

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-01/06**

Date: **14 May 2012**

TRIAL CHAMBER I

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

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

Public

Prosecution's Sentence Request

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the****Court to:*****The Office of the Prosecutor**

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Luc Walleyne

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

Mr Paul Kabongo Tshibangu

Legal Representatives of Applicants**Unrepresented Victims****Unrepresented Applicants for
Participation/Reparation****The Office of Public Counsel for Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence****States Representatives****Amicus Curiae****REGISTRY****Registrar**

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Defence Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Other**

I. Introduction

1. In its 24 April 2012 “Order fixing the date for the sentencing hearing”¹, Trial Chamber I (Chamber) ordered the Prosecution and legal representatives of victims to file written submissions on i) the relevant evidence presented during trial that may be applicable to sentence along with views as to sentence to be imposed on the convicted person, taking into consideration, *inter alia*, any specific aggravating and mitigating factors², and ii) time required for oral submissions to be made during the sentencing hearing scheduled for 13 June 2012³.

I. SENTENCE TO BE IMPOSED

Overview

2. The gravity of the three crimes charged, the extent of the aggravating factors for the crimes and the lack of mitigating factors justify the imposition of three separate high sentences and a very severe joint sentence pursuant to Article 78(3) of the Rome Statute (Statute)⁴.
3. Thomas Lubanga was convicted of all three crimes⁵ as a direct co-perpetrator who made a deliberate and essential contribution to the crimes. He was both the architect and implementer of the common plan to build an army that

¹ ICC-01/04-01/06-2871.

² ICC-01/04-01/06-2871, para.5.

³ ICC-01/04-01/06-2871, para.7.

⁴ See paragraph 31 of “Prosecution’s Submissions on the Procedures and Principles for Sentencing”, # 2868.

⁵ ICC-01/04-01/06 – 2842, para.1358.

resulted in the conscription and enlistment of children and their use in hostilities.⁶ Thomas Lubanga himself used child soldiers as personal bodyguards⁷. His position of supreme authority and his high level of education⁸ gave rise to a duty/ trust which he abused by using his power and position to recruit and use children under 15. As the President and Supreme Commander of the UPC/FPLC,⁹ he had the authority and ability to order and effect the cessation of the crimes. He did not. On the contrary, Thomas Lubanga continually¹⁰ committed the crimes on a widespread¹¹ and large-scale¹² basis causing harm to his victims and their families, over a period of almost a year¹³.

4. The heinous and vicious nature of the commission of the crimes was not confined to their widespread scope and breadth. They were directed at the most vulnerable and defenceless, notably the girl child soldiers¹⁴ and the young, including 5 year old children¹⁵. The child soldiers recruited were trained in a cruel manner at the training camps and were subjected to harsh regimes and severe punishments in order control their will.¹⁶ The girl child

⁶ ICC-01/04-01/06 – 2842, para. 1355.

⁷ ICC-01/04-01/06 – 2842, para. 1356.

⁸ EVD-OTP-00621.

⁹ ICC-01/04-01/06 – 2842, paras. 1356, and 1357

¹⁰ ICC-01/04-01/06 – 2842, para.759.

¹¹ ICC-01/04-01/06 – 2842, para. 911 – in relation to the crimes of enlistment and conscription.

¹² See for example, ICC-01/04-01/06 – 2842, paras 834, 838, 857, 915 and 1354 as to the large-scale character of the crimes.

¹³ ICC-01/04-01/06 – 2842, para.1358: early September 2002 to 13 August 2003.

¹⁴ ICC-01/04-01/06 – 2842, para. 913, for instance..

¹⁵ Chamber found that children as young as 5 were in the UPC/FPLC– see paras. 708 and 709.

¹⁶ ICC-01/04-01/06 – 2842, para. 913.

soldiers were subjected to sexual violence and rape at the hands of UPC/FPLC commanders¹⁷.

