

1 International Criminal Court

2 Pre-Trial Chamber II - Courtroom 1

3 Situation: Democratic Republic of the Congo

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

5 Presiding Judge Ekaterina Trendafilova, Judge Kaul and Judge Tarfusser

6 Confirmation of Charges Hearing

7 Wednesday, 12 February 2014

8 (The hearing starts in open session at 9.30 a.m.)

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 PRESIDING JUDGE TRENDAFILOVA: Good morning to everyone who is in the

12 courtroom. I welcome. Please be seated.

13 I welcome Mr Ntaganda and his Defence team, the team of the Prosecutor, the legal

14 representatives and the interpreters of course, with our thankfulness for all the

15 assistance that they provide in order to be able to do our job, the court reporters, the

16 stenographers, the security officers and those who are in the public gallery.

17 Court officer, would you please call the case.

18 THE COURT OFFICER: Thank you, Madam President. The situation in the

19 Democratic Republic of the Congo, in the case of the Prosecutor against Bosco

20 Ntaganda, ICC-01/04-02/06.

21 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, court officer.

22 Following our schedule, we proceed with the presentation of the Prosecutor on the

23 modes of liability. Please, Ms Luping, the floor is over to you.

24 MS LUPING: Thank you, Madam President, your Honours. I'll be continuing my

25 presentation in relation to the subjective elements in the context of direct and

1 indirect co-perpetration under Article 25(3)a). If the court officer could please

2 ensure that we can have access to the system for visual aid purposes?

3 Your Honours, the Prosecution submits that there are substantial grounds to believe

4 that Bosco Ntaganda and his co-perpetrators were mutually aware and accepted that

5 implementing the common plan would result in the realisation of the objective

6 elements of the crimes, or alternatively were aware that the crimes would be

7 committed in the ordinary course of events.

8 There are substantial grounds to believe that Bosco Ntaganda and others planned

9 and prepared to use violent means to expel the non-Hema civilian population from

10 the predominantly non-Hema civilian areas in Ituri and to assume military, political

11 and economic domination of Ituri. There are also substantial grounds to believe

12 that Bosco Ntaganda was aware that the common plan involved an element of

13 criminality.

14 Bosco Ntaganda's intent and/or knowledge is established from the following eleven

15 facts, as established on substantial grounds to believe, including by evidence

16 presented by the Prosecution over the last two days.

17 First, Bosco Ntaganda and his co-perpetrators adopted the common plan. This can

18 be inferred, for example, by the concerted action of the co-perpetrators in planning

19 and co-ordinating the assaults against the non-Hema civilian population, as well as

20 various statements - including those made by Bosco Ntaganda himself - regarding

21 the aims of ousting Lendu and non-originares, as well as their supporting armies;

22 namely the RCD-K/ML, APC and the Lendu and Ngiti militia from their areas.

23 Secondly, his intent and knowledge can be inferred from the fact that he knew that

24 his co-perpetrators, some of whom also exercised command, authority and control

25 over the UPC forces, espoused the common plan. This can be inferred, for instance,

1 by their respective contributions to the common plan.

2 Third, his intent and knowledge can be inferred from the fact that he knew about the  
3 roles that his co-perpetrators were assigned within the common plan and the means  
4 that they had at their disposal to implement it.

5 As previously described, the various contributions of the co-perpetrators included  
6 establishing training camps; recruitment of young persons, including children under  
7 the age of 15; securing logistical support, including weapons, ammunition, uniform  
8 -- uniforms, food, as well as finances. In addition, planning as well as leading of  
9 operations.

10 In terms of the respective roles of the co-perpetrators, first Thomas Lubanga. As  
11 president and commander-in-chief, Thomas Lubanga had an overall co-ordinating  
12 role within the UPC and was involved in planning military operations. He  
13 provided logistical support, including weapons, ammunition, food and finances, and  
14 he assisted in the recruitment and use of child soldiers.

15 His role as president and commander-in-chief is evidenced for example by the  
16 various UPC founding documents and evidence of key military insiders, including  
17 for instance senior military commander Witness P-16.

18 UPC political insider, Witness P-41, describes how Thomas Lubanga had a role in  
19 providing finances for the organisation. Witness P-55 provides evidence of Thomas  
20 Lubanga's role more generally in providing logistical support, including in the  
21 provision of weapons.

22 Witnesses P-55, UN child protection officer P-46 and military insider P-16 all provide  
23 evidence of Thomas Lubanga's role in the recruitment and use of young persons  
24 within the UPC forces.

25 Floribert Kisembo, the chief of staff of the UPC/FPLC, his role as a co-perpetrator

1 included his involvement in the planning and in participating in their military  
2 operations and assaults, as well as in the recruitment and use of child soldiers.  
3 UPC military insiders P-55, as well as P-17, describe Floribert Kisembo's  
4 involvement in key military assaults, including the assault on the Walendu-Djatsi  
5 collectivité.  
6 UPC military insider P-17 further describes Floribert Kisembo's role in the  
7 recruitment and use of child soldiers.  
8 Bosco Ntaganda's role, his contributions to the common plan, have already been  
9 described, but in sum he was in charge of military operations, including the  
10 planning, troop deployment, actual participation in the various military assaults,  
11 provision and supply of weapons and ammunition, as well as the recruitment,  
12 training and use of child soldiers.  
13 Chef Kahwa was the customary chief of Mandro. He was also involved in  
14 recruitment. He assisted in the establishment of the UPC military camp at Mandro  
15 and in the overseeing of the training of recruits at the camp, as well as in securing  
16 weapons and ammunition for the FPLC forces.  
17 PUSIC political insider P-12 describes in some detail Chef Kahwa's role in the  
18 provision in particular of weapons for the FPLC forces. Military insider P-38  
19 further describes Chef Kahwa's role in the training at the military camp in Mandro,  
20 as well as his role in the recruitment drive for additional troops for the FPLC.  
21 Rafiki was a co-founder of the UPC and primarily he was responsible for security,  
22 for civilians - Hema civilians, that is - as well as for the president, Thomas Lubanga.  
23 His role as a co-founder of the UPC is demonstrated for example by one of the key  
24 UPC founding documents. His responsibility for security, in particular for Hema  
25 civilians and Thomas Lubanga, is evidenced for example by Witness P-55.

1 His association with the co-perpetrators is further evidenced by the 2003 Rwampara  
2 video in which he features along with his other co-perpetrators. He also appears in  
3 the group photograph that was taken as shown to your Honours by my colleague,  
4 Ms Samson.

5 The other co-perpetrators included key military commanders, such as Tchaligonza,  
6 Bagonza and Kasangaki, who were part of those key commanders in charge of  
7 actually leading the UPC forces during the assaults on the non-Hema civilian  
8 population. The role of these key military commanders is evidenced for example by  
9 Witness P-55.

10 The fourth factor evidencing Bosco Ntaganda's intent and knowledge is the fact that  
11 he met frequently with his co-perpetrators to discuss as well as to co-ordinate the  
12 implementation of the common plan.

13 Fifth, the fact that he gave instructions to his subordinates to implement the common  
14 plan.

15 Sixth, that he provided weapons and troops, including for the two assaults on  
16 Banyali-Kilo and Walendu-Djatsi collectivités.

17 Seventh, the fact that during those assaults he was remaining in very close and direct  
18 contact with the UPC forces involved.

19 Eighth, his direct participation for example in the assault on Banyali-Kilo collectivité.

20 Ninth, the fact that he was aware of the contribution that other members of the  
21 common plan provided towards its implementation.

22 Tenth, the fact that as the deputy chief of staff in charge of operations he was briefed  
23 by his subordinates, as well as other co-perpetrators, about the situation on the  
24 ground in the course of the assaults.

25 And, finally, Bosco Ntaganda's intent and knowledge is evidenced by the fact that he

1 knew about the crimes being committed both by UPC forces, as well as supporting  
2 Hema civilians under his command.

3 Turning to the co-perpetrators, the Prosecution submits that the co-perpetrators'  
4 intent and knowledge is established on substantial grounds to believe, including by  
5 the evidence as presented during this hearing, by the following five factors:

6 First, the co-perpetrators' adoption of the common plan;  
7 second, their knowledge that Bosco Ntaganda had also adopted the common plan;  
8 third, the co-perpetrators' attendance at meetings, together with Bosco Ntaganda or  
9 other co-perpetrators, to discuss and co-ordinate the implementation of the common  
10 plan;  
11 fourth, their awareness of the means and authority at their disposal to implement the  
12 common plan; and finally by their respective individual contributions to the  
13 implementation of the common plan, including by the recruitment, the arming, the  
14 financing, the co-ordinating and the instructing of the direct perpetrators.

15 Your Honours, the Prosecution submits that there are substantial grounds to believe  
16 that Bosco Ntaganda was aware of the factual circumstances that enabled him to  
17 exercise functional control over the crimes jointly with his co-perpetrators. In  
18 particular, this is established on substantial grounds to believe, including by the  
19 evidence as presented during this hearing, from the following facts:

20 First, he was aware that he exercised both de jure and de facto command authority  
21 over the UPC forces, as well as over the Hema civilian supporters.

22 Secondly, by his role and command authority within the UPC/FPLC as the deputy  
23 chief of staff and operations commander.

24 Third, by his role in the planning and in the provision of logistical support,  
25 including weapons and troops, for example in the two assaults on Banyali-Kilo and

1 Walendu-Djatsi collectivités.

2 Fourthly, by his direct participation in the assault on Banyali-Kilo, as well as other  
3 assaults.

4 Fifthly, by his knowledge that other co-perpetrators espoused the common plan and  
5 were willing to implement it.

6 Sixthly, by his knowledge that other members of the common plan also exercised, by  
7 virtue of their own respective positions and authority within the UPC/FPLC, over  
8 subordinates within the UPC/FPLC and non-Hema civilian supporters.

9 Seventh, his knowledge that the UPC/FPLC had an effective structure and hierarchy.

10 And, finally, by his knowledge of the size of the UPC/FPLC and its composition;  
11 namely that it was comprised by trained soldiers with obedience to hierarchy.

12 In addition, in the context of Bosco Ntaganda's individual criminal responsibility for  
13 indirect co-perpetration, there are substantial grounds to believe, for all the reasons  
14 as articulated, that he was aware of the fundamental features of the UPC  
15 organisation; first and foremost on the basis of his position of authority and role and  
16 his activities within the UPC/FPLC as the deputy chief of staff in charge of  
17 operations and organisation.

18 In conclusion, your Honours, in relation to the subjective elements of the crimes,  
19 there are substantial grounds to believe that Bosco Ntaganda either intended to  
20 bring about the objective elements of the crimes, or was aware that they would occur  
21 in the ordinary course of events in the implementation of the common plan.

22 Your Honours, moving now to Article 25(3)(d). In the alternative, your Honours,  
23 the Prosecution submits that Bosco Ntaganda is individually criminally responsible  
24 pursuant to Article 25(3)(d) for the crimes as charged.

25 Recalling the elements for criminal responsibility under Article 25(3)(d), first looking

1 at the objective elements, first there needs to be established a crime within the  
2 jurisdiction of the Court that was attempted or committed; and secondly that there  
3 was a group of persons acting with a common purpose who attempted to commit or  
4 committed the crime.

5 The Prosecution recalls that the concept of common plan is functionally identical to  
6 the Statute requirement of Article 25(3)(d) in that there be a group of persons acting  
7 with a common purpose. A common purpose must also include an element of  
8 criminality. However, this does not need to be specifically directed at the  
9 commission of the crime. Moreover, Article 25(3)(d) applies irrespective of whether  
10 the suspect actually is a member of the group acting with a common purpose or not.

11 The third objective element for this mode of liability is that the suspect contributed  
12 to the crime in any way other than those set out in Articles 25(3)(a) to (c) of the  
13 Statute.

14 The concept of contribution under Article 25(3)(d) merely requires the existence of  
15 some form of a link or nexus between the act and the conduct of the suspect, as well  
16 as the commission of the crime by a group of persons acting with a common  
17 purpose.

18 The relevant contribution can be linked to a material element for crime, for example  
19 by in any way facilitating the commission of the material elements of the crime, but  
20 it can also be linked to any of the subjective elements of the crime; for instance by  
21 encouraging troop morale of those who actually committed the material elements of  
22 the crime.

23 The contribution itself does not need to be criminal per se. A suspect can be held  
24 liable for contributing to a crime after it has been committed provided this  
25 contribution was agreed upon by the relevant group, including the suspect, prior to

1 the perpetration of the crime.

2 In relation to the contribution, it needs to be further proven that the contribution was  
3 made intentionally and either with the aim of furthering the criminal activity or  
4 criminal purpose of the group, or in the knowledge of the intention of the group to  
5 commit the crime.

6 Turning now to analysis of the evidence in relation to the objective elements of the  
7 crime -- sorry, of the objective elements for this mode of liability, the Prosecution  
8 submits that there are substantial grounds to believe that Bosco Ntaganda  
9 contributed to the commission, or the attempted commission, of crimes by a group  
10 of persons, including Thomas Lubanga and Floribert Kisembo, who were acting with  
11 a common purpose to further their criminal objective to take over Ituri and expel or  
12 oust the non-Hema population by means which involved the commission of crimes.

13 Alternatively, Bosco Ntaganda knew of the group's intention to commit the crimes.

14 As previously described, Bosco Ntaganda planned military operations. He  
15 deployed troops. He supplied weapons and ammunition to the forces. He created  
16 military sectors, issued orders during military operations and assaults. He  
17 participated in military assaults in which crimes against non-Hema civilians were  
18 committed. He recruited and trained recruits, including children under the age of  
19 15, and he used them to participate actively in hostilities. Moreover, he was in  
20 constant contact with the persons acting with a common purpose.

21 Turning now to the subjective elements for this mode of liability, the Prosecution  
22 submits that there are substantial grounds to believe that Bosco Ntaganda knew that  
23 the crimes would be committed in the ordinary course of events as a consequence of  
24 the execution of the order, or as a result of the inducement. As deputy chief of staff  
25 in charge of operations and organisation in a structured armed group such as the

1 UPC and FPLC, where the soldiers were trained in obedience to hierarchy and  
2 where there were strict chains of command imposed, he knew his orders would be  
3 executed and he knew that they would be executed with the aim of furthering the  
4 criminal activity, or the criminal purpose, of the group.

5 He also knew that the intention of the group was to commit the crimes. This is  
6 shown, for instance, by his position with the UPC -- within the UPC/FPLC, his  
7 command of the forces, his role in planning and in participation in assaults and his  
8 communication with subordinates and other members of the group.

9 Turning briefly to Article 25(3)(f), the Prosecution submits that there are also  
10 substantial grounds to believe that Bosco Ntaganda is also criminally responsible for  
11 the attempted murders of UPC forces, as well as supporting Hema civilians acting  
12 under his orders, or instigation, or acting further to the co-perpetrators' common  
13 plan, or the group acting with a common purpose.

14 In conclusion, your Honours, the Prosecution submits that there are substantial  
15 grounds to believe that Bosco Ntaganda is individually criminally responsible under  
16 Article 25(3)(a) and alternatively under Article 25(3)(d).

17 That concludes my presentation, your Honours. Thank you. And unless you have  
18 any questions, I would give the floor to my colleague, Ms Solano, who will be  
19 presenting the next presentation in relation to modes of liability for the Prosecution.

20 PRESIDING JUDGE TRENDAFILOVA: Thank you, Ms Luping. For the moment,  
21 no one is in a way identifying an interest to pose some questions to you. Who is the  
22 next one, Ms ...? I'm sorry, I didn't reflect your name in my notes, but you will  
23 identify yourself.

24 MS SOLANO: Ms Solano.

25 PRESIDING JUDGE TRENDAFILOVA: And your presentation will be on Article

1 28?

2 MS SOLANO: Article 25(3)(b) and Article 28(a), Madam President.

3 PRESIDING JUDGE TRENDAFILOVA: Well, so you proceed now the way you  
4 choose. 25(3)(b), thank you.

5 (Pause in proceedings)

6 MS SOLANO: Apologies, Madam President, for the delay.

7 PRESIDING JUDGE TRENDAFILOVA: Sorry?

8 MS SOLANO: I was apologising for taking some time.

9 PRESIDING JUDGE TRENDAFILOVA: No, take your time. You start now?

10 MS SOLANO: Yes.

11 PRESIDING JUDGE TRENDAFILOVA: Thank you, Ms Solano.

12 MS SOLANO: Your Honours, in addition to Bosco Ntaganda's responsibility  
13 pursuant to Articles 25(3)(a), (d) and (f), the Prosecution submits that there are also  
14 substantial grounds to believe that he is responsible for having ordered and induced  
15 his subordinates in the UPC to commit crimes.

16 The Prosecution's case with respect to this mode of liability can be summed-up by  
17 the following three main allegations: First, Bosco Ntaganda issued standing orders  
18 or general instructions as to how his troops should behave during the hostilities.  
19 He issued standing orders for his troops to attack and displace civilians, to kill and  
20 to pillage and destroy property. The crimes committed by Bosco Ntaganda's troops  
21 during the operations in Banyali-Kilo and Walendu-Djatsi collectivités flow from  
22 these standing orders.

23 Second, in addition to his standing orders, Bosco Ntaganda gave specific orders to  
24 target individual civilians and specific locations. He did so while he was at the  
25 battle-front, as was the case at Mongbwalu in Banyali-Kilo collectivité. He ordered

1 to kill and rape individual civilians, to pillage and destroy property and to attack  
2 protected objects. He also gave orders to train and use children under the age of 15  
3 to participate actively in hostilities.

4 Third, Bosco Ntaganda induced the commission of crimes by his subordinates. He  
5 did so by expressly encouraging the commission of specific crimes and by sending a  
6 message of official tolerance through his direct perpetration of crimes, his use of  
7 derogatory language against the Lendu and his repeated failure to take all necessary  
8 and reasonable measures to prevent and repress those who committed crimes.

9 I will analyse for your Honours these allegations and refer to the main evidence  
10 supporting them. I will first deal with the evidence relevant to ordering and  
11 subsequently turn to the evidence relevant to inducing.

12 My presentation on ordering will relate to the following elements of this mode of  
13 liability derived from the Pre-Trial Chamber's -- from this Pre-Trial Chamber's  
14 decision on the arrest warrant application in the Mudacumura case, which are  
15 now visible on the screens.

