not make positive findings in respect of the following factual allegations made by the Prosecution:

- that Mr Ntaganda personally enlisted children under 15 years of age;<sup>2317</sup>
- that individuals under 15 years participated within the UPC/FPLC in the combat in Zumbe in October 2002,<sup>2318</sup> and

<sup>2314</sup> Confirmation Decision, para. 140.

<sup>2315</sup> See paras 516, footnote 1530; and para. 526.

<sup>2316</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

<sup>2317</sup> It is noted that the only instance specifically mentioned in the Prosecution Closing Brief is the abduction of children from a primary school in Mudzipela; see Prosecution Closing Brief, para. 819. See, in this regard, paras 139 to 142, and 350.



- that individuals under 15 years participated within the UPC/FPLC in the combat in Bunia in March 2003.<sup>2319</sup>

758. Conversely, as established above, the Chamber found that:

- persons under the age of 15 participated in the attacks on Mongbwalu and Sayo;<sup>2320</sup> and that
- Mr Ntaganda's escorts included individuals under 15 years of age.<sup>2321</sup>

759. In this regard, taking into account the role played by Mr Ntaganda in relation to the assaults on Mongbwalu and Sayo, and even though the extent of Mr Ntaganda's involvement in the setting up of a guard unit for himself is demonstrated by the evidence,<sup>2322</sup> the Chamber finds that direct perpetration is not the appropriate mode of liability under which to consider, in this specific context, Mr Ntaganda's precise role and individual criminal responsibility. In the view of the Chamber, to accurately reflect the occurrence of these crimes pursuant to a common plan between Mr Ntaganda and the co-perpetrators, Mr Ntaganda's individual criminal responsibility is to be qualified as indirect co-perpetration, as alternatively charged.

#### **f) Attacking protected objects as a war crime (Count 17)**

760. It is alleged that Mr Ntaganda attacked the hospital in Mongbwalu and the church in Sayo.<sup>2323</sup> In the submission of the Prosecution, the pillaging of these buildings constituted an attack against protected objects.<sup>2324</sup>

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<sup>2318</sup> See para. 458, footnote 1310.

<sup>2319</sup> See para. 649, footnote 2073.

<sup>2320</sup> See para. 511.

<sup>2321</sup> See paras 386 to 389.

<sup>2322</sup> See para. 381.

<sup>2323</sup> Confirmation Decision, para. 141.

<sup>2324</sup> Prosecution Closing Brief, para. 802.

761. As a matter of law, as also stated below, the Chamber does not consider that pillaging of protected objects constitutes an attack within the meaning of Article 8(2)(e)(iv) of the Statute.<sup>2325</sup>

762. In addition, the Chamber notes that this factual allegation is also considered under the charge of pillaging, but that the conclusion is ultimately negative, as the allegation that Mr Ntaganda personally appropriated items from the hospital in Mongbwalu and the church in Sayo is not established by the evidence.<sup>2326</sup>

763. Accordingly, Mr Ntaganda does not bear individual criminal responsibility within the charge of attacks against protected objects, under Articles 8(2)(e)(iv) and 25(3)(a) of the Statute (Count 17).

### **C. COMMISSION 'JOINTLY WITH ANOTHER' AND 'THROUGH ANOTHER' (INDIRECT CO-PERPETRATION)**

#### **1. The charges**

764. Mr Ntaganda is charged as individually criminally responsible under the heading 'indirect co-perpetration' under every count of the charges.<sup>2327</sup>

765. The Pre-Trial Chamber found in the Confirmation Decision that '[f]rom 6 August 2002 onwards and throughout the period relevant to the charges, Mr. Ntaganda was part of a common plan amongst members of the UPC/FPLC to assume military and political control over Ituri'.<sup>2328</sup> It held that '[a]s part of the

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<sup>2325</sup> See para. 1141.

<sup>2326</sup> See paras 516, and 526.

<sup>2327</sup> Confirmation Decision, para. 97; *see also* UDCC, counts 1 to 18, pages 61 to 66.

<sup>2328</sup> Confirmation Decision, para. 105. The UDCC states that Mr Ntaganda is charged as having contributed to the common plan 'to assume the military and political control of Ituri, occupy the non-Hema dominated areas in Ituri and expel the non-Hema civilian population, particularly the Lendu, Ngiti and non-originares (...) by means which included the commission of the following crimes: murder or attempted murder, attacks against a civilian population, rape, sexual slavery, persecution, pillaging, forcible transfer of the population, enlistment and conscription of children under the age of 15 and their use to participate actively in hostilities, attacks against protected objects and, destruction of property'. *See* UDCC, paras 1 and 111. The Prosecution names the following co-perpetrators: Ntaganda, Lubanga, Kisembo (until early December 2003), Chief Kahwa (until end of November 2002), Rafiki, Abdul Bagonza Kasoro (until 2 December 2002), Tchalignonza, and Thomas Kasangaki. *See* UDCC, para. 16.

common plan, Mr. Ntaganda and others sought to take over non-Hema dominated areas and expel the non-Hema civilian population, particularly the Lendu, from Ituri’ and that ‘the common plan contained an element of criminality, as evidenced by the crimes described previously’.<sup>2329</sup>

766. The Pre-Trial Chamber further found that ‘Mr. Ntaganda, as Deputy Chief of Staff of the UPC/FPLC, together with other persons involved in the common plan, provided an essential contribution resulting in the fulfilment of the material elements of the crimes charged’.<sup>2330</sup>

767. The Pre-Trial Chamber found that Mr Ntaganda ‘played an overall coordinating role before and during the execution stage of the crimes’ during the First Operation,<sup>2331</sup> and in particular that he ‘arranged for weapons to be transported by aircraft from Bunia to Aru and distributed them to the troops[,] [...] travelled from Aru to Bunia to secure additional troops for the attack [and] liaised with subordinates’;<sup>2332</sup> ‘at a parade in Mabanga in November 2002 before the *First Attack* [...] told UPC/FPLC troops that everyone encountered in Mongbwalu was to be considered an enemy, which was generally interpreted to mean that all human beings should be killed’;<sup>2333</sup> ‘issued instructions to chase away the Lendu’;<sup>2334</sup> during the attack ‘commanded the troops, took part in the

<sup>2329</sup> Confirmation Decision, para. 105. *See also* UDCC, para. 16.

<sup>2330</sup> Confirmation Decision, para. 108. The UDCC states in the charges that Mr Ntaganda ‘contributed to the crimes charged in the following ways: (a) recruiting, training and using young persons, including under the age of 15, to participate actively in hostilities; (b) planning the attacks and ordering and encouraging the UPC/FPLC and the Hema civilian supporters to commit crimes by securing and distributing weapons and ammunition in advance of and during attacks, deploying troops, commanding operations, communicating with superiors and subordinates on military matters; (c) meeting and maintaining regular contact with his co-perpetrators to discuss the implementation of the Common Plan, briefing and instructing the troops on operational matters; and (d) facilitating and/or encouraging the commission of crimes by the UPC/FPLC and the Hema civilian supporters through his own criminal actions and by failing, while under a duty stemming from his position, to take adequate steps to prevent, repress or punish the perpetrators of such crimes. *See* UDCC, para. 131 (emphasis omitted). Specifically, the UDCC also states that during the First Operation, Mr Ntaganda ‘deployed troops, briefed them in advance of the attack and gave specific instructions to carry out criminal activities’, and that with respect to the Second Operation, he ‘participated in planning meetings’ and ‘played a key role in commanding the attack from Bunia’. *See* UDCC, paras 126 to 131.

<sup>2331</sup> Confirmation Decision, para. 109. *See also* UDCC, paras 126 to 131.

<sup>2332</sup> Confirmation Decision, para. 110. *See also* UDCC, paras 126 to 131.

<sup>2333</sup> Confirmation Decision, para. 111. *See also* UDCC, paras 126 to 131.

<sup>2334</sup> Confirmation Decision, para. 111. *See also* UDCC, paras 126 to 131.

fighting, provided instructions to troops and communicated with subordinates[,] [...] ‘repeatedly told his subordinates to eliminate all Lendu, without distinguishing between those who were taking a direct part in hostilities and those who were not[,] [...] armed young Hema civilians and instructed them to kill and chase away the Lendu[,] [...] instructed UPC/FPLC troops to remove goods after Mongbwalu was taken [,] [...] told a subordinate to take any goods from Mongbwalu church and, if necessary, to destroy the church[,] [...] sent his bodyguards to rape three Lendu nuns who were held in his apartment in Kilo-Moto and [...] instructed subordinates to kill two Lendu prisoners at his compound as well as two Lendu civilians returning to their homes in Nzebi’.<sup>2335</sup> In relation to the Second Operation, the Pre-Trial Chamber found that Mr Ntaganda ‘assumed a coordinating role before the execution stage of the crimes’,<sup>2336</sup> and more specifically that he ‘(i) was in contact with the troops through a manpack and a Motorola; (ii) received updates on the situation in the field; and (iii) issued operational orders concerning the fighting’.<sup>2337</sup>

768. The Pre-Trial Chamber also found that Mr Ntaganda ‘oversaw the recruitment, training and deployment of troops in the UPC/FPLC’.<sup>2338</sup>

769. The Pre-Trial Chamber determined that ‘the UPC was a structured political organisation and the FPLC functioned as a fully-fledged military force’, that ‘[i]n these circumstances, [it] considers that, for the same reasons, the UPC/FPLC constituted an organised and hierarchical apparatus of power’, and that ‘the active recruitment pursued by the UPC/FPLC ensured that it had fungible individuals capable of being replaced by others’.<sup>2339</sup> It also found that

<sup>2335</sup> Confirmation Decision, para. 112 (footnotes omitted). *See also* UDCC, paras 126 to 131.

<sup>2336</sup> Confirmation Decision, para. 113. *See also* UDCC, paras 126 to 131.

<sup>2337</sup> Confirmation Decision, para. 114. (footnotes omitted). *See also* UDCC, paras 126 to 131.

<sup>2338</sup> Confirmation Decision, para. 116. *See also* UDCC, paras 126 to 131.

<sup>2339</sup> Confirmation Decision, para. 119. The Prosecution alleges in the charges that the ‘implementation of the Common Plan was effected by an organised hierarchy, comprised of Lubanga as President and Commander in Chief, Kisembo as Chief of Staff and Bosco Ntaganda as Deputy Chief of Staff’. *See* UDCC, para. 120. It is alleged that the UPC was a ‘sophisticated and structured political organisation’ and that the FPLC ‘was a fully

Mr Ntaganda ‘had control over the UPC/FPLC and that his orders were complied with almost automatically’.<sup>2340</sup>

770. The Pre-Trial Chamber found that Mr Ntaganda fulfilled the subjective elements of the crimes charged.<sup>2341</sup>

## 2. Applicable law

771. Article 25(3)(a) of the Statute provides expressly for three forms of individual criminal responsibility: a person who commits a crime ‘as an individual’, ‘jointly with another person’, or ‘through another person, regardless of whether that other person is criminally responsible’. The Prosecution charges Mr Ntaganda for having committed certain crimes as an ‘indirect co-perpetrator’, *i.e.* ‘jointly with another person’ and ‘through another person’.

772. Previous jurisprudence of the Court confirms that a simultaneous application of these two variants of individual criminal responsibility is possible as a matter of law, provided that all legal requirements are met.<sup>2342</sup> The Appeals Chamber in *Lubanga*, referring to some of such jurisprudence, noted that views have been expressed that there is a fourth form of commission liability, whereby a perpetrator may commit a crime jointly with another person, where that other person commits a crime through yet another person.<sup>2343</sup> However, the Chamber understands that in the current case, the concept of indirect co-perpetration entails a form of co-perpetration where the common plan is executed through

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functioning army’, which ‘operated according to a chain of command’, where ‘troops received military training including in arms, drills, tactics and respect for hierarchy’, and which ‘had an effective communications system’ and ‘structured and efficient reporting mechanisms’. See UDCC, paras 121, 123, 124, and 125.

<sup>2340</sup> Confirmation Decision, para. 120.

<sup>2341</sup> Confirmation Decision, para. 122 to 135. The UDCC states that Mr Ntaganda ‘intended to bring about the objective elements of the crimes, and/or was aware that they would occur in the ordinary course of events in implementing the Common Plan. He knew that his conduct was part of a widespread and systematic attack against the non-Hema civilian population pursuant to, or in furtherance of, the organisational policy and was aware of the factual circumstances that established the existence of an armed conflict’. See UDCC, para. 137.

<sup>2342</sup> *Katanga* Confirmation Decision, paras 492 to 493, and 519; *Ruto et al.* Confirmation Decision, paras 290 to 292; *Kenyatta* Confirmation Decision, para. 297; *Ntaganda* Confirmation Decision, paras 104, 121; *Gbagbo* Confirmation Decision, para. 230, footnote 538; *Ongwen* Confirmation Decision, paras 38 to 41.

<sup>2343</sup> *Lubanga* Appeal Judgment, footnote 863

other persons, who function as a tool of all of the co-perpetrators. In this sense, ‘indirect co-perpetration’ in this case should not be seen as a stand-alone mode of liability, but as a particular form of co-perpetration,<sup>2344</sup> which is compatible with the wording of the Statute.<sup>2345</sup>

773. The Appeals Chamber in *Lubanga* clarified that the commission ‘jointly with another person’ requires an agreement between the perpetrators, which led to the commission of one or more crimes under the jurisdiction of the Court.<sup>2346</sup> The Appeals Chamber further clarified that the commission ‘through another person’ entails the underlying assumption that the accused makes use of another person, who actually carries out the incriminated conduct, by virtue of the accused’s control over that person, and the latter’s conduct is therefore imputed on the former.<sup>2347</sup> In both forms, it is not required that a person carry out directly and personally the incriminated conduct in order to be a perpetrator.

774. Following the analysis of the Appeals Chamber in *Lubanga* and other jurisprudence of the Court, individual criminal responsibility for commission of a crime jointly with another person and through another person requires the following objective legal elements: (i) the existence of an agreement or common plan, between the accused and one or more other persons, to commit the crimes or to engage in a conduct which, in the ordinary course of events, would result in the commission of the crimes; and (ii) the control of the members of the common plan over a person or persons who execute the material elements of the crimes by subjugating the will of the direct perpetrators. The accused, though not required to carry out the criminal conduct directly and personally, must have a control over the crime, by virtue of his or her essential contribution to it and the resulting power to frustrate its commission. In addition, individual criminal responsibility

<sup>2344</sup> *Ongwen* Confirmation Decision, para. 38.

<sup>2345</sup> See also *Ngudjolo* concurring Opinion of Judge Van den Wyngaert, para. 62.

<sup>2346</sup> *Lubanga* Appeal Judgment para. 445.

<sup>2347</sup> *Lubanga* Appeal Judgment para. 465.

requires that the subjective elements are fulfilled as required by Article 30<sup>2348</sup> and any *lex specialis*.

775. As concerns the requirement of agreement or common plan, in order to establish that an accused person committed a crime under the jurisdiction of the Court ‘jointly with another [...] person’, it has to be established that two or more individuals worked together in the commission of the crime.<sup>2349</sup> This requires an agreement between these perpetrators, which led to the commission of one or more crimes under the jurisdiction of the Court. It is this very agreement – express or implied, previously arranged or materialising extemporaneously – that ties the co-perpetrators together and that justifies the reciprocal imputation of their respective acts.<sup>2350</sup> This agreement may take the form of a ‘common plan’.<sup>2351</sup>

776. It is not required that the common plan between individuals was specifically directed at the commission of a crime; it suffices that the common plan contained a critical element of criminality, and that it was virtually certain that the implementation of the common plan would lead to the commission of the crimes at issue.<sup>2352</sup>

777. In relation to the requirement of the use of a person or persons to execute the material elements of the crime, jurisprudence has held the crucial element to be in the perpetrators’ control of the action of another person or persons to such a

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<sup>2348</sup> The Chamber agrees with previous rulings that the phrase ‘will occur in the ordinary course of events’ as laid down in Article 30(2)(b) and (3) of the Statute requires ‘virtual certainty’ (*Lubanga Appeal Judgment*, paras 447 to 450; *Katanga Trial Judgment*, paras 774 to 777; *Bemba et al. Trial Judgment*, para. 29; and *Bemba Confirmation Decision*, paras 357 to 369). Accordingly, any lower threshold, such as *dolus eventualis*, recklessness and negligence, is insufficient to establish ‘intent’ and ‘knowledge’ in relation to a consequence under Article 30(2)(b).

<sup>2349</sup> *Lubanga Appeal Judgment*, para. 445 (footnotes omitted).

<sup>2350</sup> *Lubanga Appeal Judgment*, para. 445 (footnotes omitted).

<sup>2351</sup> *Lubanga Appeal Judgment*, para. 445 (footnotes omitted).

<sup>2352</sup> *Lubanga Appeal Judgment*, paras 446, 452. The Appeals Chamber also confirmed that it is, in this context, ‘as such correct to consider article 30 of the Statute because that provision describes the relevant mental element and may therefore also serve as a yardstick for determining whether two or more individuals agreed to commit a crime’ (*Lubanga Appeal Judgment*, para. 446).

degree that the will of that person or persons becomes irrelevant, and that their action must be attributed to the perpetrators as if it were their own.<sup>2353</sup>

778. The requirement of the existence of an organisation used to subjugate the will of the direct perpetrators refers to one of the forms in which commission through another person, within the meaning of Article 25(3)(a) of the Statute may take place.<sup>2354</sup> In such case, while the potential physical perpetrators are interchangeable within the organisation,<sup>2355</sup> the criterion of control means that the indirect perpetrator used 'at least part of the apparatus of power subordinate to him or her, so as to steer it intentionally towards the commission of the crime, without leaving one of the subordinates at liberty to decide whether the crime is to be executed.'<sup>2356</sup>

779. Further, in relation to the requirement of control over the crime, it facilitates a normative assessment of the role of the accused person in the specific circumstances of the case.<sup>2357</sup> Indeed, the most appropriate tool for conducting such an assessment is an evaluation of whether the accused had control over the crime, by virtue of his or her essential contribution to it and the resulting power to frustrate its commission, even if his essential contribution was not made at the execution stage of the crime.<sup>2358</sup>

780. Accordingly, the purpose of the requirement of control over the crime is to distinguish between commission and other modes of liability, such as under Article 25(3)(c) of the Statute. If it is found that the accused provided an essential contribution to the crime pursuant to an agreement or common plan, this justifies the normative imputation to each co-perpetrator of the totality of the crime committed jointly by the co-perpetrators.

<sup>2353</sup> *Blé Goudé* Confirmation Decision, para. 136; *Ongwen* Confirmation Decision, para. 39.

<sup>2354</sup> *Katanga* Trial Judgment, para. 1403; *see also* para. 1406.

<sup>2355</sup> *Katanga* Trial Judgment, para. 1408.

<sup>2356</sup> *Katanga* Trial Judgment, para. 1411.

<sup>2357</sup> *Lubanga* Appeal Judgment, para. 473

<sup>2358</sup> *Lubanga* Appeal Judgment, para. 473; *see also Bemba et al* Appeal Judgment, para. 821.



### 3. Findings of the Chamber on indirect co-perpetration

#### a) Common plan

781. In order to determine whether Mr Ntaganda is individually criminally responsible as indirect co-perpetrator under Article 25(3)(a) of the Statute as alleged by the Prosecution, the Chamber will first examine whether he entered in a common plan with the other alleged co-perpetrators.

#### **(1) UPC/FPLC military leaders were already part of an active group in 2000**

782. In 2000, in the context of the creation of the Chui Mobile Force, Floribert Kisembo, Thomas Kasangaki, Paul Bagonza, Nduru Tchaligonza, Rafiki Saba, with Mr Ntaganda as its founder and leader, mutinied from the APC, the armed branch of the RCD-K/ML.<sup>2359</sup> At the time, they claimed that the RCD-K/ML sided with the Lendu community and discriminated against the Hema.<sup>2360</sup> They therefore gathered on an ethnic-basis, *i.e.* in order to protect the interests of the Hema community.<sup>2361</sup> To this end, they started a recruitment campaign and organised military training in Uganda.<sup>2362</sup>

#### **(2) In 2002, the UPC/FPLC military leaders worked together to set up a strong military group capable of achieving its objectives**

783. In April 2002, the military leaders of the emerging UPC/FPLC again entered into a conflict with the RCD-K/ML<sup>2363</sup> and, on this occasion, undertook to put an end to the power it exercised in Ituri.<sup>2364</sup> As of around May 2002, the emerging

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<sup>2359</sup> See para. 309.

<sup>2360</sup> See para. 310.

<sup>2361</sup> See para. 310.

<sup>2362</sup> See paras 311 and 312.

<sup>2363</sup> See para. 313.

<sup>2364</sup> See section IV.B.2 UPC/FPLC military objectives.

UPC/FPLC started providing military training to recruits at Mandro.<sup>2365</sup> In June 2002, it started extensively recruiting individuals, primarily Hema, from various locations throughout Ituri.<sup>2366</sup> As detailed below, Mr Ntaganda was, throughout the relevant period, personally and actively involved in the organisation's recruitment and training activities.<sup>2367</sup>

784. After a successful assault on Bunia in August 2002, the military limb of the UPC/FPLC was formally constituted as the FPLC,<sup>2368</sup> adopting a structure which replicated that of a conventional modern army.<sup>2369</sup> Thomas Lubanga was its President and Commander-in-Chief.<sup>2370</sup> He appointed Floribert Kisembo and Mr Ntaganda to the positions of Chief of Staff and Deputy Chief of Staff in charge of Operations and Organisation, respectively.<sup>2371</sup> Nduru Tchaligonza became UPC/FPLC brigade commander.<sup>2372</sup> Rafiki Saba was Thomas Lubanga's security advisor and was entrusted with civilian intelligence matters.<sup>2373</sup>

785. These individuals all had high-level responsibilities within the UPC/FPLC, a well-functioning armed force which had the numerical strength, capacity and resources to successfully conduct large-scale military operations.<sup>2374</sup> Notably, a disciplinary system ensured the execution of orders within its ranks.<sup>2375</sup>

786. Prior to the First Operation, the military leaders of the UPC/FPLC reached an agreement with APC dissidents under the leadership of Jérôme Kakwavu, as part

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<sup>2365</sup> See para. 314. See also para. 371.

<sup>2366</sup> See para. 347 and, generally, section IV.A.3.a) Recruitment.

<sup>2367</sup> See generally section V.C.3.c)(1) Mr Ntaganda's role was determinative in setting up a strong military group capable of driving out from certain areas all Lendu civilians.

<sup>2368</sup> See para. 315.

<sup>2369</sup> See para. 324. See also sections IV.A.2.b) Leadership and General Staff, and IV.A.2.d) Command structure and effectiveness of the military apparatus.

<sup>2370</sup> See paras 300 and 316.

<sup>2371</sup> See para. 321.

<sup>2372</sup> See para. 326.

<sup>2373</sup> See para. 301.

<sup>2374</sup> See paras 705 to 709.

<sup>2375</sup> See para. 332.

of which the troops under Kakwavu's command were incorporated in the UPC/FPLC.<sup>2376</sup>

**(3) The UPC/FPLC military leaders made arrangements for the recruitment and use of individuals under 15**

787. In June 2002, during a meeting held in Kampala where they discussed how they would take control of Ituri, Thomas Lubanga and other political leaders of the emerging UPC/FPLC decided that each person present at the meeting should mobilise the children in their community in order to join the UPC.<sup>2377</sup> As noted above, large scale recruitment efforts followed.<sup>2378</sup>

788. The Chamber also recalls that some political and military leaders of the UPC/FPLC, including Mr Ntaganda, had children under the age of 15 in their immediate vicinity, most notably, as part of their personal escorts.<sup>2379</sup> These individuals accompanied them everywhere, including to the front, as part of military operations.<sup>2380</sup> The demobilisation efforts, notably made by Mr Ntaganda and the other leaders of the UPC/FPLC, were isolated initiatives throughout the period of the charges, while the recruitment and reliance on individuals under the age of 15 continued.<sup>2381</sup>

789. In order to grow in strength as an army, and to be able to chase away the RCD/ML from Ituri, and to fight its well-armed and organised military wing, the UPC/FPLC had a strict and violent disciplinary system within its ranks. Recruits were told that they would be killed in case of desertion.<sup>2382</sup> Those who tried to escape were brought back to face other recruits before being seriously beaten

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<sup>2376</sup> See para. 325.

<sup>2377</sup> See para. 347.

<sup>2378</sup> See para.347, and, generally, section IV.A.3.a) Recruitment.

<sup>2379</sup> See sections IV.A.3.c)(1)(b) Presence of individuals under the age of 15 within Mr Ntaganda's bodyguard, and IV.A.3.c)(2) Escorts of other UPC/FPLC commanders and leaders.

<sup>2380</sup> See section IV.A.3.c)(1)(c) Tasks assigned to Mr Ntaganda's escorts; and para. 414.

<sup>2381</sup> See section IV.A.3.f) Demobilisation efforts.

<sup>2382</sup> See paras 331 to 332 and paras 376 to 377.

up.<sup>2383</sup> More generally, the Chamber considers that members of the organisation knew that they would be punished if they did not obey orders.<sup>2384</sup>

790. The military leaders of the organisation employed various methods to ensure that their commands would be obeyed. With regard to the recruits, the Chamber observes that the commanders subjected them to violent treatment and instilled fear in them. It was found that Mr Ntaganda, notably, inspired fear amongst the troops.<sup>2385</sup> Life in the UPC/FPLC for recruits, including for the youngest ones, meant harsh living conditions, threats, including to their life, monitoring of their movements, and severe punishments, including beatings and executions.<sup>2386</sup> While ensuring that the recruits obeyed their orders, the actual orders given to them, including to the youngest ones, directed them to be engaged in violent acts, such as killing the enemy, namely the Lendu, regardless of their sex, age and whether they were soldiers or civilians.<sup>2387</sup>

791. Taking into account the specific context of the creation of the UPC/FPLC, as well as the fact that its military branch had only just become an independent entity in mid-2002, the Chamber finds that building a sizable army and maintaining the number of recruits within the organisation was indispensable to achieve the aims of the organisation. As demonstrated above, the military leaders of the organisation took the measures required to ensure that their recruits, including the youngest ones, would remain part of the organisation.

792. In addition to these conditions, its young female recruits and soldiers were additionally subjected to a continuous exposure to the risk of sexual abuses, including rape, accompanied by severe physical violence. The Chamber found that female members of the UPC/FPLC, including those under 15 years of age,<sup>2388</sup>

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<sup>2383</sup> See para. 377.

<sup>2384</sup> See paras 376 to 377. See also para. 454.

<sup>2385</sup> See para. 322.

<sup>2386</sup> See paras 374 to 377, and 409.

<sup>2387</sup> See para. 416.

<sup>2388</sup> See paras 408 to 411.

were regularly raped or subjected to sexual violence by male members of the UPC/FPLC.<sup>2389</sup> These crimes were left largely unpunished<sup>2390</sup> and the Chamber considers that no effective measures were taken by Mr Ntaganda or Floribert Kisembo to restrain or prevent this practice within their respective groups of escorts.<sup>2391</sup> Moreover, some of the UPC/FPLC commanders themselves subjected some members of the UPC/FPLC to sexual violence.<sup>2392</sup> The Chamber finds that this practice could occur due to the circumstances in which these vulnerable young girls were kept, notably not being able to leave. In this regard, the Chamber emphasises the fact that the military leaders did not create the necessary conditions to ensure a safe environment for the female members of the UPC/FPLC, in which they would not be sexually abused by other members of the group.

**(4) The UPC/FPLC military leaders planned a military campaign including series of assaults involving the commission of crimes against the Lendu community**

793. The Chamber recalls that the leaders of the emerging UPC/FPLC, as of mid-2002, started to take steps to put an end to the power exercised by the RCD-K/ML in the territory of Ituri.<sup>2393</sup> After the successful taking of Bunia in August 2002,<sup>2394</sup> they undertook the planning of a large scale military campaign to prevent the APC from reorganising and launching counter-attacks. As set out above, the UPC/FPLC had the intention to occupy key positions in Ituri, notably Mongbwalu, and secure important roads leading to and from Bunia.<sup>2395</sup> It is in this context that the UPC/FPLC undertook to open the Main Road between Mongbwalu and Bunia (Second Operation) after having successfully taken

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<sup>2389</sup> See para. 407.

<sup>2390</sup> See paras 411 to 412. See also para. 332.

<sup>2391</sup> See paras 411 to 412.

<sup>2392</sup> See para. 407.

<sup>2393</sup> See paras 287 to 294.

<sup>2394</sup> See para. 292.

<sup>2395</sup> See paras 438 to 439.

control over Mongbwalu, its airstrip, and its surroundings (First Operation).<sup>2396</sup> As such, the First and Second Operation are part of the same military campaign and constitute a logical succession of events. Although separate in place and time, the acts performed by the UPC/FPLC troops during these two successive operations are part of one and the same course of conduct.

794. In November 2002, the UPC/FPLC launched a first assault to take over Mongbwalu.<sup>2397</sup> This operation failed, but led to a second attempt less than a month later. For this second attempt, Mr Ntaganda devised a tactic to approach the enemy from two sides; troops of Jérôme Kakwavu, which, as mentioned above, had recently integrated the UPC/FPLC, were to be deployed from the north, while other UPC/FPLC troops, including Salumu Mulenda's brigade, would come from the south-east.<sup>2398</sup>

795. Mr Ntaganda travelled to Aru to prepare this operation with Jérôme Kakwavu.<sup>2399</sup> In this context, Mr Ntaganda provided a briefing to the troops who would participate in the First Operation; he informed them about the planned two-side strategy, and told them that they had to do everything to join up with the troops coming from Bunia via Mabanga.<sup>2400</sup>

796. Having succeeded in taking over Mongbwalu and the surrounding area, the military leaders of the UPC/FPLC, including Floribert Kisembo, Mr Ntaganda, Rafiki Saba, Salongo Ndekezi, and Nduru Tchaligonza, held a meeting with Thomas Lubanga in mid-February 2003 during which Lubanga gave the instruction to open the Main Road between Mongbwalu and Bunia, which meant to take control of localities on the north-west axis, including Lipri, Kobu and Bambu,<sup>2401</sup> where the Lendu population who had fled from the area of

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<sup>2396</sup> See paras 440 to 442.

<sup>2397</sup> See paras 475 to 477.

<sup>2398</sup> See para. 478.

<sup>2399</sup> See paras 479 to 482.

<sup>2400</sup> See para. 482.

<sup>2401</sup> See para. 551.

Mongbwalu concentrated.<sup>2402</sup> Immediately after this meeting, these same military leaders, without Thomas Lubanga and his security advisor, met to divide tasks in preparation for this series of assaults,<sup>2403</sup> agreeing that Floribert Kisembo would plan the Second Operation from Mongbwalu.<sup>2404</sup>

797. The Chamber notes that, during and immediately after these military assaults, UPC/FPLC soldiers committed a large number of different crimes, in many localities, and over an extended period of time. These crimes were all perpetrated against the civilian population, predominantly Lendu, and perpetrated in a systematic way. The Chamber also found that soldiers who participated in the Second Operation, notably the killings in Kobu, were not punished for their conduct.<sup>2405</sup>

798. The Chamber further observes that the way these military operations unfolded is consistent with events which took place prior to their unfolding, including a number of related meetings and briefings.

799. In June 2002, during a meeting held amongst political leaders of the emerging UPC/FPLC in Kampala, including Thomas Lubanga, it was stated that one of the objectives of the UPC/FPLC was to drive out the non-natives, identifying the first target as the Nande, and then, the Lendu.<sup>2406</sup> In the context of side discussions, reference was also made to using the rape of enemy women as a means of waging war.<sup>2407</sup>

800. UPC/FPLC recruits were taught during their training that the Lendu and the Ngiti were the enemy.<sup>2408</sup> Soldiers were told to kill the enemy, regardless of their

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<sup>2402</sup> See para. 549.

<sup>2403</sup> See para. 552.

<sup>2404</sup> See para. 553.

<sup>2405</sup> See para. 639.

<sup>2406</sup> See paras 290 and 293.

<sup>2407</sup> See para. 293.

<sup>2408</sup> See para. 373.

sex, age and of whether they were soldiers or civilians.<sup>2409</sup> The killing of a Lendu, and the looting of Lendu property, were not considered punishable offences by UPC/FPLC soldiers, and rapes went unpunished.<sup>2410</sup>

801. As explained above, it was found that the UPC/FPLC did not only have the objective to chase away the RCD-K/ML, but also the Lendu civilians, as well as those who were perceived as non-Iturians.<sup>2411</sup> To achieve this, UPC/FPLC military leadership ordered troops to attack using the expression '*kupiga na kuchaji*', which was understood to mean attacking the Lendu civilians and looting their property.<sup>2412</sup> In this regard, the Chamber recalls that looted items which were considered of high quality or value were usually given to the commanders under threat of punishment.<sup>2413</sup>

802. In the context of the First Operation, Mr Ntaganda and Salumu Mulenda both issued this specific order to UPC/FPLC troops who were getting ready to deploy; telling them that they were going to Mongbwalu to fight against the Lendu.<sup>2414</sup> After some key positions had been secured in Mongbwalu, and once he had joined the troops in the field, Mr Ntaganda repeated a similar order for the troops to attack 'the Lendu'.<sup>2415</sup>

803. In the context of the Second Operation, Floribert Kisembo and Salumu Mulenda, amongst others, briefed the troops. A soldier who attended a first briefing of Salumu Mulenda in Kilo explained that the troops were asked to destroy the enemy forces in Kobu, Lipri and Bambu and that, according to him, this included the Lendu ethnic group.<sup>2416</sup> In Mongbwalu, Floribert Kisembo told the troops that they were going to Kobu to destroy Lendu headquarters, bring

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<sup>2409</sup> See para. 416.

<sup>2410</sup> See para. 332.

<sup>2411</sup> See section V.A.1.a)(3) Pursuant to or in furtherance of a State or organisational policy.

<sup>2412</sup> See para. 415.

<sup>2413</sup> See para. 515.

<sup>2414</sup> See para. 484.

<sup>2415</sup> See para. 493.

<sup>2416</sup> See para. 558.



back the lost *saba saba* weapon, open the road, but also that they were to drive out *all* the Lendu.<sup>2417</sup> These instructions were understood by a soldier present to mean that Lendu civilians were to be driven out, and that, for him, they would either leave or be killed.<sup>2418</sup> In a second briefing in Kilo on or about 18 February 2003, Salumu Mulenda explained the objective of the assault on Kobu to the troops and gave orders, including '*[ku]piga na kuchaji*'.<sup>2419</sup> Finally, to prevent the return of the Lendu inhabitants, Salumu Mulenda gave an order for troops to torch Buli.<sup>2420</sup>

804. During both the First and Second Operation, UPC/FPLC troops adapted their behaviour depending on the ethnicity of the individuals they were interacting with; Lendu were to be killed, while members of other ethnic groups could be released and stay alive.<sup>2421</sup>

805. Regarding acts of sexual violence, the Chamber notes that the unfolding of the operations shows that these acts were, like the acts of killings and other acts of physical violence, a tool used by UPC/FPLC soldiers and commanders alike to achieve their objective to destroy the Lendu community in the localities under assault. The Chamber notes the words pronounced by a UPC/FPLC soldier during a rape and at a moment when many of the victims were raped: he compared the Lendu to non-human elements to be exterminated.<sup>2422</sup> It is significant that the UPC/FPLC soldiers killed or attempted to kill many of the civilians they subjected to sexual violence.<sup>2423</sup> A survivor compared her experience to dying.<sup>2424</sup>

806. This aim of destruction is also evidenced by the particularly violent method used for the rapes committed during the course of the First and Second

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<sup>2417</sup> See para. 560.

<sup>2418</sup> See para. 560.

<sup>2419</sup> See para. 561.

<sup>2420</sup> See para. 609.

<sup>2421</sup> See paras 528 and 625. See also para. 546.

<sup>2422</sup> See para. 622.

<sup>2423</sup> See paras 878 to 881. See also paras 600 and 623.

<sup>2424</sup> See para. 622.

Operation,<sup>2425</sup> including the use of sticks to wound victims during the rapes<sup>2426</sup> and the fact that UPC/FPLC soldiers forced detained victims to sexually assault each other.<sup>2427</sup> These acts also had grave and fatal consequences for the victims: they suffered from serious injuries and required medical intervention;<sup>2428</sup> and they faced rejection and stigmatisation within their community.<sup>2429</sup> The Chamber finds that, by way of these acts, the UPC/FPLC intended at the same time to subject victims to these consequences that would go beyond the sexual violence itself.

807. Accordingly, the Chamber finds that the UPC/FPLC troops were instructed to attack everyone and everything, without making a distinction between fighters and those individuals who did not take any direct part in hostilities, but they were also expected by UPC/FPLC commanders to target Lendu civilians and their property specifically.

#### (5) Conclusion

808. The Chamber finds beyond reasonable doubt that Mr Ntaganda and other military leaders of the UPC/FPLC, including Thomas Lubanga and Floribert Kisembo, worked together and agreed in the common plan to drive out all the Lendu<sup>2430</sup> from the localities targeted during the course of their military campaign against the RCD-K/ML. It is this agreement, building on the relationships that they established long before the First and Second Operation, and which were already based on ethnical claims, which tied them together and made them co-perpetrators.

809. By way of this agreement, as notably evidenced by their use of the expression ‘[ku]piga na kuchaji’, the co-perpetrators meant the destruction and disintegration

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<sup>2425</sup> See paras 943 and 944.

<sup>2426</sup> See para. 623

<sup>2427</sup> See para. 545.

<sup>2428</sup> See paras 519 to 520.

<sup>2429</sup> See para. 88.

<sup>2430</sup> The Chamber recalls that it uses the term ‘Lendu’ to refer to the Lendu group as a whole, *i.e.* including the Ngiti (see para. 4).

of the Lendu community, which inherently involved the targeting of civilian individuals by way of acts of killing and raping, as well as the targeting of their public and private properties, via acts of appropriation and destruction. All of these acts were performed targeting the Lendu communities specifically in order prevent their return to the assaulted localities.

810. In the view of the Chamber, the co-perpetrators, by virtue of this agreement to drive out all the Lendu from the localities that they attacked, meant beyond reasonable doubt: (i) for civilians to be attacked and killed (Counts 1, 2 and 3); (ii) for their property to be appropriated and destroyed (Counts 11 and 18); (iii) for civilians to be raped and subjected to sexual slavery (Counts 4, 5, 7 and 8); (iv) for civilians to be forcibly displaced (Counts 12 and 13); and (v) for protected objects to be attacked (Count 17). Moreover, the Chamber finds beyond reasonable doubt that the co-perpetrators meant for the abovementioned conduct to be targeted towards the Lendu civilian population as such (Count 10).

811. The Chamber also concludes that, as of at least the beginning of August 2002, the co-perpetrators were virtually certain that the implementation of their plan to drive out all the Lendu from the localities targeted during the course of their military campaign against the RCD-K/ML would lead to: (i) the recruitment and active use in hostilities of children under the age of 15 within the UPC/FPLC (Counts 14, 15 and 16); and (ii) the rape and sexual slavery of these children (Counts 6 and 9). Indeed, the Chamber finds that, in the circumstances prevailing in Ituri at the time, the occurrence of these crimes was not simply a risk that they accepted, but crimes they foresaw with virtual certainty.

**b) Execution of the elements of the crimes through other persons**

812. As set out in detail below,<sup>2431</sup> the material elements of the crimes under consideration were executed by direct perpetrators who were UPC/FPLC soldiers or, in some instances, Hema civilians. The Chamber will now examine whether the conduct of these direct perpetrators is attributable to the co-perpetrators, acting pursuant to the common plan.