5. These crimes and the manner in which they were committed had a severely debilitating physical and emotional impact on the victims, their families and their communities. For example, the “catastrophic”¹⁸ psychological and physical repercussions of the abuse and suffering of the girl child soldiers, or the extreme pressure on families within the Hema community¹⁹ to part with children and join the UPC/FPLC’s military cause,²⁰ show the severe impact of the crimes.
6. A particularly incriminating factor is the broader social impact on the entire community. Even the children who were not recruited and their families suffered from the traumatic experience of living in a situation of insecurity. As a consequence, an entire generation from Ituri was deprived of its right to education.
7. The above aggravating factors are not tempered by any mitigating ones. Thomas Lubanga did not commit the crimes under duress; rather he “acted with the intent and knowledge to establish the charges”²¹. Far from taking steps to ameliorate the situation with respect to child soldiers, the UPC/FPLC in fact tried to interfere with and thwart the work of organisations involved in assisting child soldiers²². Although there were demobilisation orders, they

¹⁷ ICC-01/04-01/06 – 2842, para. 913 and T.113, p.36, lines 11-23 and T.114, p.23, lines 13-19, T.154, p.28, line 9 to p.29, line 23.

¹⁸ ICC-01/04-01/06 – 2842, para.890.

¹⁹ ICC-01/04-01/06 – 2842, para.1354.

²⁰ ICC-01/04-01/06 – 2842, paras. 770, 771, 781 and 785.

²¹ ICC-01/04-01/06 – 2842, para. 1357.

²² ICC-01/04-01/06 – 2842, para. 1290.

were issued as part of a cover up operation, under pressure, and unenforced, as child abduction and enlistment continued unabated²³.

8. Thomas Lubanga did not affirmatively cooperate with the Court nor did he voluntarily surrender, or provide helpful information to the Prosecution.
9. Given the above, and pursuant to Article 78 of the Rome Statute (Statute) and Rule 145 of the Rules of Procedure and Evidence (Rules) the Prosecution will request that Thomas Lubanga be sentenced to a severe punishment.

THE GRAVITY OF THE CRIMES

*Circumstances of manner, time and location of the crimes*²⁴

i. Large-scale and widespread nature of the crimes committed

10. The evidence shows that the crimes committed by Thomas Lubanga occurred on a large scale throughout the approximate one year period. This was not a case of a few children falling through the net²⁵. The Chamber made several factual findings on the widespread nature of the crimes. For instance, it found that “*a significant*” number of children were used as military guards and as escorts or bodyguards to main staff commanders.²⁶ It also found that recruitment of young people, including children under 15, was “*widespread*”.²⁷
11. W-014, whom the Chamber found to be a credible and reliable witness²⁸, estimated that during military training at the UPC’s headquarters in Bunia,

²³ ICC-01/04-01/06 – 2842, para. 1321.

²⁴ Rule 145 (1)(c).

²⁵ T.345, p.39, lines 8 to 15.

²⁶ ICC-01/04-01/06 – 2842, paras. 837 and 857.

²⁷ ICC-01/04-01/06 – 2842, para. 911.

²⁸ ICC-01/04-01/06 – 2842, paras. 706 and 709.

some 30 percent of the approximately 100 recruits were children under 15²⁹. Although this was just prior to the period of the charges, given that once the UPC/FPLC took over Bunia and mobilisation increased³⁰, it is inevitable that the numbers of child recruits increased during the period of the charges³¹. At the military camps, the large numbers of children demonstrated the scale of the criminality. W-0016 testified that three quarters of the recruits at Mandro camp were children between the ages of 13 and 17 years old.³² Given that the Chamber found that in addition to Mandro and the UPC/FPLC headquarters in Bunia, children under 15 were also trained at the Rwampara³³ and Mongbwalu³⁴ camps, it is clear that the crimes were committed on a large scale.