16 PRESIDING JUDGE TRENDAFILOVA: Ms Solano, I'm sorry to interrupt you, I  
17 hate to do this, but Judge Kaul would like to make a point.

18 JUDGE KAUL: Well, we just have seen that the Office of the Prosecutor has used  
19 tables -- graphic tables - to present the requirements and the elements of Article  
20 25(3)(a) and (d), and it is my view that these tables in the first place are useful and  
21 helpful. They allow not only -- not only the Chamber, but also those who are  
22 present here in this room, including the Defence, to look at the requirements and  
23 elements as defined in this table.

24 Maybe I can use this opportunity to clarify at least my personal view, but I'm pretty  
25 sure that this is also the view of my colleagues, that it is proper that the Office of the

1 Prosecutor when making these presentations on individual criminal responsibility  
2 and the various modes which are presented and you are presenting alternative  
3 modes, that for reasons of consistency you use tables which indicate very clearly the  
4 requirements and the elements of the mode of responsibility that you present.

5 I am fully aware that it is not possible now to provide such a table instantly, but  
6 maybe this is a point which the Prosecution can also share with other teams of the  
7 Prosecution because this is a helpful approach which will help everybody in the  
8 Chamber and we are looking forward that the Office of the Prosecutor is using  
9 consistency and a consistent approach when presenting the various modes of  
10 criminal responsibility.

11 MS SOLANO: Thank you, your Honour. Your guidance is noted and will be  
12 transmitted to the other teams in the Office of the Prosecutor. I wonder if a slide  
13 that I was about to show your Honour is perhaps what you had in mind?

14 PRESIDING JUDGE TRENDAFILOVA: Please proceed, Ms Solano. The slide is  
15 already on the screen, but it was not available at the time when Judge Kaul took the  
16 floor and made his point.

17 MS SOLANO: Thank you, Madam President.

18 As your Honours can now see on your screens, the mode of liability of ordering,  
19 according to this Pre-Trial Chamber's decision in the arrest warrant application in  
20 the Mudacumura case, has the following constituent elements:

21 First, that the person is in a position of authority.

22 Second, that the person instructs another person in any form to either commit a  
23 crime, which in fact occurs or is attempted, or to perform an act or omission in the  
24 execution of which a crime is carried out.

25 Third, that the order has a direct effect on the commission or attempted commission

1 of the crime.

2 And, fourth, that the person is at least aware that the crime will be committed in the  
3 ordinary course of events as a consequence of the execution or implementation of the  
4 order.

5 Your Honours, the acts I am about to characterise as ordering could also be  
6 characterised as inducing. However, we submit that ordering captures Bosco  
7 Ntaganda's conduct more precisely. Inducing is confined to a few instances,  
8 because the primary mode of liability relied on by the Prosecution in the context of  
9 Article 25(3)(b) is ordering.

10 In relation to the first constituent element of ordering, the Prosecution alleges that  
11 Bosco Ntaganda was part of the UPC's top military leadership. Bosco Ntaganda  
12 was the deputy chief of staff in charge of operations and organisation throughout the  
13 period of the charges up until the time when he became the chief of staff and, even  
14 whilst he was deputy chief of staff, he was sometimes referred to by Thomas  
15 Lubanga as "the chief of staff," such was his standing in the UPC. Bosco Ntaganda  
16 referred to himself, referred to himself by this same title during the Banyali-Kilo  
17 assault, as your Honours heard on Monday in a video showing Bosco Ntaganda in  
18 Mongbwalu. This position gave Bosco Ntaganda authority over all UPC  
19 commanders and troops, including those that perpetrated the assaults on  
20 Banyali-Kilo and Walendu-Djatsi collectivités, as well as over UPC commanders and  
21 troops who recruited and used children under the age of 15 to participate actively in  
22 hostilities and those who raped and sexually enslaved girls in the ranks of the UPC.  
23 In relation to the second constituent element of this mode of liability, the Prosecution  
24 alleges that Bosco Ntaganda ordered UPC commanders and troops to commit crimes  
25 which in fact occurred or were attempted.

1 Madam President, your Honours, Bosco Ntaganda issued standing orders to  
2 subordinate commanders and troops. These orders told them how to behave  
3 during military operations.  
4 Bosco Ntaganda gave these orders during training. You have already heard about  
5 the role that Bosco Ntaganda played in training UPC forces. According to Witness  
6 P-10, a young recruit with the UPC, Bosco Ntaganda gave precise instructions  
7 during training indicating how to behave during battle, and I quote in French,  
8 (Interpretation) "We have to kill all the enemies, namely the Lendu, that we came  
9 across without distinguishing between combatants and civilians," (Speaks English)  
10 end quote.  
11 According to high level insider witness P-55, during training the troops were  
12 instructed to attack the citizens and to pillage their belongings. According to this  
13 witness, the Swahili expression - the Swahili term - used to convey these  
14 instructions, "kupiga na kuchaji," could also be seen to include women among the  
15 property to be pillaged.  
16 Your Honours, Bosco Ntaganda repeated these orders to attack civilians, kill them  
17 and pillage their property during the military operations he commanded. Witness  
18 P-10 was told by Bosco Ntaganda that they had to kill everyone, even women and  
19 children, as they were on the way to combat in Libi. I quote in French,  
20 (Interpretation) "On the way Bosco reminded us on several occasions that during the  
21 fighting we had to kill anyone that we came across on our way, irrespective of  
22 whether they were men, women or children," (Speaks English) end quote.  
23 Witness P-10 heard Bosco Ntaganda repeat this order before the battle at Mbau, the  
24 order to kill and burn everything, and I quote in French, (Interpretation) "Bosco  
25 reminded us that our orders were to kill all the Lendu indiscriminately and to burn

1 everything that we came across," (Speaks English) end quote.

2 Your Honours have already heard about the orders given by Bosco Ntaganda to his  
3 commanders and troops during the assault on Mongbwalu. At a briefing in  
4 Mabanga in advance of this assault, Witness P-38 heard Bosco Ntaganda say that  
5 they would encounter -- that everyone they would encounter there was an enemy. I  
6 quote the witness in French, (Interpretation) "The order was indeed given: 'Go, kill  
7 every one.' It wasn't about going to fight a group, or a group of soldiers, or to go  
8 and fight. It was a war; a popular war, " (Speaks English) end quote.

9 High level military insider 768, who also fought at Mongbwalu, heard Bosco  
10 Ntaganda use very hostile words against the Lendu tribe when he spoke to UPC  
11 commanders, as well as directly to the soldiers, during Bosco Ntaganda's visits to the  
12 positions at which they were stationed during the assault. Bosco Ntaganda said  
13 that all of the Lendu civilians and combatants were the enemy and needed to be  
14 exterminated once and for all.

15 According to P-768, Bosco Ntaganda gave the same order to kill the Lendu to the  
16 UPC's Hema civilian supporters who contributed to the UPC's assault on  
17 Mongbwalu. He gave them the order to kill the Lendu and arm them with the  
18 weapons to do so.

19 According to the same witness, Bosco Ntaganda also gave orders to displace the  
20 Lendu. I quote the witness in French, (Interpretation) "Bosco ordered me to drive  
21 out the RCD-K/ML troops from Mongbwalu and the Lendu militia and the Lendu,"  
22 (Speaks English) end of quote.

23 Bosco Ntaganda also ordered his troops to pillage. According to Witness P-38 at the  
24 briefing in Mabanga in advance of the assault on Mongbwalu, Bosco Ntaganda  
25 addressed the battalions and gave them their orders using the expression "piga na

1 kuchaji," which according to the witness meant, and I quote in French  
2 (Interpretation) "Fight, conquer the land, and then pillage everything."  
3 (Speaks English) Your Honours, Bosco Ntaganda also gave implied orders to  
4 destroy property. Witness P-38 did not receive explicit instructions to burn, but  
5 said that he knew they were always expected to do so, because it was a tribal war.  
6 Bosco Ntaganda's orders applied wherever the UPC went to fight and specifically  
7 during the operation in Walendu-Djatsi collectivité. I quote witness P-38 in French  
8 (Interpretation) "The order was that every person found there was to be executed, in  
9 addition to Mongbwalu, I could even say in Kobu when we left, Kobu or elsewhere,  
10 everywhere where I left to go to war," (Speaks English) end quote.  
11 Bosco Ntaganda's orders were reissued by his subordinate commanders who  
12 repeated them to the troops. Specifically during the operation in Walendu-Djatsi,  
13 Bosco Ntaganda's orders were reissued by Brigade Commander Salumu Mulenda,  
14 who was the immediate superior of the troops that murdered some 50 civilians in a  
15 banana field in Kobu.  
16 According to P-38, at a parade in Kilo just prior to the Kobu attack, Salumu Mulenda  
17 said, and I quote the witness in French (Interpretation) "Shoot at everyone you find  
18 in Kobu," (Speaks English) end quote.  
19 And so Bosco Ntaganda's orders to attack and displace civilians, to kill and pillage  
20 were communicated down the chain of command. High level insider Witness P-55  
21 was told by Kasangaki, one of Salumu Mulenda's subordinates, that Mulenda used  
22 the expression "kupiga na kuchaji" before the Kobu attack. Witness P-17, a member  
23 of a heavy weapons unit who took part in the assault on Walendu-Djatsi, also  
24 received the orders down the chain of command. According to this witness, his  
25 commanders ordered the troops to flatten the villages and to chase the population

1 away.

2 Your Honours have already heard the evidence from this same witness during  
3 earlier presentations according to which Salumu Mulenda told the troops there  
4 would be pillaging in Mongbwalu, and there would be women in Mongbwalu.

5 Your Honours, the Prosecution submits that the evidence I have just referred to  
6 provides substantial grounds to believe that the crimes committed by the UPC  
7 during the operations in Banyali-Kilo and Walendu-Djatsi collectivités had been  
8 ordered by Bosco Ntaganda. He gave the orders during training. He repeated  
9 them during military operations he commanded, and they were reissued by his  
10 subordinate commanders.

11 Taken together, the evidence of the military insider witnesses I have quoted  
12 indicates that attacking and displacing civilians, killing them and pillaging their  
13 property was a modus operandi they had been instructed to follow and, thus, their  
14 normal behaviour during military operations.

15 Your Honours, Bosco Ntaganda did not sit by idly as military operations unfolded.  
16 While at the battlefield, he met frequently with his subordinate commanders to  
17 order the next steps. In Mongbwalu he visited the various positions at which his  
18 troops were stationed and provided further direction. And while away from the  
19 battlefield from a distance he also ensured compliance with his orders as illustrated  
20 by a logbook entry which we are now pulling up on your screens.

21 This logbook entry dated 18 February 2003, just at the start of the assault in  
22 Walendu-Djatsi collectivité shows a message from Brigade Commander Salumu  
23 Mulenda to his direct superior, Sector Commander Salongo, copying Bosco  
24 Ntaganda. Salumu Mulenda informs Sector Commander Salongo that Americain, a  
25 battalion commander in Mulendu's brigade was threatening to desert.

1 Within hours Bosco Ntaganda himself reacted to this reported threat as can be seen  
2 in the logbook message. Bosco Ntaganda addresses Mulenda directly and tells him  
3 that no commander in the army has the capacity to refuse to comply with superior  
4 orders. I quote from the message in French (Interpretation) "You are informed  
5 following the message according to which there is a commander who has refused to  
6 advance. That has never happened in the army. There is no commander who has  
7 the capacity to refuse a superior order," (Speaks English) end quote.

8 The Prosecution submits that this message shows Bosco Ntaganda giving orders to  
9 advance on Lipri, Bambu, and Kobu down the chain of command and through the  
10 UP -- through the UPC's means of radio communication.

11 Madam President, your Honours, I will now address the evidence of Bosco  
12 Ntaganda's orders for the commission of crimes against individual civilians and  
13 specific locations. They relate primarily to the operation in Banyali-Kilo and  
14 specifically to Bosco Ntaganda's conduct in Mongbwalu and Sayo.

15 Bosco Ntaganda ordered his subordinates to murder individual civilians at  
16 Mongbwalu and Sayo. According to high level insider P-768, who took part in the  
17 assault, Bosco Ntaganda ordered his bodyguards to execute two civilians who were  
18 seeking to return home in Nzebi. This same witness heard that Bosco Ntaganda  
19 ordered his bodyguards to rape three female prisoners being held at Bosco  
20 Ntaganda's apartment in Mongbwalu.

21 According to P-768, Bosco Ntaganda also ordered the pillage of the church at  
22 Mongbwalu. He told the witness to send his own troops to pillage the church, to  
23 take anything they wanted, and to destroy the church if necessary.

24 Bosco Ntaganda also ordered his subordinates to attack protected objects,  
25 specifically the church at Mongbwalu. He also ordered his subordinates to train

1 children under the age of 15. In late 2002, Bosco Ntaganda asked military insider  
2 P-290 to train four children under the age of 15 at Bosco Ntaganda's house in Bunia.  
3 Ntaganda thereafter ordered the deployment of these trained youngsters.  
4 According to this same witness, P-768 -- Madam President, excuse me.  
5 According to the same witness P-768, Bosco Ntaganda sent another group of visibly  
6 very young children to back up a brigade in advance of the assault on Mongbwalu  
7 and surrounding villages. The witness stated that he knew the child soldiers  
8 depicted in a photograph shown to your Honours by Ms Samson yesterday.  
9 Bosco Ntaganda had children under the age of 15 years among his bodyguards. As  
10 such, these children participated actively in hostilities under his orders. According  
11 to Witness 768, Bosco Ntaganda had children in his unit during the assault on  
12 Mongbwalu. Bosco Ntaganda ordered children under the age of 15 years to take  
13 active part in combat at Libi and Mbau alongside Witness 10. According to that  
14 witness, several children died during the fight.  
15 Your Honours, before I move on to my next point, I would like to sum up what I  
16 have covered so far, namely, the standing orders given by Bosco Ntaganda to attack  
17 and displace civilians, kill them and pillage their property.  
18 Bosco Ntaganda gave these standing orders during the training of the UPC's recruits  
19 and repeated them during military operations he commanded directly from the  
20 field. The standing orders applied at all times including during the UPC's  
21 operations in Banyali-Kilo and Walendu-Djatsi collectivités. Bosco Ntaganda's  
22 subordinates reissued those orders during the military operation in Walendu-Djatsi  
23 while Bosco Ntaganda commanded the assault from Bunia.  
24 Finally, Bosco Ntaganda saw that his orders were enforced through the chain of  
25 command. As submitted, Bosco Ntaganda also gave specific orders for individual

1 civilians to be killed and raped, for properties to be pillaged and destroyed, for  
2 protected objects to be attacked, and for individual children under the age of 15 to be  
3 trained and used actively in hostilities.

4 I will now move on to the third constituent element of ordering pursuant to Article  
5 25(3)(b). In this regard the Prosecution alleges that Bosco Ntaganda's orders had a  
6 direct effect on the commission or attempted commission of the crimes. As shown  
7 by the evidence referred to by my colleagues before me, Bosco Ntaganda was a  
8 feared commander and insisted on compliance with his orders and on respect for his  
9 authority.

10 Moreover, as the evidence presented so far demonstrates, Bosco Ntaganda's orders  
11 to attack and displace and kill civilians and to pillage and destroy and attack  
12 protected objects were obeyed by the commanders and troops who took part in the  
13 military operations in Banyali-Kilo and Walendu-Djatsi resulting in the large scale  
14 victimisation of the non-Hema populations living in those areas.

15 Finally, in relation to the fourth constituent element of this mode of liability, the  
16 Prosecution alleges that Bosco Ntaganda was at least aware that crimes would be  
17 committed in the ordinary course of events as a consequence of the execution or  
18 implementation of his orders.

19 Your Honours, the Prosecution submits that the evidence presented during this  
20 hearing on substantial grounds to believe demonstrates Bosco Ntaganda's actual  
21 knowledge that crimes would be committed by his troops. Bosco Ntaganda knew  
22 that his orders would be complied with. He was assured of this given his  
23 high-ranking position as deputy chief of staff in charge of operations and  
24 organisation and in light of the UPC's nature as a structured armed group in which  
25 soldiers were trained to follow orders and in which strict chains of command were

1 enforced.

2 Bosco Ntaganda trained the UPC soldiers instilling in them the armed group's

3 modus operandi. He addressed his men before battle, reinforcing the message that

4 the non-Hema civilians were the enemy and should be attacked, displaced, killed,

5 their properties and protected objects attacked, pillaged, destroyed. He gave

6 explicit orders to the troops to commit these crimes.

7 In addition to Bosco Ntaganda's responsibility for ordering the commission of these

8 crimes, the Prosecution also alleges that he induced UPC commanders and troops to

9 commit the crimes in three principal ways: Through his own behaviour in

10 committing crimes directly, through his repeated use of derogatory language against

11 the non-Hema, and by his repeated failure to take all necessary and reasonable

12 measures to prevent and repress crimes committed by his subordinates.

13 Your Honours, there is as of yet no decision from this Court setting out the elements

14 of inducing as a mode of liability. But we have guidance in the decisions of the ad

15 hoc tribunals and the broadly equivalent mode of liability of instigation. My

16 presentation on inducing will relate to the following elements of this mode of

17 liability now visible on your screens.

18 First, the person exerts influence over another person to either commit a crime which

19 in fact occurs or is attempted or to perform an act or omission as a result of which a

20 crime is carried out.

21 Second, the inducement has a direct effect on the commission or attempted

22 commission of the crime; and

23 Third, the person is at least aware that the crimes will be committed in the ordinary

24 course of events as a consequence of the realisation of the act or omission.

25 I will address all of these elements together. My submissions are brief.

1 Bosco Ntaganda actively encouraged his subordinates to destroy the Mongbwalu  
2 church. He told Witness 768 to send his men to pillage the church even if it meant  
3 destroying it. The church was attacked through acts of pillaging.

4 Bosco Ntaganda induced his subordinates to rape as described by Witnesses P-17  
5 and P-55. UPC troops understood the Swahili instruction "kupiga na kuchaji" to  
6 give them license to rape the non-Hema population, in particular the Lendu, who  
7 was identified by Bosco Ntaganda as the UPC's enemies.