**(1) Organisation**

813. By 6 August 2002, the emerging UPC/FPLC was an operational structure.<sup>2432</sup> It conducted a successful military operation and took control of Bunia, which was the headquarters of the RCD-K/ML.<sup>2433</sup> As stated above, the emerging UPC/FPLC formalised in September 2002.<sup>2434</sup>

814. The UPC/FPLC was a well-organised armed group, consisted of a high number of trained soldiers and possessed a significant arsenal of weapons, and resembled a conventional army.<sup>2435</sup> The UPC/FPLC had a formal military structure.<sup>2436</sup> It had the General Staff based in Bunia during most of the temporal scope of the charges.<sup>2437</sup> The UPC/FPLC divided its operation units over three, and later two, geographical sectors.<sup>2438</sup> Three of the co-perpetrators, Thomas Lubanga, Floribert Kisembo, and Mr Ntaganda, held the positions of highest authority within the UPC/FPLC.<sup>2439</sup>

<sup>2431</sup> See section Findings of the Chamber on the crimes charged.

<sup>2432</sup> See paras 313 to 314.

<sup>2433</sup> See section IV.B.3 Bunia on or about 6 to 9 August 2002.

<sup>2434</sup> See paras 298 and 315.

<sup>2435</sup> See sections IV.A.2.d) Command structure and effectiveness of the military apparatus, and IV.A.2.f) Weapons, ammunition, and other material.

<sup>2436</sup> See para. 324.

<sup>2437</sup> Namely, between September 2002 and March 2003. See para. 320.

<sup>2438</sup> See paras 326 to 327.

<sup>2439</sup> See paras 300, 316 to 317, and 321. Before the formalisation of the UPC/FPLC, Thomas Lubanga already acted as the leader of the incipient organisation. See paras 286 to 288, 290, and 294.

815. The UPC/FPLC communication system was effective and allowed the different commanders to communicate on a constant basis in the context of the military operations.<sup>2440</sup> Transmission of orders and reports was made possible through these communication systems and recruits were trained in military skills, including discipline.<sup>2441</sup> The UPC/FPLC used kadogos, including individuals under 15, to gather information, to ascertain the position of opposing forces, and the kinds of weapon they were using, and also to observe MONUC personnel.<sup>2442</sup>

816. The evidence on the conduct of operations on the ground demonstrates beyond reasonable doubt that the orders of Mr Ntaganda and the other co-perpetrators were respected and executed, demonstrating their ability to rely on the organisation to implement their common plan. The First and Second Operation was executed in line with the orders issued.

817. At the end of July 2002, the emerging UPC/FPLC had 1800 to 2000 recruits present at Mandro.<sup>2443</sup> Turning now to the way these recruits were organised, treated and trained, the Chamber recalls that penalties included violent beatings, imprisonment, and, in specific cases, death.<sup>2444</sup> Other forms of punishment included physical exercises such as submersion in water, and depriving recruits of food.<sup>2445</sup> At the training camps, recruits were told that they would be killed if they tried to flee.<sup>2446</sup> Sometimes, recruits were beaten by the instructors without any apparent reason.<sup>2447</sup> Recruits were punished in the same way, regardless of their age.<sup>2448</sup>

818. Recruits, including children under the age of 15, which were undoubtedly vulnerable. Once recruited, these already vulnerable soldiers were subjected to

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<sup>2440</sup> See section IV.A.2.g) Communication system.

<sup>2441</sup> See para. 371.

<sup>2442</sup> See para. 404.

<sup>2443</sup> See para. 314.

<sup>2444</sup> See para. 377.

<sup>2445</sup> See para. 377.

<sup>2446</sup> See para. 376.

<sup>2447</sup> See para. 377.

<sup>2448</sup> See para. 377.

conditions of living and training which could only have the impact of increasing their vulnerability and making them even more docile and submissive to their commanders. The functioning of the camps was such that that they knew that violent acts were being performed on their peers,<sup>2449</sup> including rapes.<sup>2450</sup> Female members of the UPC/FPLC were indeed regularly raped or subjected to sexual violence – including at Mandro camp – by male UPC/FPLC soldiers and commanders.<sup>2451</sup> Although the Chamber heard evidence on specific cases of rape or sexual violence being punished, sexual violence against PMFs was left largely unpunished.<sup>2452</sup>

819. According to the Chamber, the conditions of living, training and service imposed on the UPC/FPLC soldiers were, beyond reasonable doubt, of such a nature that the soldiers reliably acted in complete obedience in the execution of orders emanating from the UPC/FPLC commanders. Taking also into account the number of persons within the UPC/FPLC military structure at the relevant time, the Chamber considers it established beyond reasonable doubt that the will of the individual soldiers was irrelevant for the execution of a given order. The UPC/FPLC as a whole functioned as a tool in the hands of the co-perpetrators, through which they were able to realise, without any structural constraints, the crimes against the Lendu. In these circumstances, the Chamber concludes that the conduct of the individual UPC/FPLC soldiers in the execution of the crimes must be attributed to the co-perpetrators as their own.

## **(2) Hema civilian supporters**

820. The Chamber found that Hema civilian supporters also participated in the commission of certain crimes:

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<sup>2449</sup> See para. 376.

<sup>2450</sup> See para. 407.

<sup>2451</sup> See para. 407.

<sup>2452</sup> See para. 412.

- the killings and lootings in the context of the *ratissage* operations in Mongbwalu and Sayo;<sup>2453</sup> and
- the looting of items from private homes shortly after the assault on Bambu;<sup>2454</sup>

821. With regard to Mongbwalu, in addition to the UPC/FPLC soldiers, the Hema civilians also executed the material elements of crimes found to have been committed, namely murder as a crime against humanity and as a war crime (Counts 1 and 2) and pillage as a war crime (Count 11).<sup>2455</sup>

822. In order to attribute the conduct of Hema civilians to the co-perpetrators, the Chamber must determine whether they were used as a tool of the co-perpetrators, having regard to the conditions in which they found themselves at the time. In this regard, the Chamber is of the view that, in Mongbwalu, the Hema civilians engaged in the relevant acts in the context of the general coercive circumstances resulting from the presence of armed UPC/FPLC soldiers, who were themselves committing crimes in Mongbwalu at the same time. In addition, the conduct of these civilians followed orders of the UPC/FPLC leadership.<sup>2456</sup>

823. With regard to the role of Hema civilians in Sayo, the evidence only establishes that they carried looted items.<sup>2457</sup> It is therefore not clear whether they themselves also committed any material element of the crime of pillaging. In respect of the events in Bambu, the Chamber does not have enough information about the circumstances in which the Hema civilians carried out their acts, to make any findings on the possible attribution of their conduct to the co-perpetrators.

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<sup>2453</sup> See paras 512 and 526.

<sup>2454</sup> See para. 475.

<sup>2455</sup> See sections V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2), and V.C.4.g) Pillage as a war crime (Count 11).

<sup>2456</sup> See para. 512.

<sup>2457</sup> See para. 526.

824. In conclusion, the Chamber considers, beyond reasonable doubt, that with regard to the abovementioned killings and looting in Mongbwalu, the Hema civilians functioned as a tool in the hands of the co-perpetrators, controlled through soldiers of the UPC/FPLC, an organisation which was itself a tool in the hands of the co-perpetrators, as established above. In this specific instance, the co-perpetrators were able to realise the material elements of certain crimes, in pursuance of the common plan, through these Hema civilians, whose will had become irrelevant. In these circumstances, the Chamber concludes that the conduct of the Hema civilians in the execution of the crimes must be attributed to the co-perpetrators as if it were their own.

### **(3) Conclusion**

825. The Chamber concludes beyond reasonable doubt that UPC/FPLC soldiers and Hema civilians were under the control of the co-perpetrators and used to execute the objective elements of the crimes.

#### **c) Contribution of Mr Ntaganda**

826. In order to determine whether Mr Ntaganda is individually criminally responsible for the crimes as an indirect co-perpetrator, the Chamber must assess whether he had control over the crimes by virtue of his essential contribution to them and the resulting power to frustrate their commission.<sup>2458</sup>

827. As a preliminary remark, the Chamber recalls Mr Ntaganda's position within the UPC/FPLC. He was among the key leaders of the movement that split from the APC in April 2002.<sup>2459</sup> In early September 2002, he became Deputy Chief of

<sup>2458</sup> *Lubanga* Appeal Judgment, paras 7 and 473.

<sup>2459</sup> See paras 288 and 313.



Staff in charge of Operations and Organisation of the UPC/FPLC, a position he held until the end of the period under examination (8 December 2003).<sup>2460</sup>

828. The Chamber found that Mr Ntaganda, in the aforementioned position, was indeed in charge of the troops' deployment and operations.<sup>2461</sup> The Chamber also found that, within the UPC/FPLC, Mr Ntaganda's orders were obeyed.<sup>2462</sup> Furthermore, Mr Ntaganda inspired fear over the troops as well as the population.<sup>2463</sup>

829. The Chamber will assess Mr Ntaganda's contribution in light of the position he occupied during the relevant period, which is not contested.

**(1) Mr Ntaganda's role was determinative in setting up a strong military group capable of driving out from certain areas all Lendu civilians**

830. The Chamber found that Mr Ntaganda was one of the members of the UPC/FPLC military leadership who was personally and actively involved in the organisation's recruitment activities. In particular, he personally asked community leaders to assist in UPC/FPLC recruitment.<sup>2464</sup> It is also established that, on at least three occasions, he made public calls to the population to join the UPC/FPLC.<sup>2465</sup>

831. The evidence demonstrates that the Mandro training centre was established by Mr Ntaganda.<sup>2466</sup> The establishment of this training centre was a pivotal event in the ability of the UPC/FPLC to increase in size and thereby become stronger as an armed group, as Mandro was the first training centre where the UPC/FPLC

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<sup>2460</sup> See para. 321.

<sup>2461</sup> See para. 322.

<sup>2462</sup> See para. 322.

<sup>2463</sup> See para. 322.

<sup>2464</sup> See para. 355.

<sup>2465</sup> See paras 356 to 359.

<sup>2466</sup> See para. 365.

training system was put in practice.<sup>2467</sup> Also, crucially, Mr Ntaganda selected the topics for instruction at Mandro camp.<sup>2468</sup> It was through these training centres of the UPC/FPLC, in Mandro and elsewhere, that children under the age of 15 became incorporated into the organisation.

832. The training of recruits in the UPC/FPLC was under the responsibility of Mr Ntaganda, who regularly paid visits to the various training camps in order to inspect the training process.<sup>2469</sup> He personally taught recruits at Mandro, and notably attended *kitamaduni* sessions.<sup>2470</sup> Mr Ntaganda personally attended and spoke at graduation ceremonies at Mandro and Lingo.<sup>2471</sup> He also decided on the deployment of soldiers after training,<sup>2472</sup> and therefore, also on the deployment of kadogos, including those who were under 15 at the time of the events.

833. In sum, Mr Ntaganda's role was determinative in setting up an efficient military group. His involvement at the early stage of the group's activities ensured that the UPC/FPLC troops had the numerical strength and capacity to successfully conduct large-scale military operations allowing them, as demonstrated below, to implement their project to drive out targeted groups of civilians from the relevant areas.

**(2) Mr Ntaganda devised the military tactic which allowed for the success of the UPC/FPLC taking over of Mongbwalu and the related First and Second Operation**

834. Both the First and Second Operation were planned and prepared in advance. The Chamber found that Mr Ntaganda, after a first failed attempt by the UPC/FPLC to take over Mongbwalu,<sup>2473</sup> devised a tactic to approach the enemy in

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<sup>2467</sup> See para. 314.

<sup>2468</sup> See para. 371.

<sup>2469</sup> See para. 360.

<sup>2470</sup> See para. 372.

<sup>2471</sup> See para. 378.

<sup>2472</sup> See para. 378.

<sup>2473</sup> See section IV.B.7.b) Failed assault on Mongbwalu.

Mongbwalu from two sides: Jérôme Kakwavu's troops, who had recently joined the UPC/FPLC, were to be deployed from the north, while other UPC/FPLC troops, including Salumu Mulenda's brigade, were to come from the south-east.<sup>2474</sup>

835. It was also established that, in this context, Mr Ntaganda travelled to Aru with a view to organising Jérôme Kakwavu's troops and inventorising their needs in preparation for the UPC/FPLC's second attempt to take over Mongbwalu.<sup>2475</sup> In Aru, Mr Ntaganda and Jérôme Kakwavu planned this operation.<sup>2476</sup>

836. In fact, importantly, the assault was launched as conceived by Mr Ntaganda<sup>2477</sup> and resulted in the UPC/FPLC taking over Mongbwalu and its surroundings. It is only after the UPC/FPLC had secured its control over the area that it could effectively implement its plan to drive out the targeted groups of civilians.

837. With regard to the Second Operation, the Chamber found that Mr Ntaganda took part in the relevant planning. In the days before the operation, preparations were undertaken during two meetings held in Bunia.<sup>2478</sup> Mr Ntaganda participated in both meetings.<sup>2479</sup> In one of these meetings, Mr Ntaganda gave, together with Floribert Kisembo, instructions to Salongo Ndekezi and Nduru Tchaligonza to handle the Lipri road.<sup>2480</sup> Lipri and the surrounding area were indeed attacked by the UPC/FPLC as part of the Second Operation.<sup>2481</sup> Mr Ntaganda also specifically gave instructions to go by Centrale to pick up ammunition and bring it to the troops in Bambu,<sup>2482</sup> one of the localities targeted during the Second Operation. This instruction was executed.<sup>2483</sup> Later, in

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<sup>2474</sup> See para. 478.

<sup>2475</sup> See para. 479.

<sup>2476</sup> See para. 481.

<sup>2477</sup> See para. 486.

<sup>2478</sup> See para. 550.

<sup>2479</sup> See paras 551-552.

<sup>2480</sup> See para. 552.

<sup>2481</sup> See IV.B.8.c)(2) Assault on Lipri and surrounding villages.

<sup>2482</sup> See para. 552.

<sup>2483</sup> See para. 557.

accordance with what was decided at the preparatory meetings, the Second Operation was further organised by Floribert Kisembo from Mongbwalu.<sup>2484</sup>

838. The Chamber finally recalls that the advance of UPC/FPLC troops south from Mongbwalu, on the Bunia road, was a major prong of the Second Operation.<sup>2485</sup> In this regard, it is noted that weapons and ammunition required to reinforce the troops for and during the Second Operation were sent from Bunia to Mongbwalu by plane.<sup>2486</sup> Hence, once the UPC/FPLC was in control of Mongbwalu, most notably of its airstrip, it could most effectively launch various assaults on villages located in the Walendu-Djatsi *collectivité*, seize the Main Road, and drive out the targeted group from this area. As such, the success of the UPC/FPLC assault on Mongbwalu allowed the organisation to continue, pursuant to the common plan, the commission of crimes against the targeted groups during both the First and Second Operation. Consequently, since the First and Second Operation are part of one and the same plan, the Chamber has assessed Mr Ntaganda's role in a comprehensive way, taking into account the totality of his actions in the context of the First and Second Operation.

839. The Chamber found that Mr Ntaganda provided a briefing to Jérôme Kakwavu's troops based in Kandoyi during which he informed them of the two-sided strategy he devised for the takeover of Mongbwalu.<sup>2487</sup> His address to the troops, on this occasion, boosted their morale and reassured them in that they would have the means to successfully conduct the operation.<sup>2488</sup> During this visit in Kandoyi, Mr Ntaganda also distributed weapons and tested the support weapons which he had brought with him in front of the troops.<sup>2489</sup>

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<sup>2484</sup> See para. 553.

<sup>2485</sup> See para. 581. See also paras 556 to 560.

<sup>2486</sup> See para. 556.

<sup>2487</sup> See para. 482.

<sup>2488</sup> See para. 482.

<sup>2489</sup> See para. 482.

840. The Chamber also notes that, on 19 November 2002, Mr Ntaganda gave the final order for the troops to advance towards Mongbwalu;<sup>2490</sup> it was Mr Ntaganda's order which set off the assault by the UPC/FPLC soldiers.<sup>2491</sup>

841. The night before leaving for the First Operation, Mr Ntaganda spoke to some of the UPC/FPLC troops in Bunia. He told them that they were going to Mongbwalu to fight against the Lendu, ordering them to attack using the term '*kupiga na kuchaji*'.<sup>2492</sup> Pursuant to this order from their commander, these UPC/FPLC soldiers committed crimes against the Lendu during the course of this assault.

842. The Chamber established that Mr Ntaganda subsequently travelled from Bunia towards Mongbwalu with these troops, arriving once the assault had commenced, but before the subsequent UPC/FPLC assault on Sayo.<sup>2493</sup> Mr Ntaganda was the overall commander of the assault on Mongbwalu: he gave orders to the UPC/FPLC troops who participated in this operation and these troops reported directly to him.<sup>2494</sup>

843. As the assault unfolded, Mr Ntaganda used his access to various means of communication to stay in contact with UPC/FPLC commanders participating in this operation, notably via the *radiophonie* and the Motorolas.<sup>2495</sup> As the troops entered Mongbwalu, Salumu Mulenda and Mr Ntaganda gave orders to fire the heavy weapons and decided which specific objects were to be shot at.<sup>2496</sup>

844. The Chamber further established that once the Kilo-Moto offices and the airstrip in Mongbwalu had been taken over by the UPC/FPLC, Mr Ntaganda met

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<sup>2490</sup> See para. 485

<sup>2491</sup> See para. 488.

<sup>2492</sup> See para. 484. See also para. 415.

<sup>2493</sup> See para. 489.

<sup>2494</sup> See para. 491.

<sup>2495</sup> See para. 491.

<sup>2496</sup> See para. 491.

the commanders involved in the operation at Camp Goli.<sup>2497</sup> He was given a report of the situation and discussed the division of tasks for the next day.<sup>2498</sup> Mr Ntaganda gave orders to take over the whole of Mongbwalu.<sup>2499</sup> Salumu Mulenda and Emmanuel Ndungutse were respectively instructed by Mr Ntaganda to take over Mongbwalu factory and a hill from where the UPC/FPLC was being threatened near Mongbwalu.<sup>2500</sup> The next day, Emmanuel Ndungutse attacked the hill overlooking the market in Mongbwalu, while Salumu Mulenda and Mr Ntaganda took over the factory and Sayo.<sup>2501</sup>

845. The Chamber also found that, on this occasion, Mr Ntaganda ordered troops to attack 'the Lendu' who were in Mongbwalu, without making a difference between 'Lendu civilians' and the militia.<sup>2502</sup>

846. With regard to the Second Operation, the Chamber found that Mr Ntaganda remained in contact with the commanders in the field and monitored the unfolding via the UPC/FPLC radio communications systems.<sup>2503</sup> In one instance, he reacted strongly, and on the same day, after receiving information that a commander had refused to depart for a specific assault forming part of the Second Operation.<sup>2504</sup> In the assessment of the Chamber, the message's purpose was to reassert discipline within the UPC/FPLC and ensure the proper execution of orders in the unfolding of the Second Operation. In other words, Mr Ntaganda exercised oversight over the unfolding of the Second Operation and, by reinforcing the chain of command within the group, he made sure that the forces deployed were carrying out the project as planned.

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<sup>2497</sup> See para. 493.

<sup>2498</sup> See para. 493.

<sup>2499</sup> See para. 493.

<sup>2500</sup> See para. 493.

<sup>2501</sup> See para. 493.

<sup>2502</sup> See para. 493.

<sup>2503</sup> See para. 565.

<sup>2504</sup> See para. 565.

**(3) Mr Ntaganda gave orders to commit crimes and personally engaged in violent conduct towards the enemies**

847. Once Mongbwalu was taken over, Mr Ntaganda met with the commanders to carry out an evaluation of the operation.<sup>2505</sup> He congratulated everyone present on the successful operation.<sup>2506</sup>

848. On or about 24 November 2002, when the UPC/FPLC attacked Sayo, Mr Ntaganda oversaw that assault.<sup>2507</sup> Salumu Mulenda and Thomas Kasangaki were present on the front and led the troops into combat, receiving orders from and reporting back to Mr Ntaganda.<sup>2508</sup> When Mr Ntaganda joined the UPC/FPLC troops in the field in Sayo,<sup>2509</sup> he ordered one of Salumu Mulenda's men to fire with a grenade launcher at the slope of a mountain where a group of men and women wearing civilian clothing were walking.<sup>2510</sup>

849. Between the attack on Nzebi and Mr Ntaganda's return to Bunia, Mr Ntaganda's bodyguards, upon his orders, shot and killed two Lendu persons who had previously been ordered by Mr Ntaganda to be arrested in Nzebi.<sup>2511</sup>

850. During his stay of more than a week in Mongbwalu,<sup>2512</sup> Mr Ntaganda was based at the *Appartements*.<sup>2513</sup> The *Appartements* and their immediate surroundings were used by the UPC/FPLC as a camp and a headquarters during the operation, and weapons were stored there.<sup>2514</sup> On one occasion, UPC/FPLC soldiers tied up and killed two persons detained there pursuant to an order from Mr Ntaganda.<sup>2515</sup> At the same location, Mr Ntaganda also shot and killed *Abbé Bwanalonga*,<sup>2516</sup> a

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<sup>2505</sup> See para. 499.

<sup>2506</sup> See para. 499.

<sup>2507</sup> See para. 500.

<sup>2508</sup> See para. 500 .

<sup>2509</sup> See para. 507.

<sup>2510</sup> See para. 508.

<sup>2511</sup> See para. 510.

<sup>2512</sup> See para. 489.

<sup>2513</sup> See para. 527.

<sup>2514</sup> See para. 527.

<sup>2515</sup> See para. 528.

<sup>2516</sup> See para. 533.

man of an advanced age serving as a Catholic priest at the Mongbwalu parish, who had been held by the UPC/FPLC at the *Appartements*.<sup>2517</sup>

851. The Chamber considers that, in addition to his direct orders to target and kill civilians, Mr Ntaganda endorsed criminal conduct of his soldiers by way of his personal conduct. Moreover, with his own actions, he illustrated for his troops how the orders were to be implemented with regard to the treatment of the Lendu civilians.

#### (4) Conclusion

852. As detailed above, the Chamber found that Mr Ntaganda had a unique and central role in the setting up of the UPC/FPLC as an efficient armed group, most notably at the early stages of the group's activities, when his skills, experience, and initiatives were determinative in increasing the group's strength and capacity to carry out its objectives.

853. Further, given the way Mr Ntaganda's skills were perceived and relied upon within the UPC/FPLC ranks, including for the planning and organisation of its military operations, the Chamber considers that the UPC/FPLC military campaign which followed its successful taking-over of Bunia was largely dependent upon Mr Ntaganda's personal involvement and commitment as one of the group's highest ranking military figures.

854. In fact, importantly, the assault on Mongbwalu was launched as conceived by Mr Ntaganda and resulted, under his overall military command, in the successful taking-over of the area. Once in control of Mongbwalu, where they established their headquarters, the UPC/FPLC troops could conduct *ratissage* operations and proceed with the widespread commission of crimes against the targeted groups of civilians, as planned by the co-perpetrators. Similarly, and as demonstrated

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<sup>2517</sup> See para. 529.



above, it is the success of the UPC/FPLC assault on Mongbwalu which allowed it to undertake the follow-up operation to seize the Main Road and drive out all the Lendu from area under attack as part of the Second Operation.

855. In addition, it is Mr Ntaganda's direct orders to kill civilians and loot, his active role as an operational commander, identifying targets, congratulating and supporting the troops in the field, as well as his proximity to the commanders and soldiers deployed, which resulted in the commission of the crimes. Further, with his own personal violent conduct towards civilians, Mr Ntaganda showed his troops how the orders were to be implemented. Mr Ntaganda's subordinates, who were taught military skills and discipline, were trained to obey orders and therefore naturally proceeded with the commission of the crimes during the course of the First and Second Operation, as requested.

856. Accordingly, the Chamber considers that Mr Ntaganda had the power to frustrate the commission of the crimes and therefore that the acts and circumstances described above, taken cumulatively, constitute an essential contribution.

857. Therefore, the Chamber concludes beyond reasonable doubt that Mr Ntaganda exercised control over the crimes committed by UPC/FPLC troops pursuant to the common plan to drive out all the Lendu from the localities targeted during the course of the First and Second Operation. The Chamber also concludes that Mr Ntaganda exercised control over the crimes committed by the UPC/FPLC against children under the age of 15 who were enrolled, raped, subjected to sexual slavery, and/or used to participate in hostilities by the UPC/FPLC during the course of this military campaign against the RCD-K/ML and the Lendu. Instead of frustrating their commission, Mr Ntaganda personally engaged, in front of his soldiers, in violent conduct towards the enemies. In the view of the Chamber, the acts which constitute his essential contribution were

necessary to ensure the progression and success of both the legitimate and illegitimate aims of the group.

#### **4. Findings of the Chamber on the crimes charged**

##### **a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2)**

##### **(1) Applicable law**

858. The crime against humanity of murder is laid down in Article 7(1)(a) of the Statute. The war crime of murder is laid down in Article 8(2)(c)(i) of the Statute.

859. The legal elements of the crime against humanity of murder are:

1. The perpetrator killed one or more persons.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.<sup>2518</sup>
4. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2519</sup>

860. The legal elements of the war crime of murder are:

1. The perpetrator killed one or more persons.
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an armed conflict.

<sup>2518</sup> Elements of Crimes, Article 7(1)(a) (footnotes omitted).

<sup>2519</sup> Where the Statute and Elements of Crimes do not provide a particular mental element for a specific crime, such as murder constituting a crime against humanity, the Article 30 definitions of 'intent' and 'knowledge' apply to the affected *conduct*, *consequence* or *circumstance*. See Elements of Crimes, General introduction, para. 2. See also Bemba Trial Judgment, paras 89 to 90; and Katanga Judgment, paras 780 to 781.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>2520</sup>

6. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2521</sup>

861. The attempted commission of a crime is characterised by the incompleteness of its objective elements; accordingly, there are no distinctions to be drawn between the mental elements required for murder in its consummated form and those required for its attempted form.<sup>2522</sup>

862. The elements of murder may be satisfied whether or not a victim's body has been recovered; a victim's death may thus be proven by circumstantial evidence so long as the only reasonable inference that can be drawn therefrom is that the victim died.<sup>2523</sup> Further, it is not necessary for the Prosecution to prove the specific identity of the victim or the perpetrator.<sup>2524</sup>

## (2) Findings of the Chamber

### (a) Scope of the charges

863. The Chamber will address Defence challenges to the scope of the charges in relation to Counts 1 and 2 concerning the following locations: Pluto and Mongbwalu, Sayo, Kilo, and Kobu.

864. *Pluto and Mongbwalu*: In relation to the Defence's arguments that murder committed in Pluto,<sup>2525</sup> and any act of alleged murder after the UPC/FPLC takeover of Mongbwalu resulting from the use of anti-personnel mines<sup>2526</sup> do not

<sup>2520</sup> Elements of Crimes, Article 8(2)(c)(i) (footnotes omitted).

<sup>2521</sup> See footnote 2519 above.

<sup>2522</sup> *Katanga et al* Confirmation Decision, para. 460; and *Banda et al* Confirmation Decision, para. 106

<sup>2523</sup> *Bemba Trial Judgment*, para. 88; *Katanga Judgment*, para. 768. See also, ICTY, *Popović et al. Trial Judgment*, para. 789.

<sup>2524</sup> *Bemba Trial Judgment*, para. 88, referring to, *inter alia*, ICTY, *Orić Appeal Judgment*, paras 33-35; and ICTY, *Blaškić Appeal Judgment*, para. 217.

<sup>2525</sup> See Defence Closing Brief, para. 618; and Defence Reply Brief, para. 14, page 8.

<sup>2526</sup> Defence Reply Brief, para. 14, page 9; and Defence Closing Brief, para. 653.

adequately fall within the scope of the charges, the Chamber recalls that, on the basis of the evidence on the record, it has not made any findings concerning deaths in Pluto or death resulting from the use of anti-personnel mines in Mongbwalu. As the Chamber will not consider these incidents in reaching its conclusions in relation to Counts 1 and 2, it considers the Defence's arguments in this respect to be moot.

865. The Chamber further notes that it found that a Lendu woman accused of being a chieftain of the Lendu 'combatants' was killed by members of Bureau Two at 'Salumu's camp' in Mongbwalu.<sup>2527</sup> The Defence argues that no charge of murder corresponds to this event.<sup>2528</sup> In this respect, the Chamber notes that, while this incident is not specifically referred to in paragraph 38 of the Confirmation Decision, and/or in paragraphs 63 to 75 of the UDCC, Mongbwalu is one of the locations mentioned in paragraph 36 in relation to Counts 1 and 2. Paragraph 36 of the Confirmation states that 'in the course of the *First Attack*, at least 200 civilians were killed in and around Mongbwalu by UPC/FPLC soldiers' (footnotes omitted). Under these circumstances, the Chamber considers that this killing falls within the scope of the charges in relation to Counts 1 and 2.

866. *Sayo*: The Defence argues that no murder at Sayo is charged other than the incident at the church and the killing of 49 civilians whose bodies the UPC/FPLC had left in the streets, including those of the Upio family.<sup>2529</sup> It further argues that Mr Ntaganda is also not charged with the alleged killing of a Lulu man, his father, and his two young nephews some days after the UPC/FPLC took over Sayo and with the alleged killing of a person named Lusala.<sup>2530</sup> In relation to 'Lusala' specifically, the Defence asserted that '[t]he name "LUSALA" does not

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<sup>2527</sup> See para. 513.

<sup>2528</sup> Defence Reply Brief, para. 14, page 9.

<sup>2529</sup> Defence Closing Brief, para. 656; and Defence Reply Brief, para. 14, page 9.

<sup>2530</sup> Defence Closing Brief, para. 656; Defence Reply Brief, para. 14, page 9.

appear in the [Confirmation Decision]’, concluding that ‘Mr Ntaganda is not even charged with [it]’.<sup>2531</sup>

867. The Prosecution submits that the ‘murder[s] of 5 persons in Sayo committed by NTAGANDA are properly charged under: (i) direct perpetration of counts 1 and 2 “in or around Mongbwalu”, (ii) direct perpetration of “attacks against civilians in Sayo”, (iii) as an essential contribution under article 25(3)(a) to the common plan related to Count 1 (murder) in Sayo’.<sup>2532</sup> In its view, ‘[t]hese individual criminal acts were properly added after the confirmation of charges, and notice was given through disclosure of the underlying evidence on 2 March 2015 and through the [Prosecution Closing Brief]’.<sup>2533</sup>

868. The Chamber notes that the aforementioned killings are not specifically referred to in paragraph 40 of the Confirmation Decision and/or in paragraphs 63 to 75 of the UDCC. However, the Chamber notes that Sayo is one of the locations mentioned in paragraph 36 in relation to Counts 1 and 2. Further, the Chamber considers that, contrary to the Defence’s assertion that no murder at Sayo is charged other than the incident at Sayo church,<sup>2534</sup> paragraph 40 of the Confirmation Decision states that ‘[i]n Sayo, UPC/FPLC soldiers killed civilians, *including, on one occasion women, children and members of the clergy who were hiding in Mungu Samaki church in Sayo*’ (footnotes omitted and emphasis added). In light of the foregoing, the Chamber finds that the killing of civilians in Sayo, other than at Sayo church, falls within the scope of the charges in the present case in relation to Counts 1 and 2.

869. *Kilo*: The Defence argues that the murders of: (i) a ‘disabled’ Lendu civilian; (ii) ‘[m]any people’ being required to dig their own graves before being killed;

<sup>2531</sup> Defence Closing Brief, para. 438, fn. 1300.

<sup>2532</sup> Prosecution Response, para. 12 The Chamber understands the Prosecution’s argument in this respect to refer to the alleged killing of the Lulu family and of Lusala.

<sup>2533</sup> Prosecution Response, para. 12, referring to Prosecution Closing Brief, para. 474.

<sup>2534</sup> See Defence Closing Brief, para. 656; Defence Reply, para. 14, page 9.

and (iii) two persons, including of a pregnant woman, do not fall within the scope of the charges, stating that there is: ‘No description even slightly resembling these events.’<sup>2535</sup> In this respect, the Chamber notes that Kilo is one of the locations referred to at paragraph 36 of the Confirmation Decision in relation to Counts 1 and 2, and that paragraph 41 of the Confirmation Decision further sets out that ‘civilians’ were killed by UPC/FPLC soldiers ‘after forcing *some* to dig their own graves’ (emphasis added). Under these circumstances, the Chamber considers that the killing of civilians in Kilo falls within the scope of the charges as set out in the Confirmation Decision.

870. *Kobu*: Lastly, the Chamber notes the Defence’s challenge in relation to the killing of two children in Kobu. The Defence argues that ‘[n]o specificity [is] provided as to identity of victims, number of victims, circumstances in which killed; the absence of description may be contrasted with the description of the banana field massacre, which is charged’.<sup>2536</sup> The Chamber notes that Kobu is one of the locations mentioned in paragraph 36 in relation to Counts 1 and 2 and that paragraph 42 of the Confirmation Decision states that: ‘after the UPC/FPLC had taken control of Kobu, UPC/FPLC patrols were organised and every civilian considered to be an enemy in Kobu was killed immediately or taken to Mr. Mulenda’s compound and executed there upon his orders. *In particular*, a man and a woman were executed in that compound by UPC/FPLC soldiers, including Commander Simba, and three Lendu men were also killed there by UPC/FPLC soldiers’ (footnotes omitted and emphasis added). In light of the foregoing, the Chamber finds that the killing of persons other than the ones specifically mentioned in paragraph 42 of the Confirmation Decision, particularly, the two children, falls within the scope of the charges.

<sup>2535</sup> Defence Closing Brief, para. 670; and Defence Reply Brief, para. 14, page 9.

<sup>2536</sup> See Defence Closing Brief, para. 908, relying on UDCC, para. 81; Defence Reply, para. 14, page 10, referring to paras 80 and 89 of the UDCC.

**(b) Material elements**

**(i) Negative findings**

871. The Chamber recalls that, on the basis of the evidence on the record, it was unable to establish that the following alleged killings referred to in the Confirmation Decision occurred and/or that they were attributable to the UPC/FPLC:

- the killing of civilians in Pluto;<sup>2537</sup>
- the killing of civilians at the Mongbwalu airfield,<sup>2538</sup> the Mongbwalu hospital,<sup>2539</sup> the Gangala area of Mongbwalu,<sup>2540</sup> specifically;
- the killing of civilians in and around the church in Sayo;<sup>2541</sup>
- the attempted killing of a number of civilians in Kilo, other than P-0022;<sup>2542</sup>
- any killings in Ngongo, Lipri, Tsili, and Jitchu;<sup>2543</sup> and
- the killing of a woman and her child (with machetes) by UPC/FPLC soldiers in Bambu on 25 February 2003, or a woman being captured and killed in Bambu by UPC/FPLC soldiers.<sup>2544</sup>

872. Accordingly, the Chamber has not taken these alleged killings into account in reaching its conclusion on the charges of murder.

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<sup>2537</sup> See para. 492, footnote 1417.

<sup>2538</sup> See para. 492, footnote 1418.

<sup>2539</sup> See para. 514, footnote 1525.

<sup>2540</sup> See para. 492, footnote 1420.

<sup>2541</sup> See para. 506, footnote 1473.

<sup>2542</sup> See para. 546, footnote 1647.

<sup>2543</sup> See para. 567, footnote 1740, and para. 619, footnote 1930.

<sup>2544</sup> See para. 586, footnote 1806.

(ii) *Positive findings*

873. The Chamber found that the following killings occurred:

- the killing of people in Mongbwalu,<sup>2545</sup> Sayo,<sup>2546</sup> and Nzebi<sup>2547</sup> by the UPC/FPLC during the assaults on these localities and the killing of a woman in front of the health centre in Sayo;<sup>2548</sup>
- the killing of people in Mongbwalu<sup>2549</sup> and Sayo<sup>2550</sup> during *ratissage* operations by members of the UPC/FPLC and – in the case of Mongbwalu – also by Hema ‘civilians’, including a Lendu woman accused of being a ‘chieftain’ of the Lendu ‘combatants’<sup>2551</sup> and persons killed at the *Appartements* camp following interrogation;<sup>2552</sup>
- the killing of two Lendu persons in Nzebi by Mr Ntaganda’s bodyguards, pursuant to Mr Ntaganda’s order, sometime between the assault on Nzebi and Mr Ntaganda’s departure from Mongbwalu to Bunia;<sup>2553</sup>
- the killing of Lendu persons,<sup>2554</sup> a Ngiti man and a pregnant Lendu woman who had been detained in a pit,<sup>2555</sup> and of a Nyali man<sup>2556</sup> by UPC/FPLC soldiers in Kilo after the takeover of the village;
- the killing of at least two young children in Kobu by UPC/FPLC soldiers during the assault<sup>2557</sup> and the killing of at least two detained persons during the *ratissage* operation<sup>2558</sup> that followed;

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<sup>2545</sup> See para. 495.

<sup>2546</sup> See para. 504.

<sup>2547</sup> See para. 509.

<sup>2548</sup> See para. 506.

<sup>2549</sup> See para. 512.

<sup>2550</sup> See para. 526.

<sup>2551</sup> See para. 513.

<sup>2552</sup> See para. 528.

<sup>2553</sup> See para. 510.

<sup>2554</sup> See para. 543.

<sup>2555</sup> See para. 546.

<sup>2556</sup> See para. 547.



- the killing of nine hospital patients in Bambu by UPC/FPLC soldiers;<sup>2559</sup>
- the killing of a woman who was raped and who tried to defend herself<sup>2560</sup> and of P-0018's sister-in-law<sup>2561</sup> by UPC/FPLC soldiers in Sangi; and
- some men who were anally penetrated by UPC/FPLC soldiers with their penises or by using 'bits of wood' died following their aforementioned treatment in Kobu;<sup>2562</sup> and
- the killing of at least 49 persons in a banana field near the Paradiso building in Kobu by UPC/FPLC soldiers.<sup>2563</sup>

874. The Chamber also found that:

- a UPC/FPLC soldier cut P-0022's neck and threw her into a pit in Kilo and that the witness survived and woke up a few hours later;<sup>2564</sup>
- UPC/FPLC soldiers shot at a patient at the hospital in Bambu during the assault on the village; the patient survived but later died of tetanus;<sup>2565</sup>
- a UPC/FPLC soldier, after having raped P-0018, shot her through her cheek and mouth, following which the witness lost consciousness;<sup>2566</sup>
- a UPC/FPLC soldier struck P-0108, one of persons detained at the Paradiso building in Kobu, on the head with a machete as P-0108 tried to flee;<sup>2567</sup> and

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<sup>2557</sup> See para. 573.

<sup>2558</sup> See para. 577.

<sup>2559</sup> See para. 587.

<sup>2560</sup> See para. 600.

<sup>2561</sup> See para. 600.

<sup>2562</sup> See para. 623.

<sup>2563</sup> See para. 628, and 632 to 633.

<sup>2564</sup> See para. 546.

<sup>2565</sup> See para. 587.

<sup>2566</sup> See para. 601.

<sup>2567</sup> See para. 628.

- UPC/FPLC soldiers shot P-0019 in her ankle as she was trying to flee a house where she had previously been raped.<sup>2568</sup>

*(iii) Killing or attempted killing*

875. In relation to all incidents referred to in paragraph 873 above, the Chamber is satisfied that the first material element of the war crime of murder, as well as of the crime against humanity of murder – that is, the killing of another person – was carried out by the physical perpetrators.

876. Specifically in relation to the men who were penetrated by UPC/FPLC soldiers with their penises or by using ‘bits of wood’ and who died following their aforementioned treatment in Kobu, the Chamber considers that, in the circumstances as described by P-0019, the only reasonable conclusion is that the UPC/FPLC soldiers caused the death of the victims.