Means employed to execute the crimes

12. Thomas Lubanga employed particularly cruel means to commit his crimes.

Although these means demonstrate the gravity of the crimes, they may also or alternatively be considered as aggravating factors pursuant to Rule 145(2)(b)(v). The factors are as follows:

i. Forced abductions and pressured recruitment

13. The Chamber concluded that Thomas Lubanga is criminally responsible for the coerced recruitment of children under 15 during the period of the

²⁹ ICC-01/04-01/06 – 2842, para. 700.

³⁰ T.347, p.61 to p.62, line 3.

³¹ See para. 801 of ICC-01/04-01/06 – 2842.

³² T.189, p.15, lines 17-21, p.16, lines 1-3.

³³ ICC-01/04-01/06 – 2842, para. 800.

³⁴ ICC-01/04-01/06 – 2842, para. 815.

charges³⁵. The evidence reveals that children were abducted in the street or from schools and forcibly taken to the training camps. W-0031 testified that in the course of his work with demobilised child soldiers, he learned that the UPC/FPLC regularly forcibly enlisted children.³⁶ Based on her interviews of child soldiers in 2003, W-0046 corroborated W-0031's account that children joined the UPC/FPLC in different ways: in the Mahagi zone, recruitment was often carried out by gathering youth together, by "rounding them up" in streets, markets or schools and forcibly transferring them to training camps.³⁷

14. Similarly, the Chamber found that the UPC/FPLC embarked on an extensive enlistment and conscription campaign, carried out by the highest echelons of the organisation, and in particular, by Thomas Lubanga himself³⁸, aimed at persuading Hema families to provide children to the UPC/FPLC³⁹.
15. W-0055, W-0017, W-0038, W-0014, W-0031, W-0046 and witness DRC-OTP-WWWW-0043 (W-0043) all testified about the UPC/FPLC's village recruitment drives or "mobilisation" campaigns.⁴⁰ Their evidence, along with other evidence, demonstrated that the UPC/FPLC leadership systematically pressured Hema families in UPC/FPLC controlled territories to provide

³⁵ ICC-01/04-01/06 – 2842, para. 1354.

³⁶ T.199, p.18, line 7 to p.19, line 17, p.27, line 23 to p.29, line 20, p.30, line 21 to p.32, line 16.

³⁷ T.207, p.17, line 20 to p.18, line 19. W-0046 provided other examples of UPC/FPLC forced recruitment: EVD-OTP-00489, p.45, line 1 to p.47, line 7; T.199, p.27, line 23 to p.29, line 20.

³⁸ ³⁸ ICC-01/04-01/06 – 2842, paras. 1277 and 1356.

³⁹ ³⁹ ICC-01/04-01/06 – 2842, para. 1354.

⁴⁰ T.199, p.28, lines 5-22. "Because we were occupying more and more terrain, we needed more and more soldiers to be trained to occupy that terrain" (T.114, p.29, lines 1-7). See also T.114, p.76, line 13 to p.77, line 12. W-0014 noted that recruitment after the takeover of Bunia continued on a larger scale: T.179, p.60, lines 6-20.

children for military service,⁴¹ a recruitment method it had been using since 2000.⁴²

16. The UPC/FPLC also employed influential community persons or emissaries to encourage Hema youth to join the UPC/FPLC military.⁴³ Typically, these influential persons - village elders/wise men, or religious leaders - used their position in the community to exert pressure on Hema families to provide children for protection of the community.⁴⁴ W-0055 elaborated that “Gegere wise men” such as Eloy Mafuta⁴⁵ convinced people to “make youth available for the army so that they would contribute to the protection of their ethnic group against the Lendu”.⁴⁶

17. W-0038 and W-0055 described the pressure placed on villagers to send young recruits under threat that their villages would be left unprotected during the next attack if they did not provide recruits to the UPC/FPLC.⁴⁷ According to W-0038, Chief Kahwa and other officers warned the assembled villagers that “[i]f you do not join the army, you will find that your village will be razed down and that will be your problem. You can't leave your brothers die like

⁴¹ EVD-OTP-00489, p.95, lines 6-24; T.113, p.53, lines 16-22, p.54, lines 15-21; MONUC Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, EVD-OTP-00480.