8 As stated by witness 38, and I quote in French (Interpretation) "They were our  
9 enemies. We had to treat them just anyhow," (Speaks English) end quote. The  
10 witness states further, referring to sexual violence, and I quote again in French  
11 (Interpretation) "It was another form of a weapon of violence that we used,"  
12 (Speaks English) end quote.

13 The Prosecution submits that it is reasonable to infer that Bosco Ntaganda was well  
14 aware that his troops would understand the instruction "kupiga na kuchaji" in this  
15 way when he gave the orders to his troops using that language.

16 In addition to his use of the instruction "kupiga na kuchaji," Bosco Ntaganda  
17 induced the commission of rape and other crimes through his own example, which  
18 sent a clear message of official tolerance for a wide range of crimes.

19 As established by the evidence presented over the past two days, Bosco Ntaganda  
20 attacked civilians and directly perpetrated murders. He pillaged and attacked  
21 protected objects. He raped and sexually enslaved women, girls recruited as  
22 soldiers in the UPC, including members of his own escort.

23 Bosco Ntaganda's repeated use of derogatory language against the Lendu in front of  
24 his subordinate commanders and troops confirmed -- as confirmed by Witness P-768  
25 also fostered an environment in which his subordinates felt free to treat the Lendu

1 however they pleased.

2 Finally, through his repeated failure to take all necessary and reasonable measures to  
3 prevent and repress them, Bosco Ntaganda actively encouraged the commission of  
4 crimes.

5 Madam President, your Honours, as deputy chief of staff in charge of operations and  
6 organisation in a structured armed group such as the UPC where soldiers were  
7 trained to obey his orders without questioning them, Bosco Ntaganda was at least  
8 aware that his own commission of crimes, his derogatory language with respect to  
9 the Lendu, and his repeated failure to take all necessary and reasonable measures  
10 served as approval and inducement for the commission of crimes by the UPC and its  
11 Hema civilian supporters.

12 The Prosecution thus submits that the evidence provides substantial grounds to  
13 believe that Bosco Ntaganda is responsible for the crimes charged in the document  
14 containing the charges pursuant to Article 25(3)(b) because he ordered or induced  
15 their commission or attempted commission.

16 This concludes my submissions on Article 25(3)(b), Madam President. I am ready  
17 to move on to the next topic.

18 PRESIDING JUDGE TRENDAFILOVA: Yes, of course. You have 20  
19 minutes, so please go ahead.

20 MS SOLANO: Thank you. I will now move on to the Prosecution's final  
21 submissions on the modes of liability. In addition to Bosco Ntaganda's  
22 responsibility pursuant to Articles 25(3)(a), (b), (d), and (f), the Prosecution submits  
23 that there are also substantial grounds to believe that he is responsible as a military  
24 commander pursuant to Article 28(a) for his failure to prevent and repress the crimes  
25 committed by his UPC subordinates.

1           Your Honours, a military commander's failure to meet his duty to prevent his  
2 subordinates from committing crimes or to punish those responsible for crimes has  
3 been described as the paramount breach which encompasses all other breaches of  
4 international humanitarian law.

5           The Prosecution alleges that Bosco Ntaganda had effective command and  
6 control over the UPC forces and Hema civilians who participated in UPC attacks  
7 against non-Hema populations in Banyali-Kilo and Walendu-Djatsi collectivités.  
8 He knew or owing to the circumstances should have known that the troops under  
9 his effective command and control were committing or were about to commit  
10 crimes.

11 By virtue of his command and control over these forces, Bosco Ntaganda could have  
12 ordered them to stop their crimes. He did not. At all relevant times, at all times  
13 relevant to the charges, he had the authority and the means to discipline and punish  
14 the troops for the crimes, but he did not.

15 I will take your Honours through the main evidence supporting these allegations.  
16 My presentation will relate to the following specific constituent elements of  
17 command responsibility now visible on your screens.

18 First, that the person was a military commander or person effectively acting as such.

19 Second, that the military commander or person had effective command and control  
20 or effective authority and control over the forces who committed the crimes.

21 Third, that the crimes resulted from the military commander or the person's failure  
22 to exercise control properly over those forces.

23 Fourth, that the military commander or person either knew or owing to the  
24 circumstances should have known that the forces were committing or about to  
25 commit the crimes; and

1 Fifth, that the military commander or person failed to take all necessary and  
2 reasonable measures within his power to prevent or repress the commission of such  
3 crimes or failed to submit the matter to the competent authorities for investigation  
4 and the prosecution.

5 Pursuant to the first constituent element of this mode of liability, the person must be  
6 a military commander. As shown by the evidence referred to in earlier  
7 presentations, Bosco Ntaganda was formally appointed deputy chief of staff of the  
8 FPLC in September 2002, a role he also performed in the UPC militia prior to this.  
9 He was subsequently promoted to chief of staff in December 2003. As such, Bosco  
10 Ntaganda had authority overall UPC commanders and troops, including those that  
11 perpetrated the assaults on Banyali-Kilo and Walendu-Djatsi collectivités, as well as  
12 over UPC commanders and troops who recruited and used children under the age of  
13 15 and who raped and sexually enslaved girls in the UPC's ranks.

14 Bosco Ntaganda also had authority over the UPC's Hema civilian supporters. The  
15 second constituent element of this mode of liability requires that a person had  
16 effective command and control over the forces who committed the crimes. In this  
17 respect, the Prosecution alleges that Bosco Ntaganda had effective control through  
18 his material ability to prevent and repress all UPC forces throughout the period  
19 covered by the charges and specifically during the operations in Banyali-Kilo and  
20 Walendu-Djatsi collectivités.

21 In support of these allegations I draw your Honours' attention to the following facts  
22 and evidence. Bosco Ntaganda had a position at the helm of the UPC's military  
23 leadership. He was appointed to this position by Thomas Lubanga and had his full  
24 support and backing. According to Witness P-56, Lubanga trusted that Bosco  
25 Ntaganda would, and I quote in French (Interpretation) "ensure the unity and trust

1 among his soldiers and avoid defections," (Speaks English) end quote.  
2 Witnesses P-768 and P-55, both high level military insiders, identified Bosco  
3 Ntaganda as the number 2 in the UPC army. P-768 describes Bosco Ntaganda as,  
4 and I quote, "more influential than Commander Kisémbó. He was on all fronts.  
5 He was even the one who was organising the recruits, the training for the recruits.  
6 Let's say he was the operational brain of this army," end quote.  
7 A video filmed in November 2002 supports Witness 768's account of Bosco  
8 Ntaganda as the central authority within the UPC army. In the video played in  
9 court on Monday, Bosco Ntaganda refers to himself as the chief of staff. In another  
10 video from February 2003, Thomas Lubanga himself refers to Bosco Ntaganda as le  
11 chef d'état-major commandant Bosco.  
12 Bosco Ntaganda was formally subordinated to Floribert Kisémbó, the chief of staff.  
13 The witnesses say that it was Bosco Ntaganda who took the lead in military matters  
14 because he was considered an expert on military operations by the UPC.  
15 According to Witness P-14, in practise, he often reported directly to Thomas  
16 Lubanga, though ordinarily Bosco Ntaganda should have reported to Floribert  
17 Kisémbó. According to Witness 315, an NGO researcher, in reality, Bosco Ntaganda  
18 had more military experience than Floribert Kisémbó and played a leading role in  
19 developing the strategy for and conducting the UPC's attacks.  
20 According to this witness, Floribert Kisémbó was given the higher rank because he  
21 was from Ituri whereas Bosco Ntaganda was not.  
22 Based on her interviews, P-315 believed that the relationship between Bosco  
23 Ntaganda and Floribert Kisémbó was one of colleagues rather than a  
24 superior-subordinate relationship. Bosco Ntaganda's specific role was to command  
25 the UPC's military operations and shape the organisation of the military wing. In

1 his role as deputy chief of staff in charge of operations, he was the UPC's main  
2 military strategist. It was his role to plan all military operations together with his  
3 co-perpetrators. It was a role that he was extensively prepared for given his long  
4 career in the Rwandan Patriotic Front and the Alliance of Democratic Forces for the  
5 Liberation of Congo, or AFDL, prior to his arrival in Ituri.

6 Bosco Ntaganda was already a seasoned military man by the time the UPC was  
7 created, more so than other members of the UPC's military wing, including Floribert  
8 Kisembo, whose military career was much shorter and who had started off as a  
9 subordinate of Bosco Ntaganda's.

10 As deputy chief of staff in charge of operations, Bosco Ntaganda routinely issued  
11 orders for military operations. Several logbook entries, which I will now show on  
12 your screens, show Bosco Ntaganda issuing standing orders to all UPC units.

13 In a message dated 24 November 2002, Ntaganda ordered all units to carry out  
14 operations in their areas of responsibility. It states, and I quote in French from the  
15 entry (Interpretation) "You are informed that you should regularly carry out  
16 operations in your areas so that the enemy should not be close to you," (Speaks  
17 English) end quote.

18 In another logbook message dated 24 December 2002, Bosco Ntaganda ordered all  
19 units to be on standby. In a further logbook message dated 13 February 2003, Bosco  
20 Ntaganda sent a message to Sector Commander Jérôme Kakwavu copying all  
21 stations. In the message Bosco Ntaganda ordered Kakwavu to instruct his  
22 subordinate not to write to Bosco Ntaganda directly as he should do so only through  
23 the chain of command.

24 I quote from the message in French (Interpretation) "You are hereby informed that  
25 you should follow the chain of command of the battalion. I should no longer see

1 the head of a battalion send me a message. I am not a soldier for someone else. I  
2 am deputy chief of staff in charge of operations and organisation."  
3 (Speaks English) Your Honours, in my previous presentation I analysed some of  
4 the evidence of Bosco Ntaganda's criminal standing orders, which directed his  
5 troops to attack and displace civilians, kill and pillage during military operations.  
6 That same evidence of Bosco Ntaganda's orders and the evidence that he was  
7 obeyed provides substantial grounds to believe that Bosco Ntaganda had effective  
8 command and control over the forces who committed the crimes.  
9 Bosco Ntaganda could order his troops to engage in hostilities as he did in  
10 Mongbwalu and Lipri, Bambu, and Kobu. He could withdraw them from the site of  
11 hostilities as well as evidenced by his order for Salumu Mulenda to abandon  
12 Mongbwalu and go to Kilo as the UPC's assault on Mongbwalu wound down  
13 according to insider witness 768.  
14 Bosco Ntaganda had the means to ensure that his orders were carried out. He used  
15 the UPC's means of communication to transmit his orders and to receive reports and  
16 information from his subordinates concerning the implementation of his orders. A  
17 sequence of logbook messages dated 19 November 2002 show Bosco Ntaganda  
18 receiving confirmation of the deployment of his troops consistent with his orders. It  
19 also shows Bosco Ntaganda seized of operational matters such as logistics and the  
20 need for reinforcements.  
21 Even senior operational commanders like Salumu Mulenda complied with Bosco  
22 Ntaganda's orders as evidenced once again by Mulenda's departure from  
23 Mongbwalu when Ntaganda ordered it, despite the fact that his departure meant  
24 foregoing further opportunities to pillage in that town.  
25 Witness P-17 confirmed that as is evidenced from the UPC's radio communications,

1 in the relationship between Bosco Ntaganda and Salumu Mulenda, it was always  
2 Bosco Ntaganda who gave the orders and not the other way around. According to  
3 that witness, Mulenda had to leave his heavy weapons behind in Mongbwalu when  
4 he went to Kilo at Bosco Ntaganda's bidding.

5 Bosco Ntaganda had access to weapons and ammunition. There was a weapons  
6 depot at his residence in Bunia. He handed weapons and ammunition to the  
7 recruits when they finished the training. He arranged for the delivery of weapons  
8 and ammunitions to UPC troops and controlled his subordinates' access to them  
9 during military operations as shown by various logbook messages dating from  
10 about the time of the operation in Banyali-Kilo.

11 I also draw your attention to one more logbook message dated 19 February 2003,  
12 now visible on your screens, which shows Bosco Ntaganda as the UPC commander  
13 in a position to inform his superiors, Lubanga and Kisembo, of the progress of the  
14 assault on Walendu-Djatsi collectivité. And I quote from the message in French  
15 (Interpretation) "The work of the operations is to remain in Lipri, Bambu, and  
16 Kobu. The trips have -- the troops have already arrived in each zone. You will be  
17 informed of further developments."

18 (Speaks English) Madam President, I am going to move to a new point in my  
19 presentation, but I'm conscious of the time.

20 PRESIDING JUDGE TRENDAFILOVA: How much time do you need, Ms Solano?

21 MS SOLANO: Your Honour, I am not yet halfway through my presentation on  
22 command responsibility.

23 PRESIDING JUDGE TRENDAFILOVA: So let us take the break now, and you will  
24 proceed at 11.30.

25 MS SOLANO: Thank you.

1 PRESIDING JUDGE TRENDAFILOVA: Thank you.

2 THE COURT USHER: All rise.

3 (Recess taken at 10.58 a.m.)

4 (Upon resuming in open session at 11.31 a.m.)

5 THE COURT USHER: All rise.

6 PRESIDING JUDGE TRENDAFILOVA: Please be seated.

7 We resume our session, but before I give the floor to the team of Ms Samson, the  
8 three of us see we have something here on our desks. We were informed that these  
9 are some documents stemming from the Defence team. Mr Desalliers, would you  
10 kindly explain to us what it is about, or you will do this when the floor will be over  
11 to you?

12 MR DESALLIERS: (Interpretation) Madam President, this -- this is due to the fact  
13 that I expect to begin before the next break. You have the documents now in front  
14 of you. I will explain them further in due time.

15 PRESIDING JUDGE TRENDAFILOVA: (Microphone not activated)

16 MS SOLANO: Thank you, Madam President. Before the break I was analysing the  
17 facts and evidence relevant to the second element of Article 28(a) mode of liability.  
18 That is the requirement that the person have effective command and control over the  
19 forces that committed the crimes.

20 I had just finished bringing to your Honours' attention Bosco Ntaganda's role as  
21 deputy chief of staff for operations. I will now address his role as deputy chief of  
22 staff in charge of organisation.

23 In this role Bosco Ntaganda shaped the military wing of the UPC. He changed the  
24 FPLC's command structure. He created a new sector after the operation in  
25 Banyali-Kilo, according to Witnesses P-55 and P-768. He positioned Salongo as its

1 commander. Bosco Ntaganda also promoted his subordinates as shown by a  
2 logbook message dated 11 January 2002 concerning the promotion of Commanders  
3 Innocent and Seyi, amongst others.

4 Bosco Ntaganda had the ability to discipline his troops, his commanders, his  
5 subordinates in general. According to Witness P-55, soldiers in the UPC faced  
6 punishment for their errors. And I quote the witness, "I remember usually it was  
7 Ntaganda who would give out the punishment like imprisonment. He would give  
8 orders like, for instance, if a soldier runs away, he would have to be tied to a tree and  
9 shot."

10 According to Witness 768, there were disciplinary measures within the UPC for bad  
11 behaviour. Bosco Ntaganda had erected a prison in Mandro. According to  
12 Witness P-38, it was normally Bosco Ntaganda who gave the orders to kill a soldier  
13 as a disciplinary measure. This witness saw Bosco Ntaganda whipping a soldier  
14 who had refused to shoot during a battle. He also recalls a case of a UPC soldier  
15 who was publicly executed on Bosco Ntaganda's orders because he had killed a  
16 Hema civilian.

17 Bosco Ntaganda was able to impose discipline in the UPC's camps. A logbook  
18 entry dated 11 February 2003 shows Bosco Ntaganda ordering all units to expel the,  
19 and I quote, "wives" from their camps.

20 Your Honours, Bosco Ntaganda's command and control also -- also extended to the  
21 UPC's Hema civilian supporters. Witness P-55 saw people pillaging and destroying  
22 houses in Lipri, though I note that this was not during the Walendu-Djatsi assault.  
23 Fearing they could be enemy forces, P-55 enquired with Bosco Ntaganda, who told  
24 the witness not to worry about them because they were, and I quote, "combatants"  
25 and were on the UPC's side. According to P-55, there was a system in place, and

1 these Hema civilian supporters were called upon by UPC commanders for all  
2 operations.

3 Witnesses P-38 and P-768 confirmed the participation of Hema civilian supporters in  
4 the assault on Mongbwalu. P-38 said there were numerous civilians with the UPC  
5 soldiers. Their role was to carry ammunition and pillage. P-768 was with Bosco  
6 Ntaganda in Mongbwalu when Ntaganda gave the order to exterminate the Lendu  
7 and personally raised awareness among the young Hema civilians whom he also  
8 armed for the task at hand.

9 Allow me to summarise my submissions regarding Bosco Ntaganda's effective  
10 command and control over the UPC forces that committed the crimes described in  
11 the document containing the charges.

12 The following factors provide substantial grounds to believe that Bosco Ntaganda  
13 had the material ability to prevent and repress the commission of such crimes. He  
14 was at the helm of the UPC's military leadership. He took the lead in military  
15 matters, in particular, relative to chief of staff, Floribert Kisembo.

16 As deputy chief of staff in charge of operations, he planned all military operations.  
17 He issued standing orders binding all UPC units. He issued standing orders  
18 applicable during military operations. He ordered his troops to engage in hostilities  
19 and was able to withdraw them from the site of hostilities. He had the means to  
20 ensure compliance with his orders and he had and controlled the access to weapons  
21 and ammunition.

22 As deputy chief of staff in charge of organisation, Bosco Ntaganda changed the  
23 UPC's military structure by creating sectors. He promoted his subordinates and he  
24 was able to punish them, including with the death penalty.

25 Now I will address the third constituent element of command responsibility. In this

1 regard, the Prosecution submits that Bosco Ntaganda either knew or owing to the  
2 circumstances should have known that UPC forces were committing or about to  
3 commit the crimes alleged in the document containing the charges.

4 Consistent with his role as deputy chief of staff for operations and organisation,  
5 Bosco Ntaganda gave his subordinates direction for the conduct of military  
6 operations. His orders were specifically directed at the commission of crimes,  
7 including attacking and displacing Ituri's non-Hema civilian population and  
8 committing murder, rape, pillaging and destruction of property among other crimes.  
9 Bosco Ntaganda committed these crimes himself in his subordinates' plain view and  
10 ordered and actively encouraged them to emulate his own behaviour.