877. Where the perpetrator does not succeed in causing the death of a person, liability for attempted murder may arise pursuant to Article 25(3)(f). In order for the crime of attempted murder to be established, it must be proven that the perpetrator took action that commenced the execution of the murder by means of a substantial step, but the murder did not occur because of circumstances independent of the perpetrator's intentions.<sup>2569</sup>

878. In relation to P-0022, the Chamber considers that, by slitting the victim's neck and throwing her into a pit, the UPC/FPLC soldier took an action that commenced the execution of P-0022's killing. Considering that the victim was thrown in a pit by the physical perpetrator where she woke up a few hours later,<sup>2570</sup> she did not die there because of circumstances independent of the

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<sup>2568</sup> See paras 622 and 632.

<sup>2569</sup> Rome Statute, Article 25(3)(f).

<sup>2570</sup> See para. 546.

physical perpetrator's intentions. In light of the foregoing, the Chamber finds that the material elements for attempted murder are met in relation to this incident.

879. In relation to the person shot at by UPC/FPLC soldiers at the hospital in Bambu, the Chamber notes that, according to P-0863, the person lost a tooth as a consequence of the gunshot.<sup>2571</sup> While the Chamber did not receive further information concerning the severity of the victim's injury and the surrounding circumstances in which he was shot, the Chamber notes that the victim was an amputee<sup>2572</sup> and that his injury occurred in circumstances in which nine others who were at the same location were killed by gunshot or bladed weapons by UPC/FPLC soldiers.<sup>2573</sup> Under these circumstances, the Chamber considers that the only reasonable inference is that the physical perpetrators intended to also kill this person. They took an action which commenced the execution of the victim's killing and his death did not occur at that time because of circumstances independent of their intention. In light of the foregoing, the Chamber finds that the material elements for attempted murder are also met in relation to this incident.

880. In relation to P-0018, the Chamber considers that, by shooting her through her cheek and mouth, following which the victim lost consciousness, and subsequently, leaving her behind, the UPC/FPLC soldier took an action that commenced the execution of P-0018's killing. If not for the persons who defended the villages who saw that she was still breathing and brought her to her parents' house,<sup>2574</sup> the victim would have died in the ordinary course of events. Her death did not occur because of circumstances independent of the physical perpetrator's intentions. In light of the foregoing, the Chamber finds that the material elements for attempted murder are met in relation to this incident.

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<sup>2571</sup> See para. 587, footnote 1811.

<sup>2572</sup> See para. 587.

<sup>2573</sup> See para. 587.

<sup>2574</sup> See para. 601, footnote 1868.

881. In relation to P-0108, the Chamber considers that, by striking him on the head with a machete as he tried to flee one of the houses,<sup>2575</sup> the UPC/FPLC soldier took an action that commenced the execution of P-0108's killing and that, considering that members of P-0108's family found him in the banana field and took him home,<sup>2576</sup> the victim had been left to die by the physical perpetrator. The fact that his death did not occur was due to circumstances independent of the physical perpetrator's intentions. In light of the foregoing, the Chamber finds that the material elements for attempted murder are met in relation to this incident.

882. In relation to P-0019, the Chamber notes that the victim was shot in the ankle.<sup>2577</sup> Although a shot in the ankle, if so intended, would not generally constitute a life-threatening injury, the Chamber considers that the context shows that the perpetrator in fact tried to kill the victim rather than only try to prevent her escape, but accidentally only managed to shoot her in the ankle. In this regard, the Chamber notes that UPC/FPLC soldiers shot and killed a Lendu person who attempted to assist P-0019,<sup>2578</sup> and that other Lendu present at the same location as P-0019 were also killed.<sup>2579</sup> Furthermore, P-0019 was left by the UPC/FPLC after she was shot; she was subsequently found by people in the bush who transported her to a traditional doctor.<sup>2580</sup> In light of the foregoing, and mindful that medical attention would not have been readily available and was not provided by the UPC/FPLC after merely injuring as opposed to directly killing P-0019, the Chamber is satisfied that – considering the particular circumstances surrounding the incident – the physical perpetrator took an action that commenced the execution of P-0019's killing and that her death did not occur because of circumstances independent of the physical perpetrator's intentions. In

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<sup>2575</sup> See para. 628.

<sup>2576</sup> See para. 635.

<sup>2577</sup> See para. 632.

<sup>2578</sup> See para. 632.

<sup>2579</sup> See paras 620 to 636.

<sup>2580</sup> See para. 635.

light of the foregoing, the Chamber finds that the material elements for attempted murder are met in relation to this incident.

*(iv) Status of victims*

883. In light of the charges, the Chamber confines its consideration to the law applicable to the murder of ‘persons taking no active part in hostilities’ and persons ‘placed *hors de combat* by sickness, wounds, detention, or any other cause’. Under IHL, during a non-international armed conflict, civilians are persons who are not members of State armed forces or organised armed groups of a party to the conflict.<sup>2581</sup> Article 50(1) of Additional Protocol I further provides, in relation to the expected conduct of a member of the military, that ‘[i]n case of doubt whether a person is a civilian, that person shall be considered to be a civilian’.<sup>2582</sup> This general presumption of protection under IHL also applies during non-international armed conflicts. However, in the context of a criminal trial, the burden is on the Prosecution to establish the status of the victim as someone taking no active part in the hostilities.<sup>2583</sup> Pursuant to the Elements of Crimes, the killing of civilians only qualifies as murder so long as they are taking no active part in hostilities at the relevant time.<sup>2584</sup> Under IHL, civilians are protected and they lose that protection only through active participation in hostilities and for such time they participate.<sup>2585</sup> The Chamber notes that the Statute, treaty law, and the principles and rules of international law, including the established principles of the international law of armed conflict do not define ‘active participation in

<sup>2581</sup> See the language of Common Article 3 of the four Geneva Conventions; Articles 1 and 13 of Additional protocol I. See similarly *Katanga Judgment*, para. 788.

<sup>2582</sup> Article 50(1) of Additional Protocol I; and ICTY, *Blaškić Appeal Judgment*, para. 111.

<sup>2583</sup> ICTY, *Blaškić Appeal Judgment*, para. 111; ICTY, *Strugar Appeal Judgment*, para. 178 and footnote 457. Similarly accepted in *Bemba Trial Judgment*, para. 94.

<sup>2584</sup> *Elements of Crimes*, Article 8(2)(c)(i)-1(2).

<sup>2585</sup> Article 13(3) of Additional Protocol II; Yves Sandoz et al. (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1986), para. 1453; Rule 6 and the related practice of the ICRC Customary IHL Study; ICTY, *Kordić and Čerkez Appeal Judgment*, para. 50; and International Committee of the Red Cross, *Interpretive guidance on the notion of direct participation in hostilities under humanitarian law* (2009), pp. 53-60

hostilities'. However, the Commentary on Article 13(3) of Additional Protocol II puts forward the following definition: 'acts of war that by their nature or purpose str[ike] at the personnel and "matériel" of enemy armed forces'.<sup>2586</sup>

884. In determining whether victims were taking an active part in hostilities at the time of their alleged murder, the Chamber may consider the relevant facts and specific situation of the victims at the relevant time, including the location of the alleged murders, whether the victims were carrying any weapons at the time they were killed, and their clothing, age, and gender.<sup>2587</sup>

885. Concerning the killings during the assault on Mongbwalu, including of children and the elderly, the Chamber recalls that the UPC/FPLC faced resistance in the attack on the town of Mongbwalu from the APC, as well as Lendu fighters, both male and female, who took up arms, including arrows, knives, machetes, as well as firearms obtained from the APC, and fought.<sup>2588</sup> Furthermore, the Chamber found that the Lendu fighters were not uniformly dressed, which made them difficult to identify,<sup>2589</sup> and included women and children.<sup>2590</sup> Under these circumstances, the Chamber considers that neither age or gender, nor the clothing worn constituted an indicator of a person's status as a civilian or as a Lendu fighter. The Chamber thus finds that those killed in Mongbwalu during the UPC/FPLC assault on the town, including children and the elderly, may have comprised both Lendu fighters and civilians, and that some of these civilians may have been actively engaged in the hostilities. In light of the above, and in the absence of specific evidence on the circumstances leading to the death of these individuals, the Chamber considers that the material elements for murder are not

<sup>2586</sup> Yves Sandoz *et al.* (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1986), p. 1453. See also ICTY, *Galić Trial Judgment*, para. 48.

<sup>2587</sup> See ICTY, *Tadić Trial Judgment*, paras 615 to 616; and *Strugar Appeal Judgment*, paras 176 to 178. See also *Bemba Trial Judgment*, para. 94, referring to ICTY, *Halilović Trial Judgment*, paras 33 to 34.

<sup>2588</sup> See para. 494.

<sup>2589</sup> See para. 472.

<sup>2590</sup> See para. 473.

met in relation to this incident. The Chamber will therefore not further consider it in reaching in conclusions in relation to Counts 1 and 2.

886. In relation to the killings in Sayo by the UPC/FPLC during the assault on the village, the Chamber recalls that, as the UPC/FPLC entered Sayo, it faced resistance from both the APC, as well as Lendu persons who did not form part of the APC referred to as the 'Lendu militia'<sup>2591</sup> and that, after the assault on the village, one could see, *inter alia*, bodies belonging to persons without weapons or fetishes on them, as well as bodies belonging to women, children, and the elderly.<sup>2592</sup> Noting its finding above that not all Lendu fighters wore fetishes and that the Lendu fighters included women and children, as well as the fact that, while the Chamber found that no weapons were seen on the bodies found in Sayo *after* the attack,<sup>2593</sup> the Chamber did not receive any evidence as to whether these persons may have been armed *at the time* when they were killed, the Chamber considers that without contemporaneous information about the circumstances in which these persons were killed, the Chamber cannot exclude the reasonable possibility that these persons were armed and actively taking part in the hostilities at the moment when the killings occurred. Under these circumstances, and in the absence of more specific evidence concerning the individual killings, the Chamber considers that the material elements for murder are not met in relation to this incident. The Chamber will therefore not further consider it in reaching in conclusions in relation to Counts 1 and 2.

887. In relation to the killings in Nzebi during the UPC/FPLC assault on the village, the Chamber similarly recalls its above considerations regarding the difficulty of identifying Lendu fighters and considers that, in the absence of more specific evidence concerning the individual killings, the material elements for murder are

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<sup>2591</sup> See para. 502.

<sup>2592</sup> See para. 504.

<sup>2593</sup> See para. 504.

not met in relation to this incident. The Chamber will therefore not further consider it in reaching in conclusions in relation to Counts 1 and 2.

888. In relation to the killing of a woman in front of the health centre in Sayo, the Chamber recalls that the woman was wearing rags and was unarmed at the time she came to the health centre seeking treatment for her approximately two-year-old child.<sup>2594</sup> Under these circumstances, the Chamber is satisfied that woman was a civilian not actively taking part in hostilities at the time when she was killed.

889. In relation to the killing of people in Mongbwalu and Sayo during *ratissage* operations by members of the UPC/FPLC and – in the case of Mongbwalu – also by Hema ‘civilians’, the Chamber notes that the victims were killed during house-to-house searches carried out in the aftermath of the takeover of the town and the surrounding areas, after the fighting had ceased.<sup>2595</sup> The Chamber further notes that there is no information before it, nor has the Defence made allegations in this regard, about any continued resistance, ongoing hostilities, or other circumstance that would render the victims targetable under IHL. Under these circumstances, the Chamber is satisfied that the aforementioned victims were civilians not actively taking part in hostilities at the time when they were killed.

890. In relation to the killing of a Lendu woman accused of being a ‘chieftain’ of the Lendu ‘combatants’ by members of Bureau Two, the Chamber notes that, before her killing, the woman was detained and interrogated at ‘Salumu’s camp’.<sup>2596</sup> By virtue of having been physically placed in the power of the UPC/FPLC, she was protected under IHL, even if she had previously been taking any part in hostilities. As such, she was either rendered *hors de combat* or was a civilian not actively taking part in hostilities at the time when she was killed.

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<sup>2594</sup> See para. 506.

<sup>2595</sup> See paras 512 and 526.

<sup>2596</sup> See para. 513.



891. In relation to the killing of persons after their questioning at the *Appartements* camp, the Chamber notes that the victims were detained before they were killed.<sup>2597</sup> Furthermore, two of the victims – who were killed pursuant to Mr Ntaganda's order – were tied up and beaten before they were killed.<sup>2598</sup> By virtue of having been physically placed in the power of the UPC/FPLC, these persons were protected under IHL, even if they had previously been taking any part in hostilities. As such, they were either rendered *hors de combat* or were civilians not actively taking part in hostilities at the time when they were killed.

892. In relation to the killing of two Lendu persons in Nzebi, the Chamber notes that they had been previously captured pursuant to Mr Ntaganda's order.<sup>2599</sup> By virtue of physically having been placed in the power of the UPC/FPLC, the two victims were protected under IHL, even if they had previously been taking any part in hostilities. As such, they were either persons *hors de combat* or civilians not actively taking part in hostilities at the time when they were killed.

893. In relation to the killing of Lendu persons in Kilo by members of the UPC/FPLC after the takeover of the village, the Chamber notes that according to P-0022, once the fighting in Kilo had ceased and the population had been called out to return from the bush, the UPC/FPLC began to go after the Lendu in the village, including at night in their homes.<sup>2600</sup> The Chamber further notes that there is no information before it, nor has the Defence made allegations in this regard, about any continued resistance, ongoing hostilities, or other circumstance that would render the victims targetable under IHL. Under these circumstances, the Chamber is satisfied that the aforementioned victims were civilians not actively taking part in hostilities at the time when they were killed.

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<sup>2597</sup> See para. 528.

<sup>2598</sup> See para. 528.

<sup>2599</sup> See para. 510.

<sup>2600</sup> See para. 543, footnote 1630.

894. In relation to P-0022's status at the time of her attempted killing, the Chamber notes that the witness had been stopped by a UPC/FPLC soldier while fetching water from the river.<sup>2601</sup> The UPC/FPLC soldier tied her hands behind her back and took her to a makeshift prison in the Kilo-État neighbourhood of Kilo, where she was detained until her attempted killing.<sup>2602</sup> In relation to the killing of a Ngiti man and a pregnant Lendu woman by UPC/FPLC soldiers in Kilo, the Chamber notes that the two victims had been detained together with P-0022 before they were killed.<sup>2603</sup> In these circumstances, the Chamber finds that P-0022 was a civilian not actively taking part in hostilities at the time of her abduction, and by virtue of her detention by the UPC/FPLC remained so. Although the Chamber does not have information about the Ngiti man and the pregnant Lendu woman prior to their detention, it is evident that they were in the power of the UPC/FPLC and were either persons *hors de combat* or civilians not actively taking part in hostilities at the time when they were killed.

895. In relation to the killing of a Nyali man by a UPC/FPLC soldiers in Kilo, the Chamber notes that the man was shot by a UPC/FPLC soldier while fetching water for singing an anti-Hema song.<sup>2604</sup> In light of the foregoing, the Chamber finds that the man was a civilian not actively taking part in hostilities at the time when he was killed.

896. In relation to the killings in Kobu, the Chamber notes that those killed during the assault were two young children – aged three and six years old – who were killed as they attempted to flee.<sup>2605</sup> Under these circumstances, considering particularly their age, the Chamber is satisfied that the two victims were civilians not actively taking part in hostilities at the time they were killed. As for the killings which occurred during the *ratissage* operation, the Chamber notes that

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<sup>2601</sup> See para. 545.

<sup>2602</sup> See paras 545-546.

<sup>2603</sup> See para. 546.

<sup>2604</sup> See para. 547.

<sup>2605</sup> See para. 573.

those killed had previously been captured by the UPC/FPLC.<sup>2606</sup> By virtue of having been physically placed in the power of the UPC/FPLC, these persons were protected under IHL, even if they had previously been taking any part in hostilities. As such, they were either rendered *hors de combat* or were civilians not actively taking part in hostilities at the time they were killed.

897. As to the killing of nine persons at the hospital in Bambu by UPC/FPLC soldiers during the attack on the village and the attempted killing of a tenth, the Chamber notes that the victims had been left unattended by the health care personnel who had fled the hospital, because they were too weak to also flee, and that the victim of the attempted killing was an amputee.<sup>2607</sup> Under these circumstances, the Chamber is satisfied that the victims were either *hors de combat* or were civilians not actively taking part in hostilities at the time they were killed.

898. In relation to the killing of at least 49 persons in a banana field near the Paradiso building in Kobu by UPC/FPLC soldiers and the attempted killing of P-0108 by UPC/FPLC soldiers at the same location, the Chamber notes that the victims had previously been captured in, *inter alia*, Sangi, Gola, Buli and the surrounding bush by UPC/FPLC soldiers<sup>2608</sup> and were detained in a number of houses in Kobu, including a the Paradiso building.<sup>2609</sup> Furthermore, at the time of their killing, they were not armed.<sup>2610</sup> By virtue of having been physically placed in the power of the UPC/FPLC, these persons were protected under IHL, even if they had previously been taking any part in hostilities. As such, they were either rendered *hors de combat* or were civilians not actively taking part in hostilities at the time they were killed.

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<sup>2606</sup> See para. 577.

<sup>2607</sup> See para. 587.

<sup>2608</sup> See para. 620.

<sup>2609</sup> See para. 621.

<sup>2610</sup> See para. 620.

899. In relation to: (i) the killing of a woman in Sangi who was raped by UPC/FPLC soldiers and who tried to defend herself; (ii) the killing of P-0018's sister-in-law in Sangi; (iii) the death of some men who were penetrated by UPC/FPLC soldiers with their penises or by using 'bits of wood' in Kobu; (iv) P-0019's attempted killing; and (v) P-0018's attempted killing, the Chamber notes that these victims had also been captured by the UPC/FPLC prior to their killings.<sup>2611</sup> As such, they were physically placed in the UPC/FPLC's power, the UPC/FPLC also having engaged in acts of rapes against the victims,<sup>2612</sup> and were therefore protected under IHL, even if they had previously been taking any part in hostilities. As such, they were either rendered *hors de combat* or were civilians not actively taking part in hostilities at the time of their killing or attempted killing.

### (c) Contextual elements

900. Considering that the conduct under consideration occurred during the First or Second Operation, the Chamber finds that the conduct formed part of the widespread and/or systematic attack against the Lendu civilian population of Ituri by the UPC/FPLC. In fact, the killings were the main means of carrying out the attack.

901. The Chamber further notes that the above-discussed killings and attempted killings were perpetrated by soldiers during or immediately after two offensive military operations conducted by an organised armed group taking part in a non-international armed conflict. The killings occurred in the towns and villages that the UPC/FPLC took over during the First and Second Operation. Accordingly, the Chamber finds that the killings and attempted killings perpetrated by the UPC/FPLC soldiers during the course of these operations took place in the context of and were associated with a non-international armed conflict.

<sup>2611</sup> See paras 599 to 601, 622 to 623, and 632.

<sup>2612</sup> See paras 600 to 601, and 622 to 623.

**b) Intentionally attacking civilians as a war crime (Count 3)**

**(1) Applicable law**

902. The war crime of intentionally attacking civilians is laid down in Article 8(2)(e)(i) of the Statute.

903. The legal elements of this war crime are:

1. The perpetrator directed an attack.
2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.
3. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>2613</sup>
6. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2614</sup>

904. The war crime of attacking civilians belongs to the category of offences committed during the actual conduct of hostilities.<sup>2615</sup> This means that the crime must be committed against civilians 'before [they] have fallen into the hands of the attacking party'.<sup>2616</sup> Article 8(2)(e)(i) of the Statute does not require any actual harm to civilians to ensue from the attack and the crime may therefore be committed by the mere *launching* of an attack.<sup>2617</sup>

<sup>2613</sup> Elements of Crimes, Article 8(2)(e)(i).

<sup>2614</sup> See footnote 2519 above.

<sup>2615</sup> Confirmation Decision, para. 45; and *Katanga and Ngudjolo* Confirmation Decision, para. 267.

<sup>2616</sup> Confirmation Decision, para. 45; *Katanga and Ngudjolo* Confirmation Decision, para. 267.

<sup>2617</sup> *Katanga Judgment*, para. 799.

## (2) Findings of the Chamber

### (a) Material elements

#### (i) *Negative findings*

905. The Chamber notes that no findings of conduct which could be considered under Count 3 were made as concerns Camp P.M., Djuba, Katho, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali, or Ngabuli, in the context of the Second Operation.

#### (ii) *Positive findings*

906. As concerns the First Operation, the Chamber found that, following Mr Ntaganda's order, the UPC/FPLC attacked Mongbwalu on or about 20 November 2002.<sup>2618</sup> In line with the devised strategy, the assault on Mongbwalu was carried out from two sides.<sup>2619</sup> The assault lasted approximately three to four days.<sup>2620</sup> Mongbwalu was attacked by soldiers with AK-47s, who were supported by heavy weapons, which were situated behind them.<sup>2621</sup> As the troops entered Mongbwalu, Salumu Mulenda and Mr Ntaganda gave orders, either in person or over the radio, to fire the heavy weapons, and decided which objects were to be shot at.<sup>2622</sup> Some houses were hit by shells fired by the UPC/FPLC, and destroyed.<sup>2623</sup>

907. The Chamber also found that while the UPC/FPLC faced resistance from the APC, as well as Lendu fighters, the UPC/FPLC soldiers fired at everyone in Mongbwalu, including the civilian population.<sup>2624</sup>

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<sup>2618</sup> See para. 486.

<sup>2619</sup> See para. 486.

<sup>2620</sup> See para. 486.

<sup>2621</sup> See para. 486.

<sup>2622</sup> See para. 491.

<sup>2623</sup> See para. 496.

<sup>2624</sup> See para. 494.

908. Further, the Chamber found that on or about 24 November 2002, the UPC/FPLC attacked Sayo.<sup>2625</sup> As UPC/FPLC units advanced on Sayo, they were supported by heavy weapons fired from the *Appartements* camp.<sup>2626</sup> Mr Ntaganda oversaw the assault.<sup>2627</sup> Mr Ntaganda was initially not present in Sayo during the assault; at the relevant time, he was at the *Appartements* camp and communicated from there.<sup>2628</sup> He gave orders to and received reports from Salumu Mulenda and Thomas Kasangaki, who were present on the front and led the troops into combat.<sup>2629</sup> As the operation in Sayo was nearing its end and the houses were still being searched by the troops, Mr Ntaganda came to Sayo.<sup>2630</sup>

909. As concerns the Second Operation, the Chamber found that on or about 18 February 2003, the UPC/FPLC attacked Lipri, Tsili, and other villages in the area.<sup>2631</sup> The UPC/FPLC used a weapon referred to as a 'rocket launcher' during the assault on Lipri.<sup>2632</sup> The village was taken over by the UPC/FPLC in approximately one hour.<sup>2633</sup> Lendu fighters were present in Lipri as a group of individuals under the command of a person referred to as Kabuli.<sup>2634</sup>

910. On or about 18 February 2003, the UPC/FPLC launched an assault on Kobu.<sup>2635</sup> Lendu fighters were present in Kobu at the time of the assault.<sup>2636</sup> There was minimal resistance from the Lendu, as they quickly fled once the UPC/FPLC started shooting.<sup>2637</sup> The Lendu initiated a 'counteroffensive' on the second day involving two groups.<sup>2638</sup> One group consisted of the Lendu fighters and members

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<sup>2625</sup> See para. 500.

<sup>2626</sup> See para. 501.

<sup>2627</sup> See para. 500.

<sup>2628</sup> See para. 500.

<sup>2629</sup> See para. 500.

<sup>2630</sup> See para. 507.

<sup>2631</sup> See para. 567, and footnote 1736.

<sup>2632</sup> See para. 567.

<sup>2633</sup> See para. 567.

<sup>2634</sup> See para. 568.

<sup>2635</sup> See para. 572.

<sup>2636</sup> See para. 572.

<sup>2637</sup> See para. 573.

<sup>2638</sup> See paras 573 and 575.

of the APC, who were armed with rifles and fired at the UPC/FPLC camp.<sup>2639</sup> The second group was dressed in civilian clothing and consisted mostly of women who were singing, shouting and hitting on pans.<sup>2640</sup> Upon the order of Salumu Mulenda, the UPC/FPLC fired at the people who were singing and making noise, after which those people dispersed.<sup>2641</sup>

911. UPC/FPLC troops attacked Bambu at the same time or shortly following the assaults on Kobu and Lipri, on or about 18 February 2003.<sup>2642</sup> Lendu fighters were present in Bambu at the time of the assault, which caused the UPC/FPLC forces some difficulties but – reinforced by another unit located in Mabanga – they were able to overcome the resistance by the Lendu fighters.<sup>2643</sup> By 19 February 2003, the UPC/FPLC was present in Bambu.<sup>2644</sup> Heavy weapons were used, at least to some extent, during the assault.<sup>2645</sup> When they realised that Bambu was under attack, most of the members of the population fled from this locality.<sup>2646</sup> A shell hit a civilian compound in Yalala and killed six people – amongst them two children – on or shortly prior to 18 February 2003.<sup>2647</sup> The kitchen building of the compound was significantly damaged by the shell.<sup>2648</sup>

912. At the ‘pacification meeting’ in Sangi, armed UPC/FPLC soldiers began capturing the Lendu people and those who were outside tried to flee; others were locked and tied up inside the building, while the UPC/FPLC soldiers began beating and injuring them with, *inter alia*, rifles, bayonets and machetes.<sup>2649</sup> The UPC/FPLC soldiers also chased people down Sangi Hill and into the bush.<sup>2650</sup>

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<sup>2639</sup> See para. 575.

<sup>2640</sup> See para. 575.

<sup>2641</sup> See para. 575.

<sup>2642</sup> See para. 583.

<sup>2643</sup> See para. 584.

<sup>2644</sup> See para. 584.

<sup>2645</sup> See para. 585.

<sup>2646</sup> See para. 585.

<sup>2647</sup> See para. 586. The Chamber notes that, while the Confirmation Decision refers to this incident in relation to Counts 1, 2, and 3, the Chamber considers that the conduct is most appropriately considered under Count 3.

<sup>2648</sup> See para. 586.

<sup>2649</sup> See para. 597.

<sup>2650</sup> See para. 597.



UPC/FPLC soldiers later killed some people who had been captured following the 'pacification meeting' in Sangi.<sup>2651</sup>

913. At around the same time as the 'pacification meeting', UPC/FPLC soldiers arrived in Gola and the surrounding bush.<sup>2652</sup> Lendu people fled, and a number of persons were captured by the soldiers.<sup>2653</sup>

914. Following the UPC/FPLC assaults on Kobu and Bambu, individuals fled to Buli and Jitchu and hid in the bush surrounding these villages.<sup>2654</sup> After the outbreak of violence at the 'pacification meeting', civilians again fled to Jitchu and the surrounding forest, where the UPC/FPLC soldiers continued to chase them, and shoot at them.<sup>2655</sup>

915. On or about 25 February 2003, the UPC/FPLC advanced into Buli, shooting and firing heavy weapons, including at those present in the village, and chasing individuals into the surrounding bush, firing their rifles at those fleeing.<sup>2656</sup> The UPC/FPLC searched the bush, including into the next day.<sup>2657</sup> At least one person was killed by a member of the UPC/FPLC in the surrounding bush.<sup>2658</sup>

### *(iii) Directing an attack*

916. The Chamber notes that neither the Statute nor the Elements of Crimes include a definition of the term 'attack'. Having regard to the established framework of international law, the Chamber notes that the crime as described in Article 8(2)(e)(i) of the Statute is based on Article 13(2) of Additional Protocol II. This protocol does not define attacks, but Additional Protocol I does, and the term

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<sup>2651</sup> See paras 620 and 628.

<sup>2652</sup> See para. 613.

<sup>2653</sup> See para. 613.

<sup>2654</sup> See para. 617.

<sup>2655</sup> See paras 603 and 617.

<sup>2656</sup> See para. 604.

<sup>2657</sup> See para. 605.

<sup>2658</sup> See para. 605.

is considered to have the same meaning in Additional Protocol II.<sup>2659</sup> ‘Attack’ must therefore be understood within the meaning of Article 49 of Additional Protocol I as ‘acts of violence against the adversary, whether in offence or defence’.<sup>2660</sup>

917. As to the meaning of the verb ‘to direct’ in this context, the Chamber reiterates its finding above that this is understood to mean selecting the intended target and deciding on the attack.<sup>2661</sup>

918. Turning to the facts of the case, the Chamber considers, with respect to the First Operation, that the aforementioned acts of violence in Mongbwalu and Sayo by UPC/FPLC soldiers are to be seen as directing an attack, for the purpose of Article 8(2)(e)(i) of the Statute. Similarly, with respect to the Second Operation, the Chamber considers that the aforementioned acts of violence in Lipri, Tsili, Kobu, Bambu, Jitchu, and Buli are to be qualified as directing attacks.

919. Conversely, the Chamber considers that the capturing of people in Gola by UPC/FPLC soldiers does not constitute an attack within the meaning of Article 8(2)(e)(i) of the Statute.

920. Furthermore, the Chamber finds that the acts of violence visited upon the civilians attending the ‘pacification meeting’ at Sangi, and the subsequent killing of at least 49 persons in Kobu, occurred after the civilians had already fallen into the hands of the UPC/FPLC. These acts can therefore not qualify as an attack under Article 8(2)(e)(i) of the Statute.

#### *(iv) Against civilians*

921. The object of the attack may be either a ‘civilian population’, in other words, a group of civilians,<sup>2662</sup> or individual civilians not taking a direct part in

<sup>2659</sup> International Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1986), para. 4783.

<sup>2660</sup> See also *Katanga Judgment*, para. 798.

<sup>2661</sup> See para. 744.

hostilities.<sup>2663</sup> The presence within a civilian population of some members of an armed force or civilians directly participating in hostilities does not deprive it of its civilian character.<sup>2664</sup> As to the status of a person as ‘civilian’ the Chamber refers to its above explanation.<sup>2665</sup> As the burden of proof lies with the Prosecution, it must be established that in the circumstances at the time, a reasonable person could not have believed that the individual or group he or she attacked was a fighter or directly participating in hostilities.<sup>2666</sup> The crime under Article 8(2)(e)(i) of the Statute may encompass attacks that are carried out in an indiscriminate manner, that is by targeting an area, as opposed to specific objects, or not targeting specific military objects or persons taking a direct part in hostilities,<sup>2667</sup> so long as the perpetrator was aware of the presence of civilians in the relevant area. It may also include attacks that are launched without taking necessary precautions to spare the civilian population or individual civilians.<sup>2668</sup> Therefore, the use of weapons that have inherently indiscriminate effects in an area where civilians are present may constitute an attack directed at the civilian population or individual civilians.

922. In this regard, the Chamber found that the UPC/FPLC faced resistance in the assault on the town of Mongbwalu from the APC, as well as Lendu fighters, both

<sup>2662</sup> See *Katanga Judgment*, para. 801, Yves Sandoz *et al.* (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 August 1949* (1986), para. 1449.

<sup>2663</sup> The Defence avers that the Article 8(2)(e)(i) only relates to attacks against ‘civilians as a group’ (Defence Closing Brief, para. 583). However, the usage of ‘individual’ in the wording of the crime as incorporated in the Rome Statute, as well as the underlying prohibition in IHL, which refers to ‘[t]he civilian population as such, as well as individual civilians’ (Article 13(2) of Additional Protocol II), clearly indicate that civilians need not be combined in a group to be protected pursuant to these provisions.

<sup>2664</sup> See Article 50(3) of Additional Protocol I, which the Chamber considers to be equally applicable to situations of non-international armed conflict; as well as ICTY, *Galić Appeal Judgment*, para. 136; and ICTY, *Kordić and Čerkez Appeal Judgment*, para. 50.

<sup>2665</sup> See para. 883.

<sup>2666</sup> See ICTY, *Kordić and Čerkez Appeal Judgment*, para. 48; and ICTY, *Galić Trial Judgment*, para. 55.

<sup>2667</sup> Compare *Katanga Judgment*, para. 802.

<sup>2668</sup> The attacker must ensure that civilians do not become the actual object of attack. For example, in case the attacker failed to seek information on the status of the objects or persons attacked. The duty to take precautions has been found to also be applicable in times of non-international armed conflict in ICTY, *Kupreškić et al. Trial Judgment*, paras 524 to 525, which concerned this type of conflict. It has also been considered as a rule of customary IHL, applicable in both international and non-international by the ICRC: *see* Rule 15 of the ICRC Study on Customary IHL, and underlying practice.

male and female, who took up arms and fought.<sup>2669</sup> The UPC/FPLC soldiers also faced resistance from the APC and 'Lendu militia' during the assault on Sayo.<sup>2670</sup> However, the Chamber notes also the following facts as established by the evidence. Prior to the assault, the night before UPC/FPLC troops left Bunia for the First Operation, Mr Ntaganda spoke to some of the UPC/FPLC troops, telling them that they were going to Mongbwalu to fight against the Lendu; he ordered to fight against the Lendu and ordered them to attack using the term '*kupiga na kuchaji*'.<sup>2671</sup> While *en route* to Mongbwalu, UPC/FPLC soldiers were ordered to regain Mongbwalu, and drive out all the Lendu, including civilians.<sup>2672</sup> Salumu Mulenda also used the expression '*kupiga na kuchaji*'.<sup>2673</sup> During the assault, the UPC/FPLC soldiers fired at everyone in Mongbwalu, including the 'civilian population'.<sup>2674</sup> At a meeting with commanders following the taking over of the Kilo-Moto offices and the Mongbwalu airstrip, Mr Ntaganda ordered to attack 'the Lendu' who were in Mongbwalu, without making a difference between 'Lendu civilians' and the militia.<sup>2675</sup> Heavy weapons were fired on Sayo from the *Appartements*.<sup>2676</sup> As part of the attack, the UPC/FPLC soldiers fired projectiles at the health centre in Sayo.<sup>2677</sup> Mr Ntaganda also ordered a UPC/FPLC soldier to fire a grenade launcher at the slope of a mountain where a number of men and women wearing civilian clothing were walking in a single file,<sup>2678</sup> and as such were not involved in any hostile action. This order was executed.<sup>2679</sup>

923. Part of the attacks during these assaults may have been fired at opposing fighters and military objectives. However, the Chamber finds that, in the course

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<sup>2669</sup> See para. 494.

<sup>2670</sup> See para. 502.

<sup>2671</sup> See para. 484; *see also* para. 415.

<sup>2672</sup> See para. 488.

<sup>2673</sup> See para. 488.

<sup>2674</sup> See para. 494.

<sup>2675</sup> See para. 493.

<sup>2676</sup> See para. 501.

<sup>2677</sup> See para. 506.

<sup>2678</sup> See para. 508.

<sup>2679</sup> See para. 508.

of its operation, the UPC/FPLC indiscriminately attacked all Lendu, civilians and fighters alike. The UPC/FPLC made no difference between the two, because in addition to attacking the opposing forces, it in fact also wished to target the Lendu civilians. In the assessment of the Chamber, while the UPC/FPLC did intend to target the APC and other Lendu fighters in Mongbwalu, as is clear from the objectives of the organisation and the orders given, it equally intended to attack civilians. As such, the Lendu civilian population of Mongbwalu and Sayo formed one of the objects of the attack. The UPC/FPLC was also fighting opposing armed groups and targeting military objectives was permitted, but the existence of lawful acts of war does not affect the criminality of incidents whereby civilians were intentionally targeted. The Chamber notes that the Defence avers that the 'number of dead bodies observed is unknown and in any case very low', and that the status of those who died is unknown.<sup>2680</sup> While the Chamber has above indeed not considered those instances where it could not establish the status of those who were killed and/or the circumstances at the time of their death, as murder, the incidents under review for the present crime are different nature. In addition, the Chamber recalls that the criminal conduct under consideration relates to intended object of the attacks and not to who was actually killed as a result of armed force.

924. With respect to the Second Operation the Chamber deems it necessary to separate the different facts and consider, in turn: (i) the firing at the people who were singing and making noise on the second day of the assault on Kobu; (ii) the use of heavy weapons in Bambu; (iii) the pursuing of fleeing persons in Jitchu and Buli, as well as in the nearby bush; and (iv) all other events under consideration.

925. Turning therefore first to the incident when, on the second day of the assault on Kobu, the UPC/FPLC fired at people who were singing and making noise, the Chamber notes that it appears from the circumstances that the group of persons

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<sup>2680</sup> Defence Closing Brief, paras 604 to 605.

that was making noise may have been purposely distracting the UPC/FPLC in order for the Lendu fighters to be able to attack the UPC/FPLC from a closer-by position. If this would have been the case, these civilians may be considered as directly participating in hostilities during that relevant time, and firing at them to disperse the group would have been lawful. While the information available does not allow the Chamber to determine whether the civilians were indeed directly participating in hostilities, and mindful of the burden on the Prosecution to establish the status of alleged victims as persons taking no active part in hostilities, the Chamber – in these circumstances – cannot find that the attack was directed at the civilian population as such or at individual civilians not taking direct part in hostilities.

926. Addressing next the shelling in Bambu, the Chamber recalls its finding that Bambu is a town on the main road connecting Mongbwalu to Bunia, while Yalala specifically is located in or next to Bambu.<sup>2681</sup> At the time of the charged events, Bambu was the seat of the headquarters of the Kilo-Moto mining company and further included a hospital, several schools and institutes, a nutrition centre, and a location referred to as the ‘stadium’.<sup>2682</sup> There were also two parishes in or around Bambu, including Sainte Thérèse parish, located about three kilometres from Bambu.<sup>2683</sup> The Chamber notes that the town does not appear to have contained structures that would constitute military objectives and recalls that heavy weapons were used during the assault on Bambu. Although any enemy fighters could legitimately be attacked, the Chamber considers that the use of, *inter alia*, the type of heavy weapons in the possession of the UPC/FPLC against them, without awareness of the situation on the ground, or any information as to the concentration of fighters or the number of civilians, and without the taking of any precautions, was unlawful. The Chamber therefore considers that the only

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<sup>2681</sup> See para. 580.

<sup>2682</sup> See para. 581.

<sup>2683</sup> See para. 581.

reasonable conclusion is that UPC/FPLC soldiers indiscriminately fired on the town, because they intended to make both the civilians present (or the civilian population of the town) and any fighters present, the object of the attack.

927. As concerns the pursuing by UPC/FPLC soldiers of persons who fled at the time of the assaults on Jitchu and Buli into nearby forest environments, the Chamber found that the UPC/FPLC soldiers shot at them while they were fleeing.<sup>2684</sup> As such, these persons were the object of the attack by UPC/FPLC soldiers. There is no indication in the evidence before the Chamber that the persons fleeing as a result of the UPC/FPLC assault on Buli and Jitchu were involved in any combat or combat related action. Accordingly, the Chamber concludes that no reasonable person could have believed that they were directly participating in hostilities and thereby targetable. As to their status for the purpose of Article 8(2)(e)(i), the Chamber therefore finds that they were persons not directly participating in hostilities at the time they were attacked.

928. Turning to the remaining events under consideration, *i.e.* in Lipri and Tsili, in Kobu – other than the specific events analysed just above, and in Bambu – other than the use of heavy weapons, the Chamber, conversely, finds that the established facts do not allow for an unequivocal conclusion that the civilian population as such or individual civilians not taking direct part in hostilities were the object of the attack.

### **(b) Contextual elements**

929. The Chamber notes that the attacks on civilians discussed occurred during the military operations conducted by the UPC/FPLC and were committed by soldiers who took part in these operations. Moreover, the attacks occurred in the towns and villages that the UPC/FPLC took over on these occasions. As such, the

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<sup>2684</sup> See paras 604 and 617.