⁴² T.168, p.22, lines 13 to p.23, line 5.

⁴³ T.199, p.27, line 23 to p.33, line 10: W-0031 testified that the UPC/FPLC organised “mobilisation” campaigns within villages and that Hema families were obliged to send their children to the UPC/FPLC.

⁴⁴ T.206, p.45, line 1 to p.47, line 9; T.113, p.54, line 15 to p.55, line 1; T.177, p.44, line 9 to p.45, line 12, p.47, line 22 to p.49, line 20.

⁴⁵ T.174, p.33 to p.34, line 3.

⁴⁶ T.174, p.32, lines 1-11; T.174, p.34, lines 1-3; T.176, p.21, line 10 to p.23, line 5; T.181, p.24, lines 15-23, p.25, lines 3-25, p.26, line 1 to p.27, line 4; T.182, p.12, line 14 to p.13, line 16, p.15, lines 14-15.

⁴⁷ T.113, p.39, lines 3-18; T.175, p.60, line 16 to p.62, line 2; T.176, p.21, line 10 to p.23, line 18.

that. You have to return to the army in order to fight back".⁴⁸ After the meeting village traders lent vehicles to take young people to Mandro.⁴⁹

ii. Harsh conditions in the camps and brutal treatment of children

18. The Chamber found that child soldiers endured a harsh training regime at the military camps during which they were subjected to a variety of severe punishments.⁵⁰ It found that those punishments were part of the context in which children under the age of 15 were conscripted, enlisted and used by the UPC/FPLC.⁵¹

19. The child soldiers had to endure brutal conditions at the camps. They were subjected to repeated beatings that were tantamount to torture.⁵² Some of them died as a result. Considering W-16 reliable⁵³, the Chamber recounted his testimony regarding the punishment imposed on children, such as the 'kafuni', a type of cane with a small bugle at the end used to beat children who received sometimes as many as 300 strokes. The witness added that if hit on the nape of the neck children could easily die as a result, as was the case for two children at the Mandro camp in August or early September 2002.⁵⁴ 'Kikobo' was another punishment involving a whip and administered on parade, during training or in places out of sight in the camp.⁵⁵

⁴⁸ T.113, p.38, line 22 to p.39, line 10.

⁴⁹ T.113, p.39, line 19 to p.40, line 1.

⁵⁰ ICC-01/04-01/06 – 2842, para. 913.

⁵¹ ICC-01/04-01/06 – 2842, para. 889.

⁵² ICC-01/04-01/06 – 2842, para. 884.

⁵³ ICC-01/04-01/06 – 2842, para. 869.

⁵⁴ ICC-01/04-01/06 – 2842, para. 883.

⁵⁵ ICC-01/04-01/06 – 2842, para. 884.

20. Similarly, W-0014 saw recruits punished; their buttocks being whipped whilst they were lying on the ground or when their hands and legs were held.⁵⁶ He saw a child hungry, crying and calling for his mother.⁵⁷
21. W- 0017 said it was common in the UPC for individuals to be whipped and imprisoned and saw young soldiers being whipped whilst lying on the ground. He added that a further punishment involved putting those concerned in a trench.⁵⁸ Describing the place where children were kept, W-0017 said that these holes in the ground had the “capacity of about a metre and a half,” and were “covered with heavy logs so a person would not be able to displace them”.⁵⁹
22. The evidence shows that the suffering of the child soldiers was not limited to their recruitment and use in hostilities. The context in which they were recruited and used was particularly cruel, sinister, brutal and inhumane. This fact ought to be considered as an aggravating for the purpose of the sentence.

iii. Impact of the crimes on the victims

23. The lasting debilitating effects of uprooting children from their families, sexually assaulting them, abruptly ending their schooling and subjecting them to the horrors of military life and war are difficult to quantify and assess. Court expert witness Elisabeth Schauer described some of the psychological effects suffered by former child soldiers. Particularly, she

⁵⁶ ICC-01/04-01/06 – 2842, para. 885.