11 Owing to his direct contact with UPC soldiers and commanders, Bosco Ntaganda  
12 knew or should have known that troops instructed to attack and plunder would take  
13 it as a given that they were also free to rape and sexually enslave women and girls.  
14 Bosco Ntaganda's presence during military operations, including during the assault  
15 in Banyali-Kilo, allowed him to observe first-hand the commission of such crimes.  
16 He was present during this operation when his troops attacked, murdered and  
17 otherwise victimised the civilian population. He can be seen on a video -- on a  
18 video recording confirming that the UPC had taken prisoners.

19 Bosco Ntaganda had first-hand knowledge of his subordinate Salumu Mulenda's  
20 criminal acts. Bosco Ntaganda launched the attack on civilians in Banyali-Kilo  
21 alongside Mulenda. Bosco Ntaganda therefore knew or owing to the circumstances  
22 should have known about Salumu Mulenda's methods. Witness P-17 states that  
23 several people were killed in Mulenda's camp in Mongbwalu and that Mulenda  
24 ordered a woman's knees to be broken.

25 Your Honours, the assault on Walendu-Djatsi was planned by Bosco Ntaganda and

1 his co-perpetrators in Bunia in the presence of Witness P-55. As deputy chief of  
2 staff for operations and organisation, Bosco Ntaganda proposed the distribution of  
3 tasks among the UPC's top military brass for the purposes of that assault.  
4 According to P-55, Bosco Ntaganda was in charge of all of the operations in Lipri,  
5 Bambu and Kobu and commanded them from Bunia. P-768, another high-level  
6 military insider, heard from Salumu Mulenda that Bosco Ntaganda commanded the  
7 troops and gave all the orders during that operation.  
8 As you have already heard, the UPC had various communication means at its  
9 disposal and used them during military operations. According to Witness P-55, all  
10 general staff officers, all high-level commanders, including Bosco Ntaganda and  
11 Floribert Kisembo, and all sector and brigade commanders had Thuraya satellite  
12 phones and used them to exchange operational information from the areas where  
13 there was no network for Motorola radios.  
14 According to P-55, the UPC used the Man-pack and Motorolas during the attack on  
15 Lipri, Bambu and Kobu. That is, the UPC used the long-range radio  
16 communication system during this attack.  
17 P-55 believes that Bosco Ntaganda and Thomas Lubanga both knew about the  
18 incident in Kobu because there were reports coming in over the long-range radio  
19 system. P-55 says that both leaders considered the operation a success. This  
20 witness's evidence suggests that Bosco Ntaganda was in touch with the troops in the  
21 field while the operation in Walendu-Djatsi was still ongoing.  
22 Ntaganda was displeased that Mulenda had launched the attack at night whereas he  
23 was supposed to do so in the morning. P-55 reports that Ntaganda was unhappy  
24 with Mulenda because he had begun the attack earlier than planned without waiting  
25 for the order and this had led to the death of two of Bosco Ntaganda's men.

1 The logbook also indicates that Bosco Ntaganda was receiving reports from the  
2 troops in the field through the radio station at his residence in Bunia.

3 A message transmitted on 17 February 2003 shows Salumu Mulenda reporting on  
4 the hostilities from Kobu and requesting additional weapons for the attack.

5 Additional logbook entries for 18 and 19 February show Bosco Ntaganda receiving a  
6 report from Salumu Mulenda stating that one of his subordinates -- one of his  
7 subordinates, Commander Américain, was threatening to desert because he was  
8 scared of the way in which the enemy had seized a weapon from the UPC. Within  
9 hours of receiving this report from Salumu Mulenda, Bosco Ntaganda reacted,  
10 reinforcing the orders to advance. This, your Honours, was on 19 February.

11 According to Witness P-38 and other high-level -- according to Witness P-38, Bosco  
12 Ntaganda and other high-level UPC commanders knew about the crimes being  
13 committed during the assault on Walendu-Djatsi.

14 In his words, and I quote the witness in French, (Interpretation) "In general, what  
15 you have to know is that during all of this war with regards to execution and  
16 everything, well, there were orders which came from someone. And the others,  
17 they executed them. But there were the supreme commanders, they were there,  
18 Kisembo, Salumu and Bosco. They were all there. They knew what was  
19 happening. They knew everything that was happening, all the rapes, murders,  
20 massacres, all that. They knew all that."

21 (Speaks English) Your Honours, the FPLC logbook shows that Bosco Ntaganda  
22 reported to his superiors on the status of the assault on Walendu-Djatsi in the  
23 afternoon of 19 February 2003 and undertook to keep them informed. As you have  
24 seen earlier on the logbook entry for this date, Bosco Ntaganda confirmed the arrival  
25 of the troops at Lipri, Bambu and Kobu and undertook to keep his superiors

1 informed.

2 The Prosecution submits that taken together, this evidence provides substantial  
3 grounds to believe that Bosco Ntaganda knew or should have known that crimes  
4 were being committed during the operations in Banyali-Kilo and Walendu-Djatsi  
5 collectivités.

6 Bosco Ntaganda also knew that the UPC recruited and used children under the age  
7 of 15 to participate actively in hostilities. He visited training camps. He trained  
8 the recruits and sent children into battle himself. He ordered Witness P-290 to train  
9 young children in Bunia. Bosco Ntaganda had children under the age of 15 among  
10 his bodyguards and used them during the battles in which he commanded the UPC  
11 troops himself.

12 According to Witness P-38, the UPC high command was aware of the sexual  
13 exploitation of women and girl soldiers in the UPC. According to the witness, the  
14 high command knew about this because they sexually exploited the UPC's female  
15 military personnel themselves.

16 Bosco Ntaganda sexually exploited women at his residence, including PMFs,  
17 personnels militaires féminins. Sexual exploitation of UPC women and girls was so  
18 endemic in the UPC that Bosco Ntaganda knew or should have known that UPC  
19 commanders and soldiers raped and sexually enslaved girls under the age of 15.

20 In relation to the fourth and fifth constituent elements of command responsibility,  
21 the Prosecution submits that Bosco Ntaganda failed to take all necessary and  
22 reasonable measures within his power to prevent or repress the commission of  
23 crimes by his subordinates and that the crimes committed by the FPLC forces  
24 resulted from Bosco Ntaganda's failure to exercise control over them properly.

25 Your Honours, Bosco Ntaganda had the ability to punish subordinates who

1 committed crimes against the non-Hema civilian population, but he did not do so.  
2 In a few cases he took measures in response to the crimes, but these fell well short of  
3 being reasonable and necessary in the circumstances.  
4 As explained by Witness P-17 in relation to the assault on Banyali-Kilo, and I quote  
5 the witness in French, (Interpretation) "This language was used frequently in the  
6 UPC: 'Kupiga na kuchaji.' So there was no sentence nor anything, no holding to  
7 account."  
8 (Speaks English) According to the same witness, in the week following the  
9 Mongbwalu operation, Salumu Mulenda conveyed to his troops an order from Bosco  
10 Ntaganda for them to stop pillaging the town, but the officers continued to pillage,  
11 and looted goods continued to come into the UPC's camp. Instead of repression or  
12 punishment, P-17 saw commanders taking for themselves goods such as radios that  
13 had been pillaged by their troops.  
14 As for the assault on Walendu-Djatsi, Witness P-38 concludes that the members of  
15 the UPC's état major, including Bosco Ntaganda, knew of the sexual exploitation of  
16 women at Kobu because it was the état major's practice to sexually exploit women  
17 and girls. Even Bosco Ntaganda had girls among his military staff, and they were  
18 sexually exploited.  
19 P-38 explains that the état major took no disciplinary sanctions against the officers  
20 who committed sexual violence. This is so particularly where the victims were  
21 Lendu.  
22 Insider witness P-16 heard indirectly that Bosco Ntaganda was displeased with the  
23 murders perpetrated by Salumu Mulenda at Kobu because he had acted without  
24 authorisation.  
25 Your Honours, this is not corroborated by other witnesses. It is at odds with

1 Witness P-17's evidence that it was always Bosco Ntaganda who gave the orders to  
2 Mulenda and not the other way around. It is also at odds with Witness P-55's  
3 evidence that Bosco Ntaganda commanded the operation in Lipri, Bambu and Kobu.  
4 According to Witness P-768, who spoke with Salumu Mulenda after the events,  
5 Mulenda told P-768 that Bosco Ntaganda gave him the orders.

6 In any case, your Honours, as confirmed by Witness P-16, Bosco Ntaganda failed to  
7 punish Salumu Mulenda for the crimes he committed at Kobu. According to P-768,  
8 in fact, none of the soldiers who participated in the Kobu massacres were  
9 disciplined. Instead, within two weeks of the massacre at Kobu, Witness P-55 heard  
10 Bosco Ntaganda praise Mulenda for being a real man in relation to that attack.

11 The situation in relation to the recruitment, use and sexual exploitation of children  
12 under the age of 15 in the UPC also reveals Bosco Ntaganda's failure to take all  
13 necessary and reasonable measures to prevent and repress the crimes.

14 Witness P-768 states that Museveni, who was Bosco Ntaganda's chief of security,  
15 raped Bosco Ntaganda's 12 or 13 year old bodyguard but faced no disciplinary  
16 action whatsoever. According to P-768, in fact, Bosco Ntaganda protected this  
17 individual from censure.

18 The Prosecution submits that this evidence, taken together with the dearth of  
19 indications that Bosco Ntaganda punished his subordinates when they victimised  
20 non-Hema civilians and children under the age of 15, provides substantial grounds  
21 to believe that Bosco Ntaganda failed to take all necessary and reasonable measures  
22 within his power to prevent and repress the crimes.

23 A sequence of logbook messages relating to a commander called Yuda suggests that,  
24 in fact, Bosco Ntaganda fostered an environment in which the alleged perpetrators  
25 of crimes could thrive. A message dated 21 December 2002, now visible on your

1 screens, shows a subordinate commander reporting up the chain of command that  
2 Yuda and others are accused of attempting to rape civilian women and that Yuda  
3 fled.

4 A second message also dated 21 December shows that Bosco Ntaganda ordered  
5 Yuda's arrest for alleged rape yet less than two months later, shortly prior to the  
6 assault on Walendu-Djatsi, Bosco Ntaganda promoted Yuda, as can be seen in the  
7 next message dated 11 February 2003.

8 The Prosecution submits that these messages illustrate first that Bosco Ntaganda had  
9 effective control over his troops as he was able to order their arrest directly. It also  
10 shows that Bosco Ntaganda's measures in this case were insufficient to address the  
11 allegations of rape which, judging by Ntaganda's initial decision to arrest Yuda,  
12 appeared to have been given credence.

13 Taken together, the arrest and subsequent promotion of Yuda amount to a failure to  
14 take all necessary and reasonable measures as required by Bosco Ntaganda's duty as  
15 military commander.

16 As with his failure to take all necessary and reasonable measures, rather than  
17 disciplining his soldiers for his crimes, Bosco Ntaganda, in fact, set a negative  
18 example for them to emulate.

19 Witness P-55 states that, after an area was captured, I quote, "... you would hear  
20 complaints later on about they killed the people. They raped the women and girls.  
21 For every operation where Ntaganda was attacking there would be complaints about  
22 killings or other complaints. That was well-known because of his behaviour, his  
23 habit."

24 This witness states further, and I quote, "It would have been for him to give the  
25 order for Salumu to be imprisoned, not only Bosco, it could have been Lubanga as

1 well because he was the president. So since they didn't do that, it showed that they  
2 were happy with what happened because nothing happened afterwards."

3 Your Honours, as to the fifth element of command responsibility, the Prosecution  
4 submits that Bosco Ntaganda's failure to exercise control properly over his troops  
5 increased the risk that they would commit the crimes. This, Madam President,  
6 brings my presentation of the evidence relevant to Article 28(a) to a close. And I  
7 will now with your leave hand over to my colleague Ms Luping, who has very brief  
8 remarks.

9 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Ms Solano. You  
10 have been to the point, concise. Thank you so much.

11 Now, Ms Luping, it's your turn.

12 MS LUPING: Thank you, Madam President, your Honours. I simply have one  
13 additional point to raise in relation to the mode of liability under Article 25(3)(f)  
14 regarding attempted murder.

15 The Prosecution simply seeks to recall the evidence of attempted murders, including  
16 as described by my colleagues Ms Rabanit and Mr van der Werf. First that P-18 was  
17 shot in the face and P-22 was hacked in the neck by UPC/FPLC direct perpetrators  
18 and both left for dead. Both Witnesses P-800 and P-19 were deliberately shot at by  
19 UPC/FPLC direct perpetrators as they were fleeing.

20 In our submission, all of these can be seen as examples of attempted murder for the  
21 purposes of Article 25(3)(f).

22 I have no further submissions, Madam President, your Honours. That concludes  
23 the submissions of the Prosecution regarding modes of liability. Thank you.

24 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Ms Luping, for this  
25 additional clarification.

1 Could I conclude that you have finished with your presentation, Ms Samson?

2 MS SAMSON: Yes, your Honour. That concludes the Prosecution's presentation  
3 of its evidence.

4 PRESIDING JUDGE TRENDAFILOVA: Thank you very much.

5 Now I turn to the team of Mr Ntaganda, in particular to the lead counsel, Mr  
6 Desalliers. You have the floor to start up until 1 o'clock. The rest of the day is also  
7 over to you and tomorrow.

8 MR DESALLIERS: (Interpretation) Thank you very much, your Honour.

9 Perhaps I could start by giving you -- giving the Chamber an idea of the order of our  
10 presentation and our presenters, because, first of all, I'm going to make a first  
11 presentation to the Chamber on the issues -- issue of crimes against humanity,  
12 Caroline Buteau will then follow thereafter to address the Chamber with regards to  
13 war crimes, and Andrea Valdivia will thereafter make observations on modes of  
14 responsibility, and I will come back at the end to make certain observations, in  
15 particular on investigations and elements of evidence which the Prosecutor has  
16 recourse to during the proceedings.

17 But before going into the issue of crimes against humanity, first of all, I would like to  
18 make some initial observations. First of all, I would like to stress that the  
19 observations that we will make during the hearing obviously cannot be exhaustive,  
20 and this is all the more true given that I mention that the document containing the  
21 charges which was communicated on 10 January makes it very difficult for us to  
22 prepare our Defence within the framework of this hearing, in particular, due to  
23 difficulties in finding the precise evidence upon which the Prosecution is basing  
24 itself.

25 I would say that the situation really hasn't improved for the Defence, because during

1 this hearing we have listened well to the presentations by the Office of the  
2 Prosecutor, but the reference to precise exhibits or evidence is something that we  
3 don't know. And they're still unknown because we have received -- well, we  
4 received at 10.15 some evidence with regards to a certain number of presentations of  
5 the Office of the Prosecutor, but we haven't had everything. And we still have not  
6 received the visual aids which were disclosed as well. And I have to say for some  
7 they -- some of them will be contested by the Defence.

8 And I would also like to stress with regards to the FPLC organigram that was  
9 communicated by the Office of the Prosecutor, we will need all that. All that will  
10 have to be in our possession so that we will be able to formulate observations which  
11 are far more specific with regard to the evidence raised by the Office of the  
12 Prosecutor.

13 And that now takes me, your Honour, over to a proposal that I would like to make  
14 to the Chamber, and this proposal is aimed at improving the efficiency and speed  
15 with which we can make our observations. And it's also aimed at trying to  
16 maintain fairness of the proceedings and equity, because on the Prosecution's side,  
17 their presentations have been made without making reference to precise evidence  
18 upon which the OTP is basing itself.

19 I propose that the Defence works in the same way. We don't systematically refer to  
20 every single individual exhibit upon which we base our arguments but only in  
21 certain cases where it would be necessary within the framework of observations.

22 And what we could do, once we receive the transcripts, then we could indicate, we  
23 could insert into the transcription all the references to evidence upon which we  
24 would like to rely and which we would like to refer the Chamber to.

25 So if this way of proceeding is possible for the Chamber, this is one of the positions

1 that we would like to take with a view to improving the effectiveness, efficiency and  
2 fairness of the proceedings.

3 PRESIDING JUDGE TRENDAFILOVA: Mr Desalliers, if I could make a short  
4 comment. First of all, it has been ordered by the Chamber that the presentation of  
5 the team of the Prosecutor in writing will be presented to you as soon as the team of  
6 the Office of the Prosecutor finalises its task regarding this presentation.

7 So did you provide something to the Defence -- not something but the presentation  
8 as such whereby it was also the instruction on behalf of the Chamber that all the  
9 allegations are connected, linked to a specific piece of evidence? This is number  
10 one.

11 With regard to the video that were presented during the hearing, this should have  
12 been part of the evidence that was disclosed to you, so no new evidence could be  
13 disclosed during the confirmation of charges hearing without having prior been  
14 disclosed to the Defence.

15 So if this was the case that there were videos that were not disclosed, then they  
16 wouldn't be taken into account by the Chamber when we are going to finally  
17 deliberate and take our final decision on the charges of the Prosecutor.

18 So, Ms Samson, I would like to hear your response to the issue raised by Mr  
19 Desalliers.

20 MS SAMSON: Yes, your Honour. The Prosecution has forwarded copies of four  
21 of the presentations delivered to date to the Defence and to the legal representatives,  
22 and we intend to file them in the record of the case today further to your Honours'  
23 decision.

24 We are finalising the footnoted versions of the presentation -- of the remaining  
25 presentations that have been heard, and we can forward those as well today to the

1 parties in advance of the official filing later today as well.

2 The visual aids are indeed based on disclosed evidence. I take Mr Desalliers' point  
3 that he would like to get a copy of the organigram. That is a compilation of various  
4 items of evidence that have been disclosed, in which case he is, in our submission,  
5 entitled to view it.

6 We've identified which pieces of evidence we've used to create the organigram on  
7 the slide that was presented by the Prosecution on Monday, but we also intend to  
8 file the visual aids with the Chamber, and we can provide an advanced copy of the  
9 visual aids to Mr Desalliers as well.

10 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Ms Samson. I very  
11 much appreciate what you're going to present to the Defence as soon as possible  
12 today and the organigrams as well related to the evidence.

13 And I would just like to make the point to the Defence team, and it is equally related  
14 to the Prosecutor's team and the legal representatives for victims, that as the usual  
15 practice of this Chamber -- not only of this Chamber, of the Pre-Trial Chambers of  
16 the International Criminal Court is, after we finish with the confirmation of charges  
17 hearings, the parties will be provided, and the legal representatives, to further  
18 develop their views in their written submissions, but this is an oral decision that will  
19 be taken at the end before closing the confirmation of charges hearing.