Chamber finds that the abovementioned attacks by UPC/FPLC soldiers took place in the context of and were associated with the non-international armed conflict.

**c) Rape as a crime against humanity and as a war crime (Counts 4 and 5)**

**(1) Applicable law**

930. The crime against humanity of rape is laid down in Article 7(1)(g) of the Statute. The war crime of rape is laid down in Article 8(2)(e)(vi) of the Statute.

931. The legal elements of the crime against humanity of rape are:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>2685</sup>
5. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2686</sup>

932. The legal elements of the war crime of rape are:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking

<sup>2685</sup> Elements of Crimes, Article 7(1)(g)-1 (footnotes omitted).

<sup>2686</sup> See footnote 2519 above.



advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>2687</sup>

5. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2688</sup>

933. The concept of 'invasion' is intended to be broad enough to be gender-neutral'.<sup>2689</sup> Accordingly, 'invasion', in the Court's legal framework, includes same-sex penetration, and encompasses both male and/or female perpetrators and victims.<sup>2690</sup>

934. Save for the very specific situation of a person whose 'incapacity' was 'tak[en] advantage of', the Elements of Crimes do not refer to the victim's lack of consent, and therefore this need not be proven.<sup>2691</sup> The Elements of Crimes clearly seek to punish any act of penetration where committed under threat of force or coercion, such as that caused by the threat of violence, duress, detention, psychological pressure or abuse of power or, more generally, any act of penetration taking advantage of a coercive environment.<sup>2692</sup> The establishment of at least one of the coercive circumstances or conditions set out in the second element is therefore sufficient alone for penetration to amount to rape within the meaning of Articles 7(1)(g) and 8(2)(e)(vi) of the Statute.<sup>2693</sup>

935. Coercive circumstances need not be evidenced by a show of physical force.<sup>2694</sup> Threats, intimidation, extortion, and other forms of duress which prey on fear or

<sup>2687</sup> Elements of Crimes, Article 8(2)(e)(vi)-1 (footnotes omitted).

<sup>2688</sup> See footnote 2519 above.

<sup>2689</sup> Elements of Crimes, Articles 7(1)(g)-1, footnote 15, and 8(2)(e)(vi)-1, footnote 63.

<sup>2690</sup> Bemba Trial Judgment, para. 100.

<sup>2691</sup> Katanga Judgment, para. 965; see also Bemba Trial Judgment, paras 105-106.

<sup>2692</sup> Katanga Judgment, para. 965; see also Bemba Trial Judgment, paras 105-106.

<sup>2693</sup> Katanga Judgment, para. 965; see also Bemba Trial Judgment, paras 105-106.

<sup>2694</sup> ICTR, Akayesu Trial Judgment, para. 688.

desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict<sup>2695</sup> or the military presence of hostile forces amongst the civilian population.<sup>2696</sup> Several factors may contribute to creating a coercive environment, such as, for instance, the number of people involved in the commission of the crime, or whether the rape is committed during or immediately following a combat situation, or is committed together with other crimes.<sup>2697</sup> In addition, in relation to the requirement of the existence of a 'coercive environment', it must be proven that the perpetrator's conduct involved 'taking advantage' of such a coercive environment.<sup>2698</sup>

## (2) Findings of the Chamber

### (a) Scope of charges

936. The Chamber notes that there is a dispute between the parties as to whether the alleged rape of V-2 at Beba is within the scope of the charges. The Defence states that this fact falls outside the scope of the charges, arguing that '[t]he UDCC does not assert that any rape was committed at Beba, or anywhere other than at NTAGANDA's camp [in Mongbwalu]; no specification of place date, identity of victim, or other circumstances corresponding to V-2's testimony are found in the UDCC'.<sup>2699</sup> The Prosecution submits that this falls within charges 'in or around Mongbwalu'.<sup>2700</sup> The Confirmation Decision names Mongbwalu, Kilo, and Sayo as locations relevant for the charge of rape against civilians during the First Operation.<sup>2701</sup> The Confirmation decision does not name Beba, or Pluto, in the vicinity of which Beba is located, even though it names Pluto as a relevant

<sup>2695</sup> ICTR, *Akayesu Trial Judgment*, para. 688.

<sup>2696</sup> *Bemba Trial Judgment*, paras 103 to 104.

<sup>2697</sup> *See also Bemba Trial Judgment*, paras 103 to 104; SCSL, *AFRC Trial Judgment*, paras 694 to 695.

<sup>2698</sup> *Bemba Trial Judgment*, para. 104.

<sup>2699</sup> Defence Reply, para. 14; *see also* Defence Closing Brief, para. 687.

<sup>2700</sup> Prosecution Response, para. 12.

<sup>2701</sup> Confirmation Decision, para. 36.

location for other charges. Therefore, the Chamber finds that the alleged rape of V-2 at Beba does not fall within the scope of the charges.

937. The Defence also argues that the UDCC provides no description corresponding to the place, names, or circumstances of rape in relation to Lipri and that the Confirmation Decision refers to a rape on which the Chamber heard no evidence.<sup>2702</sup> While this argument is presented in the context of challenges to the scope of the charges, it is premised on the evidence admitted during the trial, or the absence thereof. As such, this is an issue of the merits of the case, and not an issue of the scope of the charges. In any case, the Chamber notes that the underlying Defence assertion is correct, and that the Chamber's finding in relation to rape in Lipri is negative.<sup>2703</sup>

938. The Defence similarly submits that 'the UDCC provides no description of any rape having occurred at Bambu, let alone that corresponding to the events described by P-0863'.<sup>2704</sup> However, the Chamber is of the view that the allegation of rape in Bambu is properly within the scope of the charges under Counts 4 and 5, considering that Bambu is a location specified in the relevant part of the Confirmation Decision in this respect.<sup>2705</sup> In the view of the Chamber, this constitutes sufficient specificity. In addition, the Chamber notes that while another incident of rape is referred to in the Confirmation Decision at paragraph 51, the circumstances of the commission of the crime are identical to the situation described by P-0863, described below.<sup>2706</sup> Therefore, the Defence argument is rejected.

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<sup>2702</sup> Defence Reply, para. 14; and Defence Closing Brief, para. 939.

<sup>2703</sup> See para. 570, footnote 1751.

<sup>2704</sup> Defence Reply, para. 14; and Defence Closing Brief, para. 941.

<sup>2705</sup> See Confirmation Decision, para. 36.

<sup>2706</sup> Confirmation Decision, para. 51 ('In Bambu, a woman was captured and raped by UPC/FPLC members and subsequently killed.')

**(b) Material elements**

**(i) Negative findings**

939. The Chamber recalls that, on the basis of the evidence on the record, it did not make positive findings in respect of the following factual allegations as referred to in the Confirmation Decision:

- that civilians accompanying the UPC/FPLC committed rape against civilian women in Mongbwalu and Sayo;<sup>2707</sup>
- any rape in Sayo;<sup>2708</sup>
- the rape of three nuns at Mr Ntaganda's camp in Mongbwalu;<sup>2709</sup> and
- that UPC/FPLC soldiers committed rape in Lipri<sup>2710</sup> and Bambu.<sup>2711</sup>

**(ii) Positive findings**

940. As established above, the Chamber found that:

- during and in the immediate aftermath of the UPC/FPLC assault on Mongbwalu, UPC/FPLC soldiers forced women and girls to have sexual intercourse with them, including at the *Appartements* camp;<sup>2712</sup>
- in Kilo, some UPC/FPLC soldiers used their influence on girls in Kilo to have sexual intercourse with them,<sup>2713</sup> and in one instance, forced a detainee to insert his hand into P-0022's vagina;<sup>2714</sup>

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<sup>2707</sup> See para. 521, footnote 1551.

<sup>2708</sup> See para. 526, footnote 1562.

<sup>2709</sup> See para. 534, footnote 1599.

<sup>2710</sup> See para. 570, footnote 1751.

<sup>2711</sup> See para. 588, footnote 1814.

<sup>2712</sup> See paras 518 to 523, 535.

<sup>2713</sup> See para. 548.

<sup>2714</sup> See para. 545.

- in Kobu, UPC/FPLC soldiers raped detained women and girls;<sup>2715</sup> and also anally penetrated men with their penises or by using ‘bits of wood’;<sup>2716</sup>
- in Sangi, UPC/FPLC soldiers raped women,<sup>2717</sup> and
- in Buli a UPC/FPLC soldier raped P-0113.<sup>2718</sup>

**(iii) Penetration**

941. The Chamber found that all incidents described above resulted in an invasion of the victim’s body through an act of penetration, as required by the Elements of Crimes. It is therefore satisfied that the first material elements of the crime against humanity of rape and of the war crime of rape are met.

942. The Chamber notes that, in most instances, the acts constituted of the penetration of the victim’s vagina by a male perpetrator’s sexual organ. In other instances, the penetration of the victims’ genitals was made using another body part of the perpetrator, or of a third person, such as when a UPC/FPLC commander inserted his fingers in the vagina of a 13-year-old girl in the aftermath of the assault on Mongbwalu,<sup>2719</sup> and when a male civilian detained in Kilo was made to penetrate with his hand the vagina of a co-detainee.<sup>2720</sup> The Chamber also found that UPC/FPLC soldiers used sticks and ‘bits of wood’ to penetrate the genital openings of some women and anal openings of some men captured after the ‘pacification meeting’.<sup>2721</sup>

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<sup>2715</sup> See paras 579, 599, 622 to 623, and 629.

<sup>2716</sup> See para. 623.

<sup>2717</sup> See paras 599 to 601.

<sup>2718</sup> See para. 607.

<sup>2719</sup> See para. 519.

<sup>2720</sup> See para. 545.

<sup>2721</sup> See para. 623.

*(iv) Use of force, threat of force or coercion, or taking  
advantage of a coercive environment*

943. Turning to the second legal element of rape, the Chamber notes that, in many instances, the perpetrators used force against the victims or other individuals present, both before and during the invasion of their body. Notably, one girl was violently undressed and, because she was screaming, the UPC/FPLC soldier who was on top of her and penetrating her put a cloth over her mouth and continued to penetrate her.<sup>2722</sup> She suffered serious injuries as a result of the conduct of the two UPC/FPLC soldiers who successively raped her, and required subsequent medical intervention.<sup>2723</sup> P-0022 was hit and thrown in an underground makeshift prison before she was raped.<sup>2724</sup> Other victims were also captured, physically restrained, and hurt by their perpetrators.<sup>2725</sup> The Chamber also notes that some victims were crying or screaming for help before, during, or immediately after the invasion of their body.<sup>2726</sup>

944. In addition, the Chamber finds that UPC/FPLC soldiers used implicit threats of force when carrying their arms in front of their victims, thereby intimidating these persons, or, in some instances, took out their weapons to show them to the victims, apparently to scare them.<sup>2727</sup> Other UPC/FPLC soldiers also plainly told their victims that they would be killed if they cried out or refused to cooperate.<sup>2728</sup> After the ‘pacification meeting’, when the soldiers were taking women to the bush to rape them, they carried out their threats and killed at least two individuals in front of some of the victims, notably killing one woman who had tried to defend herself.<sup>2729</sup>

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<sup>2722</sup> See para. 519.

<sup>2723</sup> See para. 520.

<sup>2724</sup> See para. 545.

<sup>2725</sup> See paras 522, 599 to 601, 607, 622, 627.

<sup>2726</sup> See paras 519, 535, 599.

<sup>2727</sup> See paras 523, 535, and 601.

<sup>2728</sup> See paras 600 to 601, and 607.

<sup>2729</sup> See para. 600.

945. Finally, the Chamber notes that the UPC/FPLC soldiers engaged in the conduct described above in the immediate aftermath of the group's takeover of, respectively, Mongbwalu and Kilo, or in the context of its military assaults on villages in the Walendu-Djatsi *collectivité*. In these circumstances, the perpetrators' status as UPC/FPLC soldiers placed them in a position of authority *vis-à-vis* the local population, particularly considering the young age of many of the victims, as well as the fact that the rapes coincided with the commission of other crimes by UPC/FPLC soldiers against the inhabitants of these villages.<sup>2730</sup> For this reason, even for the incidents where the use of violence or threats was not established, notably when soldiers were calling girls from the road in front of their camp in Kilo,<sup>2731</sup> the Chamber considers that the UPC/FPLC soldiers abused their power and took advantage of a coercive environment to have sexual intercourse with girls or women.

946. Accordingly, the Chamber concludes that at least one, often more, of the coercive circumstances or conditions set out in the second legal element of the crime against humanity and of the war crime of rape is proven for all incidents listed at paragraph 940 above.

### (c) Contextual elements

947. Considering that the conduct under consideration occurred during and/or in the direct aftermath of the takeover of, respectively, Mongbwalu and Kilo, or during the Second Operation, the Chamber finds that the conduct took place as part of the widespread and/or systematic attack against the Lendu civilian population of Ituri by the UPC/FPLC.

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<sup>2730</sup> Notably, the Chamber observes that P-0113 was brought to Salumu Mulenda's place in Kobu, where she was raped, and was subsequently made to come with him to Bunia, after having witnessed the execution of the people who were captured. *See* paras 627 to 629.

<sup>2731</sup> *See* para. 548.

948. The Chamber notes that the rapes occurred during UPC/FPLC military operations and were committed by soldiers during or immediately after the relevant assaults. Moreover, the locations where the rapes took place were amongst the towns and villages that the UPC/FPLC took over during the First and Second Operation. As such, and noting that the First and Second Operation have above been found to constitute part of a non-international armed conflict, the Chamber finds that the rapes took place in the context of and were associated with the non-international armed conflict in Ituri.

**d) Sexual slavery as a crime against humanity and as a war crime (Counts 7 and 8)**

**(1) Applicable law**

949. The crime against humanity of sexual slavery is laid down in Article 7(1)(g) of the Statute. The war crime of sexual slavery is laid down in Article 8(2)(e)(vi) of the Statute.

950. The legal elements of the crime against humanity of sexual slavery are:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>2732</sup>
5. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2733</sup>

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<sup>2732</sup> Elements of Crimes, Article 7(1)(g)-2 (footnotes omitted).



951. The legal elements of the war crime of sexual slavery are:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>2734</sup>
5. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2735</sup>

952. There is no exhaustive list of situations or circumstances which reflect the exercise of a power of ownership.<sup>2736</sup> In determining whether the perpetrator exercised such a power, the Chamber must take into account various factors, such as control of the victim's movement, the nature of the physical environment, psychological control, measures taken to prevent or deter escape, use of force or threats of use of force or other forms of physical or mental coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality, forced labour, and the victim's vulnerability.<sup>2737</sup> The exercise of the right of ownership over someone need not entail a commercial transaction.<sup>2738</sup>

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<sup>2733</sup> See footnote 2519 above.

<sup>2734</sup> Elements of Crimes, Article 8(2)(e)(vi)-2 (footnotes omitted).

<sup>2735</sup> See footnote 2519 above.

<sup>2736</sup> The Elements of Crimes refer to definitions contained in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. See in this regard Elements of Crimes, Article 7(1)(g)-2, footnote 18 and Article 8(2)(e)(vi)-2, footnote 66. See also Katanga Judgment, para. 975; and SCSL, Sesay et al. Trial Judgment, para. 160.

<sup>2737</sup> See ICTY, Kunarac et al. Appeal Judgment, paras 119 and 121. See also Katanga Judgment, para. 976; SCSL, RUF Trial Judgment, para. 160; SCSL, Taylor Trial Judgment, para. 420.

<sup>2738</sup> Katanga Judgment, para. 975; SCSL, Taylor Trial Judgment, para. 420; SCSL, Brima et al. Trial Judgment, para. 709; see also UN Economic and Social Council, Systematic rape, sexual slavery and slavery-like practices during armed conflict – Update to the final report, E/CN.4/Sub.2/2000/21, 6 June 2000, para. 50.

Imposition of ‘similar deprivation of liberty’ may take various forms;<sup>2739</sup> it may cover situations in which the victims may not have been physically confined, but were otherwise unable to leave as they would have nowhere else to go and fear for their lives.<sup>2740</sup>

## (2) Findings of the Chamber

### (a) Material elements

#### (i) *Negative findings*

953. The Chamber recalls that, on the basis of the evidence on the record, it did not make any factual findings in relation to conduct which may amount to sexual slavery in Ngabuli.<sup>2741</sup> Accordingly, the Chamber has not taken it further into account in reaching its conclusion on the charge of sexual slavery.

#### (ii) *Positive findings*

954. As established above, the Chamber found that during the course of the Second Operation, in Kobu, Sangi, Buli, and Jitchu, UPC/FPLC soldiers detained P-0018, P-0019, P-0113, and an 11-year-old girl, for certain periods, in some instances for several days, during which they raped them on one or more occasions, and forced them to carry items and/or prepare food.<sup>2742</sup>

<sup>2739</sup> See in this regard Elements of Crimes, Article 7(1)(g)-2, footnote 18 and Article 8(2)(e)(vi)-2, footnote 66. See also Katanga Judgment, para. 977; SCSL, Taylor Trial Judgment, para. 420, and AFRC Trial Judgment, para. 709.

<sup>2740</sup> SCSL, Taylor Trial Judgment, para. 420; AFRC Trial Judgment, para. 709; Taylor Trial Judgment, para. 420. See also Katanga Judgment, para. 977.

<sup>2741</sup> See para. 606, footnote 1878.

<sup>2742</sup> See paras 579, 599 to 601, 606 to 608, 611, 618, 627, 629, and 631 to 632.

*(iii) Acts of a sexual nature*

955. On the basis of its finding that the victims referred to above were raped on one or more occasions,<sup>2743</sup> the Chamber is satisfied that the second material element of the crime of sexual slavery, *i.e.* that the perpetrator cause the person to engage in one or more acts of a sexual nature, is met.

*(iv) Exercise of any or all of the powers attaching to the right of ownership*

956. The Chamber notes that the alleged victims, including P-0018, P-0019, P-0113, and an 11-year-old girl, were captured by UPC/FPLC soldiers and subsequently taken to other locations.<sup>2744</sup>

957. P-0018 was captured in Jitchu and made to carry items to Buli.<sup>2745</sup> The next morning, she was raped, together with other women, and UPC/FPLC soldiers shot her.<sup>2746</sup> While she was captured against her will and forced to carry items the day before she was raped, the Chamber has not received any evidence to indicate that any or all of the powers attaching to the right of ownership were exercised by the soldiers who raped her the next day, or anyone involved in allowing the rape to occur, nor has it received evidence to assess whether a similar deprivation of liberty was imposed on her. The Chamber therefore cannot conclude that the first element of sexual slavery is fulfilled. The Chamber has already made a positive findings above on the crimes of rape and attempted murder having been committed against P-0018,<sup>2747</sup> but its findings on what happened to P-0018 during the day prior does not allow the sexual violence suffered by P-0018 to be qualified

<sup>2743</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2744</sup> See paras 579, 599 to 600, 606, 608, 618, and 631.

<sup>2745</sup> See para. 618.

<sup>2746</sup> See paras 600 to 601.

<sup>2747</sup> See sections V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2), and V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

as another charged crime than rape. Although her capture and having been made to carry items were not lawful, this conduct is not separately charged.

958. P-0019 was captured in Sangi by UPC/FPLC soldiers and forced to carry items to Wadza.<sup>2748</sup> She was brought to Kobu together with others, where she was raped by a named UPC/FPLC commander.<sup>2749</sup> After the same commander told her to flee, she attempted to do so but was shot in her ankle by a UPC/FPLC soldier.<sup>2750</sup> Similar to the situation of P-0018, while P-0019's capture and her having been made to carry items were not lawful, this conduct is not separately charged as such. On the basis of evidence before the Chamber, it cannot conclude that the first element of sexual slavery is fulfilled. The Chamber recalls that it already found above that the crimes of rape and attempted murder were committed against P-0019.<sup>2751</sup>

959. P-0113 was captured by the UPC/FPLC in the bush surrounding Buli.<sup>2752</sup> After being taken to Buli, she was forced together with three other women to cook for the UPC/FPLC soldiers and told to fetch water.<sup>2753</sup> From there, she was made to carry a mattress to Kobu.<sup>2754</sup> When she was made to fetch water and on the way to Kobu, she was raped by UPC/FPLC soldiers.<sup>2755</sup> In Kobu, she was brought to the place where a named UPC/FPLC commander was staying.<sup>2756</sup> During the night, a soldier woke her up, telling her that the commander was calling for her.<sup>2757</sup> The commander told her that she would be spending the night with him and raped her.<sup>2758</sup> The commander later told P-0113 to come with him to Bunia to live in his

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<sup>2748</sup> See para. 599.

<sup>2749</sup> See para. 622; and section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2750</sup> See para. 632.

<sup>2751</sup> See sections V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2), and V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2752</sup> See para. 606.

<sup>2753</sup> See paras 606 to 607.

<sup>2754</sup> See para. 608.

<sup>2755</sup> See para. 607 and 611.

<sup>2756</sup> See para. 629.

<sup>2757</sup> See para. 629

<sup>2758</sup> See para. 629; and section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

house.<sup>2759</sup> Although she did not want to, she felt that she to obey him and go to Bunia in order not to be killed by the UPC/FPLC soldiers in Kobu.<sup>2760</sup> The commander made her to carry a mattress to Bunia, where she stayed one night in his house, before being sent away by the commander's wife.<sup>2761</sup>

960. The Chamber considers that the aforementioned circumstances show that the deprivation of liberty of P-0113 was such that the some of the powers of the right of ownership were exercised over her by members of the UPC/FPLC, including after she was brought to the location where he was staying in Kobu, by the named UPC/FPLC commander. During this period she was raped various times, only to afterwards be made to carry on with what she was forced to do by the UPC/FPLC, such as cooking or carrying goods. The Chamber therefore considers that the first element of the crime of sexual slavery is established with regard to P-0113. Although the Chamber also made a finding above on the crime of rape having been committed against P-0113, it considers that the circumstances of P-0113's prolonged deprivation of liberty are such that the period during which she was deprived of her liberty is in addition appropriately qualified as the crime of sexual slavery.

961. Although the Chamber has not received evidence on the name of the 11-year-old girl, the evidence it received on her deprivation of liberty, shows her having been captured by Commander Simba during a mop-up operation in Kobu, prior to the negotiations, after which Simba kept her, brought her to Bunia, and forced her to sleep with him.<sup>2762</sup> According to P-0017, she was forced to have 'sexual relationships' with Simba to save her life.<sup>2763</sup> Her deprivation of liberty lasted until the Bunia operation, which means that it lasted for several days or

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<sup>2759</sup> See para. 631.

<sup>2760</sup> See para. 631.

<sup>2761</sup> See para. 631.

<sup>2762</sup> See para. 579.

<sup>2763</sup> See para. 579.

even weeks.<sup>2764</sup> In these circumstances, and noting particularly the age of the victim, the Chamber considers that Simba exercised powers attached to the right of ownership over the girl during her captivity.

**(b) Contextual elements**

962. Considering that the conduct under consideration occurred during and after the UPC/FPLC assaults on Kobu and Buli, the Chamber finds that the conduct took place as part of the widespread and/or systematic attack against the Lendu civilian population of Ituri by the UPC/FPLC.

963. The Chamber further notes that the conduct commenced during the military operations referred to in this Judgment as the Second Operation, and was committed by soldiers who took part in this operation. Moreover, the locations where the conduct commenced were amongst the towns and villages that the UPC/FPLC took over during the Second Operation. As such, and noting that the Second Operation has above been found to constitute part of a non-international armed conflict, the Chamber finds that the conduct took place in the context of and was associated with the non-international armed conflict in Ituri.

**e) Rape as a war crime and sexual slavery as a war crime (Counts 6 and 9)**

**(1) Applicable law**

964. The Chamber recalls the applicable law on rape as a war crime and sexual slavery as a war crime under Article 8(2)(e)(vi) of the Statute as set out in section V.C.4.c)(1) above.

965. The Chamber further recalls its ‘Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9’<sup>2765</sup> in which the

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<sup>2764</sup> See para. 579.

Chamber found that, provided there is a nexus to the armed conflict, rape and *sexual* slavery against any person is prohibited, and that therefore members of the same armed force are not *per se* excluded as potential victims of the war crimes of rape and sexual slavery under Article 8(2)(e)(vi), which was upheld by the Appeals Chamber.<sup>2766</sup> The Chamber further recalls its indication, and the Appeals Chamber's finding in this regard, that for a proper delineation between war crimes and ordinary crimes, the nexus between the conduct in question and the armed conflict must be satisfied.<sup>2767</sup>

## (2) Findings of the Chamber

### (a) Scope of the charges

966. The Chamber notes that there is a dispute between the parties as to the scope of the charges in relation to Counts 6 and 9. The Defence submits that the UDCC does not contain any description of which alleged rapes or acts of sexual slavery are purportedly charged under Counts 6 and 9 and that therefore, no conviction can be entered under these counts.<sup>2768</sup> It also asserts that, while there are four events mentioned in the Confirmation Decision,<sup>2769</sup> they do not form part of the charges as they were omitted from the UDCC. However, according to the Defence, 'these are the only facts and circumstances on which a conviction could conceivably be entered'.<sup>2770</sup> The Defence also challenges the Prosecution's argument that Counts 6 and 9 can be pleaded with vagueness given the nature of these crimes stating '[r]apes are commenced and completed at specific times and

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<sup>2765</sup> 4 January 2017, ICC-01/04-02/06-1707.

<sup>2766</sup> Judgment on the appeal of Mr Ntaganda against the "Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9", 15 June 2017, ICC-01/04-02/06-1962.

<sup>2767</sup> 4 January 2017, ICC-01/04-02/06-1707, para. 52; and ICC 01/04-02/06-1962, in particular paras 2 and 68.

<sup>2768</sup> Defence Closing Brief, para. 1541.

<sup>2769</sup> The four events are: '(i) rape of P-0758 and other child soldiers at Camp Lingo; (ii) rape by Abelanga of a girl under 15 at Mandro between November 2002 until May 2003; (iii) rapes of young girls at Mandro camp between mid-August and mid-September; and (iv) rape of a girl aged 13 by Kisembo "until he was killed in Mongbwalu"', Defence Closing Brief, para. 1542, referring to Confirmation Decision, para. 82. *See also* T-263, page 100.

<sup>2770</sup> Defence Closing Brief, para. 1542. *See further* Defence Closing Brief, paras 1545 to 1557.

places by specific individuals against specific victims’ and ‘the possibility of rape being committed repeatedly does not set it apart from any other crime known to the ICC Statute’.<sup>2771</sup>

967. The Prosecution submits that the charges concerning Counts 6 and 9 are not limited to the acts listed by the Defence.<sup>2772</sup> Particularly in relation to P-0883, who is not mentioned in the Confirmation Decision, it argues that the acts relating to her victimisation were ‘properly added after the [Confirmation Decision]’.<sup>2773</sup> The Prosecution further argues that the UDCC refers to rape and sexual slavery of child soldiers ‘during military training and after battles, and in the residence of UPC commander[s] throughout Ituri in places where the UPC fought or was based’<sup>2774</sup> while the Confirmation Decision refers to ‘a non-exhaustive list of victims of recruitment, use, rape and sexual slavery by witness code with factual details of these crimes’.<sup>2775</sup> In relation to sexual slavery, the Prosecution further refers to the *Taylor* case before the Special Court for Sierra Leone, where it was held that ‘due to the continuous nature of sexual slavery, pleading specific locations is impractical’, as both victims and perpetrators ‘were often on the move between villages and districts over a significant period of time’, while in relation to rape, it states that ‘[a]lthough rape is not a continuous crime, the perpetrators and victims were on the move between villages over a significant period of time’, which is – according to the Prosecution – to be distinguished from the situation in the *Bemba* case.<sup>2776</sup>

968. The Chamber recalls its considerations in relation to the scope of the charges, particularly as set out in paragraphs 41 to 42 above. The Chamber further notes that, pursuant to paragraph 74 of the Confirmation Decision, the crimes

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<sup>2771</sup> T-263, page 102.

<sup>2772</sup> Prosecution Response Brief, para. 13.

<sup>2773</sup> Prosecution Response Brief, footnote. 60, referring to the date of disclosure of the witness’s statement (30 January 2015) and Pre-Trial Brief, para. 372.

<sup>2774</sup> T-262, page 28.

<sup>2775</sup> T-262, page 28.

<sup>2776</sup> T-264, pages 51 to 52 also referring to *Taylor* Judgment.



underlying Counts 6 and 9 are confirmed as having been committed against UPC/FPLC ‘child soldiers under the age of 15’, in the time period between on or about 6 August 2002 and 31 December 2003, in Ituri, in the DRC.<sup>2777</sup> As a result, the group of victims is limited to individuals within the UPC/FPLC under the age of 15, in the area and during the time period as stated above. Paragraphs 81 to 82 of the Confirmation Decision further set out facts specific to the charges underlying Counts 6 and 9. Considering the aforementioned limitations, the nature of the crimes underlying the two counts, as well as the fact that – as pointed out by the Prosecution – during part of the specified time period, both the perpetrators and the victims moved around within the specified territory, the Chamber finds that the crimes underlying Counts 6 and 9 have been charged with a sufficient degree of specificity.

969. The above considered, the Chamber finds that both P-0883’s treatment at Camp Bule, as well as the rapes of Mave, a girl under the age of 15 who was assigned to Floribert Kisembo, fall within the charges of rape and sexual slavery of child soldiers as framed in paragraph 74 of the Confirmation Decision.

## (b) Material elements

### (i) *Negative findings*

970. The Chamber recalls that it was not established that P-0758 was under 15 years old at the time when she joined the UPC/FPLC and, therefore, did not rely on her status as an alleged child soldier or related acts of sexual violence suffered.<sup>2778</sup> The Chamber has not considered reported acts of sexual violence suffered by P-0758 in reaching its conclusions in relation to Counts 6 and 9.

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<sup>2777</sup> Confirmation Decision, para. 74.

<sup>2778</sup> See section III.D.2.f) P-0758.

971. Similarly, the Chamber recalls the remaining doubts regarding whether or not P-0010 was under 15 at the time of the events referred to during her testimony.<sup>2779</sup>

As such, while the Chamber found that she was subjected to acts of sexual violence,<sup>2780</sup> the relevant evidence does not fall within the scope of the charges in the present case.

972. The Chamber also found that PMFs within the UPC/FPLC were raped at Mandro camp.<sup>2781</sup> However, on the basis of the evidence on the record, the age of those victims was not established. The Chamber therefore does not take these rapes into account in relation to Counts 6 and 9.

973. Lastly, it was not demonstrated that Abelanga committed acts of sexual violence against individuals under the age of 15.<sup>2782</sup>

#### *(ii) Positive findings*

974. The Chamber found that the following incidents occurred:

- the repeated rapes of P-0883, a girl under 15 years of age, by UPC/FPLC soldiers at Camp Bule;<sup>2783</sup>
- the rapes of Mave, a girl under the age of 15 who was assigned to Floribert Kitembo, who was raped by UPC/FPLC soldiers on a regular basis;<sup>2784</sup> and
- the rape of Nadège, a girl of approximately nine years old, who was raped at the Lingo training camp.<sup>2785</sup>

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<sup>2779</sup> See section III.D.2.a) P-0010.

<sup>2780</sup> See para. 407, footnote 1158.

<sup>2781</sup> See para. 407.

<sup>2782</sup> See para. 408, footnote 1161.

<sup>2783</sup> See para. 409.

<sup>2784</sup> See para. 411.

<sup>2785</sup> See para. 410.

*(iii) Penetration / acts of a sexual nature*

975. As explained in the analysis of the evidence, the Chamber finds that, in the incidents referred to above, sexual intercourse, and therefore penetration, took place. The Chamber therefore finds that the conduct of the UPC/FPLC soldiers at the training camps in Bule and Lingo, and in the context of the escort of Floribert Kisembo, as referred to above, involved the execution of the first material element of the war crime of rape. Having found that the three abovementioned victims were raped, the Chamber is also satisfied that the second material element of the war crime of sexual slavery is met, that is that the perpetrator caused the victim to engage in one or more acts of a sexual nature.

*(iv) Use of force, threat of force or coercion, or taking advantage of a coercive environment / exercise of any or all of the powers attaching to the right of ownership*

976. The Chamber has established that P-0883 was brought to Camp Bule for training, where she stayed for several months.<sup>2786</sup> Noting her age at the time,<sup>2787</sup> the fact that she reported having been threatened to be killed in case she tried to flee, and that her movements were monitored,<sup>2788</sup> as well as the general conditions in the UPC/FPLC training camps at the time,<sup>2789</sup> it is clear to the Chamber that she feared for her life and had no choice but to remain in the camp.

977. In this regard, the Chamber also notes its below finding that P-0883's transfer to Camp Bule for training and some of her activities within the UPC/FPLC during and after her training, constitutes the war crime of conscripting and enlisting children under the age of 15.<sup>2790</sup> While the Chamber observes that the Prosecution has not clearly tried to show how the situation of P-0883 (and other individuals

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<sup>2786</sup> See para. 409.

<sup>2787</sup> See section III.D.2.h) P-0883.

<sup>2788</sup> See para. 409.

<sup>2789</sup> See paras 374 to 377.

<sup>2790</sup> See section V.C.4.j) Conscripting, enlistment and use of children under 15 as a war crime (Counts 14, 15, and 16).

who were allegedly under the age of 15 and who were part of the UPC/FPLC and alleged to have been subjected to sexual slavery) differed from being a ‘child soldier’, as such, the Chamber notes that the evidence establishes that P-0883’s situation, as would those of others if they were similarly subjected to sexual violence on a near-continuous basis, was distinguishable from being a ‘child soldier’ as such. Namely, as noted above, the witness was forced to engage in sexual intercourse with UPC/FPLC soldiers through the use of threats, being told that she would be shot if she did not accept.<sup>2791</sup> She suffered continuous rapes and described how UPC/FPLC soldiers could do this to her ‘whenever they wanted’: at any time and anywhere in the camp.<sup>2792</sup>

978. On the basis of the above circumstances, and particularly as she was kept captive in a state of extreme vulnerability, her situation was such that her personal liberty was denied. Accordingly, the evidence establishes that, by imposing on P-0883 a deprivation of liberty similar to the other circumstances listed under Article 8(2)(e)(vi) of the Statute, members of the UPC/FPLC in Camp Bule collectively exerted powers over her attaching to the right of ownership. Similarly, in relation to the second element of rape, the Chamber concludes that the conduct of the UPC/FPLC soldiers who subjected P-0883 to sexual violence was committed by threat of force or coercion.

979. With regard to the second incident listed above, the Chamber notes that Mave was under 15 years of age at the time<sup>2793</sup> and that she was raped by many different UPC/FPLC soldiers on a regular basis.<sup>2794</sup> The Chamber further considers the fact that Floribert Kisembo had to personally intervene to stop UPC/FPLC soldiers from further raping Mave and that this prohibition was only put in place after she

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<sup>2791</sup> See para. 409.

<sup>2792</sup> See para. 409.

<sup>2793</sup> See para. 399, footnote 1135.

<sup>2794</sup> See para. 411.

developed serious health problems as a result of the repeated rapes.<sup>2795</sup> In addition, P-0887's direct observations attest of Mave's unhealthy and troubled condition at the time.<sup>2796</sup> Having considered cumulatively the above circumstances, the Chamber finds that the only reasonable conclusion is that the UPC/FPLC male soldiers who raped this young escort took advantage of the coercive environment in which she found herself at the time. Accordingly, the Chamber concludes that the second legal element of the war crime of rape is met in relation to this conduct.

980. Turning to the first element of sexual slavery, the Chamber, having had particular regard to her state of mind at the time, as reported by P-0877, considers that the only reasonable conclusion is that, although Mave was not necessarily physically confined, she was unable to leave her position as Floribert Kisembo's escort. As such, her situation for the period during which she suffered from repeated acts of sexual violence amounts to the 'deprivation of liberty' foreseen under Article 8(2)(e)(vi) of the Statute. Accordingly, the Chamber finds that Floribert Kisembo exercised some of the powers attaching to the right of ownership over her. In the circumstances, since she was raped by many different UPC/FPLC soldiers on a regular basis, the only reasonable conclusion is that Floribert Kisembo allowed these rapes to happen, and as such placed her at the disposal of those who raped her. Noting that the commission of the present crime may involve more than one perpetrator,<sup>2797</sup> and the sexual acts need not have been perpetrated by the one who exercised the rights attaching to ownership, the Chamber considers that the first element of sexual slavery is also fulfilled.

981. With regard to the third incident discussed above, the Chamber notes that the victim was around nine years old at the time,<sup>2798</sup> an age at which the Chamber is

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<sup>2795</sup> See para. 411.

<sup>2796</sup> See para. 411.

<sup>2797</sup> See footnote 65 to the Elements of Crimes.

<sup>2798</sup> See para. 410.

satisfied that children are incapable of giving informed consent. Noting further the general conditions in the UPC/FPLC training camps at the time,<sup>2799</sup> and the likely impact that such conditions would have had on such a young victim, the Chamber is satisfied that the second legal element of rape is met in relation to the nine-year-old girl.

982. As far as sexual slavery is concerned, the Chamber notes that it has received very limited evidence concerning the victim's personal circumstances, notably no information on the length of time she spent at the Lingo training camp, or the individuals who raped her. Accordingly, the evidence does not support a finding that, in addition to raping her, UPC/FPLC soldiers exercised some of the powers attaching to the right of ownership over the victim. The Chamber will therefore not further consider this incident in reaching its conclusions in relation to Count 9.

### (c) Contextual elements

983. The Chamber refers to its below finding that between 6 August 2002 and 31 December 2003, the UPC/FPLC conscripted and enlisted individuals under the age of 15, both male and female, into its ranks.<sup>2800</sup> After being recruited, these individuals were trained at the various UPC/FPLC training camps<sup>2801</sup> before, *inter alia*, being assigned as escorts to UPC/FPLC commanders,<sup>2802</sup> participating in military operations,<sup>2803</sup> and carrying out other activities qualifying as actively participating in the hostilities.<sup>2804</sup>

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<sup>2799</sup> See paras 374 to 377.

<sup>2800</sup> See section V.C.4.j) Conscription, enlistment and use of children under 15 as a war crime (Counts 14, 15, and 16).

<sup>2801</sup> See section IV.A.3.b) Training.

<sup>2802</sup> See section IV.A.3.c) Escorts, bodyguards, and other assignments.

<sup>2803</sup> See section IV.A.3.e) Participation in military operations.

<sup>2804</sup> See section V.C.4.j) Conscription, enlistment and use of children under 15 as a war crime (Counts 14, 15, and 16).

984. The Chamber notes the Defence's submissions that 'sexual abuse [is] widespread in armed forces around the world',<sup>2805</sup> but emphasises that it is not generally pronouncing on whether such sexual abuse, while criminal, constitutes a war crime. Sexual abuse within armed forces may or may not take place at a time that the relevant armed force is a party to an armed conflict, and may or may not take place in the context of or be associated with such an armed conflict. The facts before the Chamber concern the two victims referred to above. The rapes and sexual slavery of these girls took place during training at one of the UPC/FPLC camps and during the assignment as an escort to a UPC/FPLC commander, respectively, during a period in which the UPC/FPLC was actively engaged in military operations and fought opposing armed actors. The UPC/FPLC's recruitment campaign at the relevant time was aimed at building up its military strength – which was required to achieve the desired control over Ituri.

985. The Chamber further recalls the link between the recruitment campaign of soldiers and the related recruitment of individuals under the age of 15, as a result of the absence of measures to exclude such persons and the UPC/FPLC's acceptance that individuals under the age of 15 would therefore become part of the UPC/FPLC,<sup>2806</sup> and the UPC/FPLC's engagement in the non-international armed conflict in Ituri.

986. The Chamber is therefore satisfied that the conduct discussed above, and amounting to the rape and/or sexual slavery of individuals under the age of 15, was associated with a non-international armed conflict and therefore fulfils the requisite nexus requirement.

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<sup>2805</sup> See Defence Closing Brief, para. 1547.

<sup>2806</sup> See para. 361.

**F) Persecution as a crime against humanity (Count 10)**

**(1) Applicable law**

987. The crime against humanity of persecution is laid down in Article 7(1)(h) of the Statute.

988. The legal elements of this crime against humanity are:

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reasons of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>2807</sup>
7. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2808</sup>

**(2) Findings of the Chamber**

**(a) Material elements**

**(i) *Negative findings***

989. The Chamber notes that, on the basis of the evidence on the record, it did not find any of the charged crimes in Pluto, Ngongo, Gutsi, Camp P.M., Djuba,

<sup>2807</sup> Elements of Crimes, Article 7(1)(h)(1) (footnotes omitted).

<sup>2808</sup> See footnote 2519 above.



Katho, Mpetsi/Petsi, Avetso, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali, and Ngabuli.<sup>2809</sup> Under these circumstances, the Chamber does not take into account these locations in relation to Count 10.

*(ii) Positive findings*

990. The Chamber made a number of findings concerning conduct which may amount to persecution in Mongbwalu, Nzebi, Sayo, Kilo, Nyangaray, Lipri, Tsili, Kobu, Bambu, Sangi, Gola, Jitchu, and Buli. These findings are set out and analysed further below.

*(iii) Severe deprivation of fundamental rights*

991. The Chamber considers that, for the purpose of identifying those rights whose severe infringement may constitute persecution, more defined parameters for the definition of human dignity can be found in international standards on human rights such as those laid down in the Universal Declaration of Human Rights (UDHR), the two UN Covenants on Human Rights, and other international instruments on international human rights, as well as the rights reflected in international humanitarian law.<sup>2810</sup> Drawing upon the various provisions of these texts, the Chamber considers that it is possible to identify a set of fundamental rights pertaining to any human being, the gross infringement of which may amount, depending on the surrounding circumstances, to a crime against humanity.<sup>2811</sup> Examples of such rights are, amongst others, the right to life, liberty and the security of person, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the right not to be subjected to arbitrary

<sup>2809</sup> See sections V.C.4.a), V.C.4.b), V.C.4.c), V.C.4.d), V.C.4.g), V.C.4.h), V.C.4.i), V.C.4.k), and V.C.4.l).

<sup>2810</sup> ICTY, *Kupreškić et al* Trial Judgment, para. 621. See also ICTY, *Kordić & Čerkez* Trial Judgment, para. 195.

<sup>2811</sup> ICTY, *Kupreškić et al* Trial Judgment, para. 621. See also ICTY, *Kordić & Čerkez* Trial Judgment, para. 195.

arrest, detention or exile.<sup>2812</sup> Persecution consists of a severe attack on those rights.<sup>2813</sup>

992. The determination as to which acts will result in the severe deprivation of one or more individuals' fundamental rights must be made on a case-by-case basis. For the purpose of this assessment, the Chamber will examine the acts 'in their context and with consideration of their cumulative effect' in order to ascertain whether taken alone or in conjunction with other acts, they resulted in the 'gross or blatant denial' of fundamental rights.<sup>2814</sup>

993. With respect to the mention in the first legal element that the deprivation of a fundamental right must be contrary to international law, the Chamber considers this to mean that no justification exists under international law for the impediment of the concerned right.<sup>2815</sup> The Chamber further notes that, while human rights law lays down obligations for *States* to be respected vis-à-vis individuals on its territory (or under its overall control),<sup>2816</sup> for the purpose of its assessment as to whether a deprivation of fundamental rights is 'contrary to international law' as per the first element, what matters is that the right cannot be enjoyed by the person entitled to it. Indeed, the provisions of Article 7(1)(h) would become meaningless if non-state armed groups cannot be held accountable for serious human rights violations. In this connection, it should be noted that the contextual elements of crimes against humanity need to be met for the conduct to qualify as a crime pursuant to Article 7(1)(h) of the Statute. This ensures that not

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<sup>2812</sup> See UDHR, Articles 3, 4, 5, and 9. The Chamber observes that there is general agreement that the rights included in the UDHR are part of customary law. See also ICTY, *Blaškić* Trial Judgment, para. 220.

<sup>2813</sup> ICTY, *Kupreškić et al* Trial Judgment, para. 621. See also ICTY, *Kordić & Čerkez* Trial Judgment, para. 195.

<sup>2814</sup> ICTY, *Kupreškić et al* Trial Judgment, paras 615 and 620 to 622; and ICTY, *Krnjelac* Trial Judgment, para. 434. See also ICTY, *Kvočka et al* Appeal Judgment, paras 319 to 321.

<sup>2815</sup> In this regard, the Chamber notes the many exceptions and limitations which may legally justify an act and its consequences, as set out under the framework of both international human rights and IHL. For the Chamber's definition of 'Military necessity', see below para. 1098. Other lawful limitations are provided under international law as 'derogations' or 'exceptions' (see, *inter alia*, OHCHR, General Comment no 29, 24 July 2001, CCPR/C/21/Rev.1/Add11).

<sup>2816</sup> See e.g. ICCPR, Article 2(1).

any infringement of a person's right(s) by individuals other than State agents amounts to persecution, but only those that are committed by a sufficiently organised entity, pursuant to a policy to attack a civilian population in a widespread or systematic manner.

994. Against this background, the commission of any act considered to be a crime against humanity will, in principle, result in a deprivation of fundamental rights of one or more individuals, as envisaged in Article 7(2)(h), and meet, in and of itself, the minimum level of severity required. Acts of murder and the causing of serious injury as well as rape and sexual slavery, may, for example, constitute underlying acts of persecution.<sup>2817</sup>

995. *First Operation:* During the assault on Mongbwalu, the UPC/FPLC intentionally attacked civilians<sup>2818</sup> and destroyed property.<sup>2819</sup> After the takeover of the town, members of the UPC/FPLC carried out a *ratissage* operation during which they murdered,<sup>2820</sup> pillaged,<sup>2821</sup> and raped women and girls.<sup>2822</sup>

996. The UPC/FPLC's conduct during and in the aftermath of the takeover of Mongbwalu had the effect of forcibly displacing part of the civilian population of Mongbwalu.<sup>2823</sup> Some of those who fled Mongbwalu lived in dire conditions, stayed in makeshift shelters or in abandoned houses, had no money and insufficient food and water and no access to medical care.<sup>2824</sup> Some of them fled to Sayo and some fled to Kilo.<sup>2825</sup>

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<sup>2817</sup> Similar alleged acts were also found to constitute conduct for which persecution charges were confirmed in: *Ongwen* Confirmation Decision, pages 73 to 89; *Blé Goudé* Confirmation Decision, paras 122 to 123; *Gbagbo* Confirmation Decision, paras 204 to 205; Confirmation Decision, para. 58; *Ruto* Confirmation Decision, paras 273 to 274; and *Kenyatta* Confirmation Decision, para. 283.

<sup>2818</sup> See section V.C.4.b) Intentionally attacking civilians as a war crime (Count 3).

<sup>2819</sup> See section V.C.4.i) Destroying the adversary's property as a war crime (Count 18).

<sup>2820</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2821</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

<sup>2822</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2823</sup> See section V.C.4.h) Forcible transfer of population as a crime against humanity (Count 12).

<sup>2824</sup> See para. 497.

<sup>2825</sup> See para. 497.

997. Following the takeover of Mongbwalu, the UPC/FPLC attacked Sayo.<sup>2826</sup>

During the assault on the village, the UPC/FPLC also intentionally attacked civilians<sup>2827</sup> and destroyed property,<sup>2828</sup> as well as intentionally directed an attack against a protected building.<sup>2829</sup> After the takeover of the village, it carried out a *ratissage* operation, murdering<sup>2830</sup> and pillaging.<sup>2831</sup> Similarly, in Nzebi, two persons were murdered pursuant to Mr Ntaganda's order,<sup>2832</sup> after the village was taken over by the UPC/FPLC.<sup>2833</sup>

998. In the aftermath of the assault on Kilo, the UPC/FPLC began to go after the Lendu in the village, including at night in their homes, killing some of them.<sup>2834</sup> The bodies of those killed were thrown into mass graves, some of which had been previously dug by those killed.<sup>2835</sup> A member of the UPC/FPLC also killed a Nyali man for singing an anti-Hema song.<sup>2836</sup> Women were raped by UPC/FPLC soldiers in Kilo.<sup>2837</sup>

999. The Chamber considers that through the commission of the aforementioned acts, the inhabitants of Mongbwalu, Sayo, Nzebi, and Kilo were severely deprived of their fundamental rights, including their right to life, and bodily integrity; rights that they enjoyed – without doubt – pursuant to international law.<sup>2838</sup> As no justification existed, this deprivation was contrary to international law. The Chamber further finds that the destruction and looting of property, in the

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<sup>2826</sup> See para. 500.

<sup>2827</sup> See section V.C.4.b) Intentionally attacking civilians as a war crime (Count 3).

<sup>2828</sup> See section V.C.4.l) Destroying the adversary's property as a war crime (Count 18).

<sup>2829</sup> See section V.C.4.k) Attacking protected objects as a war crime (Count 17).

<sup>2830</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2831</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

<sup>2832</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2833</sup> See para. 510.

<sup>2834</sup> See para. 543.

<sup>2835</sup> See para. 543, and section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2836</sup> See para. 547.

<sup>2837</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2838</sup> See, e.g., ICCPR, Articles 6 and 7.

situation where the civilian population had to flee, compounded the aforementioned deprivation of fundamental rights.

1000. *Second Operation:* At the start of the Second Operation, the UPC/FPLC took control over Nyangaray.<sup>2839</sup> The population fled and hid in the bush, where they stayed in difficult conditions.<sup>2840</sup> Further, on or about 18 February 2003, the UPC/FPLC launched an assault on Lipri, Tsili, and other villages in the area.<sup>2841</sup> Also on or about 18 February 2003, the UPC/FPLC attacked Kobu, where alongside members of the APC, Lendu persons had sought refuge following UPC/FPLC violence in the region.<sup>2842</sup> At least two young children were murdered as they attempted to flee the village.<sup>2843</sup> On or about 18 February 2003, the UPC/FPLC also launched an assault on Bambu.<sup>2844</sup> During the assault, the UPC/FPLC intentionally attacked civilians,<sup>2845</sup> murdered nine patients at the Bambu hospital, and attempted to murder a tenth.<sup>2846</sup>

1001. During the UPC/FPLC control of the area, the UPC/FPLC destroyed houses in Lipri and Tsili by burning them down.<sup>2847</sup> They also pillaged in Lipri.<sup>2848</sup> In Kobu, after the takeover of the village, the UPC/FPLC carried out a *ratissage* operation for two or three days, during which at least two persons were captured and subsequently murdered at the UPC/FPLC camp.<sup>2849</sup> The UPC/FPLC also pillaged,<sup>2850</sup> destroyed some of the houses in and around Kobu by burning them

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<sup>2839</sup> See para. 640.

<sup>2840</sup> See para. 640.

<sup>2841</sup> See para. 567.

<sup>2842</sup> See paras 571 to 572.

<sup>2843</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2844</sup> See para. 583.

<sup>2845</sup> See section V.C.4.b) Intentionally attacking civilians as a war crime (Count 3).

<sup>2846</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2847</sup> See section V.C.4.1) Destroying the adversary's property as a war crime (Count 18).

<sup>2848</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

<sup>2849</sup> See para. 577, and section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2850</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

down,<sup>2851</sup> and repeatedly raped<sup>2852</sup> women and subjected them to sexual slavery.<sup>2853</sup>

1002. The UPC/FPLC's conduct during and in the aftermath of the takeover of Lipri, Kobu, and Bambu had the effect of forcibly displacing part of the civilian population of these villages.<sup>2854</sup> Some of the inhabitants of Tsili, a village near Lipri, were also forcibly displaced.<sup>2855</sup> Some went to the bush and the nearby hills<sup>2856</sup> while some went to or in the direction of Gutsi,<sup>2857</sup> Jitchu,<sup>2858</sup> and Buli.<sup>2859</sup> Some of those who fled had to endure harsh conditions, living with limited shelter and food.<sup>2860</sup>

1003. On or about 22 February 2003, the UPC/FPLC invited members of the Lendu community to a 'pacification meeting' to be held in Sangi.<sup>2861</sup> Once unarmed Lendu dignitaries, community leaders, young people, and women from various locations arrived at the 'pacification meeting',<sup>2862</sup> armed UPC/FPLC soldiers began capturing them; those who did not manage to flee were locked and tied up inside a building, while the UPC/FPLC soldiers began beating and injuring them.<sup>2863</sup> They were subsequently taken to Kobu by the UPC/FPLC.<sup>2864</sup>

1004. Some of the captured women were raped by UPC/FPLC soldiers.<sup>2865</sup> Some women were murdered, either when they attempted to resist the rapes or after

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<sup>2851</sup> See section V.C.4.l) Destroying the adversary's property as a war crime (Count 18).

<sup>2852</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2853</sup> See section V.C.4.d) Sexual slavery as a crime against humanity and as a war crime (Counts 7 and 8).

<sup>2854</sup> See section V.C.4.h) Forcible transfer of population as a crime against humanity (Count 12).

<sup>2855</sup> See section V.C.4.h) Forcible transfer of population as a crime against humanity (Count 12).

<sup>2856</sup> See paras 568, and 573.

<sup>2857</sup> See para. 615.

<sup>2858</sup> See para. 617.

<sup>2859</sup> See para. 603.

<sup>2860</sup> See para. 616.

<sup>2861</sup> See para. 590.

<sup>2862</sup> See para. 595.

<sup>2863</sup> See para. 597.

<sup>2864</sup> See para. 598.

<sup>2865</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

they were raped.<sup>2866</sup> An example of the treatment of women captured at the ‘pacification meeting’ is the story of P-0019, who was among those captured by the UPC/FPLC in Sangi, together with other women who were taken to the bush and raped.<sup>2867</sup> In addition to being raped,<sup>2868</sup> she was used to carry luggage and various items to Wadza.<sup>2869</sup> She also heard other women screaming as they were raped, some of whom did not return.<sup>2870</sup> Sometime after the ‘pacification meeting’, the UPC/FPLC destroyed houses in and around Sangi, by burning them down.<sup>2871</sup>

1005. At around the same time as the ‘pacification meeting’, UPC/FPLC soldiers captured a number of Lendu in Gola and the surrounding bush and took them to Kobu.<sup>2872</sup>

1006. Some of those who fled the ‘pacification meeting’ went to Jitchu and the surrounding forest, where the UPC/FPLC continued to chase them, intentionally attacking civilians.<sup>2873</sup> UPC/FPLC soldiers also pillaged in Jitchu<sup>2874</sup> and burned down houses.<sup>2875</sup> A Lendu woman who had previously been forced to flee from Bambu was captured in Jitchu and forced to carry looted items to Buli.<sup>2876</sup> On or about 25 February 2003, the UPC/FPLC advanced into Buli, intentionally attacking civilians and chasing those present in the village into the surrounding bush.<sup>2877</sup> The UPC/FPLC searched the bush, including into the next day, and captured individuals who they found.<sup>2878</sup> A woman captured was subjected to repeated rapes<sup>2879</sup> and sexually enslaved.<sup>2880</sup> Some of those captured were taken to

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<sup>2866</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2867</sup> See para. 599, and section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2868</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2869</sup> See para. 599.

<sup>2870</sup> See para. 599.

<sup>2871</sup> See section V.C.4.l) Destroying the adversary’s property as a war crime (Count 18).

<sup>2872</sup> See para. 613.

<sup>2873</sup> See para. 617; see section V.C.4.b) Intentionally attacking civilians as a war crime (Count 3).

<sup>2874</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

<sup>2875</sup> See section V.C.4.l) Destroying the adversary’s property as a war crime (Count 18).

<sup>2876</sup> See para. 618.

<sup>2877</sup> See para. 604. See also section V.C.4.b) Intentionally attacking civilians as a war crime (Count 3).

<sup>2878</sup> See para. 605.

<sup>2879</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

Kobu.<sup>2881</sup> The UPC/FPLC also destroyed houses in the village by burning them down.<sup>2882</sup>

1007. Persons captured in Sangi, Gola, Buli, and the surrounding bush were brought back to Kobu-Wadza by UPC/FPLC soldiers and held there.<sup>2883</sup> Some of the women were subjected to rape and sexual slavery by UPC/FPLC soldiers and commanders.<sup>2884</sup> A number of men were also raped and subsequently murdered.<sup>2885</sup> The detained persons were then taken outside of the houses and murdered by UPC/FPLC soldiers at or close to a banana field near the Paradiso building.<sup>2886</sup> At least one person was murdered as they were trying to assist an injured victim.<sup>2887</sup> A couple of victims survived their attempted murders.<sup>2888</sup> Mutilated bodies of the victims were discovered by those who came to Kobu-Wadza in the next few days.<sup>2889</sup>

1008. The Chamber considers that through the commission of the aforementioned acts, the inhabitants of Nyangaray, Lipri, Tsili, Kobu, Bambu, Sangi, Gola, Jitchu, and Buli were severely deprived of their fundamental rights, including their right to life, and bodily integrity; rights that they enjoyed – without doubt – pursuant to international law.<sup>2890</sup> As no justification existed, this deprivation was contrary to international law. The Chamber further finds that the destruction and looting

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<sup>2880</sup> See section V.C.4.d) Sexual slavery as a crime against humanity and as a war crime (Counts 7 and 8).

<sup>2881</sup> See para. 620.

<sup>2882</sup> See section V.C.4.l) Destroying the adversary's property as a war crime (Count 18).

<sup>2883</sup> See paras 620 to 621.

<sup>2884</sup> See sections V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5); and V.C.4.d) Sexual slavery as a crime against humanity and as a war crime (Counts 7 and 8).

<sup>2885</sup> See sections V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5), and V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2886</sup> See para. 628; *see also* section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2887</sup> See para. 632; *see also* section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2888</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2889</sup> See para. 633.

<sup>2890</sup> See ICCPR, Articles 6, 7, 9, and 10.



of property, in the situation where the civilian population had to flee, compounded the aforementioned deprivation of fundamental rights.

*(iv) Targeting based on ethnic grounds*

1009. In relation to the requirement that the persons, group, or collectivity targeted shared a political, racial, national, ethnic, cultural, religious, or gender identity, or that the discrimination was based on any other ground universally recognised as impermissible under international law, one such ground will suffice, although a combination of more than one may equally form the basis for the discrimination. Further, the target group can be defined in both a positive and a negative manner. Therefore, it may be the case that the perpetrator targeted only members of certain groups or targeted individuals for not belonging to a certain group, for instance by targeting all but one ethnic group within a community.

1010. In evaluating the alleged status as a protected group, the Chamber will reflect upon the particular political, social, and cultural context, and take into consideration, in addition to the objective factors relevant to the discriminatory ground alleged, the subjective perception of belonging of both the perpetrator and the victim.<sup>2891</sup>

1011. While it must be demonstrated that the perpetrator targeted certain persons, a group, or a collectivity, based on one of the prohibited grounds, not all victims of the crime of persecution are required to be members, sympathisers, allies of, or in any other way related to, the protected group.<sup>2892</sup>

<sup>2891</sup> ICTR, *Rutaganda* Trial Judgment, paras 56 to 57; and ICTY, *Jelisić* Trial Judgment, para. 70.

<sup>2892</sup> By opposition, *see* sub-paragraph (2) of the Elements of Crimes for Article 6 – Genocide (‘Such person or persons belonged to a particular national, ethnical, racial or religious group’). *See also* ICTY, *Krnjelac* Appeal Judgment, para. 185.

1012. Turning now to the facts of the present case, the Chamber recalls that the Lendu constituted an ethnic group.<sup>2893</sup> In this regard, the Chamber notes that many witnesses testified that they belonged to the Lendu ethnic group.

1013. As demonstrated above, the common plan encompassed the commission of crimes specifically against the Lendu.<sup>2894</sup> As demonstrated below, Mr Ntaganda meant for the Lendu ethnic group as such to be targeted by UPC/FPLC troops.<sup>2895</sup> Furthermore, the Chamber considers that the unfolding of the First and Second Operation demonstrates objectively the targeting of Lendu persons, based on their ethnic affiliation.

1014. In this regard, the Chamber recalls that Mongbwalu and the surrounding villages, including Sayo, were predominantly Lendu, while some members of other groups, except the Hema, were also present.<sup>2896</sup> Similarly, the inhabitants of the villages in the Walendu-Djatsi *collectivité* of, *inter alia*, Kobu, Bambu, Lipri, Tsili, and Jitchu were predominantly Lendu.<sup>2897</sup>

1015. Moreover, the Chamber notes that a great number of people who fled Mongbwalu because of the UPC/FPLC assault during the First Operation concentrated in Lipri, Kobu, and Bambu<sup>2898</sup> and that, following the UPC/FPLC assaults on Kobu and Bambu, a large number of individuals, comprised in part of Lendu ethnicity, fled to Buli.<sup>2899</sup> During the assaults on these locations, the UPC/FPLC thus intentionally attacked civilians,<sup>2900</sup> destroyed the enemy's property,<sup>2901</sup> and attacked a protected object<sup>2902</sup> in predominantly Lendu localities.

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<sup>2893</sup> See paras 3 to 4.

<sup>2894</sup> See section V.C.3.a) Common plan.

<sup>2895</sup> See section V.C.5.d)(1) Crimes committed during the course of the First and Second Operation.

<sup>2896</sup> See para. 470.

<sup>2897</sup> See para. 549.

<sup>2898</sup> See para. 549.

<sup>2899</sup> See para. 603.

<sup>2900</sup> See section V.C.4.b) Intentionally attacking civilians as a war crime (Count 3).

<sup>2901</sup> See section V.C.4.l) Destroying the adversary's property as a war crime (Count 18).

<sup>2902</sup> See section V.C.4.k) Attacking protected objects as a war crime (Count 17).

Lendu individuals who had previously fled the UPC/FPLC following the First Operation were notably located in these villages.

1016. Furthermore, during the *ratissage* operations which followed the takeover of Mongbwalu and Sayo, while those brought in for questioning at the *Appartements* camp were not only Lendu, the majority of Lendu were killed after the questioning, while members of other ethnicities were released.<sup>2903</sup> Notably, members of Bureau Two killed a woman accused of being a 'chieftain' of the Lendu 'combatants'.<sup>2904</sup>

1017. An example of the manner in which the UPC/FPLC persecuted the Lendu is the story of P-0022, a Lendu woman who, while fetching water from the river, was stopped in Kilo by a UPC/FPLC soldier, who tied her hands behind her back.<sup>2905</sup> She was held together with seven other people in a pit in the ground, too shallow to stand upright in and covered with wooden boards.<sup>2906</sup> The next day, UPC/FPLC soldiers attempted to kill the woman by cutting her neck and leaving her to die,<sup>2907</sup> and murdered a Ngiti man and a pregnant Lendu woman who had been detained in the same pit.<sup>2908</sup> By contrast, a woman who had been previously detained with the aforementioned victims was released on account of the fact that she had a child with a Gegere.<sup>2909</sup>

1018. Members of the UPC/FPLC pillaged in the predominantly Lendu localities of Mongbwalu, Sayo, Kobu, Lipri, Bambu, and Jitchu<sup>2910</sup> and the UPC/FPLC's conduct during and in the aftermath of the assaults on Mongbwalu, Lipri, Tsili,

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<sup>2903</sup> See para. 528.

<sup>2904</sup> See para. 513.

<sup>2905</sup> See para. 545.

<sup>2906</sup> See para. 545.

<sup>2907</sup> See para. 546.

<sup>2908</sup> See para. 546. See also section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2909</sup> See para. 546.

<sup>2910</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

Kobu, and Bambu further had the effect of forcibly displacing part of the civilian population of these predominantly Lendu localities.<sup>2911</sup>

1019. In relation to Nzebi, the Chamber recalls that the only victims of crimes committed in the village were Lendu.<sup>2912</sup> In relation to Kilo, the Chamber notes that, while the village was predominantly Nyali,<sup>2913</sup> the victims of murder and attempted murder in Kilo were mostly Lendu.<sup>2914</sup> With regard to one victim, who was Nyali, the Chamber notes that he was singled out because he was singing an anti-Hema song<sup>2915</sup> and, as such, also appears to have been targeted on the basis of the UPC/FPLC ethnic-based policy.

1020. As for the rapes committed by UPC/FPLC soldiers against men, women, and girls in Mongbwalu, Kilo, Kobu, Sangi and Buli,<sup>2916</sup> and the acts of sexual slavery committed against two victims,<sup>2917</sup> the Chamber considers that, while the Chamber has not made a specific finding as to the ethnicity of the victims, and while – in the case of rape – the Chamber could not establish the identity of all victims on the basis of the evidence on the record, rape and sexual slavery was, alongside murder and pillage, one of the means used by the UPC/FPLC to destroy the Lendu community in the localities under assault.<sup>2918</sup>

1021. Lastly, in relation to the crimes which occurred following the capture of persons at the ‘pacification meeting’ in Sangi and during related events during the ‘Kobu massacre’, the Chamber recalls that: (i) the intended addressee of

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<sup>2911</sup> See section V.C.4.h) Forcible transfer of population as a crime against humanity (Count 12).

<sup>2912</sup> See para. 510; *see also* section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2913</sup> See para. 537.

<sup>2914</sup> Those killed in Kilo after the takeover of the village by members of the UPC/FPLC were Lendu, *see* para. 543; the pregnant woman who had been detained in a pit in Kilo and was subsequently killed by UPC/FPLC soldiers was Lendu, *see* para. 545; and P-0022 was Lendu, *see* para. 545. With regard to the Ngiti man who had been detained in a pit in Kilo and subsequently killed, *see* para. 546, the Chamber recalls that Ngiti people are a subgroup of the Lendu (*see* para. 4). The Chamber further notes that, when the Ngiti man and a Lendu woman previously detained in a pit were killed, a woman who had also been detained with them was released on account of the fact that she had a child with a Gegere, *see* para. 546.

<sup>2915</sup> See para. 547.

<sup>2916</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2917</sup> See section V.C.4.d) Sexual slavery as a crime against humanity and as a war crime (Counts 7 and 8).

<sup>2918</sup> See *also* paras 805 to 806.

Salumu Mulenda's invitation to the 'pacification meeting' was the Lendu community;<sup>2919</sup> (ii) Motorola messages intercepted by the Lendu indicated that the 'pacification meeting' was meant to be a trap aimed at capturing the Lendu;<sup>2920</sup> and (iii) those who went to the meeting were Lendu.<sup>2921</sup> The Chamber further recalls that: (i) those brought to the location of the 'Kobu massacre' from the various locations were mostly Lendu;<sup>2922</sup> (ii) P-0113, a Lendu woman captured in the bush surrounding Buli who had eventually also been brought to that location had lied to the UPC/FPLC soldiers about her ethnicity to save herself as the soldiers were looking for Lendu;<sup>2923</sup> (iii) before the 'Kobu massacre', some people, including an Alur boy, were released and Salumu Mulenda told his subordinates that anyone who was not 'combatants' or not 'enemies' – which P-0017 understood to mean not of Lendu ethnicity – were to be released.<sup>2924</sup> Lastly, the Chamber recalls that P-0019, one of the Lendu captured in Sangi, heard UPC/FPLC soldiers say: 'Lendu are useless wild animals and we can do with them anything we want. They are not humans'; and that they would 'exterminate' the Lendu within three days.<sup>2925</sup> P-0019 was also told by a UPC/FPLC commander that she and others were not human beings, but beasts, animals and hostages.<sup>2926</sup>

1022. In light of the foregoing, the only reasonable conclusion is that the crimes committed during and in the aftermath of the UPC/FPLC takeover of Mongbwalu, Sayo, Nzebi, Kilo, Nyangaray, Kobu, Sangi, Bambu, Lipri, Tsili, Jitchu, Buli, and Gola, as well as following the capture of persons at the 'pacification meeting' in Sangi and during related events during the 'Kobu massacre', effectively targeted the Lendu ethnic group as such.

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<sup>2919</sup> See para. 590.

<sup>2920</sup> See para. 593.

<sup>2921</sup> See para. 595.

<sup>2922</sup> See para. 620.

<sup>2923</sup> See para. 606.

<sup>2924</sup> See para. 625.

<sup>2925</sup> See para. 599.

<sup>2926</sup> See para. 622.

**(v) Connection with any act referred to in Article 7(1) or any crime within the jurisdiction of the Court**

1023. In relation to the fifth element, the Chamber observes that connection to either an act referred to in Article 7(1) of the Statute or a *crime* falling within the jurisdiction of the Court is required.

1024. The Chamber notes that most underlying acts are in fact acts referred to under Article 7(1) of the Statute and, accordingly, finds that all abovementioned incidents committed in Mongbwalu, Sayo, Nzebi, Kilo, Nyangaray, Kobu, Bambu, Lipri, Tsili, Jitchu, Buli, Gola, and Sangi are connected to crimes within the jurisdiction of the Court, as established elsewhere in the present Judgment.

**(b) Contextual elements**

1025. Considering the victims were targeted on the basis of their ethnicity, as referred to above, as well as the fact that the conduct under consideration took place during and in the immediate aftermath of the First and Second Operation, the Chamber finds that the conduct took place as part of the widespread and/or systematic attack against the Lendu civilian population of Ituri by the UPC/FPLC.

**g) Pillage as a war crime (Count 11)**

**(1) Applicable law**

1026. The war crime of pillage is laid down in Article 8(2)(e)(v) of the Statute.

1027. The legal elements of this war crime are:

1. The perpetrator appropriated certain property.
2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.
3. The appropriation was without the consent of the owner.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>2927</sup>

6. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2928</sup>

1028. Article 8(2)(e)(v) relates to 'pillaging a town or place'. The pillaging of a town or place comprises all forms of appropriation, public or private, including not only organised and systematic appropriation, but also acts of appropriation committed by fighters in their own interest.<sup>2929</sup>

1029. In order for the war crime of pillaging to be established, it must also be demonstrated that the perpetrator intended to prevent the owner from having or using his or her property.<sup>2930</sup> As to the requirements that the perpetrator must have been aware of the fact that the property was appropriated without the consent of the owner, in the absence of the owner, or in coercive circumstances, the perpetrator's knowledge of non-consent of the owner may be inferred.<sup>2931</sup>

1030. Contrary to the Defence's submission,<sup>2932</sup> the Chamber considers that the reference to 'military necessity' in footnote 62 of the Elements of Crimes does not provide for an exception to the absolute prohibition on pillaging,<sup>2933</sup> but rather clarifies that the concept of military necessity is incompatible with a requirement that the perpetrator intended the appropriation for private or personal use, as any military necessity would require its use to be directed to further the war effort and thus use for military purposes.<sup>2934</sup> Accordingly, situations in which the

<sup>2927</sup> Elements of Crimes, Article 8(2)(e)(v) (footnotes omitted).

<sup>2928</sup> See footnote 2519 above.

<sup>2929</sup> Katanga Judgment, para. 905.

<sup>2930</sup> Bemba Trial Judgment, para. 119.

<sup>2931</sup> Bemba Trial Judgment, para. 121.

<sup>2932</sup> Defence Closing Brief, para. 758; and Defence Reply Brief, para. 20.

<sup>2933</sup> Military necessity justifies the taking of items that may legitimately be seized as war booty. However, it cannot serve to justify pillage, as the taking of such goods that do not have an inherent military function or serve a military purpose is prohibited.

<sup>2934</sup> For a similar consideration, see Bemba Trial Judgment, para. 124.

perpetrator appropriated items for personal use (*i.e.* use by him- or herself), or for private use by another person or entity, assuming all other legal elements have been met, constitutes pillage under Article 8(2)(e)(v).

## (2) Findings of the Chamber

### (a) Material elements

#### (i) *Negative finding*

1031. The Chamber did not make a positive finding in relation to the looting of the church in Sayo.<sup>2935</sup> Accordingly, the Chamber has not taken this instance of alleged looting into account in reaching its conclusion on the charge of pillage.

#### (ii) *Positive findings*

1032. The Chamber found that the following incidents occurred:

- the UPC/FPLC taking possession of a vehicle belonging to *Abbé Bwanalonga*;<sup>2936</sup>
- the looting of items in Mongbwalu, including household items, clothing, food items, gold, and vehicles, as well as medical equipment from the Mongbwalu hospital,<sup>2937</sup> some of which were brought to Mr Ntaganda's residence in Bunia,<sup>2938</sup> by UPC/FPLC soldiers and Hema 'civilians' and of household items, livestock, and corrugated roofing sheets in Sayo<sup>2939</sup> by UPC/FPLC soldiers during the UPC/FPLC *ratissage* operations on these localities;

<sup>2935</sup> See para. 526, footnote 1566.

<sup>2936</sup> See para. 531.

<sup>2937</sup> See paras 512, and 514 to 517.

<sup>2938</sup> See para. 516.

<sup>2939</sup> See para. 526.



- the looting of personal belongings, metal roofs of houses, a goat, and a motorcycle in Kobu by UPC/FPLC soldiers and commanders Salumu Mulenda and Pascal Okito;<sup>2940</sup>
- looting in Bambu by UPC/FPLC soldiers;<sup>2941</sup>
- looting in Lipri, including of harvests and crops, by UPC/FPLC soldiers;<sup>2942</sup> and
- the looting by UPC/FPLC soldiers in Jitchu.<sup>2943</sup>

*(iii) Acts of appropriation of property*

1033. Having considered the factual circumstances of the incidents listed above, the Chamber is satisfied that acts of appropriation of property were committed.

*(iv) Appropriation without the consent of the owner and for private or personal use*

1034. For the purpose of pillage, the Chamber will consider the person who had the property under him or her as the 'owner'. Whether or not this person was the owner in the legal sense is not relevant for the Chamber's assessment. Moreover, in case it is not clear who the owner of a property was, for example, because at the time of the alleged appropriation the item found itself in a house whose residents had fled, or were not otherwise present, it suffices that the perpetrator was aware that the property belonged to someone else than him- or herself, and that as such any appropriation must be assumed to have without the owner's consent.

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<sup>2940</sup> See para. 578.

<sup>2941</sup> See para. 589.

<sup>2942</sup> See para. 569.

<sup>2943</sup> See para. 617.

1035. As far as the appropriation of the vehicle belonging to *Abbé* Bwanalonga is concerned, the Chamber notes that, around the same time when the appropriation took place, the owner of the vehicle was captured at the Mongbwalu parish and taken to the *Appartements* camp,<sup>2944</sup> where he was later shot and killed.<sup>2945</sup> In these circumstances, the Chamber is satisfied that *Abbé* Bwanalonga was not in a position to agree to the UPC/FPLC's appropriation of the vehicle, which as such took place without the owner's consent.

1036. In relation to the looting of items during the UPC/FPLC's *ratissage* operations in Mongbwalu and Sayo, the Chamber notes that these acts of appropriation took place concomitantly with the carrying out of house-to-house searches by the UPC/FPLC, in a context where people were also abducted, intimidated, and killed.<sup>2946</sup> Similarly, in relation to looting in Kobu, the Chamber notes that the acts of appropriation took place at the same time with at least two killings and the burning down of houses in the village.<sup>2947</sup> Considering the circumstances in which the acts of appropriation occurred, the Chamber is satisfied that the persons from whom the goods were taken were not in a position to agree in free will to the UPC/FPLC taking their property, either because they were not, or no longer physically present, or because of the coercive circumstances in which they had no choice but to give up their property to the physical perpetrators. The Chamber therefore finds that the acts of appropriation occurred without the consent of the owners.

1037. In relation to looting in Bambu by UPC/FPLC soldiers after the UPC/FPLC assault on the village, the Chamber notes that the acts of appropriation took place in the aftermath of the UPC/FPLC assault on the village on or about 18 February

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<sup>2944</sup> See para. 530.

<sup>2945</sup> See para. 532.

<sup>2946</sup> See para. 512, and 526.

<sup>2947</sup> See paras 577 to 578.

2003,<sup>2948</sup> an assault during which a number of people were killed<sup>2949</sup> and following which most of the population of the village fled the locality and were unable to return until the UPC/FPLC had left the area.<sup>2950</sup>

1038. In relation to looting in Lipri, including of harvests and crops, by UPC/FPLC soldiers, the Chamber notes that the acts of appropriation took place in the direct aftermath of the UPC/FPLC takeover of Lipri on or about 18 February 2003,<sup>2951</sup> as a result of which the population of Lipri, including any Lendu fighters, had fled and sought refuge in the bush.<sup>2952</sup> The Chamber further notes that the acts occurred in a context where the UPC/FPLC burned down houses.<sup>2953</sup>

1039. In relation to the looting of items, by UPC/FPLC soldiers in Jitchu, the Chamber notes that these acts of appropriation took place in a context where the UPC/FPLC chased the population which was hiding in the Jitchu forest,<sup>2954</sup> captured and detained individuals in and around Jitchu,<sup>2955</sup> and burned houses in the village.<sup>2956</sup>

1040. Considering the circumstances in which the acts of appropriation in the three aforementioned villages occurred, the Chamber is satisfied that the persons from whom the goods were taken were not in a position to agree in free will to the UPC/FPLC taking their property, either because they were not, or no longer physically present, or because of the coercive circumstances in which they had no choice but to give up their property to the physical perpetrators. The Chamber therefore finds that, in all four instances, the acts of appropriation occurred without the consent of the owners.

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<sup>2948</sup> See para. 583, and 589.

<sup>2949</sup> See paras 586 to 587.

<sup>2950</sup> See para. 585.

<sup>2951</sup> See para. 567, and 569.

<sup>2952</sup> See para. 568.

<sup>2953</sup> See para. 569.

<sup>2954</sup> See para. 617.

<sup>2955</sup> See paras 617 to 618.

<sup>2956</sup> See para. 619.

1041. As concerns specifically the requirement that the looting of goods be for private or personal use, the Chamber notes that some of the items taken, namely the vehicles, and medical equipment, could potentially serve a military purpose. In the absence of evidence as to the manner in which these items were used, the Chamber is unable to conclude that their appropriation was intended for private and personal use. The Chamber will therefore not further consider their appropriation in reaching its conclusions under Count 11.

1042. Conversely, in relation to the appropriation of other items, including chairs, beds, mattresses, radio and television sets, clothing, livestock, corrugated roofing sheets, and gold, the Chamber considers that they do not serve an inherently military purpose. The Chamber further recalls its finding that, within the UPC/FPLC, looted items which were considered of high quality or value were usually given to the commanders, under threat of punishment, while the soldiers could keep other goods, and that other items looted by UPC/FPLC soldiers were either sold for money or used by the soldiers themselves.<sup>2957</sup> In addition, some of the looted goods from Mongbwalu were brought to Mr Ntaganda's residence in Bunia<sup>2958</sup> while items that appeared to have been looted were also seen at Commander Mai Mai's place.<sup>2959</sup> In light of the foregoing, the Chamber is satisfied that these items were appropriated for private or personal use.

### **(b) Contextual elements**

1043. The Chamber notes that the acts of looting discussed above took place during the military operations referred to in this Judgment as the First and Second Operation, and were committed by soldiers who took part in this operation. Moreover, the locations where the looting took place, namely Mongbwalu, Sayo, Kobu, Bambu, Lipri, and Jitchu were amongst the towns and villages that the

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<sup>2957</sup> See para. 515.

<sup>2958</sup> See para. 516.

<sup>2959</sup> See para. 589.