20 The Prosecutor and the legal representatives will have three weeks to respond.

21 Thereafter, the Defence will have four weeks to respond in written submissions. So  
22 you will have an abundance of opportunities to further on develop your views of  
23 course with regard to what has been discussed during the confirmation of charges  
24 hearing.

25 The Chamber is of the view that a lot of efforts were made so that the parties are put

1 on an equal footing, and the Defence is not in any way put in a difficult position to  
2 properly present the interests of Mr Ntaganda.

3 MR DESALLIERS: (Interpretation) Thank you very much, your Honour. So I  
4 understand from your observations that the Chamber has no objection to us  
5 presenting our observations without systematically referring, with regard to each of  
6 the allegations, to the exact piece of evidence or where these references come from  
7 and that we will provide this information later.

8 PRESIDING JUDGE TRENDAFILOVA: We do not have objections.

9 MR DESALLIERS: (Interpretation) Thank you very much, your Honour.  
10 So I shall start with my observations on the issue of crimes against humanity. In the  
11 document containing the charges, we find five counts for crimes against humanity  
12 which have been described to you by the Office of the Prosecutor over the last days.  
13 First of all, I would like to go back to certain general prerequisites which must be  
14 met relating to crimes of such a nature. For a crime against humanity Article 7 of  
15 the Statute indicates that any of the following acts provided for in this article must  
16 be committed as part of a widespread or systematic attack directed against any  
17 civilian population with knowledge of the attack.  
18 Article 7(3) of the elements of crimes stipulates that by attack directed against a  
19 civilian population, this is understood to mean a course of conduct involving the  
20 multiple commission of acts referred to in Article 7(1) of the Statute against any  
21 civilian population pursuant to or in furtherance of a state or organisational policy to  
22 commit such attack. As such, it requires that the state or organisation actively  
23 promotes or encourages such an attack against a civilian population.  
24 The Prosecutor must, therefore, demonstrate -- even before it is necessary to discuss  
25 particular elements relating to each of the crimes against humanity, must

1 demonstrate that -- firstly, that there were an attack against a civilian population. It  
2 has to demonstrate the widespread or systematic nature of the attack and  
3 demonstrate that this attack was carried out pursuant to the active policy of an  
4 organisation.

5 Article 7(1) of the elements of crimes furthermore specifies that since Article 7 must  
6 be strictly construed in accordance with international criminal law as it engages  
7 individual responsibility.

8 So the first point about which I would like to make observations is with regards to  
9 this notion of an attack against the -- against a civilian population. This notion is  
10 defined in Article 7(2)(a), and it is understood, and here I quote "... a course of  
11 conduct involving the multiple commission of acts referred to in paragraph 1 against  
12 any civilian population pursuant to or in furtherance of a state or organisational  
13 policy to commit such attack."

14 In the decision confirming the charges in the Bemba case, the Chamber recalled the  
15 jurisprudence of the international criminal tribunals to stipulate that the civilian  
16 population must be the primary object of the attack and not just an incidental victim  
17 thereof. The Chamber also observed in that decision that according to the  
18 well-established principle of international humanitarian law, the term "civilian  
19 population" comprises all persons who are civilians as opposed to members of  
20 armed forces or other legitimate combatants.

21 The Prosecutor asserts in paragraph 5 of the document containing the charges that  
22 these charges for crimes against humanity are aimed at two specific operations,  
23 namely Mongbwalu and the area around it in November 2002, and that of Kobu,  
24 Bambu, Lipri in February and March of 2003.

25 The Prosecutor must therefore demonstrate that the FPLC had the aim of attacking

1 the civilian population in these two places.

2 And on this point, your Honours, the Office of the Prosecutor merits a special  
3 mention for having succeeded in avoiding mentioning its own evidence regarding  
4 the true objective of these. It has not mentioned at all in its request for the issuance  
5 of a second arrest warrant, and in the document of charges it also avoided any  
6 mention of the true objectives of these military operations.

7 Let us start with the operations in Mongbwalu which took place in November 2002.

8 The Prosecution asserts in its document containing the charges that the aim of this  
9 operation was to capture the town and to drive out the non-Hema civilians in the  
10 region, particularly the Lendu. That's the objective of the operation as it has been  
11 described to you.

12 Further, the Prosecution's own witnesses, particularly those who declare that they  
13 have been part of this operation, have described a completely different aim. The  
14 objective of the FPLC was not to attack the non-Hema civilian population but rather  
15 to neutralise the combined armed forces of the APC and the Lendu combatants.

16 The Prosecution witnesses who declare having been former members of the FPLC  
17 and participate in this military operation in Mongbwalu are Witnesses P-17, P-38  
18 and P-768, and they have testified with regard to the aims of this operation in  
19 Mongbwalu.

20 Let us start with P-17. This witness told the investigators that the enemy of their  
21 troops in Mongbwalu were the APC and the Lendu combatants. He continued that  
22 the enemy infiltrated the dwellings to fire on them and that the fire exchange was  
23 particularly fierce because the enemy was firing at them using machine-guns. He  
24 added that as they advanced up towards Sayo, the UPC troops met with  
25 considerable resistance. They encountered ambushes and were being fired upon by

1 the enemy. He also told the investigators that the civilian population had left the  
2 town before their troops arrived.

3 P-38 indicated that the aim of the operation in Mongbwalu was to destroy the  
4 general staff of the FNI. He said that the UPC forces were first told to attack the  
5 airport, then the Lendu military camp in Kagoli. This is in the town of Mongbwalu.  
6 He said that most of the enemy troops were in Sayo and that they were even  
7 stronger than the UPC troops at this point and that they put up fierce resistance to  
8 the FPLC, firing at them with automatic weapons, AK-47 and even with heavy  
9 weapons.

10 P-768 also maintained that he had been part of the Mongbwalu operation as part of  
11 the FPLC. He testified that the RCD-K/ML and the Lendu militia were in control of  
12 the town of Mongbwalu and fought side by side during this operation. He  
13 maintained also that the objective of the FPLC was to drive out the RCD-K/ML and  
14 the Lendu militia from the town. He said that the Lendu militia were in Camp Goli  
15 in the factory and then Sayo. He also added that some of these combatants were  
16 wearing civilian clothing while others were in uniform.

17 On the list of evidence from the Prosecutor's office we have a video which is said to  
18 have been filmed in Mongbwalu about three days after the end of the operations.  
19 You have seen part of this yesterday. It was shown by the Prosecution. This is a  
20 prime piece of evidence because it shows the locations referred to in the charges  
21 shortly after the events in question.

22 You were shown yesterday a very short extract of this -- of this video, but we feel it's  
23 important to draw your attention to other passages of this video which show not  
24 only that the aim of the Mongbwalu operation was the armed coalition of the APC  
25 and the Lendu combatants but also that the Prosecutor's allegations with regard to

1 the ethnic policy of the UPC, RP and FPLC has no foundation.

2 We will only show you extracts today, but we would like to draw your attention to

3 the fact that it would be interesting to see the whole of this video given the

4 importance with regard to these charges.

5 If I may, Madam President, I would like to move to private session for a short

6 clarification.

7 PRESIDING JUDGE TRENDAFILOVA: The question from the court officer, private

8 or closed session?

9 MR DESALLIERS: (No interpretation)

10 PRESIDING JUDGE TRENDAFILOVA: Closed with curtains?

11 MR DESALLIERS: (No interpretation)

12 PRESIDING JUDGE TRENDAFILOVA: Okay. So private session, please.

13 (Private session at 12.23 p.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

26

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Open session at 12.25 p.m.)

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

8 PRESIDING JUDGE TRENDAFILOVA: Could we have the video?

9 MR DESALLIERS: (Interpretation) My video -- the video is going to be managed  
10 by my colleague here on the right who is going to show you the relevant parts. But  
11 perhaps I could make another proposal with regard to how we should manage this.

12 I have the transcription of the extracts that I would like to draw your attention to.

13 These are the documents that I believe were given to you before the presentation.

14 The French transcription of this video is EVD-PT-OTP-06511.

15 That's -- your Honour, having tried this out myself before the presentation, I think it  
16 would be difficult to try and watch the image -- the video and look at the  
17 transcription at the same time. It was very good that the Prosecution had subtitles.

18 We unfortunately don't have this luxury.

19 So the interpreters have the transcriptions, and I would suggest that the extracts be  
20 translated out loud as the video is being shown so that the interpreters can translate,  
21 and it will bring the whole thing to life much more.

22 PRESIDING JUDGE TRENDAFILOVA: This is a very good point. We cannot  
23 simultaneously follow the video and the transcript.

24 MR DESALLIERS: (Interpretation) Thank you, your Honour. This video is  
25 EVD-PT-OTP-06338. So the code that I gave you just now was for the video, and

1 the transcription was the code that I gave you a few moments ago.

2 I'm sorry, your Honour. One moment, please.

3 THE INTERPRETER: Message from the interpreters: The French interpreters will  
4 read the transcript --

5 MR DESALLIERS: (Interpretation) Apparently there's a problem with the video.  
6 I'll just cross-check that everything is working correctly.

7 THE INTERPRETER: Message from the interpreters: We will read out the French  
8 transcript, and the English interpreters will sight translate, but we would appreciate  
9 receiving the specific line references so that we can find the appropriate part of the  
10 transcript. Many thanks.

11 PRESIDING JUDGE TRENDAFILOVA: Maybe you could be guided by Mr  
12 Desalliers.

13 Mr Desalliers, there is a request from the interpreters that you are guiding which  
14 parts exactly from the transcript should be translated.

15 MR DESALLIERS: (Interpretation) Yes, your Honour. For each extract I will give  
16 the timing of the video and the exact point in the French transcription which  
17 corresponds to the extract we will be seeing.

18 PRESIDING JUDGE TRENDAFILOVA: To the interpreters, this support on behalf  
19 of Mr Desalliers, will it help you?

20 THE INTERPRETER: The interpreters require the specific line references so we can  
21 find our place in the text.

22 PRESIDING JUDGE TRENDAFILOVA: The specific line references so that they can  
23 find them in the text. So it is arranged. Thank you.

24 MR DESALLIERS: (Interpretation) And one final point, this transcription which is  
25 a translation was done by the OTP and communicated to us. Some extracts we feel

1 are not quite correct, we in the Defence. So I think we can work with the  
2 transcription for the time being, but at a future point I will bring up one of the -- one  
3 or two of the points where we feel that there may have been translation errors. But  
4 I don't want to go into this level of detail during these presentations. We can do  
5 that in writing at a later stage.

6 PRESIDING JUDGE TRENDAFILOVA: Yes. That would have been my proposal.  
7 So if you find some mistakes, some imprecisions that would be vital for the case of  
8 the Defence, you are going to reflect in the written submissions after the  
9 confirmation of charges hearing.

10 MR DESALLIERS: (Interpretation) Thank you. The first extract that I would like  
11 to draw to your attention starts at 5.33, 5 minutes 33 and goes to minute 9.45. The  
12 transcription of this goes from page 3, line 94 to page 5, line 158. So we will play  
13 the particular footage, your Honour.

14 (Viewing of the video excerpt)

15 PRESIDING JUDGE TRENDAFILOVA: There is no sound.

16 MR DESALLIERS: (Interpretation) I apologise. We will try again and try to get  
17 the video playing properly.

18 (Viewing of the video excerpt)

19 THE INTERPRETER: "This was Mongbwalu airstrip. The town was taken by the  
20 UPC three days ago. I'm now talking to the sector commander Bosco.

21 Bosco, what's the situation here following the capture of this town? Is everything  
22 okay?

23 I'm not the sector commander.

24 This is the landing airstrip in Mongbwalu that was -- this town was taken three  
25 days ..."

- 1 (Video continues in English) "... by RCD/ML rebels which is led by Mbusa  
2 Nyamwisi. I have now met the chief of staff of the UPC rebels forces, Commander  
3 Bosco.  
4 Commander Bosco, how is the situation here after capturing the town of  
5 Mongbwalu?  
6 The situation now is okay.  
7 It's fine?  
8 It's fine.  
9 There's no problem?  
10 There is no problem.  
11 Everything is fine?  
12 Everything is fine.  
13 People are doing their business peaceful?  
14 No problem.  
15 There is no problem.  
16 Mm-hmm.  
17 Thank you very much. It continues to be like this. We are now going to town and  
18 shall be back on air. Mike Arereng reporting from Mongbwalu airstrip."  
19 MR DESALLIERS: (Interpretation) I just paused the video because you see there  
20 are changes of language, and it's somewhat complicated for the interpreters to hop  
21 from one language to another. So I'll try to pause the video each time there's a  
22 change of language.  
23 (Viewing of the video excerpt)  
24 THE INTERPRETER: "We are at the airstrip in Mongbwalu, and this is a sector in  
25 the eastern part of the Congo, and many problems have occurred here. I'm chatting

1 with the leader of the general staff of the UPC, Commander Bosco.

2 Could he tell me ever since they took the town, have things been going well?

3 Answer: I think things have been going well in this sector. The fighting was  
4 tough, but for the time being we have control of the sector. We have the soldiers all  
5 around us, as you can see. And for the time being people are going back to their  
6 homes. Those who fled, they saw their property looted by other fighters. There  
7 were some APC soldiers from President Kabila who were there.

8 Did you detain them?

9 Yes. We stopped -- we arrested some of them.

10 In that sector?

11 Answer: Further on.

12 How many days did the fighting last?

13 Answer: Two days. We got there in the morning and one day after that we had  
14 taken the town.

15 Question: Are people still going about their usual occupation?

16 Answer: People had fled because all the people who were here had been stopped  
17 by the -- by the fighters, the APC troops and the FAC forces. And for the time  
18 being, the people who were there before us, you see they were telling some lies, but  
19 for the time being they've seen that the situation has changed and --

20 Question: Thank you very much. The people who were here before were the  
21 people who caused a lot of problems to the local populace. We think that the  
22 situation will return to normal. We are here at the Mongbwalu airstrip."

23 The Swahili interpreters wish to point out that the sound quality of this video  
24 footage was rather poor and the speed was excessive.

25 MR DESALLIERS: (Interpretation) I just had a message from the interpretation

1 booth to the effect that the speed was excessive for the interpreters. I will try to  
2 pause the videos as much as possible so that the interpreters can catch up. If it's too  
3 difficult, please, they should not hesitate to let us know.

4 PRESIDING JUDGE TRENDAFILOVA: Please proceed, Mr Desalliers.

5 MR DESALLIERS: (Interpretation) I wanted to show the Court this particular  
6 footage to point out one point that is quite problematic, your Honours. Namely,  
7 you see the Prosecutor has used this particular footage more than once. And my  
8 learned friend opposite, Ms Samson, and also her colleague tried to use this footage  
9 to convince the Chamber that Mr Ntaganda had a more important position in the  
10 structural -- in the org chart, so to speak, but I think that this is really not very fair.  
11 It's clear from the transcript that Mr Ntaganda did not say that he was the chief of  
12 staff. He said that he was the chief of staff of the UPC and commander of  
13 operations.

14 I stress that he was speaking in a language that is not his mother tongue. And to  
15 use just one particular part of this footage and just to stop at the few words "chief of  
16 staff" and to try to claim that he was in a higher position than Mr Kisembo, that is  
17 not a proper way of presenting the facts. I wanted to make that specific point.

18 Now, the following extract that I would like to play begins at 10 -- at time stamp  
19 10.17 and goes to 12.59, time stamp 12.59. In the transcript these are -- in the French  
20 transcript this goes from page 5, line 169 to page 6, line 211.

21 (Viewing of the video excerpt)

22 MR DESALLIERS: (Interpretation) I'll play this.

23 (Viewing of the video excerpt)

24 THE INTERPRETER: The interpreters cannot hear what is being said on the video.

25 MR DESALLIERS: (Interpretation) I think we should cross-check whether the

1 interpreters can hear. I might suggest that they might try to rely on the transcript.

2 We have also provided a Swahili transcript to the interpreters. I think they could  
3 follow that transcript and then do a translation from the various extracts.

4 PRESIDING JUDGE TRENDAFILOVA: The interpreters actually were making the  
5 point that they cannot hear very well what has been said, but maybe if you could  
6 follow the transcript, this is going to put you at ease with the interpretation.

7 THE INTERPRETER: Message from the interpreters: We will do our best, but you  
8 see in the case of a discrepancy between the sound and the transcript, the  
9 interpreters are in a very difficult position, and we must give priority to the sound,  
10 what we actually hear.

11 PRESIDING JUDGE TRENDAFILOVA: So the transcript is from page 5, line 067,  
12 'til page 6, line 211. And of course you know how to best do your job.

13 (Viewing of the video excerpt)

14 THE INTERPRETER: "They came to attack us. We can't tolerate someone bother  
15 us all the time. That is why we have decided to attack this sector and take control  
16 of it. Now, regarding the -- did the traders do something? Yes. And they have  
17 fled with the forces and others are coming back. We are talking about the security  
18 situation.

19 What is the situation here? Did the inhabitants greet you? Answer: Yes. We  
20 were well greeted because those who occupy the terri -- and what's more, as far as  
21 we are concerned, that was not our intention.

22 Question: Can you tell us whether the people in this locality and the civil  
23 population have greeted you?

24 Answer: Yes. They have greeted us nicely, very nicely, and you yourself can see

25 what kind of greeting we received. Question from the journalist: Can you confirm

1 that these planes were dropping off weapons to --

2 Answer: The truth is well-known. The inhabitants have greeted us here. The  
3 planes, one is from the Cetraca and the --"

4 Message from the interpreters: It is not possible to provide accurate interpretation  
5 under these conditions.

6 (Viewing of the video excerpt)

7 PRESIDING JUDGE TRENDAFILOVA: Wasn't the sound of the recent video  
8 clearer?

9 THE INTERPRETER: Message from the interpreters: Usually we do not interpret  
10 videos because of problems with sound and speed. In this occasion, we tried to do  
11 our best, but it is not possible to provide an accurate interpretation under these  
12 conditions.

13 PRESIDING JUDGE TRENDAFILOVA: Thank you so much. I think that we  
14 shouldn't put too much pressure on the interpreters because they wouldn't like, as  
15 far as I understand, to make inventions, because every single word uttered could be  
16 extremely important. So I would -- just a moment.

17 I would like to suggest that we rely on what has been interpreted right now plus the  
18 transcripts whereby you're going to make your comments, Mr Desalliers, and some  
19 corrections if you find the interpretation that is provided by the Prosecutor's office at  
20 some places inappropriate or imprecise.

21 MR DESALLIERS: (Interpretation) Yes, I would have liked to have shown the  
22 footage and listened to the interpretation at the same time, but that seems to be very  
23 difficult, so I would suggest that we show the videos and I could read out -- perhaps  
24 I could pause and perhaps I could read out parts of the transcript that I think are of  
25 relevance and I could make reference to the extracts that way. It wouldn't be

1 the -- quite the same thing. It would be me speaking, but I do understand the  
2 difficulties that the interpreters are facing.

3 PRESIDING JUDGE TRENDAFILOVA: Mr Desalliers, I think that first and  
4 foremost we have to pay tribute to the professionalism of the interpreters and that  
5 they would like to adhere to the oath that -- under which they are doing their job.  
6 So your proposal, it can't equate a hundred per cent to what could have been the  
7 impression of following the video, but it is sufficient enough.

8 MR DESALLIERS: (Interpretation) Thank you, your Honour.

9 PRESIDING JUDGE TRENDAFILOVA: Shall we proceed now as suggested by you  
10 to follow the transcripts?

11 MR DESALLIERS: (Interpretation) Yes, your Honour. My suggestion is that  
12 perhaps I refer you to the specific time stamps to play the particular footage or one  
13 portion thereof so that you can see the images. We would pause then, take more  
14 frequent pauses, and then I would read into the record the extracts that are of  
15 particular interest.

16 PRESIDING JUDGE TRENDAFILOVA: Let us proceed the way you have  
17 suggested.

18 MR DESALLIERS: (Interpretation) Before that, if we could just go back to the  
19 earlier footage so that I could point out two questions and two answers that we think  
20 are of particular importance, and I would like to reread those.

21 The journalist said, and in the French transcript page 5, line 176:

22 "Question: Since you are talking about the security situation, what is the situation  
23 that prevails here? Did the inhabitants greet you nicely?"

24 The answer from Mr Ntaganda was this, "Yes. The inhabitants greeted us properly,  
25 because those -- those people who were occupying this territory, it was an army that

1 was not ideal. They told us that they did their own business or trading, and what's  
2 more, they paid them. As far as we are concerned, that is not our intent because, as  
3 far as we are concerned, this is about protecting the inhabitants and their property."

4 Question from the journalist, "Could you tell me whether the leaders of this locality  
5 and the civilian population greeted you properly? Were they pleased to see you?"

6 Answer from Mr Ntaganda, "Yes, we had a warm welcome. They welcomed us  
7 very warmly and you can see for yourselves the images of the greeting that we  
8 received."

9 The following piece of footage begins at time stamp 21.02 and goes on to 27.27, time  
10 stamp 27.27. So we could begin by playing part of that video. And in the  
11 transcript the equivalent part of the French transcript is at page 10, line 341 to page  
12 11, line 393.

13 (Viewing of the video excerpt)

14 MR DESALLIERS: (Interpretation) Your Honour, I realise that this is a somewhat  
15 difficult exercise. We didn't think that we would be proceeding in this manner.

16 What I would suggest -- now, I believe that we would take our break at 1 o'clock. I  
17 will try to identify the specific passages that I think are truly important. I will read  
18 them out for the transcript, and I think that would be more effective if I try to  
19 identify the specific passages. So I would suggest we take our break now and I will  
20 immediately begin that particular exercise.

21 PRESIDING JUDGE TRENDAFILOVA: Your proposal is appreciated, Mr  
22 Desalliers, although it could have been much better to follow the video with the  
23 interpretation simultaneously running, but the proposal that you are making that  
24 you identify the relevant parts and you're just -- they're just translated for the  
25 purposes of the record in the transcript, this is how it would expedite the way we

1 run our proceedings.

2 So we shall take the break now and resume our session at 2 o'clock. Not 2.30, but 2  
3 o'clock. Thank you.

4 THE COURT USHER: All rise.

5 (Recess taken at 12.56 p.m.)

6 (Upon resuming in open session at 2.02 p.m.)

7 THE COURT USHER: All rise.

8 PRESIDING JUDGE TRENDAFILOVA: Good afternoon. Please be seated. We  
9 resume our session with the presentation of Mr Desalliers and anyone else from his  
10 team. So the floor is over to you, Mr Desalliers.

11 MR DESALLIERS: (Interpretation) Thank you, your Honour. I would like to  
12 continue with the video that we began viewing before the lunch break. Of course,  
13 since there is no translation of the passages, I will first indicate the time stamps and  
14 the specific references within the transcript. We will view a shorter excerpt than I  
15 initially thought I would show, and then I will read out or summarize the items that  
16 are of interest to us.

17 I'd like to draw your attention to the footage from 21.02 to 21.27, time stamp 21.02 to  
18 21.27, page 10, line 343 to page 11, line 393.

19 Now, I won't play the entire footage right now, but if we could go to time stamp  
20 23.03, and we will view part of that footage as of that particular time stamp.

21 (Video recording was played in open court.)

22 MR DESALLIERS: (Interpretation) So we can see in this footage Mr Ntaganda  
23 speaking with someone on the telephone. And just before, I gave you the time  
24 stamp a few moments ago, there was a voice, a person who is not seen on the video,  
25 but we do

26

1 hear this person. And this person mentions that the video was filmed in  
2 Mongbwalu in the area close to the factory. And the person who is commenting on  
3 the video says the following, and I quote:  
4 "Truly dear fellow Congolese citizens, we are very indignant by what has been done  
5 by Mbusa Nyamwisi soldiers, the APC soldiers, with the complicity of the Lendu  
6 combatants. What they did in Mongbwalu is truly a shame. This factory was of  
7 great use to the population. It was used by the entire public -- republic, but it has  
8 just been destroyed by the UPC fighters and the APC soldiers, Mbusa Nyamwisi  
9 soldiers. This is really a shame. At the current time it is the UPC, the Union of  
10 Congolese Patriots who is here in the field, they are the ones who have taken control  
11 of Mongbwalu."

12 Then after that there is this discussion on the telephone with Mr Ntaganda speaking,  
13 and I quote:

14 "We drove them all off. In actual fact, it was a mix. We caught some of them,  
15 others were killed, others fled, they scattered. Our objective was to fight all these  
16 leaders who are only fighting for their own good. Musamba Nyamwisi is a person  
17 who is not fighting for the well-being of the Congolese. Our objective is to move  
18 forward, to continue progressing forward, and to liberate all Congolese citizens  
19 without any distinction.

20 "We wish to liberate those who are currently led by the RCD party. They're the  
21 ones we are fighting right now. We have just driven them out of the locality where  
22 we are right now. I think that at this time we've taken control of the Ituri district  
23 and, thus, we are preparing to pursue Mbusa Nyamwisi's troops no matter where  
24 they may be. He formed an alliance with Joseph Kabila's army, because amongst  
25 those who are fighting us, those troops are part of that. The FAC soldiers are

1 involved.

2 "This is an utter lie, this is propaganda, because as far as we are concerned, we are  
3 not committing any massacres at all. I think that some journalists are visiting these  
4 areas. They can see so for themselves. We do not intend to kill the inhabitants. In  
5 contrast, what we do want to do is protect the inhabitants and their property.  
6 Everything else is absolutely false. I refute all of that. The person who was the  
7 governor of this district, he was a member of our party, the UPC. I don't see why  
8 we could kill our own governor."

9 Then at the end of this particular footage you see the journalist who says the  
10 following, and I quote:

11 "We are in areas where gold is mined, within the Kilo-Moto plant, which is known  
12 throughout the entire world. This is in the Ituri province in the north-eastern  
13 Congo. Yes, the Patriotic Union, the Patriotic Union of the Congo, yes, they are  
14 fighting Mbusa Nyamwisi, because Mbusa Nyamwisi committed massacres in this  
15 part of the world in the Ituri district. So they want to kick him out, because Mbusa  
16 Nyamwisi, at this particular time Mbusa Nyamwisi is in Kinshasa.

17 "During the negotiations that were held in Sun City to enter into a peace agreement,  
18 he was supposed to be designated vice-prime minister or deputy prime minister  
19 rather," end of quote.

20 Now, the next thing I would like to draw the Chamber's attention to begins at time  
21 stamp 30.47 and continues to time stamp 34.58. The corresponding transcript is at  
22 page 13, line 453, to page 14, line 502.

23 (Video recording was played in open court)

24 MR DESALLIERS: (Interpretation) I'll just restrict myself to that. And I would  
25 like to draw your attention to one particular passage which shows that this factory in

1 Mongbwalu was destroyed, looted. And the voice that we heard specified that the  
2 factory had been destroyed and looted by APC fighters and Lendu combatants.

3 I would now like to move to the following passage, time stamp 43.07 to 45.00. The  
4 corresponding transcript is at page 16, line 584 to page 17, line 638.

5 (Video recording was viewed in open court.)

6 MR DESALLIERS: (Interpretation) Your Honours, I will restrict myself to one part  
7 of this passage. I just wanted you to see that the journalist is interviewing a lady.  
8 And rather than playing the entire video, I'd rather just read out this interview. I'll  
9 use the transcript for that purpose. Just to give you an exact reference, I'll begin  
10 reading out at line, at line 596 -- correction 593. The lady gives her name. Her  
11 name is Yvonne.

12 "Could you tell us what is the situation right now? How are things going? We can  
13 see that you just returned here. You had gone off, and you had hidden. Where did  
14 you go and hide?

15 Answer: In the bush. We were told to flee.

16 Question: Who told you that, Mbusa's people?

17 Answer: The Lendu. They told us that if we stayed here, we would all be killed  
18 without any distinction made no matter what ethnic group one might belong to.  
19 That is why when we learned that, we fled into the bush. We went and we hid in  
20 the vegetation. However, we learned yesterday that they were asking us to come  
21 back. And then after that, we went back to the village.

22 Question: And now you are happy. Have you given the soldiers a warm greeting?

23 Answer: We were fine. When we got to the road, they told us in a very nice way  
24 to come back and to re-settle. We didn't have any problems, no disturbances, no  
25 difficulties. We re-settled. Yesterday we chatted with some of them. And many

1 of our brothers who we know quite well are amongst them.

2 Question: When will you reopen the shops, tomorrow?

3 Answer: Well, we don't know. I'm sure the owners of the shops will open them.

4 Question: But there is no problems?

5 Answer: No, no. There are no problems.

6 Question: Is security being provided?

7 Answer: Everything is quite calm, completely calm."

8 Further on in the transcript Commander Kitembo speaks, and he says the following:

9 "Even us, we don't have any problems with the Lendu. We came to liberate this  
10 factory. The factory belongs to the people of the Congo. It does not belong to the  
11 Lendu. It does not belong to Mbusa, not at all. Just look at how they have  
12 destroyed it. Just imagine the number of people who used to work here," end of  
13 quote.

14 Now, the next excerpt that I would like to draw the Chamber's attention to is at time  
15 stamp 1.35.58 and continues to 1.41.42. And the corresponding part of the  
16 transcript is at page 43, page 43, line 1471 to page 46, line 1626.

17 (Video recording was played in open court)

18 MR DESALLIERS: (Interpretation) I'll pause here. And now I'd like to read out  
19 the transcript of what was said. And I'd like to quote at line 1594, line 1594:

20 "Okay. We are at -- okay, here we are at the Mongbwalu market. Look and see for  
21 yourselves how the APC soldiers and combatants looted the market before they left.

22 "What you see here is the Mongbwalu market. What you see over there, those are  
23 shoes that were left behind by people who were running away. But they're starting  
24 to come back one by one. Let's hope that soon things will get better.

25 "Here you can see the Kasuku shop in the Mongbwalu market. We are with

1 Commander Kisémbó, who is touring the market to see for himself what happened  
2 here at the Mongbwalu market. We are still here at the Mongbwalu market, but the  
3 market is empty. All the same soon, once people are back, the market will resume  
4 as usual. In actual fact the inhabitants have fled far away because there was heavy  
5 fighting. So you see, people fled, and that is why the market is empty. No people  
6 are here. But they will come back.

7 "In the meantime, as you can see, security at the market is being provided. Soldiers  
8 are nearly everywhere. That is the prevailing situation in Mongbwalu at this  
9 particular time," end of quote.

10 Now, the next passage that I'd like to draw the Chamber's attention to is on the  
11 video at time stamp 1.43.37 and continues to 1.47.00. And as for the transcript itself,  
12 please go to page 45, line 1649, and it continues to page 47, line 1745. We will now  
13 play part of that particular footage. (Video recording was played in open court)

14 MR DESALLIERS: (Interpretation) This footage shows the person wearing  
15 military clothing and a red beret speaking to two people wearing civilian clothing.

16 One person is Mr Kisémbó, chief of staff, and he is talking to the two other people.

17 Now, I've identified the part of the transcript that is relevant so that we can properly  
18 understand this discussion between these people. I won't repeat all of it. That

19 would be far too -- that would take far too much time. But I think it's important to

20 stress that Commander Kisémbó was giving specific instructions to those two people  
21 who wanted to go into a house or a number of houses that were -- had been

22 abandoned but in which Lendu people were living. Commander Kisémbó told

23 them that they were officially prohibited from taking anybody's house, and everyone

24 had to go back to his or her own house once people returned to the town.

25 Now, if you require more details about this particular passage, I would urge you to

1 read the transcript in its entirety or in greater detail rather.

2 Now, the next passage is at time stamp 1.47.00 and continues to 1.57.14. The  
3 corresponding transcript is found at page 48, line 1747 to page 57, line 2067. So  
4 we'll now play that particular passage for you.

5 (Video recording was played in open court)

6 MR DESALLIERS: (Interpretation) I interrupt here, Madam President, to say the  
7 person wearing the red beret in the centre of the image is Chief of Staff Kisembo.  
8 And he's discussing with civilians in the town of Mongbwalu, and if you read the  
9 transcription for this extract, that the lady we heard on the video was explaining  
10 what abuse the civilian population suffered at the hands of the Lendu.

11 Commander Kisembo explained that the authorities were there to resolve these  
12 conflicts, that they would be resolving them impartially among the population, and  
13 he explained that they are not a group of Hema, they are not an army of Hema,  
14 they're an army for everybody. And Kisembo said he wanted no further conflict  
15 between the Hema and the Lendu.

16 In these pictures he introduced Mr Bosco Ntaganda. And as you will see from the  
17 transcript, he presents him as the -- presents himself as chief of staff and Bosco  
18 Ntaganda as his deputy.

19 I would like to quote a short passage which was on this video. In the transcription,  
20 we go to line 2050. And if I may have a moment, Madam President, I'll try to pin  
21 this down on the video itself.

22 I think perhaps we could give you the exact references later, the time stamp for this  
23 extract. But what I want to draw your attention to was something said by Mr  
24 Ntaganda, who was speaking to one of the women there at that time. So this is line  
25 2050, and I quote starting with Mr Ntaganda:

1 "Yes, indeed, that's very good. Okay. We're on your side. If somebody does  
2 something wrong, even if it's one of our soldiers, you have to run away shouting  
3 'Chief Bosco, come and help,' and I will come to your aid."

4 The person questioned says: "What camp are you living in at the moment? Where  
5 are you living?"

6 "Ntaganda: I'm living over there somewhere in the interior not far from you. You  
7 should have no worries. You can be calm. Go into your fields and look for gold,"  
8 end of quotation.

9 And finally, my last extract from this video, which is at 1.57.14 to 1.58.00 in the  
10 transcript, this is page 57, line 2069 and goes to page 58, line 2113.

11 (Video recording was played in open court)

12 MR DESALLIERS: (Interpretation) So there you see footage of the journalist  
13 questioning two women who seem to be returning to the town. And the extract I'd  
14 like to quote in relation to these images starts at 2073. We first hear a voice in the  
15 background, and I quote:

16 "Some people are starting to return to the town. As you can see here, they are  
17 coming back from gathering cassava leaves in the field. We can see them as they  
18 make their way back."

19 Journalist: "These are women that you see walking there. They have covered great  
20 distances to come here. And as you can see, they are bringing back cassava leaves,  
21 which are the staple food in this part of the Congo. They are completely exhausted.

22 "Ladies, where are you coming from?"

23 The reply is: "We are coming from the bush.

24 Question: From the bush? How much time have you spent there?

25 Answer: I don't know. About six days.

1 Six days? They were in the bush. And now you're returning. So what have you  
2 been told about security? Is it okay?  
3 Yes, it's good.  
4 There are no problems? And in the brush, did you have a lot of problems?  
5 No, not at all. I didn't have a lot of problems.  
6 You didn't have a lot of problems? You were spending the night in the brush?  
7 Yes, in the brush -- in the bush."  
8 THE INTERPRETER: Excuse me.  
9 "And food, where were you finding that?  
10 We were eating food with neither salt nor oil.  
11 And the soldiers who are here, did you welcome them warmly.  
12 Yes, we did. Yes, we welcomed them very warmly," end of quotation.  
13 Your Honours, what I have shown you are simply some extracts of a video which I  
14 would invite you to watch again and also to read the whole transcription, because as  
15 I said, as far as the Defence is concerned, this is of primary importance. The  
16 Prosecution has put this on the list of evidence which it will provide to support its  
17 accusations and even showed you a passage last Monday.  
18 But how does this video relate to the charges? What are you expected to retain  
19 from this video? Simply that Mr Ntaganda was present at Mongbwalu in the days  
20 following the military operation.  
21 However, this video shows us much more than that. It shows clearly that the aim  
22 of this operation for the FPLC was to drive out an armed group made up of the APC  
23 and Lendu combatants and not to attack the civilian population.  
24 It shows us that the FPLC was not a Hema militia, but was working for all the  
25 population, no matter what their ethnic origin. It showed us that it's the military of

1 the APC and the Lendu combatants that looted the town and destroyed the factory  
2 before fleeing. And it showed us that the civilian population fled ahead of the  
3 combat and that the FPLC, far from driving out the population, was encouraging  
4 them to come back to their own homes and to pick up their normal life.