UPC/FPLC took over during the First and Second Operation. As such, and noting that the First and Second Operation have above been found to constitute part of a non-international armed conflict, the Chamber finds that the looting took place in the context of and was associated with the non-international armed conflict in Ituri.

### (c) Seriousness

1044. The Defence argues that there is a ‘minimum threshold of seriousness for pillage under Article 8(2)(e)(v)’.<sup>2960</sup> However, the Chamber considers that the reference to ‘[o]ther serious violations of the laws and customs applicable in armed conflicts not of an international character’ in Article 8(e) of the Statute refers to the seriousness of the nature of the crimes listed under (e), which by virtue of their inclusion in the Statute must all be considered as ‘serious violations’. With regard to the Defence’s submission that pillage must take place on a ‘somewhat large-scale’,<sup>2961</sup> the Chamber considers that the war crime of pillage as included in the Statute does not contain such an element. As to the impact of the UPC/FLPC’s conduct on those whose property was taken, the Chamber nonetheless highlights that, in relation to the First Operation, there was no limit on what could be looted and that the members of the UPC/FPLC took everything that they wanted,<sup>2962</sup> resulting in many inhabitants of Mongbwalu who subsequently returned to their houses not finding anything left as everything had been taken.<sup>2963</sup> Furthermore, while there is some disparity in the value of the looted items and their likely significance and use for the victims, these items represented the bulk of the victims’ possessions, played an important role in the victims’ day-to-day lives and/or their businesses. As to the items taken during the Second Operation, the Chamber notes that, likewise, while there is some disparity

<sup>2960</sup> Defence Reply Brief, para. 20.

<sup>2961</sup> Defence Closing Brief, para. 965.

<sup>2962</sup> See para. 514.

<sup>2963</sup> See para. 517.

in the value of the items and their likely significance and use for the victims, the Chamber is satisfied that the looted items – such as the harvest, the taking of which affected their livelihood and availability of food until new crops would have grown and could be harvested – also played an important role in their day-to-day lives.

## **h) Forcible transfer of population as a crime against humanity (Count 12)**

### **(1) Applicable law**

1045. The crime against humanity of forcible transfer of population is laid down in Article 7(1)(d) of the Statute.

1046. The legal elements of this crime against humanity are:

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>2964</sup>
6. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>2965</sup>

1047. Different types of conduct on the part of the perpetrator 'can amount to "expulsion or other coercive acts", so as to force the victim to leave the area

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<sup>2964</sup> Elements of Crimes, Article 7(1)(d) (footnotes omitted).

<sup>2965</sup> See footnote 2519 above.

where he or she is lawfully present'.<sup>2966</sup> It therefore must be demonstrated that one or more acts performed by the perpetrator had the effect of forcibly displacing the victim.<sup>2967</sup>

## (2) Findings of the Chamber

### (a) Scope of the charges

1048. The Chamber found that: (i) following the UPC/FPLC assault on the village, members of the population fled Sayo;<sup>2968</sup> and (ii) when the UPC/FPLC attacked Kilo, members of the population fled Kilo to the bush and to other places as soon as they heard shots being fired.<sup>2969</sup> In this respect, the Defence submits that Mr Ntaganda is not charged with the forcible transfer of population in Pluto, Sayo, and Kilo.<sup>2970</sup> The Chamber notes that, as Sayo and Kilo are not specifically referred to in paragraph 36 of the Confirmation Decision in relation to Count 12 and 13, the forcible transfer of population from Sayo and Kilo indeed falls outside the scope of the charges.<sup>2971</sup> The Chamber will therefore not take the aforementioned findings into account in its assessment concerning Counts 12 and 13.

### (b) Material elements

#### (i) *Negative finding*

1049. The Chamber notes that, on the basis of the evidence on the record, it did not establish that the population of Nzebi was forcibly transferred or displaced.<sup>2972</sup> It

<sup>2966</sup> *Ruto and Sang Confirmation Decision*, para. 244.

<sup>2967</sup> *Ruto and Sang Confirmation Decision*, para. 245.

<sup>2968</sup> See para. 505.

<sup>2969</sup> See para. 539.

<sup>2970</sup> Defence Closing Brief, para. 710, referring to UDCC, paras 63 to 64, and 69.

<sup>2971</sup> As far as Pluto is concerned, the Chamber notes that it has not entered a finding that the population of the village was displaced and that the Defence's argument in this respect is therefore moot.

<sup>2972</sup> See para. 509, footnote 1501.

also did not establish that the population of Gutsi, Buli, and Jitchu was forcibly transferred or displaced.<sup>2973</sup>

**(ii) Positive findings**

1050. The Chamber recalls that, as the UPC/FPLC's second assault on Mongbwalu in November 2002 unfolded, many of those present in the town fled Mongbwalu, going to the bush and to other places.<sup>2974</sup>

1051. The Chamber further made a number of findings concerning conduct which may amount to forcible transfer of population as a crime against humanity in Nyangaray, Lipri, Tsili, Kobu, and Bambu. These findings are set out and analysed further below.

**(iii) Forcible transfer or displacement of one or more persons**

1052. In relation to the First Operation, following the initial UPC/FPLC attempt to take over Mongbwalu on or about 9 November 2002,<sup>2975</sup> numerous inhabitants of Mongbwalu fled the town.<sup>2976</sup> Following the UPC/FPLC's defeat and retreat from Mongbwalu, some of the town's inhabitants returned to the area.<sup>2977</sup> Many of those present in Mongbwalu as the UPC/FPLC second attempt to take over the town in November 2002 unfolded fled the town, going to the bush and other places.<sup>2978</sup>

1053. In light of the foregoing, the Chamber is satisfied that persons present in Mongbwalu were displaced during and in the immediate aftermath of the UPC/FPLC's second assault on the town in November 2002, which formed part of the First Operation.

<sup>2973</sup> See para. 604 and footnote 1872, para. 615, footnote 1913, and para. 617, footnote 1919.

<sup>2974</sup> See para. 497.

<sup>2975</sup> See para. 475.

<sup>2976</sup> See para. 476.

<sup>2977</sup> See para. 477.

<sup>2978</sup> See para. 497.



1054. In relation to the Second Operation, the Chamber found that at the start of the operation, the UPC/FPLC took control over Nyangaray and the population fled and hid in the bush.<sup>2979</sup> Further, on or about 18 February 2003, when the UPC/FPLC's second assault on Lipri and its surrounding villages, including Tsili, commenced, the predominantly Lendu population of Lipri and Tsili, including the Lendu fighters, fled and sought refuge in the bush.<sup>2980</sup> Also on or about 18 February 2003, when the UPC/FPLC launched an assault on Kobu, it encountered minimal resistance from the Lendu who quickly fled once the UPC/FPLC started shooting; the villagers who managed to flee hid on the hills and in the bush surrounding Kobu.<sup>2981</sup> Similarly, when they realised that Bambu was being attacked by the UPC/FPLC on or about 18 February 2003, most members of the population fled from the locality.<sup>2982</sup> Some of those who fled Kobu and Bambu went in the direction of Gutsi,<sup>2983</sup> and some fled towards Buli and Jitchu.<sup>2984</sup>

1055. In light of the foregoing, the Chamber is satisfied that persons present in Nyangaray, Lipri, Tsili, Kobu, and Bambu were displaced during and in the immediate aftermath of the UPC/FPLC assaults on those villages between the beginning of the Second Operation and on or about 25 February 2003.

*(iv) By way of expulsion or other coercive acts*

1056. Although incidental displacement as a result of an entirely lawful attack, or collateral consequences of a lawful attack,<sup>2985</sup> would not amount to forcible transfer or displacement, contrary to the Defence's submission, in order to

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<sup>2979</sup> See para. 640.

<sup>2980</sup> See paras 567 to 568.

<sup>2981</sup> See paras 572 to 573.

<sup>2982</sup> See paras 583, and 585.

<sup>2983</sup> See para. 615.

<sup>2984</sup> See paras 603, and 617.

<sup>2985</sup> For example, a house located next to a military objective being destroyed as incidental, non-excessive damage resulting from an attack directed at the military objective.

establish the forced character of displacement, it need not be established that ‘unlawful targeting’ took place and that the displaced population formed the ‘object of [an] unlawful attack designed to coerce [its] departure.’<sup>2986</sup> Rather, in line with the Elements of Crimes, as well as existing jurisprudence on the matter, it must be demonstrated that there was a genuine lack of choice on the part of the individuals transferred.<sup>2987</sup> Such a lack of choice may result from other factors than intentional firing at civilians or the civilian population, and the ‘targeting’ of the civilian population may be done in other ways. While individuals may agree, or even request, to be removed from an area, ‘consent must be real in the sense that it is given voluntarily and as a result of the individual’s free will’.<sup>2988</sup> Therefore, when assessing whether the persons who were transferred had a genuine choice to remain or leave and thus whether the resultant displacement was unlawful, the Chamber will take into account the prevailing situation and atmosphere, as well as all other relevant circumstances, including in particular the victims’ vulnerability.<sup>2989</sup>

1057. In relation to the First Operation, the Chamber recalls that, during its assault on Mongbwalu, the UPC/FPLC intentionally attacked civilians.<sup>2990</sup> Particularly, the UPC/FPLC soldiers fired at everyone in Mongbwalu, including the civilian population.<sup>2991</sup> They received orders including ‘*kupiga na kuchaji*’,<sup>2992</sup> and to assault ‘the Lendu’ who were in Mongbwalu, without making a difference between ‘Lendu civilians’ and the militia.<sup>2993</sup>

<sup>2986</sup> See Defence Reply Brief, para. 16.

<sup>2987</sup> *Stakić Appeal Judgment*, para. 279; *Krnjelac Appeal Judgment*, para. 229; and *Đorđević Trial Judgment*, para. 1605. See also *Kenyatta Confirmation Decision*, para. 244 in which the Court found that the destruction of homes, the brutality of killings and injuries that occurred, the rape of certain individuals, and public announcements to the effect that certain groups needed to leave, all amounted to coercion.

<sup>2988</sup> *Stakić Appeal Judgment*, para. 279

<sup>2989</sup> See *Blagojević Trial Judgment*, para. 596.

<sup>2990</sup> See section V.C.4.b) Intentionally attacking civilians as a war crime (Count 3).

<sup>2991</sup> See para. 494.

<sup>2992</sup> See paras 484, and 488.

<sup>2993</sup> See para. 493.

1058. Furthermore, after taking over Mongbwalu, members of the UPC/FPLC carried out *ratissage* operations;<sup>2994</sup> they murdered,<sup>2995</sup> raped,<sup>2996</sup> and pillaged.<sup>2997</sup>

1059. Lastly, sometime in December 2002, some of the inhabitants of Mongbwalu who had fled the town during the UPC/FPLC assault started to return to their houses; however, for as long as the UPC/FPLC was present in Mongbwalu, those who returned did not include the Lendu.<sup>2998</sup> As the members of the UPC/FPLC had been trained to regard the Lendu as their enemy, any Lendu person would be killed if they tried to return to Mongbwalu.<sup>2999</sup>

1060. In light of the above, the Chamber is satisfied that the UPC/FPLC's conduct during the assault on Mongbwalu had the effect of forcibly displacing part of the civilian population of the town. Particularly, the Chamber finds that by being targeted during the assault on Mongbwalu, those who fled the town had no genuine choice but to leave.

1061. Further, while some – particularly those who fled as soon as they heard the first signs of fighting – may have voluntarily left Mongbwalu before any coercive circumstances arose, in light of the UPC/FPLC's conduct in the aftermath of the assault, which was clearly aimed at creating conditions to hamper the return of the Lendu, and by which it indeed effectively prevented the Lendu from returning for at least a considerable period, the Chamber considers that the first element of the crime against humanity of deportation or forcible transfer of population is fulfilled also in relation to the individuals who fled as soon as they noticed the first signs of fighting.

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<sup>2994</sup> See paras 512 to 523.

<sup>2995</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>2996</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>2997</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

<sup>2998</sup> See para. 536.

<sup>2999</sup> See para. 536.

1062. In relation to the Second Operation, the Chamber recalls that, during the UPC/FPLC control of Lipri, which lasted from on or about the attack and takeover on 18 February 2003<sup>3000</sup> to early March 2003,<sup>3001</sup> the UPC/FPLC pillaged<sup>3002</sup> and destroyed houses by burning them down.<sup>3003</sup> In Tsili, which was attacked at the same time as Lipri, the UPC/FPLC similarly destroyed houses by burning them down.<sup>3004</sup>

1063. In relation to Kobu, the Chamber recalls that, during its assault on the village, the UPC/FPLC murdered at least two young children as they attempted to flee.<sup>3005</sup> Furthermore, the Chamber found that during the *ratissage* operation which followed the takeover, UPC/FPLC soldiers murdered at least two persons,<sup>3006</sup> pillaged,<sup>3007</sup> and destroyed houses by burning them down.<sup>3008</sup> They also raped women<sup>3009</sup> and subjected them to sexual slavery.<sup>3010</sup> Furthermore, UPC/FPLC soldiers murdered at least 49 persons in a banana field near the Paradiso building in Kobu,<sup>3011</sup> some of which had been invited to a ‘pacification meeting’ with the UPC/FPLC and some which had been previously captured in Sangi, Gola, Buli, and the surrounding bush.<sup>3012</sup>

1064. As for Bambu, the Chamber recalls that, during and in the immediate aftermath of the assault on the village, the UPC/FPLC murdered,<sup>3013</sup> intentionally

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<sup>3000</sup> See para. 567.

<sup>3001</sup> See para. 570.

<sup>3002</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

<sup>3003</sup> See section V.C.4.l) Destroying the adversary’s property as a war crime (Count 18).

<sup>3004</sup> See section V.C.4.l) Destroying the adversary’s property as a war crime (Count 18).

<sup>3005</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>3006</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>3007</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

<sup>3008</sup> See section V.C.4.l) Destroying the adversary’s property as a war crime (Count 18).

<sup>3009</sup> See section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>3010</sup> See section V.C.4.d) Sexual slavery as a crime against humanity and as a war crime (Counts 7 and 8).

<sup>3011</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

<sup>3012</sup> See para. 620.

<sup>3013</sup> See section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2).

attacked civilians,<sup>3014</sup> and pillaged.<sup>3015</sup> The Chamber further found that members of the population were unable to return to Bambu until after the UPC/FPLC had left the area.<sup>3016</sup>

1065. The Chamber further recalls that in a briefing to UPC/FPLC troops in Kilo prior to the Second Operation, Salumu Mulenda explained that the objective of the operation in Kobu, Lipri, and Bambu was to 'destroy that triangle which was a pocket of resistance to the UPC'.<sup>3017</sup> His order was understood by P-0017, a UPC/FPLC soldier attending the briefing, to mean 'destroying [the] enemy force which occupied these three places' and that, for the UPC/FPLC, the 'enemy' at that time included members of the APC, as well as the Lendu more generally, regardless of sex or age.<sup>3018</sup>

1066. Further, Floribert Kitembo spoke to the troops in Mongbwalu on or about 17 February 2003 about the objectives of the upcoming UPC/FPLC assault on Kobu, saying that they were going to Kobu to destroy the Lendu headquarters, bring back the lost weapons system, open the road, and that they were to drive out all the Lendu.<sup>3019</sup> P-0963's understanding was that the Lendu 'civilians' at Kobu, Bambu, and Lipri were to be driven out by the UPC/FPLC, and that it was up to the UPC/FPLC to 'occupy' the location, and for 'civilians' to either leave or be killed.<sup>3020</sup> The Chamber further recalls that the Second Operation was a coordinated assault on several villages in the Walendu-Djatsi *collectivité*.<sup>3021</sup>

1067. In light of the above, the Chamber is satisfied that the UPC/FPLC's conduct during and in the immediate aftermath of the UPC/FPLC assaults on Lipri, Tsili, Kobu, and Bambu had the effect of forcibly displacing part of the persons present

<sup>3014</sup> See section V.C.4.b) Intentionally attacking civilians as a war crime (Count 3).

<sup>3015</sup> See section V.C.4.g) Pillage as a war crime (Count 11).

<sup>3016</sup> See para. 585.

<sup>3017</sup> See para. 558.

<sup>3018</sup> See para. 558.

<sup>3019</sup> See para. 560.

<sup>3020</sup> See para. 560.

<sup>3021</sup> See para. 562.

in those villages, who had no genuine choice but to leave in order to survive. Further, while some – particularly those who fled as soon as they heard the first signs of fighting – may have voluntarily left the villages before any coercive circumstances arose, in light of the UPC/FPLC's conduct in the aftermath of the assaults – particularly the destruction of houses by burning them down – which deterred the population from returning, the Chamber considers that the first element of the crime against humanity of deportation or forcible transfer of population is fulfilled also in relation to those who fled as soon as they noticed the first signs of fighting.

1068. In relation to Nyangaray, the Chamber notes that the evidence on the record does not establish the reasons for the population's flight from the village as the UPC/FPLC took control over the village, the conditions prevailing in the village following the UPC/FPLC takeover, or whether the population had the possibility to return. Under these circumstances, the Chamber cannot establish that the first element of the crime against humanity of deportation or forcible transfer of population is fulfilled in relation to Nyangaray and will not consider the population's flight from this village in reaching its conclusions in relation to Count 12.

*(v) From the area in which they are lawfully present*

1069. The prohibition against forcible transfer is intended to protect the right of individuals to remain in their homes or communities unhindered.<sup>3022</sup> The requirement of 'lawful presence' does not mean that the victim must have had legal residence in the area. Indeed, this protection extends to individuals who, for whatever reason, have come to live in a community, including internally

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<sup>3022</sup> See Commentary to Additional Protocol II, Article 17, para. 4847; see also Stakić Appeal Judgment, para. 277; and Popović Trial Judgment, para. 900.

displaced persons who have established temporary homes after being uprooted from their original communities.<sup>3023</sup>

1070. In relation to the First Operation, the Chamber recalls that, with the onset of heavy tensions between the Hema and the Lendu sometime in 2002, the Hema left, *inter alia*, Mongbwalu, leaving everything behind, including their houses.<sup>3024</sup> As the Hema left, more Lendu arrived from the surrounding areas, taking over the town and the majority of the houses.<sup>3025</sup>

1071. In light of the above, the Chamber notes that some of those who fled Mongbwalu during and the immediate aftermath of the UPC/FPLC's assault on the town may have been residing in houses that were not theirs.<sup>3026</sup> The Chamber, however, considers that this does not affect the lawfulness under international law of their presence in the area of Mongbwalu as such – as opposed to residing inside specific houses and the domestic legal requirements related thereto – for no discrimination may be made based on ethnicity and members of all ethnic group must therefore be considered as having been permitted to be present in any area of Ituri. Under these circumstances, the Chamber considers that those who fled Mongbwalu during, and in the immediate aftermath of, the UPC/FPLC's second assault on the town were lawfully present in the area from which they were forcibly displaced.

1072. In relation to the Second Operation, the Chamber notes that there is no evidence on the record indicating that those displaced from Lipri, Tsili, Kobu, and Bambu were not lawfully present in their area of residence or, in the case of some, in the area where they had previously sought refuge.<sup>3027</sup> Under these

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<sup>3023</sup> *Popović Trial Judgment*, para. 900, also cited in *Tolimir Trial Judgment*, para. 797.

<sup>3024</sup> See para. 468 to 469.

<sup>3025</sup> See para. 469.

<sup>3026</sup> See Defence Closing Brief, para. 240.

<sup>3027</sup> See para. 549.

circumstances, the Chamber finds that they were lawfully present in the areas from which they were displaced.

**(vi) *Without grounds permitted under international law***

1073. The Chamber notes that the evidence on the record does not reveal any grounds permitting the forcible displacement of persons from Mongbwalu, Lipri, Tsili, Kobu, and Bambu under international law. Under these circumstances, the Chamber finds that the displacement was carried out without grounds permitted under international law.

**(c) Contextual elements**

1074. Considering that the conduct under consideration occurred during the First and Second Operation, the Chamber finds that the conduct took place as part of the widespread and/or systematic attack against the Lendu civilian population of Ituri by the UPC/FPLC.

**i) Ordering the displacement of the civilian population as a war crime  
(Count 13)**

**(1) Applicable law**

1075. The war crime of ordering the displacement of the civilian population is laid down in Article 8(2)(e)(viii) of the Statute.

1076. The legal elements of this war crime are:

1. The perpetrator ordered a displacement of a civilian population.
2. Such order was not justified by the security of the civilians involved or by military necessity.
3. The perpetrator was in a position to effect such displacement by giving such order.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.



5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>3028</sup>

6. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>3029</sup>

## **(2) Findings of the Chamber**

### **(a) Scope of charges**

1077. As set out in paragraph 1048 above, the Chamber concurs with the Defence's assertion that Mr Ntaganda is not charged with the displacement of civilians in Pluto, Sayo, and Kilo.<sup>3030</sup> Accordingly, it did not take these villages into account in relation to Count 13.

### **(b) Material elements**

#### **(i) *Negative finding***

1078. The Chamber notes that it did not receive any specific evidence concerning the ordering of the displacement of the population from Nzebi, Nyangaray, Buli, Jitchu, and Gutsi.

#### **(ii) *Positive finding***

1079. The Chamber made a number of findings concerning conduct which may amount to ordering the displacement of the civilian population from Mongbwalu and from Lipri, Tsili, Kobu, and Bambu, which are set out and analysed further below.

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<sup>3028</sup> Elements of Crimes, Article 8(2)(e)(viii).

<sup>3029</sup> See footnote 2519 above.

<sup>3030</sup> See Defence Closing Brief, para. 710.

*(iii) Perpetrator ordered the displacement of a civilian population*

1080. Contrary to the Prosecution's assertion,<sup>3031</sup> it follows from the wording of Article 8(2)(e)(viii), as well as the first and third elements of the Elements of Crimes, that the war crime of ordering the displacement of civilians, in contrast to the crime against humanity of forcible transfer of population discussed above, requires establishing the existence of an *order* to displace, and not of the resulting displacement as such.

1081. The issuance of an order within the political or military chain of command is sufficient and the order does not need to be made to the civilian population for the crime to be established.<sup>3032</sup> The order itself needs only to instruct another person in any form to: (i) displace a civilian population; or (ii) perform an act or omission as a result of which such a displacement would occur.<sup>3033</sup>

1082. The order need not necessarily be issued in writing and may be transmitted through a variety of means, to be determined on a case-by-case basis. However, the order to displace must emanate from a person who was in a position to effect such displacement by giving such order.

1083. The reference to 'a civilian population', rather than 'a civilian' or 'civilians' used in other statutory provisions,<sup>3034</sup> indicates that the displacement needs to cover a certain number of individuals. However, the replacement of the definite article '*the* civilian population' in the Statute by the indefinite article '*a* civilian population' in the Elements of Crimes indicates that it is not necessary for the order to be aimed at the displacement of an entire civilian population in order for

<sup>3031</sup> Prosecution Closing Brief, para. 312, also referring to Confirmation Decision, para. 64.

<sup>3032</sup> In support of this conclusion, see Ryszard Piotrowicz, 'Displacement and displaced persons' in Elizabeth Wilmschurst (ed.), *Perspectives on the ICRC Study on Customary International Humanitarian Law* (2017), pages 337 to 353; and Jan Willms, 'Without order, anything goes? The prohibition of forced displacement in non-international armed conflict', 91 *International Review of the Red Cross* (2009), page 562.

<sup>3033</sup> See, similarly, ICC-01/04-01/12-1-Red, para. 63.

<sup>3034</sup> See e.g. Article 8(2)(a)(vii) on unlawful deportation.

this requirement to be fulfilled.<sup>3035</sup> A precise assessment as to whether a certain group of civilians amounts to ‘a civilian population’ needs to be performed on a case-by-case basis. For the definition of the concepts of ‘civilian’ and ‘civilian population’, the Chamber refers to its findings in the applicable law on murder and directing an attack against civilians.<sup>3036</sup>

1084. In relation to Mongbwalu, the Chamber recalls that Mr Ntaganda gave the order to advance towards Mongbwalu.<sup>3037</sup> Before the commencement of the assault, Mr Ntaganda provided a briefing on the operations to be conducted on the Aru-Mongbwalu axis.<sup>3038</sup>

1085. Furthermore, at a meeting the night before the UPC/FPLC troops left Bunia for Mongbwalu, Mr Ntaganda spoke to some of the UPC/FPLC troops, telling them that they were going to Mongbwalu to fight against the Lendu and ordering them to attack using the term ‘*kupiga na kuchaji*’.<sup>3039</sup> Also, Mr Ntaganda ordered to attack ‘the Lendu’ who were in Mongbwalu, without making a difference between ‘Lendu civilians’ and the militia.<sup>3040</sup>

1086. In addition, while *en route* to Mongbwalu, the brigade led by Salumu Mulenda stopped in or around Mabanga where Salumu Mulenda addressed the soldiers during a gathering, explaining the importance of taking over Mongbwalu and telling them that they were to drive out the Lendu, regain Mongbwalu, and set up headquarters in the town; he also used the expression ‘*kupiga na kuchaji*’.<sup>3041</sup>

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<sup>3035</sup> In support of this interpretation, see Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court, Sources and Commentary* (2003), page 473. This interpretation is also in line with the ICRC’s commentary which states that the term ‘civilian population’ in Article 17(1) of Additional Protocol II, on which the crime under Article 8(2)(e)(viii) is based, includes ‘individuals or groups within the territory’ (see Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987), para. 4852).

<sup>3036</sup> See paras 883 and 921.

<sup>3037</sup> See para. 485.

<sup>3038</sup> See para. 482.

<sup>3039</sup> See para. 484; see also para. 415.

<sup>3040</sup> See para. 493.

<sup>3041</sup> See para. 488.

1087. Also, before the UPC/FPLC assault on the town, the Lendu constituted the majority of the inhabitants in Mongbwalu and the surrounding villages, while some members of other ethnic groups, except the Hema, were also present.<sup>3042</sup>

1088. In light of the foregoing, the Chamber is satisfied that, by ordering the UPC/FPLC troops to indiscriminately attack the Lendu present in Mongbwalu, with the purpose of either eliminating them or driving them out, Mr Ntaganda instructed the troops to perform an act as a result of which the displacement of a significant proportion of the civilian population of Mongbwalu – the majority of which was Lendu – would necessarily occur.<sup>3043</sup> The Chamber therefore finds that the first material element of the war crime of ordering the displacement of the civilian population is fulfilled.

1089. In relation to the Second Operation, the Chamber recalls that, in a briefing to UPC/FPLC troops in Kilo prior to the Second Operation, Salumu Mulenda explained that the objective of the operation in Kobu, Lipri, and Bambu was to ‘destroy that triangle which was a pocket of resistance to the UPC’.<sup>3044</sup> His order was understood by P-0017, a UPC/FPLC soldier attending the briefing, to mean ‘destroying [the] enemy force which occupied these three places’ and that, for the UPC/FPLC, the ‘enemy’ at that time included members of the APC, as well as the Lendu more generally, regardless of sex or age.<sup>3045</sup>

1090. Further, in a briefing held in Mongbwalu, Floribert Kisembo spoke to the troops about the objectives of the upcoming UPC/FPLC assault on Kobu, saying that they were going to Kobu to destroy the Lendu headquarters, bring back the lost weapons system, open the road, and that they were to drive out all the Lendu.<sup>3046</sup> P-0963, who attended the briefing, understood this to mean that the

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<sup>3042</sup> See para. 470.

<sup>3043</sup> The Chamber clarifies that any displacement of APC or other fighters that resulted from the same order is not considered for the present crime.

<sup>3044</sup> See para. 558.

<sup>3045</sup> See para. 558.

<sup>3046</sup> See para. 560.

Lendu ‘civilians’ of Kobu, Bambu, and Lipri were to be driven out by the UPC/FPLC, and that it was up to the UPC/FPLC to ‘occupy’ the location, and for ‘civilians’ to either leave or be killed.<sup>3047</sup>

1091. Also, in a further briefing in Kilo, just before the assault on Kobu, Salumu Mulenda further explained the objective of the assault on Kobu to the troops, and gave orders, including ‘*[ku]piga na kuchaji*’.<sup>3048</sup> A witness, who was at the briefing, said about what, if anything, troops were to do when they encountered the civilian population: ‘We were fighting the Lendu. The orders were clear: Shoot at everyone.’<sup>3049</sup>

1092. The Chamber further recalls that the Second Operation was a coordinated assault on several villages in the Walendu-Djatsi *collectivité* which followed the First Operation.<sup>3050</sup>

1093. Lastly, the Chamber recalls that the inhabitants of Lipri, Tsili, Kobu, and Bambu at the time of the Second Operation were predominantly Lendu.<sup>3051</sup>

1094. In light of the foregoing, the Chamber is satisfied that, by ordering their troops to ‘destroy th[e] triangle which was a pocket of resistance to the UPC’, a triangle which was constituted by the villages of Lipri, Kobu, and Bambu, to drive out all the Lendu, and by giving orders using the expression ‘*kupiga na kuchaji*’ – which was understood to mean also get rid of everyone and everything, referring to all the Lendu, including civilians and their possessions<sup>3052</sup> – Floribert Kisembo and Salumu Mulenda instructed the troops to perform acts as a result of which the displacement of a significant proportion of the civilian population of Lipri, Tsili, Kobu, and Bambu – which was constituted predominantly by Lendu – would

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<sup>3047</sup> See para. 560.

<sup>3048</sup> See para. 561.

<sup>3049</sup> See para. 561.

<sup>3050</sup> See para. 562.

<sup>3051</sup> See para. 549.

<sup>3052</sup> See para. 415.

necessarily occur. The Chamber therefore finds that the first material element of the war crime of ordering the displacement of the civilian population is fulfilled.

*(iv) Perpetrator was in a position to effect such displacement by giving such order*

1095. Between early September 2002 and 8 December 2003, Mr Ntaganda held the position of UPC/FPLC Deputy Chief of Staff in charge of Operations and Organisation.<sup>3053</sup> Furthermore, Mr Ntaganda was in charge of deployment and operations of the UPC/FPLC and his orders were obeyed.<sup>3054</sup> He was also the overall commander during the UPC/FPLC second attempt to take over Mongbwalu, which formed part of the First Operation.<sup>3055</sup>

1096. Under these circumstances, the Chamber is satisfied that Mr Ntaganda was in a position to effect the displacement of a significant proportion of the civilian population of Mongbwalu by ordering his UPC/FPLC subordinates to indiscriminately attack all Lendu present in Mongbwalu, with the purpose of either eliminating them or driving them out.

1097. As to Floribert Kisembo and Salumu Mulenda, the Chamber recalls that they both held high positions within the UPC/FPLC. Floribert Kisembo was the UPC/FPLC Chief of Staff between September 2002 and 8 December 2003.<sup>3056</sup> Furthermore, he planned the Second Operation.<sup>3057</sup> Salumu Mulenda was the commander of the UPC/FPLC's '409<sup>th</sup> Brigade',<sup>3058</sup> and in charge of the assault on Kobu.<sup>3059</sup> Both were therefore *de jure* and *de facto* in a position to effect the displacement of a significant proportion of the civilian population of Lipri, Tsili,

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<sup>3053</sup> See para. 321.

<sup>3054</sup> See para. 322.

<sup>3055</sup> See para. 491.

<sup>3056</sup> See para. 316.

<sup>3057</sup> See para. 553.

<sup>3058</sup> See para. 329.

<sup>3059</sup> See para. 572.

Kobu, and Bambu by ordering their subordinates to carry out acts as a result of which such displacement would occur, as discussed above.

*(v) Order not justified by the security of the civilians  
involved or by military necessity*

1098. Ordering a displacement with the aim of ensuring the safety of the civilian population, such as in cases of epidemics or natural disasters, would not constitute a crime under Article 8(2)(e)(viii) of the Statute. For the concept of military necessity, the Chamber notes that the reference to ‘*imperative* military reasons’ (emphasis added) in the Statute, derived from Article 49 of the Fourth Geneva Convention, is not reproduced in the Elements of Crimes. In this regard, the Chamber recalls that it has defined the concept of military necessity with reference to the relevant provision in Article 14 of the Lieber Code,<sup>3060</sup> which describes military necessity as the need to take ‘those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war’. In light of this definition, and notably the reference to the ‘indispensable’ nature of the measures, the Chamber is of the view that the qualification ‘imperative’ is subsumed in the general concept of military necessity as defined by the Chamber.<sup>3061</sup> That notwithstanding, the Chamber considers that the explicit addition of the qualifier ‘imperative’ in the Statute aims to emphasise that the instances in which a lawful displacement may be ordered are limited.<sup>3062</sup>

1099. The Chamber notes that the evidence on the record does not indicate that Mr Ntaganda’s order had the aim of ensuring the safety of the civilian

<sup>3060</sup> Instructions for the Government of Armies of the United States in the Field of 24 April 1863.

<sup>3061</sup> In support of this interpretation, see Eve La Haye, ‘Article 8(2)(e)(viii) – Displacing civilians’ in Roy S. Lee (ed.), *The International Criminal Court. Elements of Crimes and Rules of Procedure and Evidence* (2001), page 216, referring to Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, para. 4853.

<sup>3062</sup> This interpretation is also in line with the ICRC’s interpretation in Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987), para. 4853.

population. To the contrary, orders were given to attack all 'the Lendu' who were in Mongbwalu, without making a difference between 'Lendu civilians' and the militia.<sup>3063</sup> The expression '*kupiga na kuchaji*', which was understood to mean also get rid of everyone and everything, referring to all the Lendu, including civilians and their possessions<sup>3064</sup> was also used. In light of the foregoing, the Chamber finds that the order violated the principle of distinction and was therefore not justified by military necessity.

1100. The Chamber further considers that the evidence on the record indicates that Floribert Kisembo and Salumu Mulenda's orders did not have the aim of ensuring the safety of the civilian population of Lipri, Tsili, Kobu, and Bambu, and that driving out the civilian population of Lipri, Tsili, Kobu, and Bambu was therefore not justified by military necessity.

### (c) Contextual elements

1101. Considering that the discussed orders were issued in relation to the UPC/FPLC's second attempt to take over Mongbwalu in November 2002, which the Chamber found to form part of the First Operation, and the UPC/FPLC's assaults on Lipri, Tsili, Kobu, and Bambu, which the Chamber found to form part of the Second Operation, the Chamber is satisfied that the orders took place in the context of and were associated with the non-international armed conflict in Ituri.

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<sup>3063</sup> See para. 493.

<sup>3064</sup> See paras 415, 484, and 488.



**j) Conscription, enlistment and use of children under 15 as a war crime  
(Counts 14, 15, and 16)**

**(1) Applicable law**

1102. The war crime of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities is laid down in Article 8(2)(e)(vii) of the Statute.

1103. The legal elements of this war crime are:

1. The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>3065</sup>
6. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>3066</sup>

1104. Conscription or enlistment alone are sufficient and it is therefore not required that a child under 15 years of age who has been conscripted or enlisted also be 'used' to participate actively in hostilities.<sup>3067</sup> Conscription and enlistment is a continuing crime, for which the commission occurs for as long as the child remains part of or is associated with the armed force or group and until the child reaches 15 years of age.<sup>3068</sup>

<sup>3065</sup> Elements of Crimes, Article 8(2)(e)(vii).

<sup>3066</sup> See footnote 2519 above.

<sup>3067</sup> Lubanga Trial Judgment, para. 609.

<sup>3068</sup> Lubanga Trial Judgment, para. 618.

1105. Both conscription and enlistment are forms of recruitment that result in the incorporation of a person into an armed force or group, whether by compulsion (conscription) or on an alleged voluntary basis (enlistment).<sup>3069</sup>

1106. Some form of coercion or compulsion thus distinguishes conscription from enlistment.<sup>3070</sup> The existence of such coercion or compulsion can be established by demonstrating that an individual joined the armed force or group due to, *inter alia*, a legal obligation, brute force, threat of force, or psychological pressure amounting to coercion.<sup>3071</sup> Conscription, however, does not generally require demonstrating that the individual joined the armed force or group against his or her will.<sup>3072</sup>

1107. Enlistment is to be understood as enrolment on the list of a military body.<sup>3073</sup> It may be difficult to distinguish between voluntary and forced recruitment in the case of children under the age of 15, particularly since such individuals may be unable to give genuine and informed consent when enlisting in an armed force or group.<sup>3074</sup> Furthermore, a child's consent does not constitute a legitimate defence to a charge of enlistment.<sup>3075</sup> Under these circumstances, for the purpose of the present Judgment, enlistment and conscription are dealt with together.

1108. In accordance with the purpose of Article 8(2)(e)(vii) to protect children under the age of 15 years from being used to participate actively in hostilities, and the corresponding risks entailed therein to the children's life and well-being,<sup>3076</sup> the expression 'to participate actively in hostilities' imports a 'wide interpretation to the activities and roles that are covered by the offence of using children under the

<sup>3069</sup> *Lubanga Trial Judgment*, para. 607.

<sup>3070</sup> *Lubanga Trial Judgment*, para. 608.

<sup>3071</sup> *Lubanga Appeal Judgment*, para. 278.

<sup>3072</sup> *Lubanga Appeal Judgment*, para. 301.

<sup>3073</sup> *Lubanga Trial Judgment*, para. 608, referring to the Oxford Dictionary (2002), page 831.

<sup>3074</sup> See also *Lubanga Trial Judgment*, para. 613.

<sup>3075</sup> See also *Lubanga Trial Judgment*, para. 617; and SCSL, *CDF Appeal Judgment*, para. 139.

<sup>3076</sup> *Lubanga Appeal Judgment*, paras 277 and 324.

age of 15 actively to participate in hostilities’.<sup>3077</sup> In assessing whether an activity or role qualifies as ‘active participation in hostilities’ for the purpose of the Statute, it is necessary to analyse the link between the activity and any combat in which the armed force or group of the perpetrator is engaged, rather than the risk posed to the child as a potential target in hostilities.<sup>3078</sup> The requisite proximity between the child’s activities and the hostilities exists in case of, *inter alia*, ‘gathering information, transmitting orders, transporting ammunition and foodstuff, or acts of sabotage’.<sup>3079</sup>

1109. The determination as to whether a particular activity constitutes active participation in hostilities must therefore be made on a case-by-case basis.<sup>3080</sup> The deployment of children under the age of 15 as soldiers and their participation in combat, as well as their use as military guards and bodyguards, constitutes use to participate actively in hostilities within the definition of Article 8(2)(e)(vii).<sup>3081</sup>

## (2) Findings of the Chamber

### (a) Scope of charges

1110. The Chamber notes that there is a dispute between the parties as to the scope of the charges in relation to Counts 14, 15, and 16. The Defence submits that the UDCC does not identify a ‘single’ victim or location and ‘gives only the vaguest description of the timing of various training camps where these crimes were ostensibly committed’.<sup>3082</sup> It further avers that, similarly to Counts 6 and 9, there are no facts and circumstances in the UDCC on which a conviction can be

<sup>3077</sup> *Lubanga Appeal Judgment*, para. 340, referring to *Lubanga Trial Judgment*, para. 627.

<sup>3078</sup> *Lubanga Appeal Judgment*, paras 332 and 335.

<sup>3079</sup> *Lubanga Appeal Judgment*, para. 334, citing Yves Sandoz *et al.*, *Commentary on the Additional Protocols of June 1977 to the Geneva Conventions of 12 August 1949* (1987), page 1380, para. 4557; and the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court, Draft Statute for the International Criminal Court, U.N. Doc. A/CONF.183/2/Add.1, 14 April 1998, page 21 and fn. 12.

<sup>3080</sup> *Lubanga Appeal Judgment*, para. 335.

<sup>3081</sup> *Lubanga Appeal Judgment*, para. 340.