5 So we would say that this video takes away all credibility from the pretension that  
6 the aim of the FPLC in this operation was to attack the non-Hema, to destroy or to  
7 loot the city or to drive the population out.

8 So the Prosecution video shows clearly what was the objective here with the -- we  
9 come now to what the Prosecution itself says about the events in Kobu, Bambu, Lipri  
10 which took place in February 2003. Two prosecution witnesses say that they took  
11 part in this operation for the FPLC. These witnesses, 17 and 38, both maintain that  
12 they participated in the operation in Kobu.

13 P-17 says that during this operation, the enemy was the armed APC group led in  
14 particular by Commander Kubuli, and he pointed out that the Lendu combatants  
15 had reached agreements with the APC soldiers. He says that the enemy was well  
16 organized in this location, and it was from there that they were committing acts  
17 against the UPC.

18 He emphasizes that the enemy was making daily, carrying out daily command  
19 operations from Kobu, and the FPLC was intimidated by the enemy. A solution  
20 had to be found. And P-17 said that they knew that the battle would not be an easy  
21 one and that they were afraid of undertaking this battle.

22 P-38 indicates that this operation was planned by Kisembo and Salumu with the  
23 intention of opening up the route to Bunia, which went through Kilo, Kobu, and  
24 Bambu.

25 Your Honours, it seems to us to be very hard to understand that faced with its own

1 evidence, the Prosecution can maintain in this Chamber that the aim of the FPLC  
2 operation in Mongbwalu and in this other location was to attack the non-Hema  
3 civilian population in order to drive them out of the region. The OP's own evidence  
4 points indubitably towards a different reality, in other words, that it was a military  
5 operation intended to drive out the armed coalition of the APC and the Lendu  
6 combatants.

7 But as I said earlier, it is really quite astonishing to see to what extent the  
8 Prosecution seems determined to disregard, disregard completely this evidence with  
9 regard to the APC and the Lendu combatants. There is no mention of it, no  
10 mention of this context in the presentation in the document containing the charges,  
11 nor in its request that a second arrest warrant be issued, which referred in fact to  
12 these very events.

13 In the document containing the charges, the Prosecution simply in paragraph 63  
14 mentions that in June 2002, the Lendu combatants and their APC allies drove out the  
15 civilian population from Mongbwalu. That's the Hema civilian population. That's  
16 all they say.

17 The Prosecution then for two and a half days talks about the Mongbwalu battle in  
18 November 2002 and the Kobu-Bambu-Lipri battle in February 2003 without  
19 mentioning on one single occasion the fact that it was a battle against the APC and  
20 the Lendu combatants. This seems to us to be quite clear.

21 The OTP is so attached to this notion of convincing the Chamber of the fact that the  
22 FPLC was intending to attack the Hema population, but they don't consider  
23 anything else. And this means that if we're to have a crime against humanity, as I  
24 mentioned earlier, the civilian population must be the prime target. And I think  
25 what I have shown you today, that this is absolutely not what one is able to conclude

1 on the basis of this evidence.

2 But, furthermore, the Prosecution avoided any mention of this evidence in order to  
3 confer a criminal dimension to the common plan on which the accusations are based.  
4 We will come back to these allegations of the criminal dimension of the common  
5 plan later when we discuss modes of liability.

6 But, your Honours, the role of the Prosecution is to present the charges to the Court.  
7 But their mission is primarily to establish the truth. We do not believe that in  
8 disregarding such key elements to the explanation of what happened that they are  
9 going to fulfil this mission.

10 We put to you that since there is no proof that the attack was directed at a civilian  
11 population, there is no question of crimes of humanity. However, I will move on to  
12 discuss the other characteristics of crimes against humanity, firstly, that of the  
13 systematic and widespread nature of such an event.

14 As was shown earlier, the events covered by the charges do not constitute an attack  
15 against a civilian population. But let us nevertheless look at the elements, the basis  
16 of the Prosecution argument asking you to conclude that there was a systematic and  
17 widespread nature of this attack against the population, the civilian population.

18 Despite the fact that the OTP has indicated that only these two events were covered  
19 in the charges, that's Mongbwalu in November 2002 and Kobu, Bambu, Lipri in  
20 February 2003, they ask you to take account of events which are completely out with  
21 the charges which it has defined itself in order to conclude that there were crimes  
22 against humanity.

23 Prosecution alleges -- alleges that there was a series of events which were attacks  
24 against the civilian population by the UPC-LP over a period (indiscernible) of more  
25 than a year. They present these attacks which are out with the charges which it's

1 self-defined as a contextual element while in the same breath asking you to refer to  
2 these and to come to the conclusion that this attack was systematic and widespread.  
3 Furthermore, and despite the importance being given by the Prosecution to these  
4 elements, it also says that the other attacks, those out with the charges and whose  
5 evidence is based on ONG -- NGO reports and UN reports and even the press  
6 reports, in other words, hearsay evidence or anonymous testimony, we would  
7 suggest that proceeding in this way is against the rules of fair procedure in their  
8 most basic form and can constitute a grave attack on the fundamental principle of  
9 the presumption of innocence.

10 Prosecution cannot limit its charges to two clearly defined events and then suggest  
11 to the Chamber that Mr Ntaganda also was guilty of such crimes on many other  
12 occasions and ask you to consider these facts proven. Mr Ntaganda is here today to  
13 defend himself against clear charges. And the Prosecution should restrict itself to  
14 the charges which they have themselves defined.

15 I would like to refer here to a decision in the Gbagbo case where the Chamber  
16 indicated the following:

17 "The real question is whether the Chamber can expect the Prosecutor to back up her  
18 allegations with sufficient evidence or whether" -- excuse me -- "the particular events  
19 mentioned by the Prosecution relating to the allegation of attack against the civilian  
20 population are part of facts and circumstances covered in Article 74(2) of the Statute  
21 and thus have to be proved in conformity with the standard, which these are  
22 substantial motives to believe this."

23 And this is particularly clear that the Prosecutor is retained to particular events  
24 which are the attacks launched against a civilian population. In other words, these  
25 events are facts which support the legal elements of the crime on the object of these

1 charges.

2 And then when the Prosecution appealed, the preliminary Chamber added that "The  
3 real question is whether the Chamber can expect the Prosecutor to back up her  
4 allegations with sufficient evidence or whether it is permissible for her to make  
5 factual allegations without sufficient evidence and still propose them as a basis for  
6 drawing inferences about the charges," end of quotation.

7 The Prosecution should be guided by these principles. But the approach chosen by  
8 the Prosecution should not have any place in a criminal trial. The Prosecution is  
9 taking unacceptable shortcuts. You're being asked to consider these elements as  
10 proven crime. And such allegations should not even be included in a document  
11 containing the charges. Presenting these elements as simply contextual elements,  
12 the Prosecution is going against the principle of the fair trial and presumption of  
13 innocence.

14 I would like now to move on to the third general criterion, which is the fact that  
15 there was or not an organisational policy as for the criterion that it should be  
16 systematic and widespread. We haven't looked at this, because it was clear that  
17 there was no attack on the civilian population. But we feel we should look in more  
18 detail at the Prosecution's allegations with regard to the politics -- policy of the  
19 organisation with regard to its ethnic composition and its aims.

20 The Prosecution's accusations are clear. The Prosecution maintains that UPC/RP  
21 was intending to drive out the non-Hema population and the non-indigenous  
22 population of Ituri. That's the foundation of the case. We highlighted in our  
23 opening statement the fact that this question was not clear, particularly with regard  
24 to who are these non -- who is this non-Hema population.

25 But even while the Prosecution referred to the Lendu ethnic group most often, its

1 position says differently. And we have not been able to clarify who exactly are  
2 these non-Hema.

3 The Prosecution does not say that it is all those who are not Hema. This seems  
4 to -- this position seems to indicate that the UPC was a group of Hema; otherwise  
5 why would a Hema group wish to attack the non-Hema population and drive them  
6 out, unless the OTP has been -- remained silent on the composition of the UPC/RP.

7 What does the UPC/RP and the FPLC, who could be involved in this, who -- we  
8 would like to show you a document which we can show on the screen and which is  
9 EVD-P-T-00425. And you have a paper copy of this document.

10 This document is dated the 26 January 2003. And in actual fact it is a list of the  
11 national secretaries of the UPC/RPC. And you see the national secretaries are, in  
12 other words, the ministers of the group.

13 Of course, you can see this document for yourselves. I won't read it all out. That  
14 would be a very long exercise. But I would like to draw your attention to one  
15 particular point. On this list you will see that there are ministers from the Alur  
16 ethnic group, from the Bara ethnic group, from the Bira ethnicity, Budu, Boa, Hema,  
17 Kakwa, Lendu, Lendu-Bindi, also known as Ngiti, Lese people, people from the Lety  
18 ethnic group, the Luba ethnic group, the Lugbara ethnic group, people from the  
19 Muyansi ethnicity, Mumbisa ethnicity, Ndo-Okebo ethnicity, Ndo ethnicity, Nyali  
20 ethnicity, Topoke ethnicity and Nande people.

21 And I think you will also see for yourselves that several of the ministers on this  
22 particular list were not even from the Ituri area. They came from another part of  
23 the country. Please note as well that this list includes the names of four ministers  
24 who were of Lendu ethnicity, including Mr Denis Akobi, who was the vice-president  
25 of the movement.

1 In actual fact you can see that this list of 35 people approximately, of these 35 people,  
2 only 10 belong to the Hema ethnic group. And the same thing can be seen when it  
3 comes to the FPLC.

4 I'll speak of the ethnicity of certain senior commanders. And some of them took  
5 part in the operations that are covered by the current charges. First of all, Idris  
6 Bobale, who was the G2 of the FPLC. He was not a Hema person, nor was he from  
7 the Ituri region. He came from Kisangani and he belonged to the Mosnadi (phon)  
8 ethnicity.

9 Commander Salongo, he was a sectoral commander. He's a Rituru person and  
10 came from the Kivu. Commander Mugisa was a person from the Hema South  
11 ethnic group. Samy was a Rituru. Commander Ndiyo Saba was a Masisi from  
12 Ngugu.

13 Commander Salumu Mulenda, who was mentioned several times during the  
14 prosecution's presentation of its case, because he was one of the brigade  
15 commanders who took part in the operations covered by the charges, belonged to  
16 the Muchi ethnic group and was from South Kivu province.

17 Commander Eric was a Banyamulenge from the South Kivu province. Commander  
18 Emmanuel Ndungutse came from Lubumbashi and was a Tutsi person.

19 Commander Innocent was from Uganda.

20 Commander Innocent Zimulinda came from Ngungu in the North Kivu area.

21 Commander Ali Mbuyi belongs to the Gokwe tribe, which is part of the Musango  
22 ethnic group.

23 Mr John Hoyeti, the G3 of the FPLC, was an Mputu person from Kinshasa.

24 Commander Luhala Lumbala, the G1 of the FPLC, was a Lendu person.

25 Commander Jérôme Kakwavu, sectoral commander, belonged to the Unde ethnic

1 group.

2 And, as we said in our opening remarks, Mr Bosco Ntaganda himself is not a Hema,  
3 nor is he from the Ituri region. He belongs to the Tutsi ethnic group and comes  
4 from the North Kivu area.

5 The reality is quite a simple one. The UPC/RP and the FPLC were not a Hema  
6 group. All ethnic groups were to be found amongst them. Why would such an  
7 ethnically diverse group -- even at the level of its senior officers, why would they  
8 develop some kind of criminal plan to drive away all the ethnic groups except the  
9 Hema, or do away with them?

10 The Prosecution has provided no answer to that question, because any such  
11 proposition is without -- is meaningless. The Prosecution prefers to remain silent  
12 on that issue and restrict themselves to one group of Hema people and provide no  
13 specific information to the Chamber about the true make-up of the UPC/RP.

14 But once again let us look at the evidence from the OTP regarding the objectives of  
15 the UPC/RP, and in the evidence from the Prosecution you will find a video which  
16 shows a peace meeting of representatives of the UPC/RP; for example, with Mr John  
17 Tinanzabo, Mr Ali Mbuyi and Mathieu Bebetu. This was a meeting at the Ngongo  
18 groupement, and the point of that meeting was to meet the Lendu leaders, including  
19 the Chief of Lipri.

20 This is a video and the discussions were filmed. Mention is made of the creation of  
21 the UPC. It was said that it was a political/military movement intended to do away  
22 with the mismanagement of -- the mismanagement that had worsened ethnic  
23 tensions. The enemy of the UPC was not the Lendu, nor the Hema, nor any ethnic  
24 group. The UPC was not set up to fight a particular or protect a particular ethnic  
25 group. Rather, it was set up to do something about the mismanagement and the

1 poor governance of the RCD/ML.

2 Another item of evidence, once again from the Prosecution, shows a meeting held on  
3 4 April 2003 and it depicts the Ituri Pacification Commission. A UPC  
4 representative, John Tinanzabo, explains that the UPC/RP was established to put an  
5 end to this poor governance.

6 Another video from the OTP, dated 4 June 2003, shows Thomas Lubanga giving two  
7 speeches. In his speeches he mentions in particular that the UPC took up arms to  
8 fight against the mismanagement - the bad governance - that were killing people and  
9 the only purpose was to end the massacres.

10 In another video, dated February 12, 2003, at a public gathering in the town of Bunia,  
11 in this video we see Mr Eric Mbabazi, who was the G5 of the UPC, we see him  
12 saying that the purpose of the army was to restore peace in the Congo, in the entire  
13 country, protect inhabitants and their property, not to conduct massacres, looting or  
14 to bother people or threaten people.

15 He said that the enemies were not Lendu, Bira, Banza, Sase, or people from other  
16 regions, but rather the enemies were those who were against development, no  
17 matter what ethnic group they might have belonged to.

18 Another video shows Thomas Lubanga giving a speech in public, and in that speech  
19 he said that when the UPC governs they protect every one; that their soldiers protect  
20 all the ethnic groups. Their goal was not to kill the Lendu people, or any particular  
21 ethnic group. The UPC had taken up arms to put an end to the massacres and to  
22 allow the process of pacification to unfold.

23 In another video found within the Prosecution's evidence, a video dated 11 January  
24 2003, at the stadium in the Bunia town hall, Thomas Lubanga is heard saying that  
25 the UPC/RP was fighting for peace in the region and in the country and that he

1 wanted to help all Congolese people to live in peace and safety. He said that the  
2 UPC was not striving to create a Republic of Ituri.

3 In another video, and this is a speech given on 4 June 2013, Mr -- correction 2003, Mr  
4 Lubanga said that everyone must pardon one another. The goal of the UPC was to  
5 bring peace and unity back to the region, that the UPC had taken up arms against  
6 the bad governance that were massacring populations and that the only goal was to  
7 end the killing, end the massacres.

8 Once again, please read the UPC/RP statement of 22 October 2002 regarding the  
9 inclusive comprehensive Inter-Congolese dialogue. That statement shows that the  
10 UPC/RP was a political/military movement that took up arms against the RCD/ML  
11 in order to do something about the mismanagement, the poor governance, of the  
12 government of the day and to end the massacres. This particular idea is reiterated  
13 in another statement signed by Mr Lubanga on 14 September 2002. All this  
14 evidence is to be found within the OTP's incriminating evidence.

15 What of Witness D-7, who testified in the Lubanga case? He confirmed that the  
16 UPC -- Witness 7 was the co-ordinator of the self-defence forces in Ituri. The  
17 self-defence forces were established. You see, these were civilians who came  
18 together to defend themselves against various incursions and to protect their  
19 villages. The Prosecution made reference to those self-defence forces and said that  
20 they were Hema civilians.

21 Now, Witness 7 was the co-ordinator of the self-defence forces and he gave  
22 testimony to the effect that the UPC was fighting the APC and the Lendu combatants  
23 and that they had come to defend the population. He specified during his  
24 testimony that these self-defence forces were entirely independent of the FPCL (sic)  
25 and were not fighting alongside them.

1 We also saw in the Mongbwalu video that the FPLC commanders ensured that their  
2 troops showed proper discipline in relation to the population, no matter what their  
3 ethnicity was.

4 Yesterday the Prosecution played a video that was filmed in Rwampara in February  
5 2003, and in this video we see Mr Thomas Lubanga giving a speech. I won't play  
6 the video again, but I would like to read out one particular passage. The transcript  
7 of this video bears the following reference number, EVD-PT-OTP-02617.

8 I make reference to page 10 of this particular transcript as of line 243, and just to give  
9 you some context, some background, this video was shown by the OTP itself and in  
10 the video we see Mr Lubanga giving a speech to the recruits in the Rwampara camp.  
11 I'll quote as from line 243, "What we wish to do ever since we set up the UPC party,  
12 we want to reunite the Congolese people living in the Ituri region because this is  
13 where we have experienced the initial suffering, then bring peace and unity back to  
14 the Congo.

15 The day before yesterday people said that the army belonged to a particular ethnic  
16 group. We've done all we could to show people, but people who do not want peace  
17 to be re-established, that was their goal. That was their daily rhetoric. They forgot,  
18 however, that an intelligent person cannot set up a party on ethnic grounds, nor can  
19 such a person set up an army on the basis of a particular ethnic group. That is  
20 impossible.

21 As leaders before the entire world, we cannot do something that is ethnic in nature.  
22 I can't say as a Bira person 'I'm going to do something for the Bira people,' or 'I'm a  
23 Hema. I'll work for the Hema.' 'I'm Ngiti. I'm going to try to do something for  
24 my people.' It is better not to have any party, or any army, if that were to be the  
25 case.

1 What we are doing, and we are doing this with you, we are trying to build an army  
2 that can avoid the massacres of any ethnic group here in the Ituri region. Our army  
3 does not have a single enemy. Our enemies are not ethnic. The enemy of our  
4 army is not the Bira ethnic group, nor the Hema, or other groups. Our enemy is any  
5 person who is opposed to re-establishing peace here in the region.

6 No matter what your ethnic group may be, whether you're a Hema person, if you  
7 want to cause trouble here, if that is the case then you are an enemy of our party. If  
8 you are a Lendu person and you are trying to disturb the peace that all Congolese  
9 people in Ituri desire, then you are an enemy (sic) of the party and of the army. No  
10 matter - no matter - what your ethnicity may be, the enemy is those who oppose  
11 peace.

12 Those who oppose peace in Ituri, those are our enemies. No matter who the person  
13 may be, whether he's tall or short, if anyone tries to undermine the peace in our  
14 region, we will take up arms and strike. No matter who they may be, we will  
15 strike."

16 He added, "We have all suffered, we have suffered a great deal, and this is the  
17 emotion we must remember and must use as our guiding principle," end of quote.

18 I would also like to play another video, your Honour, and this video is also on the  
19 Prosecution's list of evidence. This is a video that was filmed in the FPLC camp in  
20 Mandro. The reference number is EVD-PT-OTP-00825. It can be played in public.  
21 (Viewing of the video excerpt EVD-PT-OTP-00825)

22 MR DESALLIERS: (Interpretation) I'll pause the video right here so that I can  
23 explain to the Chamber that here we see a person who is standing and he is facing a  
24 number of troops. This person who is in front of the other soldiers is Mr Bosco  
25 Ntaganda, just so that you have a better idea of the general background for this

1 particular video.

2 We'll now continue playing the video.

3 (Viewing of the video excerpt EVD-PT-OTP-00825)

4 MR DESALLIERS: (Interpretation) We've stopped at time stamp 9.18. I just  
5 would like to mention to the Chamber that here we see Mr Ntaganda. He is  
6 saluting someone. This person is wearing a red beret and the person wearing the  
7 red beret is the chief of staff, General Kisémbó.

8 We can now resume the video.

9 (Viewing of the video excerpt EVD-PT-OTP-00825)

10 MR DESALLIERS: (Interpretation) I'll pause at this particular point, your Honour,  
11 because I would like you to have a general idea of the background to this particular  
12 speech.

13 This is the Mandro camp and in fact I wanted to draw the Chamber's attention to  
14 this speech, but the entire speech, and since interpretation seems to be a bit of a  
15 difficulty I suppose I'll just have to read it out myself using the transcript. It will be  
16 a long and somewhat tiresome exercise, but this speech is truly important and it is  
17 necessary to draw the Chamber's attention to the entire speech. So if you don't  
18 mind, I will take the transcript of this particular speech, given by Mr Kahwa to the  
19 troop, and I will read it out so it can be properly heard by the Chamber.

20 PRESIDING JUDGE TRENDAFILOVA: Of course, it's your strategy.

21 MR DESALLIERS: (Interpretation) Thank you, Madam President. My colleague  
22 has pointed out that you do indeed have a hard copy of that translation and I'll begin  
23 from line 202 and it is DRC-OTP-0164-0712 (sic).

24 PRESIDING JUDGE TRENDAFILOVA: I'm sorry, Mr Desalliers. The last figure is  
25 8, not 2. 0718. That is what we have.

1 MR DESALLIERS: (Interpretation) I was in fact mistaken. I was looking at a  
2 particular page, but I'll give you the EVD reference. It is EVD-PT-OTP-03804.

3 PRESIDING JUDGE TRENDAFILOVA: Thank you very much.

4 MR DESALLIERS: (Interpretation) I will now start from the beginning of Mr  
5 Kahwa's speech, which begins on line 202:

6 "Okay. I realise that you are in good health. Today we have decided to come and  
7 visit you and to update ourselves on your living conditions. I can see that you are  
8 in fact doing well and that the situation continues to be good.

9 To begin with, I would like to convey to you the greetings of our president, the  
10 president of the UPC party, His Excellency Thomas Lubanga. He extends to all of  
11 you his greetings and wishes you success in your work discipline and wishes you a  
12 good life.

13 As you are aware, over the first few days, or rather recently many people had not yet  
14 understood our philosophy. They thought that this was exclusively an ethnic war,  
15 that we were fighting an ethnic war, that is between the Lendus and the Hemas, and  
16 even our enemies, as well as international opinion, has used this weapon to deprive  
17 us of our rights.

18 As far as we are concerned, when we took our decision we realised that all these  
19 leaders were bad. People were continuing to kill each other like animals. The  
20 soldiers continued looting the property of the inhabitants, and we realised that it  
21 was necessary for us to establish an army to fight against the enemy because our  
22 fundamental objective is to fight against the enemy of humanity, peace and  
23 democracy.

24 We also realised that all these armies, whether it was the FAC, the APC or the others,  
25 these were all armies whose only purpose was to harass the population. It is for

1 this reason that we took the decision to carry out a new revolution. This present  
2 army will be an army without discrimination, an army for all Congolese, and it will  
3 be an army that will regain the respect of the Congolese.  
4 You know that those of us Congolese, we have lost the respect that we had  
5 everywhere in Africa. People have been saying that these people are idiots. This  
6 does not mean that all Congolese are idiots. It does not mean that, if things did not  
7 go well, it was because the soldiers were bad.  
8 Even those soldiers of the APC are not bad people. Rather, it was the leaders who  
9 were bad. All the soldiers follow the orders from their superiors.  
10 The fact of the matter is that the enemy was Mbusa, with his RCD philosophy, and it  
11 was for that reason that we started fighting until today.  
12 We are attaining that objective of building a new army, the FPLC. We believe that  
13 this will be an army of the people to such an extent that, when the population will  
14 see this army, they will be happy. They will know that peace has been restored.  
15 It should not be an army whereby, when a civilian sees a soldier, he should be  
16 worried or distrustful. Things therefore have to change.  
17 If we took the decision to take up arms to fight against all the idiots and get rid of  
18 them, it is because we had realised that the population was suffering. In everything  
19 that we are doing, we take into consideration first of all the interest of the inhabitants  
20 as well as their security and the security of their property.  
21 We do not want also for this army to be an ethnic-based army. We do not need an  
22 ethnic-based army. It is because of tribalism that everything has gone bad in Ituri.  
23 We want this to be an army that protects all the ethnic groups, that protects all the  
24 inhabitants and their property.  
25 We know that the living conditions are hard, but we are trying to help you and we

1 will be with you. I think that even our president, Thomas Lubanga, is still with  
2 you. It is for this reason that you received uniforms, that you have received all the  
3 necessary equipment.

4 Do not think that we can fail. If we fight for the rights of the people and we  
5 continue our revolution, we will be in a position to help all Congolese people and  
6 one day we'll be able to assist the entire continent of Africa within the framework of  
7 our philosophy.

8 And for you soldiers, that uniform that you wear should be like the flag of the  
9 country. It should represent the honour of the country. We do not want an army  
10 which is going to take girls and rape them, grab the property of people, or harass  
11 members of the population. I believe that we will be very severe with all the  
12 soldiers, because if we wish to make progress there should be discipline. All armies  
13 must be disciplined. Nothing shall stop us and we shall move forward. It is  
14 thanks to your discipline that we were able to conquer Bunia and it was thanks to  
15 your discipline that we are advancing and capturing other locations.

16 We are trying hard to resolve some of your problems. These uniforms that you  
17 have received, for example, is only the beginning. Very soon you will be able to be  
18 paid your salaries. You will be happy and everyone will be happy. You know  
19 that, if everything goes well with the army, then the country will do well also.

20 In order to know in what state the country finds itself, you have to look at the  
21 situation of education and the discipline of the army. If the army is disciplined, this  
22 means that the inhabitants can also be hopeful. That is the truth, isn't it?

23 Therefore we do not wish to have an army that will go and steal the property of the  
24 inhabitants, because we have decided to be rebels and the rebels have to work hard,  
25 better than the government - better than the government - because we are fighting

1 against this government, considering that this government has dilapidated the  
2 economy, has undermined development and undermined the economy. It has  
3 caused the population to continue to suffer and caused the parents to be paying the  
4 salaries of teachers, and yet we know that our country, Congo, is very rich and its  
5 inhabitants therefore do not deserve to be living such a life.  
6 It is for this reason that we launched this revolution so as to assist the population  
7 and raise the living standards of all Congolese people. You know that in the past  
8 the politicians were using us as tractors, as animals to ensure their own progress.  
9 They were using you soldiers to send you to war so that you would be the ones to be  
10 killed. They -- for their part, they were taking away money, they were stealing  
11 money and building houses in Europe and all their children were going to study  
12 abroad.  
13 I believe that you yourselves have realised that the children of all the former  
14 politicians and all their families are living abroad, but during the war it is us, the  
15 soldiers, who are being injured. It is us, the soldiers, who are being killed and yet  
16 we do not receive any salaries. We do not receive any medical assistance. Our  
17 children do not go to school because we do not have money.  
18 We are therefore fighting against this poor government – governance, and our  
19 president has taken the decision to change the living conditions of all Congolese  
20 people, not only the people of Ituri, because his vision is to help all Congolese people  
21 and later on even to help the entire continent of Africa.  
22 Given that we are Pan-Africanists, we want Africa to experience a renaissance, and  
23 you know that in Congo, if the country progresses in peace, if we are able to govern  
24 ourselves successfully, we will be able to help Africa one day.  
25 Unfortunately, many people are not aware of our philosophy. They believe that our

1 concerns are local in nature and that we are only interested in Bunia. We need,  
2 therefore, to progress and to do so you have to serve as examples. You have to be  
3 the example of a new army.

4 You have seen that some of your brothers were members of the APC. They  
5 themselves voluntarily agreed to come and join our ranks and we welcomed them  
6 because they are all Congolese and we cannot discriminate between people. It is  
7 not correct to say that this person was in the APC. We are trying to welcome into  
8 this army all those who had lost their way, such as those from the APC, because they  
9 were not all bad. In fact, not all soldiers are bad. Normally in the army there are  
10 no bad soldiers. It is the leaders - the commanders - who were bad.

11 We want everybody to join us."

12 Now we will move to line 312:

13 "Okay. There are people of the APC who took this area. That is true. We  
14 welcomed them. We give -- we gave them uniforms. And amongst those people  
15 from the APC, if any one of them was a commander, if any one of them was a  
16 company commander or had any rank, for example the rank of captain, that person  
17 would conserve or keep that rank because that is what happens in the army, because  
18 we cannot take someone who was a captain and demote him to the rank of sergeant.  
19 That cannot happen. So they must not be afraid.

20 Because we are an army, an army that is prepared to welcome everyone, and even  
21 considering this problem of war between Lendus and Hemas, we do not want to use  
22 force. You know fully well that there are enemies here in Zombe. I believe that  
23 you are aware of that. I believe that this location is five kilometres away from here;  
24 that is from Mandro. There are enemies in Lipri and elsewhere, including Goma.

25 We are not weak. We can decide even right now to go and attack them, because we

1 have the necessary equipment and we have an army, but before that, even if we  
2 know that we are strong, that we have the strength, it is not necessary to use force.  
3 To begin with we would like to use diplomacy and, if that does not work, then we  
4 will use force.

5 There are many people who think that we have not succeeded in reaching various  
6 locations, and you have these people from the APC who are based in various  
7 locations in Mongbwalu, Nyakunde, Zumbe and Kwandrumba. We need them.  
8 They should come and we will welcome them.

9 In the army, there is only one father. There is no tribalism in the army. I do not  
10 know which ethnic group -- well, which ethnic group you belong to. When you  
11 arrived here, whether you are Lendu or from any other ethnic group, you are all  
12 Congolese. However, the enemy is the person who will begin fighting to kill the  
13 inhabitants. That person will be our enemy and we will fight against such people.  
14 We therefore call on everyone to join us in our struggle, because Congo is a very  
15 large country and in order to build Congo it is crucial for us to unite. It is only after  
16 that that we shall be able to build Congo.

17 We ask you, the young people, to be patient. Living conditions will improve  
18 shortly and you will be paid a salary. You will also receive other things, because  
19 we want to distance ourselves from this government that we have conquered.

20 You know that with the previous government you were sent to the warfront without  
21 ammunition, without equipment, and when you were injured there were no  
22 medicines to treat you. But we want to change things. You -- we want you to be  
23 well-dressed. We want you to live well. We want you to have access to medical  
24 treatment. We want your spouses to live well, that your children should go to  
25 school freely, because you also have the right to be happy.

1 For tomorrow we should accept to suffer today, because tomorrow, if God helps us,  
2 you will -- we will take the entire country, and I believe that the first people to enjoy  
3 a good life will be the soldiers because it is your blood that is being spilled in order  
4 to liberate the country.

5 We believe that amongst the politicians of today, those of our government, we have  
6 President Thomas Lubanga who is thinking a lot in his vision about the soldiers  
7 living happily. You can see the uniforms. These uniforms are expensive, but the  
8 president made sacrifices to procure those uniforms. These are American uniforms  
9 and they're the ones who wear them.

10 Many people are surprised. They said, 'Where did you find this uniforms?' But  
11 our president, he has forgotten about himself. He has forgotten about his personal  
12 interest in order to occupy himself with your problems. He's concerned with the  
13 problems of all Congolese people.

14 We do not want an army that will steal the goods of the inhabitants, that will rape  
15 women. We do not want soldiers who will desert.

16 As you know, we have discussed about this. It is not a secret. Today I had a  
17 meeting with the incumbent chief of staff, as well as with the deputy chief of staff in  
18 charge of operations and other authorities, and we decided that as from Wednesday,  
19 that is today, any soldier that will steal with a weapon will not face a trial. He will  
20 be shot and he will die. Any soldier that will use -- that will rape a woman, take  
21 girls and rape them, will be killed, will be shot dead, and any soldier who deserts,  
22 who flees, during the war will be killed inevitably.

23 We are rigorous because we would like to have a disciplined army, and that is  
24 because President Thomas Lubanga himself, who is president before all else is  
25 disciplined and we follow his example. We are disciplined and your chiefs of staff

1 are disciplined.

2 We therefore do not want you to lose your way, because if we are not strict and you  
3 continue to loot and rape women, there will be no difference between you and the  
4 APC army that we have chased out. So you have to be the proof of change and you  
5 have to help your country.

6 Everything will be well and we are confident that Congo shall be liberated. We  
7 have realised that the Congolese people are suffering everywhere. If you have paid  
8 any attention, you will realise that Congo is rich everywhere. The Congolese do not  
9 deserve to be wearing Lagome (phon) type slippers. The Congolese do not deserve  
10 to sleep -- to eat only once a day, but we have realised that all leaders do not love the  
11 Congolese people.

12 Each one uses the term "democracy," but once they come to power their actions  
13 becomes even worse. They do not think about the population. They do not  
14 remember how to bring development. You can see how the roads are in a bad state,  
15 whereas there is money.

16 Now, when you look at these authorities, where are their residences? Where are  
17 their houses? Instead of building them in Congo, they have built those houses in  
18 Europe because they knew that they would damage everything here, they would  
19 destroy everything here, and when everything would have been destroyed they  
20 would flee to Europe because their children are going to school there, whereas we,  
21 that is the poor people, our children are going to stay here.

22 Our president is fighting against them, so what should we all do? We have to stand  
23 up so that all the inhabitants and everyone else should be able to live in peace. We  
24 are aware that you might have some difficulties, but we meet regularly with our  
25 superiors. We work in harmony with them and we are taking care of you. And if

1 you behave properly, you ..." --

2 PRESIDING JUDGE TRENDAFILOVA: Mr Desalliers, I hate very much to  
3 interrupt you, but I received the information that the tape, you know, that the  
4 proceedings are recorded, that there are four minutes left. So -- and there are three  
5 minutes left 'til the end of the hearing. So would you like that you proceed  
6 tomorrow?

7 MR DESALLIERS: (Interpretation) Madam President, I have just three minutes  
8 left to complete reading this speech.

9 PRESIDING JUDGE TRENDAFILOVA: Thank you very much. Could we arrange,  
10 court officer, for the rest -- yes, there are these minutes left. Thank you.

11 MR DESALLIERS: (Interpretation)

12 "We know that you might have a few difficulties, but we meet regularly with your  
13 superiors. We work in harmony with them and we are taking care of you. And, if  
14 you live in appropriate manner, you will be assigned vehicles. I believe that in a  
15 few days other equipment that we have ordered shall be delivered.

16 I do not have much else to add. We thank you and we wish you success in your  
17 work. Continue to behave properly. You even have to bear suffering, because in  
18 the near future you will be happy. Follow the example of your companions.

19 When the AFDL came in, you realised that the members of the DSP pillaged. There  
20 are soldiers who looted. They looted and they looted. Even some of you looted,  
21 but today you do not even have a bicycle. Isn't that true? They do not have any  
22 savings at all.

23 So do not be greedy. You are fighting first of all for human rights, you are fighting  
24 for your country and in the future you will be happy. Goods from pillaging shall  
25 not prosper.

1 I believe that I have nothing to add. The president sends you greetings. He is  
2 confident, because the future of Congo is in your hands and you are the ones who  
3 are going to build Congo. Thank you. "

4 PRESIDING JUDGE TRENDAFILOVA: So one minute left. Thank you so very  
5 much, Mr Desalliers. Judge Kaul would like to ask a question with regard to what  
6 you have right now read to us.

7 JUDGE KAUL: (Interpretation) Counsel, maybe my memory is defective, but can  
8 you once again give us the precise date of that speech addressed to those soldiers?  
9 It is possible that you mentioned the date, but I want to be certain about it.

10 MR DESALLIERS: (Interpretation) It is a good thing that you asked that question,  
11 your Honour, because I did not yet mention that date and that is because the precise  
12 date of that video was not disclosed to us. I stand to be corrected by my learned  
13 colleagues opposite, but we do not have any information about the precise date.  
14 But we can make a few assumptions here. We know that the video was made after  
15 the creation of the FPLC, because it is the FPLC that we see on these images and they  
16 were set up in September 2002. We can also say that the video was captured before  
17 the attack in Mongbwalu, because it is mentioned that the enemy is in several  
18 locations including Mongbwalu.

19 I would like to add that this video footage would have been taken at the end of  
20 November at the very latest, because Minister Kahwa left that movement around the  
21 end of November 2002. So I would say between September and November 2002.

22 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Mr Desalliers. We  
23 will seek an answer to this question from the Office of the Prosecutor tomorrow  
24 before we start with the session.

25 So thank you very much, the team of Mr Ntaganda - Defence team - with Mr

- 1 Desalliers, Ms Samson and her team, legal representatives. Of course, our
- 2 thankfulness goes to the interpreters, stenographers and to the court officers,
- 3 security officers. Thank you very much. Tomorrow we resume our work at 9.30
- 4 and we shall start with this question.
- 5 THE COURT USHER: All rise.
- 6 (The hearing ends in open session at 4.02 p.m.)