<sup>3082</sup> *Defence Reply Brief*, para. 15.

properly entered under Article 74(2), with the exception of the last two sentences of paragraph 95 of the UDCC, which ‘plead with sufficient particularity [...] the facts and circumstances of where Mr Ntaganda purportedly saw individuals who had been enlisted in the FPLC or UPC forces and who were trained [...] [including] the visit to Rwampara on 12 February 2003’.<sup>3083</sup> According to the Defence, the other relevant paragraphs of the UDCC<sup>3084</sup> do not provide adequate particularity and ‘there is nothing in the nature of these crimes that excuses the failure to set out the facts and circumstances with adequate particularity; including, for example, where the recruitment took place, when it took place, where was the use, who was recruited, who directly performed the recruitment’.<sup>3085</sup>

1111. The Prosecution argues that it provided ‘significant detail’ in this respect, referring to UPC/FPLC recruitment campaigns in villages where the Hema lived, the training of children in at least 13 identified camps, and the use of children during attacks of at least 16 specified villages.<sup>3086</sup> It further avers that the Confirmation Decision ‘refers to a non-exhaustive list of victims of recruitment, use, rape and sexual slavery by witness code with factual details of these crimes’.<sup>3087</sup>

1112. As far as Counts 14 and 15 are concerned, the Chamber considers that, whereas the time of the actual enlistment or conscription may not be known, or impossible to be specified as part of a charge, the presence of a child below the age of 15 within an armed group takes place over a period of time. As noted by Trial Chamber I, the criminal conduct is ‘continuous’ and ‘end[s] only when the

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<sup>3083</sup> T-264, page 2.

<sup>3084</sup> UDCC, paras 92 to 99 (recruitment at paras 93 to 94 ‘between August 2002 and into 2003’, use at paras 96 to 97).

<sup>3085</sup> T-264, page 2.

<sup>3086</sup> T-262, page 28.

<sup>3087</sup> T-262, page 28.

child reaches 15 years of age or leaves the force or group’.<sup>3088</sup> Therefore, and in the circumstances of this case, in particular given that these acts are alleged to have been committed in the institutionalised coercive environment of the UPC/FPLC, in similar circumstances over a period of time, and not as isolated acts, the Chamber considers that the charges underlying Counts 14 and 15 are sufficiently specific.

1113. As for Count 16, the Chamber notes that active participation in hostilities is temporary in nature under IHL and that individuals cease to actively participate when not engaged in combat related activities.<sup>3089</sup> Any charge of active participation must therefore be framed in a more specific way. The Chamber notes that the Confirmation Decision indeed does so. Paragraph 74 of the Confirmation Decision, one of the operative bolded paragraphs which sets out the parameters for counts related to alleged child soldiers, including Count 16, sets out the temporal scope of the charge, *i.e.* from 6 August 2002 to 30 May 2003, whereas paragraphs 93 to 96 set out types of conduct, locations, and timeframes specific to this charge.

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<sup>3088</sup> *Lubanga* Trial Judgment, para. 618.

<sup>3089</sup> As held by the Appeals Chamber in *Lubanga*, ‘the crime of using children to participate actively in hostilities requires the existence of a link between the activity and the hostilities’. It therefore found that ‘in order to determine whether the crime of using children to participate actively in hostilities under article 8 (2) (e) (vii) of the Statute is established, it is necessary to analyse the link between the activity for which the child is used and the combat in which the armed force or group of the perpetrator is engaged.’ (*Lubanga* Appeal Judgment, paras 333 and 335, and similarly para. 340), Trial Chamber I and the Confirmation Decision consider conscription and enlistment to be clearly distinct from use to actively participate in hostilities: ‘The prohibition against using children under the age of 15 to participate actively in hostilities is not dependent on the individuals concerned having been earlier conscripted or enlisted into the relevant armed force or group.’ (*Lubanga* Trial Judgment, para. 620); and ‘the mere membership of children under the age of 15 years in an armed group cannot be considered as determinative proof of direct/active participation in hostilities, considering that their presence in the armed group is specifically proscribed under international law’ (Confirmation Decision, para. 78). The Chamber notes, however, that the Confirmation Decision also refers to the ‘crimes under article 8(2)(e)(vii) of the Statute’ as being ‘continuous [in] nature’ (Confirmation Decision, para. 83).

**(b) Material elements**

**(i) Negative findings**

1114. The Chamber notes that, on the basis of the evidence before it, it was unable to enter findings in relation to the participation of children under the age of 15 in the following UPC/FPLC assaults:

- Bunia in August 2002<sup>3090</sup> and March 2003,<sup>3091</sup>
- Zumbe in October 2002,<sup>3092</sup>
- Komanda in October 2002,<sup>3093</sup> and
- Lipri, Kobu, and Bambu in February-March 2003.<sup>3094</sup>

1115. Accordingly, the Chamber has not taken these allegations into account in reaching its conclusion in relation to Count 16.

**(ii) Positive findings**

1116. The Chamber made a number of findings concerning conduct which may amount to conscription, enlistment, and use of children under 15 to participate actively in hostilities. These findings are set out and analysed further below.

**(iii) *The perpetrator enlisted or conscripted one or more persons under the age of 15 years into an armed force or group***

1117. The Chamber recalls that the UPC/FPLC, which the Chamber finds to constitute an armed group for the purpose of Article 8(2)(e)(vii),<sup>3095</sup> recruited

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<sup>3090</sup> See para. 446, footnote 1261.

<sup>3091</sup> See para. 649, footnote 2073.

<sup>3092</sup> See para. 458, footnote 1310.

<sup>3093</sup> See para. 462, footnote 1317.

<sup>3094</sup> See sections IV.B.8.c)(2) Assault on Lipri and surrounding villages, IV.B.8.c)(3) Assault on Kobu and IV.B.8.c)(4) Assault on Bambu.

<sup>3095</sup> See in this regard section V.A.2.a)(1) Organisation requirement.

individuals of all ages in various locations throughout Ituri, including Bunia and the rural areas, from at least June 2002,<sup>3096</sup> notably through awareness raising campaigns and rallies.<sup>3097</sup> Members of the UPC/FPLC communicated with elders, community leaders, and individuals of influence in Ituri – as well as directly with parents – in order to mobilise ‘children’ and ‘young people’ for recruitment into their ranks.<sup>3098</sup> Community leaders and parents were told that the UPC/FPLC needed such individuals to join in order to protect their communities<sup>3099</sup> and to defend themselves against the Lendu.<sup>3100</sup>

1118. The UPC/FPLC also imposed an obligation on families to provide one or several ‘children’ to the UPC/FPLC for military service, including by threatening them.<sup>3101</sup> Some parents also paid a fee or otherwise contributed to the UPC/FPLC in order to exempt their children from having to join the UPC/FPLC.<sup>3102</sup>

1119. As a result of the various forms of recruitment, some individuals joined the UPC/FPLC voluntarily, and others were recruited forcibly.<sup>3103</sup>

1120. Following their recruitment, at least between May 2002<sup>3104</sup> and February 2003<sup>3105</sup> individuals under the age of 15, including P-0883 and P-0898, were trained along with other UPC/FPLC recruits at the various UPC/FPLC training camps,<sup>3106</sup> where they were taught basic military skills such as the use of

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<sup>3096</sup> See para. 347. The Chamber recalls that the temporal scope of the charges in relation to Counts 14 to 15 is between on or about 6 August 2002 and 31 December 2003. Under these circumstances, the Chamber has noted that the enlistment and conscription of certain individuals under the age of 15 commenced before the temporal scope of the charges of the present case, but, given the crimes’ continuous nature, has considered only the conduct occurring as of August 2002 for the purpose of its conclusions in relation to Counts 14 and 15.

<sup>3097</sup> See para. 348.

<sup>3098</sup> See para. 348.

<sup>3099</sup> See para. 355.

<sup>3100</sup> See para. 357.

<sup>3101</sup> See para. 349.

<sup>3102</sup> See para. 349.

<sup>3103</sup> See paras 350 to 354.

<sup>3104</sup> See para. 314.

<sup>3105</sup> See para. 369.

<sup>3106</sup> See para. 362.

weapons, marching, crawling and saluting, as well as military discipline.<sup>3107</sup> On arrival at a training location, recruits were screened based on their physical ability, and age as such was not a bar for them to receive training.<sup>3108</sup> At Lingo Camp, a girl as young as approximately nine years old, was present.<sup>3109</sup> Some recruits were also trained in the use of rocket launchers and at least two individuals under the age of 15 were trained at Mr Ntaganda's residence as radio operators.<sup>3110</sup> At the training camps, recruits were told that they would be killed if they tried to flee and, at Mandro camp, those who were caught attempting to escape were beaten, put in an underground prison or, in at least one instance, shot.<sup>3111</sup>

1121. Upon completion of their training, which usually lasted from several weeks to up to two months, recruits were considered UPC/FPLC soldiers, issued with weapons and uniforms, and deployed to the battlefields.<sup>3112</sup> Occasionally, they could be deployed before the end of their training.<sup>3113</sup> There was no age threshold for deployment and individuals under the age of 15 were assigned to various UPC/FPLC units, as any other soldiers.<sup>3114</sup>

1122. The Chamber notes that, in October 2002 and January, February, May, and June 2003, respectively, the UPC/FPLC issued a series of documents concerning the demobilisation of individuals aged between 10 and 18 from their ranks,<sup>3115</sup> after having been invited to do so by the international community.<sup>3116</sup> On 18 March 2003, representatives of, *inter alia*, the UPC, signed an agreement to, amongst other things, interrupt any recruitment and use of 'child soldiers' within

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<sup>3107</sup> See para. 371.

<sup>3108</sup> See para. 361.

<sup>3109</sup> See para. 410.

<sup>3110</sup> See para. 371.

<sup>3111</sup> See para. 376.

<sup>3112</sup> See paras 379, and 414.

<sup>3113</sup> See para. 379.

<sup>3114</sup> See para. 414.

<sup>3115</sup> See paras 418 to 422, and 427 to 428.

<sup>3116</sup> See para. 417.



their forces.<sup>3117</sup> On or about 16 June 2003, UPC/FPLC commanders discussed, *inter alia*, matters related to demobilisation.<sup>3118</sup> In or around June and July 2003, a number of individuals were demobilised from the UPC/FPLC in isolated initiatives.<sup>3119</sup> The Chamber however found that the UPC/FPLC did not effectively engage in any systematic demobilisation process.<sup>3120</sup>

1123. Recalling that a child's consent does not constitute a legitimate defence to a charge of enlistment,<sup>3121</sup> the Chamber is satisfied that the recruitment of individuals under the age of 15 into the UPC/FPLC constituted enlistment into an armed group for the purpose of Article 8(2)(e)(vii) of the Statute. The Chamber notes that, while the individuals undergoing training were referred to as 'recruits', this fact has no bearing on the Chamber's finding that, by being brought for training, such individuals were enlisted into the UPC/FPLC. In this regard, the Chamber notes that the recruits had to remain in the camp,<sup>3122</sup> received their food from the UPC/FPLC,<sup>3123</sup> had to obey orders,<sup>3124</sup> and were taught military skills and military discipline.<sup>3125</sup> That on occasion, they could be deployed to the battlefield before the end of their training<sup>3126</sup> indicates that the completion of the training did not constitute a pre-condition for becoming a UPC/FPLC 'member'. It further supports the Chamber's findings that, during their training, the recruits already formed part of the UPC/FPLC.

1124. Whereas the moment of enlistment can be more specifically determined as a point in time in case of national armed forces in which enlistment occurs on the basis of pre-existing domestic laws, the precise moment of enlistment may be less

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<sup>3117</sup> See para. 424.

<sup>3118</sup> See para. 429.

<sup>3119</sup> See para. 430.

<sup>3120</sup> See para. 430.

<sup>3121</sup> See para. 1107.

<sup>3122</sup> See para. 376.

<sup>3123</sup> See para. 375.

<sup>3124</sup> See para. 377.

<sup>3125</sup> See para. 371.

<sup>3126</sup> See para. 379.

clear in case of armed groups.<sup>3127</sup> However, the Chamber's findings on the enlistment of individuals under the age of 15 within the UPC/FPLC are not based on the mere presence of such individuals at UPC/FPLC training camps, and as such there is no risk that any persons clearly under the age of 15, who coincidentally found themselves at a certain point in time in an UPC/FPLC camp without actually having been enlisted or conscripted in the armed group, are mistakenly found to fall within the parameters of the present crime.<sup>3128</sup> The Chamber basis its findings on the fact that the individuals were subjected to military training at UPC/FPLC camps, which they were also prevented from leaving. While the Chamber has in most instances not establish the exact moment that the individuals it found to have been under the age of 15 were brought to UPC/FPLC camps and commenced their training, and similarly it did not make findings on when they completed their stay in these camps, the Chamber is satisfied that by virtue of being trained at UPC/FPLC camps, individuals under the age of 15 were enlisted or conscripted into the UPC/FPLC ranks.

*(iv) The perpetrator used one or more persons under the age of 15 years to participate actively in hostilities*

1125. The Chamber recalls that individuals under the age of 15 participated in the assaults forming part of the First Operation<sup>3129</sup> and that at least one individual under 15 years of age participated in the UPC/FPLC assault on Bunia in May 2003.<sup>3130</sup>

1126. The Chamber further recalls that, around February 2003, Mr Ntaganda's escort comprised individuals under the age of 15.<sup>3131</sup> The members of Mr Ntaganda's

<sup>3127</sup> See also Defence Reply Brief, para. 25.

<sup>3128</sup> Compare Defence Reply Brief, para. 26.

<sup>3129</sup> See para. 511.

<sup>3130</sup> See para. 655.

<sup>3131</sup> See paras 386 to 391.

escort were armed and, on some occasions, wore military uniforms.<sup>3132</sup> Individuals under the age of 15 generally carried out the same tasks as the older ones,<sup>3133</sup> which included guarding Mr Ntaganda's residence and compound and accompanying him on his travels outside his residence in order to provide for his security, including to meetings at the places of other commanders, such as Thomas Lubanga, Rafiki, and Floribert Kisembo<sup>3134</sup> and during visits to training camps, such as a visit to Rwampara on 12 February 2003, where the Chamber found that he was accompanied by at least two bodyguards under the age of 15 and a visit to Mandro camp where, similarly, he was accompanied by two individuals under the age of 15.<sup>3135</sup> When accompanying Mr Ntaganda, his escorts carried his arms and communication equipment.<sup>3136</sup> A number of other UPC/FPLC commanders, leaders, and lower level soldiers also used individuals under 15 years of age to serve as their bodyguards.<sup>3137</sup> These included Floribert Kisembo, Thomas Lubanga – who had individuals under the age of 15 within the PPU – and other individuals.<sup>3138</sup>

1127. Individuals under the age of 15 present within the UPC/FPLC were also sent on reconnaissance missions, where they would gather information about the opposing forces and MONUC personnel,<sup>3139</sup> carried out patrolling, which could involve intercepting people who were either escorted to their homes or taken to the UPC/FPLC camp in case they were found to have committed theft,<sup>3140</sup> and guarded and held detained persons.<sup>3141</sup>

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<sup>3132</sup> See para. 385.

<sup>3133</sup> See para. 392.

<sup>3134</sup> See para. 393.

<sup>3135</sup> See para. 394.

<sup>3136</sup> See para. 395.

<sup>3137</sup> See para. 398.

<sup>3138</sup> See para. 399, and 401.

<sup>3139</sup> See para. 404.

<sup>3140</sup> See para. 403.

<sup>3141</sup> See para. 405.

1128. In relation to the above, the Chamber is satisfied that the participation of individuals under the age of 15 in the First Operation and in the UPC/FPLC assault on Bunia in May 2003 constituted active participation in hostilities for the purpose of Article 8(2)(e)(vii) of the Statute.

1129. As to the use of individuals under the age of 15 as bodyguards, the Chamber notes that these individuals were tasked with providing protection to UPC/FPLC commanders, the UPC/FPLC Chief of Staff and Deputy Chief of Staff, and the UPC President at a time in which the UPC/FPLC was actively engaged in the non-international armed conflict in Ituri and when the aforementioned persons – whom the individuals under the age of 15 were protecting – constituted legitimate military targets. Under these circumstances, the Chamber is satisfied that providing these persons with protection under the aforementioned circumstances constituted active participation in hostilities.

1130. In relation to the use of individuals under the age of 15 to gather intelligence information about the opposing forces and MONUC personnel, in light of the military purpose of these activities that have a connection with military operations, at a time in which the UPC/FPLC was engaged in an armed conflict with the aforementioned opposing forces, the Chamber finds that this constituted active participation in hostilities.<sup>3142</sup>

1131. As far as the guarding of detained persons is concerned, the Chamber considers that, while certain guard duties may amount to active participation in hostilities, the guarding of detainees does not *per se* constitute active participation for the purpose of Article 8(2)(e)(viii). Without further detail as to these guard duties, such as who were guarded and where the guarded persons were detained, the Chamber is not in a position to make any findings on their relation to the alleged conduct for Count 16.

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<sup>3142</sup> See also ICRC, Statement before the Third Committee of the UN General Assembly, 21 October 1998.

1132. Similarly, in relation to carrying out patrolling, on the basis of the evidence on the record the Chamber could not establish that this activity had a military purpose. Rather, it appears that the night patrols undertaken by P-0883 and others were aimed at the prevention of ordinary crimes, such as theft.<sup>3143</sup> The Chamber therefore finds that it was not demonstrated that the aforementioned activity constituted active participation in hostilities.

### (c) Contextual elements

1133. Considering the timeframe of the acts referred to at paragraphs 1117 to 1122 and 1026 to 1028, their connection with the combat activity involving the UPC/FPLC as established above, and the specific operations that the children under the age of 15 participated in, the Chamber is satisfied that the conscription, enlistment, and use to participate actively in hostilities of children under the age of 15 by the UPC/FPLC took place in the context of and were associated with the non-international armed conflict in Ituri.

### k) Attacking protected objects as a war crime (Count 17)

#### (1) Applicable law

1134. The war crime of attacking protected objects is laid down in Article 8(2)(e)(iv) of the Statute.

1135. The legal elements of this war crime are:

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or

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<sup>3143</sup> See para. 403.

places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>3144</sup>

6. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>3145</sup>

1136. As set out above, the term 'attack' is to be understood as an 'act of violence against the adversary, whether in offence or defence'.<sup>3146</sup> As with the war crime of attacking civilians, the crime of attacking protected objects belongs to the category of offences committed during the actual conduct of hostilities.<sup>3147</sup> Article 8(2)(e)(iv) only requires the perpetrator to have *launched* an attack against a protected object and it need not be established that the attack caused any damage or destruction to the object in question.<sup>3148</sup>

## (2) Findings of the Chamber

### (a) Material elements

#### (i) *Negative findings*

1137. The Chamber recalls that, on the basis of the evidence on the record, it did not make findings in relation to the taking of property from hospitals, schools, an orphanage, and religious structures in Bambu.<sup>3149</sup>

<sup>3144</sup> Elements of Crimes, Article 8(2)(e)(iv).

<sup>3145</sup> See footnote 2519 above.

<sup>3146</sup> See para. 916.

<sup>3147</sup> See para. 904. Compare Confirmation Decision, para. 45; and *Katanga and Ngudjolo* Confirmation Decision, para. 267. In respect of the war crime of attacking protected objects, the Chamber's findings do not relate to the interpretation of an 'attack' under Article 8(2)(e)(iv) when cultural objects enjoying a special status are the object of the attack. It notes that the protection of such objects under IHL is based on different underlying rules.

<sup>3148</sup> See *Al Mahdi* Judgment, footnote 29.

<sup>3149</sup> See para. 609, footnote 1816.

*(ii) Positive findings*

1138. The Chamber found, in the context of the First Operation, that:

- UPC/FPLC soldiers looted the Mongbwalu hospital;<sup>3150</sup>
- during the UPC/FPLC advance into Sayo, UPC/FPLC soldiers fired projectiles at the health centre;<sup>3151</sup> and
- sometime after the assault on Sayo, the UPC/FPLC set up a base inside the church, broke the doors of the church, removed the furniture, dug trenches around the church, and started a fire inside to prepare their food.<sup>3152</sup>

1139. In the context of the Second Operation, the Chamber found that UPC/FPLC soldiers shot and killed nine patients at the Bambu hospital, and that bullet marks were left on the walls.<sup>3153</sup>

*(iii) Directing an attack*

1140. In the assessment of the Chamber, the shelling of the health centre in Sayo by UPC/FPLC soldiers constituted an ‘attack’ within the meaning of Article 8(2)(e)(iv) of the Statute.

1141. However, contrary to the Prosecution’s assertion,<sup>3154</sup> the Chamber does not consider that pillaging of protected objects, in particular in this case of the Mongbwalu hospital, is an ‘act of violence against the adversary’ and, consequently, it does not constitute an attack within the meaning of Article 8(2)(e)(iv) of the Statute. This incident is therefore not further considered.

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<sup>3150</sup> See para. 589.

<sup>3151</sup> See para. 506. The Chamber recalls that it was unable to establish that the UPC/FPLC looted the health centre in Sayo, see para. 526, footnote 1563.

<sup>3152</sup> See para. 526.

<sup>3153</sup> See para. 587.

<sup>3154</sup> Prosecution Closing Brief, para. 408.

1142. In addition, given that the attack on the church in Sayo took place sometime after the assault, and therefore not during the actual conduct of hostilities, the Chamber finds that the first element of Article 8(2)(e)(iv) of the Statute is not met. This incident is therefore also not further considered.

1143. As concerns the events at a hospital in Bambu during the Second Operation, the Chamber observes that the facts established by the evidence indicate that the acts of violence were directed at the patients present in the hospital. The facts do not support a finding that the hospital itself was made the object of the attack. Indeed, the mere presence of bullet marks on the walls cannot sustain an affirmative conclusion.

1144. Accordingly, the Chamber proceeds with its analysis under Count 17 only with respect to the attack on the health centre in Sayo.<sup>3155</sup>

*(iv) Against protected objects*

1145. The Chamber must next determine whether the health centre in Sayo qualified as a protected object under the relevant provision.

1146. In principle, all objects are protected under IHL as being civilian, apart from those ‘objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage’.<sup>3156</sup> Such military objectives may lawfully be attacked. In order to fall under Article 8(2)(e)(iv) of the Statute, the attacked objects must have performed the function of buildings dedicated to religion or education, hospitals, or places

<sup>3155</sup> The Chamber notes that Count 17 in relation to the Second Operation is the only part of the charges not included under the mode of liability of indirect co-perpetration, but is charged under Article 25(3)(d)(i) or (ii) of the Statute, or alternatively Article 28(a) of the Statute. However, in light of the Chamber’s conclusion that the specific elements of the crime are not met with respect to the underlying facts, it is not necessary to analyse the modes of liability presented under Count 17 in relation to the Second Operation.

<sup>3156</sup> Article 52(2) of Additional Protocol I. This definition, through customary international law, has also become applicable to non-international armed conflicts. See Rule 8 of the ICRC Study on Customary IHL, and the underlying State practice referred to in the study.



where the sick and wounded are brought at the time of the attack. With respect to medical facilities, the Chamber notes that these structures enjoy enhanced protection which ‘shall not cease unless they are used to commit hostile acts, outside their humanitarian function’.<sup>3157</sup> Furthermore, even under such circumstances, their protection only ceases ‘after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded’.<sup>3158</sup>

1147. Because persons seeking treatment were present at the Sayo health centre,<sup>3159</sup> the Chamber finds that the health centre was in use as a medical facility at the time of the attack. The evidence before the Chamber provides no indication that the health centre in Sayo was used, at the time of the attack, in any manner which would invalidate its protected status so as to turn it into a military objective. The Chamber therefore concludes that the health centre in Sayo qualified as a protected object for the purpose of Article 8(2)(e)(iv) of the Statute. However, noting that no non-international armed conflict equivalent of Article 8(2)(b)(ii) is included in the Statute, and pursuant to the third legal element of crime, it must be demonstrated that the perpetrator intended to attack a building or place dedicated to one of the specific functions listed in Article 8(2)(e)(iv), and not just any object not constituting a military objective. Applied to the present inquiry, the perpetrator therefore must have been aware that he or she was attacking a hospital or place where the wounded and sick were collected. In this regard, the Chamber notes that a UPC/FPLC soldier who used heavy weapons in Sayo referred to the health centre as a ‘dispensary’<sup>3160</sup> and as such was aware that it served a medical purpose. With the UPC/FPLC having been aware of the status of

<sup>3157</sup> See Article 13(1) of Additional Protocol I and Article 11(2) of Additional Protocol II, found to be a norm of customary international law applicable in both international and non-international armed conflicts: Rule 28 of the ICRC Study on Customary IHL, and the underlying State practice referred to in the study.

<sup>3158</sup> Article 11(2) of Additional Protocol II.

<sup>3159</sup> See Revised Factual Findings, para. 228.

<sup>3160</sup> See footnote 1474.

the building and yet making it the object of attack, the third legal element of the crime is fulfilled.

**(b) Contextual elements**

1148. The Chamber notes that the attack against this health centre took place during the First Operation and was committed by soldiers who took part in this operation. As such, and noting that the First Operation has above been found to constitute part of a non-international armed conflict, the Chamber finds that the attack took place in the context of and was associated with the non-international armed conflict in Ituri.

**1) Destroying the adversary's property as a war crime (Count 18)**

**(1) Applicable law**

1149. The war crime of destroying the adversary's property is laid down in Article 8(2)(e)(xii) of the Statute.

1150. The legal elements of this war crime are:

1. The perpetrator destroyed or seized certain property.
2. Such property was property of an adversary.
3. Such property was protected from that destruction or seizure under the international law of armed conflict.
4. The perpetrator was aware of the factual circumstances that established the status of the property.
5. The destruction or seizure was not required by military necessity.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>3161</sup>

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<sup>3161</sup> Elements of Crimes, Article 8(2)(e)(xii).

8. The perpetrator's conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>3162</sup>

1151. Article 8(2)(e)(xii) of the Statute concerns both 'destroying' and 'seizing' of property. As the charges in the present case are limited to the destruction of property, the Chamber will only consider and refer to in the further analysis the destruction of property.

1152. Article 8(2)(e)(xii) of the Statute covers all types of property, movable and immovable, as well as public and private property.<sup>3163</sup> Further, the acts of destruction can take many different forms and include torching and demolishing.<sup>3164</sup>

## (2) Findings of the Chamber

### (a) Scope of charges

1153. The Defence argues that any acts of destruction of property in Sayo other than with heavy weapons are outside of the scope of the charges.<sup>3165</sup> However, the Chamber notes that, in the case of Sayo, unlike for Mongbwalu, the Confirmation Decision does not contain such limitation.<sup>3166</sup> The Confirmation Decision in fact makes reference to the burning of houses in Sayo.<sup>3167</sup> For this reason, the Chamber considers that the destruction of houses by burning falls within the scope of the charges.

1154. The Defence also argues that the alleged destruction of the church in Sayo does not properly fall within the scope of the charges.<sup>3168</sup> It is not entirely clear whether this argument relates to Count 17 or to Count 18. In any case, the

<sup>3162</sup> See footnote 2519 above.

<sup>3163</sup> *Katanga Judgment*, para. 892.

<sup>3164</sup> *Katanga Judgment*, paras 891 to 892.

<sup>3165</sup> Defence Closing Brief, para. 738; and Defence Reply Brief, para. 14.

<sup>3166</sup> Confirmation Decision, para. 36.

<sup>3167</sup> Confirmation Decision, para. 72.

<sup>3168</sup> Defence Closing Brief, para. 751; and Defence Reply Brief, para. 14.

Chamber notes that the Confirmation Decision or the UDCC do not refer to, in the relevant part, the alleged destruction of the church in Sayo. Accordingly, it is not within the scope of the charges under Count 18.

**(b) Material elements**

**(i) *Negative findings***

1155. The Chamber notes that no findings of conduct which could be considered under Count 18 were made as concerns Bambu, Camp P.M., Djuba, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali or Ngabuli, in the context of the Second Operation. In particular as concerns Bambu, Gola and Nyangaray, the Chamber found the presence of destroyed houses broadly during the relevant period, but was unable to conclude that this destruction was caused by UPC/FPLC soldiers during the Second Operation.<sup>3169</sup>

**(ii) *Positive findings***

1156. The Chamber found that, in the context of the First Operation:

- some houses in Mongbwalu were hit by shells during the UPC/FPLC takeover of the town, and were destroyed,<sup>3170</sup> and
- in Sayo, some houses were destroyed by heavy weapons during the assault, and one was burned down.<sup>3171</sup>

1157. Further, the Chamber found that, in the context of the Second Operation:

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<sup>3169</sup> See paras 586, 613, and 640.

<sup>3170</sup> See para. 496.

<sup>3171</sup> See para. 503.

- during the UPC/FPLC control of the area, UPC/FPLC soldiers burned down houses in Lipri and Tsili;<sup>3172</sup>
- the UPC/FPLC burned down some of the houses in or around Kobu;<sup>3173</sup>
- the day after the 'pacification meeting', the UPC/FPLC burned down houses in Jitchu;<sup>3174</sup>
- UPC/FPLC soldiers burned down houses in Buli;<sup>3175</sup> and
- sometime after the 'pacification meeting', the UPC/FPLC burned down houses in or around Sangi.<sup>3176</sup>

*(iii) Destruction of property*

1158. The present crime, of which the wording is derived from Article 23(g) of the Hague Regulations relating to sieges and bombardments, may be committed during but also outside the conduct of hostilities, after a party has taken control over an area.<sup>3177</sup> As regards to destruction as a result of the conduct of hostilities, any attacks as part of the conduct of hostilities that are directed at objects that do constitute military objectives, with the intent to destroy these objects, fall under the present crime if the destruction is in indeed effectuated.

1159. The Chamber is satisfied that some houses in Mongbwalu, Sayo, Lipri, Tsili, in and around Kobu, Jitchu, Buli and in or around Sangi, as described just above, were destroyed by shelling or burning. The first legal element of the crime under Article 8(2)(e)(xii) of the Statute is therefore fulfilled.

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<sup>3172</sup> See para. 569.

<sup>3173</sup> See para. 578.

<sup>3174</sup> See para. 619.

<sup>3175</sup> See para. 609.

<sup>3176</sup> See para. 602.

<sup>3177</sup> Compare Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (Cambridge University Press 2003), p. 251 and 486. See also Article 53 of the Fourth Geneva Convention of 1949, which forms part of the underlying prohibition for the international armed conflict version, *i.e.* Article 8(2)(b)(xiii), of the present war crime.

(iv) *Belonging to an adversary*

1160. In order to demonstrate that the property belonged to an ‘adversary’,<sup>3178</sup> the Chamber considers that it will be sufficient to establish that the property did not belong to persons who were part of, or aligned with, an armed force or group the perpetrators were part of. Generally, the property in question will have belonged to individuals or entities aligned with or with allegiance to a party to the conflict that is adverse or hostile to the perpetrators.<sup>3179</sup> With regard to the destruction of property belonging to persons who had no stated or apparent allegiance to a party involved in the conflict, the Chamber notes that it may be established that these persons or entities were ‘adverse’, or considered as such by the perpetrators, for example by showing that they were not aligned to or supportive of the perpetrators’ party or its objectives. The Chamber considers that, depending on the circumstances, such allegiance may be established by demonstrating the ethnicity or place of residence of the owner of the property destroyed.

1161. The houses destroyed were inhabited by the predominately Lendu residents in Mongbwalu, Sayo, and in Lipri, Tsili, Kobu, and Jitchu.<sup>3180</sup> There is no indication the property belonged, at the time of the assaults, to persons who were part of, or aligned with the UPC/FPLC. Accordingly, the Chamber finds that the second legal element of this war crime, which is that the destroyed property was property of an adversary, is met.

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<sup>3178</sup> The Chamber notes that the international armed conflict version of the crime and its equivalent element contain slightly different wording: (i) the ‘enemy’s property’ as compared to ‘property of an adversary’; and (ii) ‘hostile party’, as compared to ‘adversary’, respectively. However, as noted by an observer of the drafting of the crimes and their elements, ‘there are no indications in the ICC Statute or other sources that this offence has different constituent elements in an international or non-international armed conflict’ (Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (Cambridge University Press 2003), p. 486). The Chamber therefore understands the term ‘adversary’ to have the same meaning as hostile party (*see, similarly, Katanga Judgment*, para. 889).

<sup>3179</sup> *See Katanga Judgment*, para. 892.

<sup>3180</sup> *See paras 470 and 549.*

(v) *Protected under the international law of armed conflict*

1162. As a matter of law, the Chamber recalls that all objects are in principle protected, unless they constitute ‘military objectives’.<sup>3181</sup> Such military objectives may lawfully be attacked, so long as the relevant precautions are taken and the attack is not expected to cause disproportionate incidental damage.<sup>3182</sup> For the purpose of its determination as to whether or not property was ‘protected’, the Chamber therefore finds it appropriate to apply the standard that, in the circumstances of the case, a reasonable person could not have believed that the property attacked and destroyed was a military objective.<sup>3183</sup>

1163. There is no indication in the evidence before it that the houses destroyed in Mongbwalu, Sayo, Lipri, Tsili, in and around Kobu, Jitchu, Buli, and in and around Sangi constituted military objectives, and a reasonable person could therefore not have believed that the property destroyed qualified as such. It therefore finds that the houses were protected from destruction under IHL.

(vi) *Destruction not required by military necessity*

1164. Destruction of property is considered to be justified by military necessity only if it was required for the attainment of a military purpose and otherwise in conformity with IHL. The Chamber recalls the description given in the Lieber Code, adopted by the ICTY and used by Trial Chamber II, which describes military necessity as the need to take ‘those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law

<sup>3181</sup> See para. 1146; see also *Katanga Judgment*, para. 893.

<sup>3182</sup> The Chamber agrees with Trial Chamber II that ‘[i]t is therefore important to assess the “military advantage” from the attacker’s perspective for each targeted object, and such an advantage must be definite and cannot in any way be indeterminate or potential.’ *Katanga Judgment*, para. 893, referring to the ICRC Commentary on the Additional Protocols, paras 2024 and 2028, and ICTY, *Galić Trial Judgment*, para. 51.

<sup>3183</sup> Compare para. 322 above. Similarly, with regard persons that are protected under IHL, ICTY, *Kordić and Čerkez Appeal Judgment*, para. 48; and ICTY, *Galić Trial Judgment*, para. 55.

and usages of war'.<sup>3184</sup> With regard to the explicit reference in Article 8(2)(e)(xii) that the destruction be 'imperatively demanded by the necessities of the conflict', the Chamber agrees with Trial Chamber II that this phrase sets a certain threshold and denotes that only when the perpetrator had no other option, which would render the object intact, can the destruction be considered to have been justified by military necessity.<sup>3185</sup>

1165. Although attacks directed at or destruction of military objectives will generally be justified by military necessity and thereby fall outside the scope of Article 8(2)(e)(xii), the Chamber considers that it will remain necessary to conduct a case-by-base assessment. The destruction of civilian objects, and in particular the cause of any destruction, will similarly have to be assessed by the Chamber on a case-by-case basis, taking account of the particular circumstances prevailing at the time, including whether the destroyed property was defended.<sup>3186</sup>

1166. In this regard, the Chamber recalls that the burden is on the Prosecution to establish that the specific incident of destruction was not justified by military necessity.<sup>3187</sup> In addition to cases where the intent was to destroy a certain object as such, the Chamber observes that there may be cases where an attack directed at a military object caused 'incidental damage' to a civilian object and where damages were not expected to be 'excessive in relation to the concrete and direct military advantage anticipated'.<sup>3188</sup> In such cases, it is understood that the attack on the military objective was justified by military necessity and that proportionate damage caused to civilian property as an unintended by-product will not amount to destruction as a war crime.

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<sup>3184</sup> See Article 14 of the Lieber Code (Instructions for the Government of Armies of the United States in the Field of 24 April 1863), which describes military necessity as the need to take 'those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war'. See *Katanga Judgment*, para. 893; and ICTY, *Kordić and Čerkez* Appeal Judgment, para. 686.

<sup>3185</sup> *Katanga Judgment*, para. 894.

<sup>3186</sup> See *Katanga Judgment*, para. 894, referring to ICTY, *Kordić and Čerkez* Appeal Judgment, paras 534 and 586.

<sup>3187</sup> *Katanga Judgment*, para. 893.

<sup>3188</sup> See the principle of proportionality as defined in Articles 51(5)(b) and 57(2)(a)(iii) of Additional Protocol I.



1167. There is no indication in the evidence nor has it been submitted that the houses in Mongbwalu, Sayo, Lipri, Tsili, in and around Kobu, Jitchu, Buli, and in and around Sangi could be considered as military objectives. In addition, there is no indication in the evidence nor has it been submitted that these houses served any military purpose. The Chamber therefore finds that the destruction of property as described was not required by military necessity.

**(c) Contextual elements**

1168. The Chamber notes that the acts of destruction of houses took place during the First and Second Operation and were committed by soldiers who took part in the relevant assaults. Moreover, the locations where the destruction of houses took place were amongst the towns and villages that the UPC/FPLC took over during the First and Second Operation. As such, and noting that the First and Second Operation have above been found to constitute part of a non-international armed conflict, the Chamber finds that the destruction of houses took place in the context of and were associated with the non-international armed conflict in Ituri.

**5. Findings of the Chamber on the mental elements for indirect co-perpetration**

1169. Having found that the material elements of the specific crimes charged were met, the Chamber will analyse subsequently, taking into account the relevant provisions of the Statute and the Elements of Crimes, notably Article 30 of the Statute, the following mental elements:

- a. in respect of crimes against humanity, whether Mr Ntaganda knew that his relevant conduct was part of, or intended it to be part of, a widespread or systematic attack directed against a civilian population and, in respect of war crimes, whether Mr Ntaganda was aware of the

factual circumstances that established the existence of an armed conflict;

- b. whether Mr Ntaganda meant to engage in the relevant conduct;
- c. for each of the crimes charged, whether Mr Ntaganda meant to cause the relevant conduct and/or consequence, or was aware that, in relation to a consequence, it would occur in the ordinary course of events; and
- d. any further requirement of knowledge or intent under the definitions of the crimes, read in conjunction with Article 30 of the Statute.

**a) Knowledge of the attack**

1170. The underlying acts of each crime against humanity must be committed ‘with knowledge of the attack’.<sup>3189</sup> However, it need not be proven that the perpetrator had knowledge of all of the characteristics of the attack or was aware of the precise details of the plan or policy of the State or organisation.<sup>3190</sup> This requirement will be satisfied if it is shown that the perpetrator was aware of the circumstances that established the widespread or systematic attack against a civilian population, for example, by being aware of repeated or coordinated violence against a certain civilian population that was not spontaneous or unintended. He or she then only needs to have intended to further such an attack.<sup>3191</sup>

1171. Noting Mr Ntaganda’s position within the UPC/FPLC, his presence in the relevant area at the beginning of the First Operation, as well as his personal conduct,<sup>3192</sup> notably the specific orders he conveyed to UPC/FPLC soldiers, the Chamber concludes beyond reasonable doubt that he intended the acts of killings,

<sup>3189</sup> Article 7(1) of the Statute.

<sup>3190</sup> See also Elements of Crimes, Introduction to Article 7, para. 2.

<sup>3191</sup> Elements of Crimes, Introduction to Article 7, para. 2.

<sup>3192</sup> See section V.C.3.c) Contribution of Mr Ntaganda.

rapes, sexual slavery, forcible transfer, and persecution, perpetrated by the UPC/FPLC soldiers to be part of the widespread and systematic attack against the civilian population.

**b) Knowledge of the armed conflict**

1172. The perpetrator need not have made a legal evaluation whether an international or non-international armed conflict existed, or have realised that the situation qualified as either of the two,<sup>3193</sup> but he or she must have been aware of the factual circumstances that established the existence of the armed conflict.<sup>3194</sup> In light of the charges in the present case, Mr Ntaganda must therefore have had sufficient awareness of the factors that indicated the existence of fighting of a certain level of intensity between at least two organised entities.

1173. On the basis of all the information available to him at the time, and considering his role and position within the UPC/FPLC, an organised armed group taking part in the non-international armed conflict, as well as his personal conduct as described above,<sup>3195</sup> the Chamber concludes beyond reasonable doubt that, from 6 August 2002 until at least 31 December 2003, Mr Ntaganda was aware of the factual circumstances that established the existence of an armed conflict.

**c) Intent in relation to personal conduct**

1174. As concerns the determination of whether Mr Ntaganda meant to engage in the relevant conduct, the Chamber notes first that the present analysis concerns his liability as an indirect co-perpetrator. Accordingly, Mr Ntaganda need not

<sup>3193</sup> Elements of Crimes, Introduction to Article 8 ('There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international'); *see also Bemba Trial Judgment*, para. 146.

<sup>3194</sup> Elements of Crimes, Introduction to Article 8 ('There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms "took place in the context of and was associated with"') and Articles 8(2)(c)(i)-(iv) and (e)(i)-(xv).

<sup>3195</sup> *See* section V.C.3.c) Contribution of Mr Ntaganda.

personally have executed the material elements of the crimes. Rather, Mr Ntaganda's conduct engaging his individual criminal responsibility is that identified above as his essential contribution to the crimes in the execution of the common plan.<sup>3196</sup>

1175. The Chamber notes that it is not, as such, contested that Mr Ntaganda deliberately participated in UPC/FPLC activities throughout and beyond the period of the charges, or that he had high-level status within its military branch at the time. The Chamber notably observes that he discussed at length during his testimony his responsibilities and related actions, notably in relation to the UPC/FPLC training efforts, the setting up of a company of bodyguards for himself, and the First Operation. The Chamber finds that the only reasonable conclusion, based on the nature of these activities, is that his related conduct was deliberate. Accordingly, the Chamber finds that the requirement that Mr Ntaganda meant to engage in his relevant conduct is met.

**d) Intent and knowledge for each of the crimes charged**

1176. In the present section, with respect to each of the crimes charged, the Chamber will assess whether Mr Ntaganda meant to cause the relevant conducts and/or consequences or was aware that, in relation to the consequences, they would occur in the ordinary course of events. The Chamber will conduct its assessment first for the crimes committed during the course of the First and Second Operation, most of which were perpetrated targeting the Lendu civilians, and second for the crimes committed against children under 15 years of age who had been mobilised in the UPC/FPLC ranks.

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<sup>3196</sup> See section V.C.3.c) Contribution of Mr Ntaganda.

**(1) Crimes committed during the course of the First and Second Operation**

1177. As the Chamber found, Mr Ntaganda agreed and worked with others to achieve their plan to drive out all the Lendu from the localities targeted during the course of the First and Second Operation.<sup>3197</sup> It was found that the execution of this agreement inherently involved the conduct that constitutes the crimes under consideration.<sup>3198</sup>

1178. As a matter of fact, crimes were committed several times by UPC/FPLC soldiers during and in the aftermath of the military assaults. They followed a certain *modus operandi*.<sup>3199</sup> In the Chamber's view, the repetition of these acts over time is a circumstantial factor to be considered when assessing the state of mind of Mr Ntaganda.

1179. Moreover, the Chamber found that Mr Ntaganda was, with Floribert Kisembo, the highest ranked leader of the FPLC, and acted as the overall commander for the Mongbwalu assault.<sup>3200</sup> He indicated himself that he did not have problems exercising his role.<sup>3201</sup> He knew and ensured that UPC/FPLC troops would be obedient, and did not hesitate to remind them that they were expected to execute orders, as he did on 18 February 2003 in the context of the Second Operation.<sup>3202</sup> Given his position, the Chamber considers that Mr Ntaganda was fully informed of the training and composition of the troops to be deployed, including the troops of Jérôme Kakwavu who had at that time been recently incorporated within UPC/FPLC ranks.<sup>3203</sup> Prior to the launching of the Second Operation,

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<sup>3197</sup> See para. 808 to 810.

<sup>3198</sup> See para. 809.

<sup>3199</sup> See para. 688.

<sup>3200</sup> See para. 491.

<sup>3201</sup> See para. 322.

<sup>3202</sup> See para. 565.

<sup>3203</sup> See paras 479 to 482.

Mr Ntaganda announced an important reorganisation concerning the assignment of commanders, some of which would participate in this operation.<sup>3204</sup>

1180. The Chamber considers that Mr Ntaganda's presence, actions, and directives illustrates how he intended the troops to behave in the field, notably in the context of the First Operation. It was established that he arrived in Mongbwalu once the assault had already commenced, but before the UPC/FPLC assault on Sayo began, and that he remained in the area, when the *ratissage* operation was ongoing, until at least one week after the UPC/FPLC had taken over Mongbwalu.<sup>3205</sup>

1181. The Chamber notes that, the night before leaving Bunia for the First Operation, Mr Ntaganda spoke to some UPC/FPLC troops, telling them that they were going to Mongbwalu to fight against the Lendu. He ordered them attack using the term '*kupiga na kuchaji*'.<sup>3206</sup> Further, on the ground, Mr Ntaganda again ordered the UPC/FPLC soldiers to attack 'the Lendu', without making a difference between 'Lendu civilians' and the militia.<sup>3207</sup> On this occasion, he congratulated them for the operation that had been carried out so far.<sup>3208</sup>

1182. He gave orders, either in person or over the radio, to fire the heavy weapons, and decided which objects were to be targeted.<sup>3209</sup> More specifically, during the Sayo assault, Mr Ntaganda ordered one of Salumu Mulenda's men to fire with a grenade launcher at the slope of the mountain where men and women wearing civilian clothing were walking in a single file; these individuals were clearly not taking any part in hostilities when they were attacked.<sup>3210</sup> On the basis of the circumstances at the time,<sup>3211</sup> Mr Ntaganda necessarily knew that these persons

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<sup>3204</sup> See para. 329.

<sup>3205</sup> See para. 489.

<sup>3206</sup> See para. 484. See also para. 415.

<sup>3207</sup> See para. 493.

<sup>3208</sup> See para. 499.

<sup>3209</sup> See para. 491.

<sup>3210</sup> See para. 508.

<sup>3211</sup> See para. 508.

could not be legitimately targeted and were entitled to protection as civilians under IHL.

1183. With regard to the appropriation of goods by soldiers, the Chamber notes that the looting of Lendu property was not considered to be a punishable offence by Mr Ntaganda's subordinates.<sup>3212</sup> Importantly, the Chamber found that some goods looted from Mongbwalu were actually brought to Mr Ntaganda's residence in Bunia.<sup>3213</sup> Accordingly, the Chamber considers that Mr Ntaganda meant for the looted property to be appropriated for private or personal use and finds that he knew that the appropriation had been carried out without the consent of the owner of these items.

1184. Furthermore, murders and rapes committed in Mongbwalu occurred at the *Appartements* camp,<sup>3214</sup> Mr Ntaganda's base.<sup>3215</sup> In one specific instance, two persons who had been detained at this location were beaten and killed upon specific order of Mr Ntaganda.<sup>3216</sup> At the *Appartements*, Mr Ntaganda also shot and killed *Abbé* Bwanalonga, a Lendu civilian of an advanced age who was detained.<sup>3217</sup> In addition, Mr Ntaganda was present and aware that civilian women were brought to the *Appartements* camp by UPC/FPLC soldiers and commanders in Mongbwalu; these women were raped in the camp, and then thrown out, to be replaced by other women.<sup>3218</sup>

1185. The Chamber also notes that, after the conclusion of the Second Operation, in Bunia, Mr Ntaganda had a conversation with the G2 about the fact that UPC/FPLC soldiers killed civilians in Kobu under the command of Salumu Mulenda. Mr Ntaganda said that he was glad with how things had turned out

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<sup>3212</sup> See para. 332.

<sup>3213</sup> See para. 516.

<sup>3214</sup> See sections V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2), and V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5).

<sup>3215</sup> See para. 527.

<sup>3216</sup> See para. 528.

<sup>3217</sup> See para. 533.

<sup>3218</sup> See para. 535.

and also said that Salumu Mulenda was a 'gentleman', 'a brave, a fine person', or a 'real man'.<sup>3219</sup> The Chamber observes that, on this occasion, Mr Ntaganda approved the behaviour of Salumu Mulenda's troops during the 'Kobu massacre' in the context of the Second Operation.

1186. In the Chamber's view, the above demonstrates that Mr Ntaganda did not only consider RCD-K/ML and APC to be the enemies of the UPC/FPLC, but also the Lendu. In giving orders for troops to attack using the term '*kupiga na kuchaji*', Mr Ntaganda necessarily meant for his subordinates to attack everyone and everything, targeting Lendu civilians and their property specifically. Rapes and murders were committed in the *Appartements*, which was his base during the First Operation. He was personally involved in some of them.

1187. For the Chamber, all this demonstrates that Mr Ntaganda willingly sent his troops to attack and kill Lendu civilians, to engage in sexual violence against this population, and to loot and destroy their belongings during the First Operation. By way of these acts, Mr Ntaganda also intended for civilians to be chased out of the assaulted localities. Noting that the criminal acts performed by UPC/FPLC troops during the First Operation were reproduced during the course of the Second Operation, which culminated in particularly violent events, *i.e.* the 'Kobu massacre', and having found that Mr Ntaganda approved of the behaviour of the troops in this context, the Chamber considers that he intended the troops to continue with the same criminal conduct during the course of the Second Operation.

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<sup>3219</sup> See para. 638.



1188. On the basis of the above, the Chamber concludes beyond reasonable doubt that, in relation to the First and Second Operation, Mr Ntaganda:

- meant for UPC/FPLC soldiers to aim at and to kill individuals protected under IHL, most notably civilians not taking part in hostilities and persons *hors de combat*;
- meant for the UPC/FPLC soldiers to appropriate goods for personal or private use; and was aware that the looting occurred without the consent of the owner of these items;
- meant to order the displacement of the local civilians not for their own security and, in line with this order, for the UPC/FPLC soldiers to displace inhabitants; and was aware of the factual circumstances that established the displaced individuals' lawful presence in the area, and therefore knew that his order was not justified by military necessity;
- meant for UPC/FPLC soldiers to rape local inhabitants; and was aware that the relevant coercive circumstances for the crimes of rape and sexual slavery were being taken advantage of;
- meant for the UPC/FPLC soldiers to indiscriminately attack structures in the villages against which assaults were launched, and to direct attacks at, and destroy houses in these villages, and a protected object in Sayo; and knew that civilian houses and medical facilities are under IHL protected against attack, so long as they remain civilian in nature, and protected against destruction when such destruction is not required by military necessity; and

- meant for the Lendu ethnic group as such to be targeted by way of the UPC/FPLC soldiers acts constitutive of [rape / killing/....

1189. In sum, the Chamber concludes beyond reasonable doubt that Mr Ntaganda meant for the troops deployed during the First and Second Operation to engage in the conducts and cause the consequences required for the commission of crimes of murder as a crime against humanity and as a war crime (Counts 1 and 2), intentionally attacking civilians as a war crime (Count 3), rape as a crime against humanity and as a war crime (Counts 4 and 5), sexual slavery as a crime against humanity and as a war crime (Counts 7 and 8), persecution as a crime against humanity (Count 10), pillage as a war crime (Count 11), forcible transfer of population as a crime against humanity (Count 12), ordering the displacement of the civilian population as a war crime (Count 13), attacking protected objects as a war crime (Count 17), and destroying the adversary's property as a war crime (Count 18), and was aware of the relevant circumstances.

## **(2) Crimes committed against children under 15**

1190. The Chamber found that Mr Ntaganda's personal escort included children under 15 years of age during the relevant period.<sup>3220</sup> The Chamber notably reached this finding on the basis of video images of three such children who it found to be 'manifestly' under 15 years of age.<sup>3221</sup>

1191. Mr Ntaganda was in the presence of and interacted with his escorts on a daily basis. As an escort, they guarded his residence and compound,<sup>3222</sup> and accompanied him on his travels<sup>3223</sup> and during his visits to training camps.<sup>3224</sup>

<sup>3220</sup> See section IV.A.3.c)(1)(b) Presence of individuals under the age of 15 within Mr Ntaganda's bodyguard.

<sup>3221</sup> See paras 387 to 388. On these occasions, the Chamber allowed for a 'large margin of error'.

<sup>3222</sup> See para. 393.

<sup>3223</sup> See para. 393.

<sup>3224</sup> See para. 394.

They also participated in combat operations with him.<sup>3225</sup> Still further, children under 15 years of age were trained as radio operators at his residence.<sup>3226</sup>

1192. Accordingly, taking into account that some of these children were ‘manifestly’ under 15 years of age, and given the frequency and proximity of their contacts, the Chamber finds that the only reasonable conclusion is that Mr Ntaganda knew that some of his escorts were below the age of 15 years and that, during this period, they were active members of the UPC/FPLC, ensuring his protection and participating in various military activities.

1193. As of June 2002, large scale recruitment drives were being conducted by the UPC/FPLC,<sup>3227</sup> a process in which Mr Ntaganda was involved.<sup>3228</sup> In this regard, the Chamber found that, on at least three occasions, Mr Ntaganda made calls for young people to join the UPC/FPLC ranks and follow military training.<sup>3229</sup> The relevant evidence shows that he addressed the population calling *everybody* to enrol, explicitly inviting individuals from all gender, age, or size to join.<sup>3230</sup> He also notably stated that parents and families should give their children to the group.<sup>3231</sup>

1194. In light of the above, the Chamber considers that Mr Ntaganda necessarily knew that the UPC/FPLC would recruit, train, and deploy children under 15 years of age in the context of its military campaign against the RCD-K/ML and the Lendu community.

1195. The Chamber also found that there was no difference in treatment between the various soldiers of the UPC/FPLC.<sup>3232</sup> From the moment they enrolled, notably during their training and their participation in hostilities, children under 15 years

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<sup>3225</sup> See para. 396.

<sup>3226</sup> See para. 371.

<sup>3227</sup> See para. 347.

<sup>3228</sup> See para. 355.

<sup>3229</sup> See para. 356 to 359.

<sup>3230</sup> See para. 359, referring to **P-0010**: T-47-FRA, page 51.

<sup>3231</sup> See paras 356 to 358.

<sup>3232</sup> See paras 362, 377, 392, and 414. See also para. 406.

of age did not receive a special treatment. They were threatened, punished, and suffered physical violence, the same as other recruits and soldiers.<sup>3233</sup> As such, the Chamber considers that no particular protection was given by the UPC/FPLC to its youngest members. Mr Ntaganda, as noted above, was aware of the conditions which ensured that UPC/FPLC troops would be obedient and execute any order.<sup>3234</sup> Notably, and with regard specifically to these children, Mr Ntaganda could not reasonably ignore their vulnerability and the fact that commanders, including him, were taking advantage of the coercive environment in which they were at the time. In this regard, the Chamber considers that Mr Ntaganda's own words when he visited the recruits at the training camps, indicating that they had to be 'well-treated', do not invalidate the finding that he knew of the particularly difficult environment the young recruits were in.<sup>3235</sup> As his words were not followed up by any actual action or better treatment of the recruits, the Chamber considers that his words must be understood as merely aimed at portraying himself as a commander who was concerned about the fate of his troops, rather than as indicating any real desire to modify the harsh disciplinary system and difficult living conditions in the camp.

1196. It is established that female members of the UPC/FPLC were regularly raped and subjected to sexual violence during their service and that this was common practice.<sup>3236</sup> The Chamber notably heard evidence regarding a pattern of daily sexual violence perpetrated by Claude Uzauakiliho against Mr Ntaganda's escorts,<sup>3237</sup> and found that Mr Ntaganda was among the commanders who inflicted rape on his female bodyguards.<sup>3238</sup> Sexual crimes were left largely

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<sup>3233</sup> See para. 376 to 377.

<sup>3234</sup> See para. 1179.

<sup>3235</sup> **P-0883**: T-168, pages 18 to 19.

<sup>3236</sup> See para. 407.

<sup>3237</sup> See para. 407.

<sup>3238</sup> See para. 407. The Chamber has previously ruled on the admissibility of evidence related to Mr Ntaganda's personal conduct amounting to acts of rape and/or sexual slavery (T-29, page 59; Decision 968; T-46, page 19). Notably, on 30 October 2015, the Chamber dismissed a Defence challenge seeking clarification that such evidence was not admissible. On this occasion, the Chamber indicated the following: 'It is undisputed that

unpunished, notably within his escort.<sup>3239</sup> The Chamber also received reliable evidence of sexual violence committed against child soldiers under the age of 15.<sup>3240</sup>

1197. In light of the above, particularly Mr Ntaganda's personal conduct, recalling that no particular protection was given to the UPC/FPLC youngest members, and given that this practice of sexual violence was generally known and discussed within the UPC/FPLC,<sup>3241</sup> the Chamber considers that the only reasonable conclusion is that Mr Ntaganda knew that rapes and sexual violence were occurring within the UPC/FPLC ranks, and that female recruits and soldiers under the age of 15 were not excluded from this practice.

1198. Accordingly, on the basis of all the above circumstances, the Chamber concludes beyond reasonable doubt that Mr Ntaganda meant for the UPC/FPLC soldiers and commanders to engage in the relevant conducts, and was aware that, in the ordinary course of events, and during the relevant period, in relation to the consequence, children under the age of 15 years would be enlisted, conscripted and used to participate actively in hostilities within the UPC/FPLC ranks (Counts 14 to 16) and that they would be raped and subjected to sexual slavery (Counts 6 and 9), and was aware of the relevant circumstances.

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Mr Ntaganda has not been charged as a direct perpetrator with the crimes of rape and sexual slavery. However, the Chamber finds unpersuasive the submission that evidence of the type challenged by the Defence does not have relevance to the confirmed charges. As indicated by the Presiding Judge in his oral ruling, there is a connection between this type of evidence and the charges. Indeed, the conduct of an accused, in particular during the temporal period of the charges, has sufficient potential relevance, including in relation to various modes of liability and to *mens rea* (Decision 968, para. 13). In line with this guidance, the Chamber found beyond reasonable doubt that Mr Ntaganda had forced sexual intercourses with many female members of his personal guard (*see above* para. 407). The Chamber notes that, notwithstanding the fact that this material does form a necessary part of the present case, Mr Ntaganda received full disclosure of the relevant material, prior to the start of the trial, and was thereby put on adequate notice of potential use of this evidence to support the charges brought against him, the Chamber finds it appropriate to rely on acts of rape performed by Mr Ntaganda on his personal bodyguards in its assessment of the mental elements required for his principal liability as an indirect co-perpetrator of the war crimes of rape and sexual slavery.

<sup>3239</sup> See paras 411 to 412. *See also* para. 332.

<sup>3240</sup> See paras 408 to 411.

<sup>3241</sup> See para. 407.

## D. CONCLUSION

1199. On the basis of all the findings reached in the present Judgment, the Chamber concludes that Mr Ntaganda is individually criminally responsible for the following crimes:

- Murder as a crime against humanity (Article 7(1)(a) of the Statute) and as a war crime (Article 8(2)(c)(i) of the Statute), as a direct perpetrator (Article 25(3)(a) of the Statute), of *Abbé Bwanalunga* in Mongbwalu during the First Operation, and murder and attempted murder as a crime against humanity (Article 7(1)(a) of the Statute) and as a war crime (Article 8(2)(c)(i) of the Statute) as an indirect co-perpetrator (Articles 25(3)(a) and 25(3)(f) of the Statute), in relation to the following killings and attempted killings committed by UPC/FPLC soldiers and – in relation to the killing of people in Mongbwalu during *ratissage* operations – also by Hema civilians:
  - the killing of a woman in front of the health centre in Sayo, in the context of the First Operation;
  - the killing of people in Mongbwalu and Sayo during *ratissage* operations, including a Lendu woman accused of being a ‘chieftain’ of the Lendu ‘combatants’ and persons killed at the *Appartements* camp following interrogation, in the context of the First Operation;
  - the killing of two Lendu persons in Nzebi, pursuant to Mr Ntaganda’s order, in the context of the First Operation;
  - the killing of Lendu person, Ngiti man and a pregnant Lendu woman who had been detained in a pit, and of a Nyali man in Kilo, in the context of the First Operation;

- the killing of two fleeing children in Kobu during the assault and the killing of people during the *ratissage* operation that followed, in the context of the Second Operation;
  - the killing of nine hospital patients in Bambu and the attempted killing of a tenth, in the context of the Second Operation;
  - the killing of a woman, while she tried to defend herself against rape, and of P-0018's sister-in-law in Sangi, in the context of the Second Operation;
  - the killing of at least 49 persons in a banana field near the Paradiso building in Kobu, in the context of the Second Operation;
  - the killings of some men who were raped by UPC/FPLC soldiers, in the context of the Second Operation; and
  - the attempted killing of P-0018, P-0019, P-0022, and P-0108, in the context of the First and Second Operation (Counts 1 and 2);
- Intentionally directing attacks against civilians as a war crime (Article 8(2)(e)(i) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu and Sayo, in the context of the First Operation; and in Bambu, Jitchu, and Buli, in the context of the Second Operation (Count 3);
- Rape as a crime against humanity (Article 7(1)(g) of the Statute) and as a war crime (Article 8(2)(e)(vi) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, of women and girls during and in the immediate aftermath of the UPC/FPLC assault on Mongbwalu, and of girls in Kilo, in the context of the First Operation; and of detained women and men in Kobu, of women in Sangi, and of P-0113 in Buli, in the context of the Second Operation (Counts 4 and 5);

- Sexual slavery as a crime against humanity (Article 7(1)(g) of the Statute) and as a war crime (Article 8(2)(e)(vi) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, of P-0113 and of an 11-year-old girl in Kobu and Buli, in the context of the Second Operation (Counts 7 and 8);
- Rape as a war crime (Article 8(2)(e)(vi) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in relation to Nadège, an approximately nine-year-old girl, at Camp Lingo (Count 6), and rape and sexual slavery of child soldiers as war crimes (Article 8(2)(e)(vi) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in relation to P-0883, a girl under 15 years of age, at Camp Bule, and Mave, a girl under the age of 15 assigned to Floribert Kisembo (Counts 6 and 9);
- Persecution as a crime against humanity (Article 7(1)(h) of the Statute), as a direct perpetrator under Article 25(3)(a) of the Statute, by killing *Abbé Bwanalonga* in Mongbwalu, in the context of the First Operation; and, as an indirect co-perpetrator (Article 25(3)(a) of the Statute), in Mongbwalu, Nzebi, Sayo, and Kilo, in the context of the First Operation; and in Nyangaray, Lipri, Tsili, Kobu, Bambu, Sangi, Gola, Jitchu, and Buli, in the context of the Second Operation (Count 10);
- Pillage as a war crime (Article 8(2)(e)(v) of the Statute), as an indirect co-perpetrator (Article 25(3)(a) of the Statute), in relation to the looting of items in Mongbwalu and Sayo by UPC/FPLC soldiers and in the case of Mongbwalu – also by Hema civilians – in the context of the First



Operation; and in Kobu, Lipri, Bambu, and Jitchu, by UPC/FPLC soldiers, in the context of the Second Operation (Count 11)

- Forcible transfer and deportation as a crime against humanity (Article 7(1)(d) of the Statute) and ordering the displacement of the civilian population as a war crime (Article 8(2)(e)(viii) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu, in the context of the First Operation; and in Lipri, Tsili, Kobu, and Bambu, in the context of the Second Operation (Counts 12 and 13);
- Conscripting and enlisting children under the age of 15 years into an armed group between on or about 6 August 2002 and 31 December 2003, and using them to participate actively in hostilities between on or about 6 August 2002 and 30 May 2003, with respect to the participation of children under the age of 15 in the First Operation and in the UPC/FPLC assault on Bunia in May 2003; the use of children under the age of 15 as bodyguards for UPC/FPLC soldiers and commanders, including for Mr Ntaganda himself, and for UPC President Thomas Lubanga; and the use of children under the age of 15 to gather information about the opposing forces and MONUC personnel as war crimes (Article 8(2)(e)(vii) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute (Counts 14, 15, and 16);
- Intentionally directing attacks against protected objects as a war crime (Article 8(2)(e)(iv) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, against the health centre in Sayo, in the context of the First Operation (Count 17); and

- Destroying the adversary's property as a war crime (Article 8(2)(e)(xii) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu and Sayo, in the context of the First Operation; and in Lipri, Tsili, Kobu, Jitchu, Buli, and Sangi, in the context of the Second Operation (Count 18).

1200. While the Chamber considers that a person's conduct may be capable of satisfying elements of one or more modes of liability<sup>3242</sup> it does not find it appropriate or necessary, having found Mr Ntaganda's principal liability to have been established for each of the counts charges, to reach any further finding on the remaining liability alternatives.

1201. As explained in the above sections of the Judgment, the Chamber has not found proven all the facts alleged by the Prosecution in the charges, or has found that certain established facts cannot be legally characterised as crimes under the Statute. Accordingly, Mr Ntaganda is only found guilty for those facts established beyond reasonable doubt by this Chamber above.

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<sup>3242</sup> See *Al Mahdi* Trial Judgment, para. 59; *Bemba* Trial Judgment, para. 174; and *Lubanga* Trial Judgment, Minority Opinion of Judge Fulford, para. 7.

## VI. CUMULATIVE CONVICTIONS

1202. The Chamber agrees with trial chambers at this Court that cumulative convictions are permissible under the Court's framework.<sup>3243</sup> The Chamber can enter multiple convictions under different provisions of the Statute for the same conduct only if each statutory provision at stake has a 'materially distinct' element not contained in the other, *i.e.* an element which requires proof of a fact not required by the other.<sup>3244</sup> It is the legal elements of each statutory provision and not the acts and/or omissions of the accused that must be considered when applying the aforementioned test.<sup>3245</sup> Further, for the purpose of this determination, all elements, including the contextual elements, should be taken into account.<sup>3246</sup> Where the offences are not materially distinct, only a conviction under the more specific provision should be entered as the more specific offence subsumes the less specific one.<sup>3247</sup> Such a test ensures that an accused is convicted only for distinct offences and, at the same time, that the convictions entered fully reflect his or her criminality.<sup>3248</sup> However, where the same conduct underlies

<sup>3243</sup> See *Bemba et al.* Trial Judgment, paras 950 to 954; *Bemba* Trial Judgment, paras 743 to 751; and *Katanga* Judgment, paras 1692 to 1696.

<sup>3244</sup> *Bemba et al.* Trial Judgment, para. 951; *Bemba* Trial Judgment, paras 747 to 748, referring with approval to, *inter alia*, ICTY, *Delalić et al.* Appeal Judgment, paras 412 to 413 and 421; *Kunarac et al.*, Appeal Judgment, paras 170 and 173; ICTR, *Musema* Appeal Judgment, para. 363; ICTR, *Karemera and Ngirumpatse* Appeal Judgment, paras 610 and 710; SCSL, *Sesay et al.* Appeal Judgment, paras 1190 to 1191; SCSL, *Taylor* Appeal Judgment, para. 577; and ECCC, *Kaing alias Duch* Appeal Judgment, paras 285 to 300; and *Katanga* Judgment, para. 1695, referring with approval to, *inter alia*, *Kordić and Cerkez* Appeal Judgment, para. 1032. See also ECtHR, *Zolotukhin v. Russia* Judgment, paras 82 to 84, and 94. The Appeals Chamber found that Trial Chamber VI's reliance on this test in the *Bemba et al.* case was not erroneous, see *Bemba et al.* Appeal Judgment, para. 750.

<sup>3245</sup> *Bemba et al.* Trial Judgment, para. 951; and *Bemba* Trial Judgment, para. 747, referring to ICTY, *Jelisić* Appeal Judgment, para. 82; ICTY, *Kordić and Cerkez* Appeal Judgment, para. 1033; and ICTY, *Đorđević* Appeal Judgment, para. 839.

<sup>3246</sup> See *Bemba* Trial Judgment, paras 749 to 750; *Katanga* Judgment, para. 1696; ICTY, *Jelisić* Appeal Judgment, para. 82; and ICTR, *Rutaganda* Appeal Judgment, paras 583 to 584.

<sup>3247</sup> *Bemba* Trial Judgment, para. 747, referring to ICTY, *Delalić et al.* Appeal Judgment, para. 413; ICTY, *Kunarac et al.* Appeal Judgment, para. 170; and ICTY, *Đorđević* Appeal Judgment, para. 839.

<sup>3248</sup> *Bemba* Trial Judgment, para. 748, referring to ICTY, *Kordić and Cerkez* Appeal Judgment, para. 1033; and ECCC, *Kaing alias Duch* Appeal Judgment, paras 296, 298, and 330; ICTY, *Kunarac et al.* Appeal Judgment, para. 169, and SCSL, *Brima et al.* Appeal Judgment, para. 215; ICTY, *Kordić and Cerkez* Appeal Judgment, para. 1033; and ECCC, *Kaing Guek Eav alias Duch* Appeal Judgment, paras 296, 298, and 330.

multiple convictions, this ought to be taken into account at the sentencing stage.<sup>3249</sup>

1203. Turning to the specifics of the present case, the Chamber recalls that Mr Ntaganda is criminally responsible for murder as a crime against humanity and as a war crime, rape as a crime against humanity and as a war crime, and sexual slavery as a crime against humanity and as a war crime, based on the same underlying conduct. In this respect, the Chamber concurs with Trial Chamber II and III and the *ad hoc* tribunals that war crimes and crimes against humanity have materially distinct elements, each requiring proof of a fact not required by the other.<sup>3250</sup> The crime against humanity of murder requires the existence of a widespread or systematic attack against a civilian population and a nexus between the perpetrator's conduct and the attack, while the war crime of murder requires that the victim was either *hors de combat* or was not taking part in hostilities and that the conduct in question was connected to an armed conflict.<sup>3251</sup> Similarly, the war crime of rape and the crime against humanity of rape as well as the war crime of sexual slavery and the crime against humanity of sexual slavery are permissibly cumulative since these crimes against humanity require the existence of a widespread or systematic attack against a civilian population and a nexus between the perpetrator's conduct and the attack, while these war crimes require that the conduct in question was connected to an armed conflict. The Chamber thus finds that Mr Ntaganda's conviction for murder as a crime against humanity and as a war crime, rape as a crime against humanity and as a war crime, and sexual slavery as a crime against humanity and as a war crime, for the

<sup>3249</sup> *Bemba et al.* Trial Judgment, para. 956.

<sup>3250</sup> *Bemba* Trial Judgment, para. 750; *Katanga* Judgment, para. 1696; ICTY, *Jelisić* Appeal Judgment, para. 82; ICTY, *Kupreškic et al.* Appeal Judgment, paras 387 to 388; ICTY, *Kunarac et al.* Appeal Judgment, paras 168, 170, 173, 179, and 196; ICTY, *Vasiljević* Appeal Judgment, paras 144 to 146; ICTR, *Rutaganda* Appeal Judgment, paras 583 to 584; ICTR, *Ntagerura et al.* Appeal Judgment, paras 427 to 428; ICTY, *Galić* Appeal Judgment, para. 165; and ICTR, *Bagosora and Nsengiyumva* Appeal Judgment, para. 415.

<sup>3251</sup> See also *Katanga* Judgment, para. 1696.

same underlying conduct, is permissible, but will take into account for sentencing that the same conduct underlies several of the convictions.

1204. The Chamber further recalls that its findings on sexual slavery are, in part, based on the same underlying conduct as its findings of rape.<sup>3252</sup> In this respect, the Chamber notes that rape requires the invasion of the body of a person by conduct resulting in penetration, however slight, committed under certain specific circumstances, while the act(s) of a sexual nature required for the crimes of sexual slavery do not require penetration. Moreover, the crimes of sexual slavery require that the perpetrator exercised any or all of the powers attaching to the right of ownership over the victim; an element not required for the crime of rape to have been committed. Convicting for rape as a war crime and as a crime against humanity and for sexual slavery as a war crime and as a crime against humanity, when based on the same underlying conduct, is therefore legally permissible.

1205. However, the Chamber is mindful of the Appeals Chamber's consideration that a bar to multiple convictions could also arise in situations where the same conduct fulfils the elements of two offences, even if these offences have different legal elements, such as where one offence is fully consumed by the other offence or is viewed as subsidiary to it.<sup>3253</sup> In this regard, the Chamber recalls that its findings on the second legal element of sexual slavery, both as a crime against humanity and as a war crime, are based on its findings that the victims concerned had been subjected to rape by members of the UPC/FPLC. For the purpose of sentencing, the Chamber will thus take into account that some of the conduct underlying the convictions for rape and sexual slavery is the same.

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<sup>3252</sup> See sections V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5), V.C.4.d) Sexual slavery as a crime against humanity and as a war crime (Counts 7 and 8), and V.C.4.e) Rape as a war crime and sexual slavery as a war crime (Counts 6 and 9).

<sup>3253</sup> *Bemba et al.* Appeal Judgment, para. 751.

1206. The Chamber further recalls that, with respect to persecution as crime against humanity, the underlying acts of this crime are also underlying Counts 1 to 5, 7 to 8, 11 to 13, and 17 to 18. As for persecution and the war crimes underlying it, the Chamber recalls that, as noted above, their contextual elements differ. In addition, persecution requires the targeting of a person on the basis of discriminatory grounds. This materially distinct element also sets persecution apart from the underlying crimes against humanity.<sup>3254</sup> Convicting for persecution as a crime against humanity and murder, intentionally attacking civilians, rape, sexual slavery, pillage, forcible transfer of population, ordering the displacement of the civilian population, intentionally directing attacks against protected buildings, and destruction of the property of an adversary, when based on the same underlying conduct, is therefore legally permissible. However, the Chamber will take into account that the conduct which underlies the convictions for persecution and the crimes underlying Counts 1 to 5, 7 to 8, 11 to 13, and 17 to 18 is the same and took place pursuant to a common plan and organisational policy that also contained a discriminatory element.

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<sup>3254</sup> The ICTY Appeals Chamber similarly held that convictions for persecution as a crime against humanity are permissibly cumulative with convictions for other crimes against humanity, *see e.g. Naletilić Appeal Judgment*, para. 589; and *Kordić and Čerkez Appeal Judgment*, paras 1039 to 1043.

## VII. DISPOSITION

For the foregoing reasons and pursuant to Article 74(2) of the Statute, the Chamber finds Mr Ntaganda:

*as concerns Count 1,*

**GUILTY** of murder as a crime against humanity (Article 7(1)(a) of the Statute), as a direct perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu, in the context of the First Operation; and of murder and attempted murder as a crime against humanity (Article 7(1)(a) of the Statute), as an indirect co-perpetrator under Articles 25(3)(a) and 25(3)(f) of the Statute, in Mongbwalu, Nzebi, Sayo, and Kilo, in the context of the First Operation, and in Kobu, Sangi, and Bambu, in the context of the Second Operation;

*as concerns Count 2,*

**GUILTY** of murder as a war crime (Article 8(2)(c)(i) of the Statute), as a direct perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu, in the context of the First Operation; and of murder and attempted murder as a war crime (Article 8(2)(c)(i) of the Statute), as an indirect co-perpetrator under Articles 25(3)(a) and 25(3)(f) of the Statute, in Mongbwalu, Nzebi, Sayo, and Kilo, in the context of the First Operation, and in Kobu, Sangi, and Bambu, in the context of the Second Operation;

*as concerns Count 3,*

**GUILTY** of intentionally directing attacks against civilians as a war crime (Article 8(2)(e)(i) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the

Statute, in Mongbwalu and Sayo, in the context of the First Operation, and in Bambu, Jitchu, and Buli, in the context of the Second Operation;

*as concerns Count 4,*

**GUILTY** of rape as a crime against humanity (Article 7(1)(g) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu and Kilo, in the context of the First Operation, and in Kobu, Sangi, and Buli, in the context of the Second Operation;

*as concerns Counts 5 and 6,*

**GUILTY** of rape as a war crime (Article 8(2)(e)(vi) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu and Kilo, in the context of the First Operation, and in Kobu, Sangi, and Buli, in the context of the Second Operation; and against children under the age of 15 years incorporated into the UPC/FPLC between on or about 6 August 2002 and 31 December 2003, in Ituri;

*as concerns Count 7,*

**GUILTY** of sexual slavery as a crime against humanity (Article 7(1)(g) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Kobu and Buli, in the context of the Second Operation;

*as concerns Counts 8 and 9,*

**GUILTY** of sexual slavery as a war crime (Article 8(2)(e)(vi) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Kobu and Buli, in the context of the Second Operation; and against children under the age of 15 years



incorporated into the UPC/FPLC between on or about 6 August 2002 and 31 December 2003, in Ituri;

*as concerns Count 10,*

**GUILTY** of persecution as a crime against humanity (Article 7(1)(h) of the Statute), as a direct perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu, in the context of the First Operation; and, as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu, Nzebi, Sayo, and Kilo, in the context of the First Operation, and in Nyangaray, Lipri, Tsili, Kobu, Bambu, Sangi, Gola, Jitchu, and Buli, in the context of the Second Operation;

*as concerns Count 11,*

**GUILTY** of pillage as a war crime (Article 8(2)(e)(v) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu and Sayo, in the context of the First Operation, and in Kobu, Lipri, Bambu, and Jitchu, in the context of the Second Operation;

*as concerns Count 12,*

**GUILTY** of forcible transfer of population as a crime against humanity (Article 7(1)(d) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu, in the context of the First Operation, and in Lipri, Tsili, Kobu, and Bambu, in the context of the Second Operation;

*as concerns Count 13,*

**GUILTY** of ordering the displacement of the civilian population as a war crime (Article 8(2)(e)(viii) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu, in the context of the First Operation, and in Lipri, Tsili, Kobu, and Bambu, in the context of the Second Operation;

*as concerns Counts 14, 15, and 16,*

**GUILTY** of conscripting and enlisting children under the age of 15 years into an armed group between on or about 6 August 2002 and 31 December 2003, and using them to participate actively in hostilities between on or about 6 August 2002 and on or about 30 May 2003 as war crimes (Article 8(2)(e)(vii) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute;

*as concerns Count 17,*

**GUILTY** of intentionally directing attacks against protected objects as a war crime (Article 8(2)(e)(iv) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Sayo, in the context of the First Operation; and

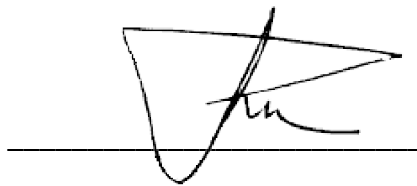
*as concerns Count 18,*

**GUILTY** of destroying the adversary's property as a war crime (Article 8(2)(e)(xii) of the Statute), as an indirect co-perpetrator under Article 25(3)(a) of the Statute, in Mongbwalu and Sayo, in the context of the First Operation, and in Lipri, Tsili, Kobu, Jitchu, Buli, and Sangi, in the context of the Second Operation.

Consequently, Mr Ntaganda shall remain in detention until such time as the Chamber has determined his sentence and rendered a sentencing judgment pursuant to Article 76 of the Statute. The Chamber will request submissions from the parties and participants, and hold separate hearings, on matters related to sentencing and reparations.

Pursuant to Article 81 of the Statute and Rule 150 of the Rules, Mr Ntaganda and the Prosecution may appeal the present Judgment within 30 days.

Done in English. A French translation will be prepared, but the English version remains authoritative.



**Judge Robert Fremr, Presiding Judge**



**Judge Kuniko Ozaki**



**Judge Chang-ho Chung**

Dated 8 July 2019

At The Hague, The Netherlands