⁵⁷ ICC-01/04-01/06 – 2842, para. 886.

⁵⁸ ICC-01/04-01/06 – 2842, para. 888.

⁵⁹ ICC-01/04-01/06-T-158, p.42, lines 14 to 25.

explained that those subjected to rape and other violence are more likely to develop psychiatric disorders⁶⁰. She added that if subjected to punishment and threat – in other words the usual conditions in the camps – while terrified into obedience by fear of injury or death, then these events can be traumatic⁶¹, producing the long-lasting effects of such trauma.

24. In addition to the months or years of education the child soldiers have missed, they are stigmatized upon returning to their communities⁶². Due to those traumas, they experience significant gaps in child development, are often emotionally compromised, have difficulties reintegrating into their community⁶³ and are disadvantaged both vocationally and occupationally⁶⁴. They also suffer from learning disabilities affecting their scholastic capacities mainly in languages, writing and reading.

25. Similarly, W-0046 explained that the psychological and physical state of the young girls was “catastrophic”, a condition itself attributable to the convicted person for the purposes of sentencing. The difficulty of reintegrating them into their families because of the stigma accompanying their abuse aggravates their condition.⁶⁵

26. W-0031 described how children arrived at his centre with serious medical problems because they had not been treated.⁶⁶

⁶⁰ T.166, page 49, lines 1 to 8.

⁶¹ T.166, page 73, lines 3 to 9.

⁶² T.166, page 32.

⁶³ T.166, page 56.

⁶⁴ T.166, page 53.

⁶⁵ ICC-01/04-01/06 – 2842, paras. 890 and 891.

⁶⁶ T.200, p.6, line 25 to p.7, line 3.

27. The harms inflicted on each of the children will last for a very long time.

The degree of participation and degree of intent of the convicted person

28. Thomas Lubanga was convicted of all three crimes⁶⁷. He was a *direct* co-perpetrator who made a deliberate, personal and essential contribution to the crimes. He conceived and executed the common plan to build an army that resulted in the conscription and enlistment of children and their use in hostilities.⁶⁸ As the Chamber found, he was fully aware that children under 15 had been and continued to be enlisted, conscripted by the UPC/FPLC and used in hostilities. Thomas Lubanga himself used child soldiers as personal bodyguards.⁶⁹ He knew that his own military commanders used children under 15 as bodyguards.⁷⁰ He gave a morale-boosting speech to children under 15 at UPC/FPLC Rwampara training camp.⁷¹

Individual circumstances of the convicted person (including the age, education, social and economic condition)

29. The personal attributes and circumstances of Thomas Lubanga also demonstrate the gravity of the crimes, pursuant to Rule 145(1)(c). Thomas Lubanga was almost 42 when he commenced his crimes – in the prime of his life. He was well-educated, possessing a degree in psychology that allowed him to understand the gravity of depriving children of the care of their

⁶⁷ ICC-01/04-01/06 – 2842, para.1358.

⁶⁸ ICC-01/04-01/06 – 2842, para. 1355.

⁶⁹ ICC-01/04-01/06 – 2842, para. 1356.

⁷⁰ ICC-01/04-01/06 – 2842, para. 1348.

⁷¹ ICC-01/04-01/06 – 2842, para. 1348.

families and their education. He was a leader of the community.⁷² These factors, coupled with his supreme authority over the UPC/FPLC, only exacerbate his criminality.

AGGRAVATING CIRCUMSTANCES

i) Sexual violence and rape

30. Although the Chamber did not base its Article 74(2) decision on the evidence led during trial on sexual violence and rape, it did contemplate considering it for the purposes of sentencing⁷³. Indeed, the Chamber recounted the evidence given by witnesses deemed to be reliable and credible⁷⁴ on sexual violence and rape, without making findings.⁷⁵ As raised by the Chamber, the evidence on the sexual abuse and violence suffered by the female child soldiers does “assist as regards sentence”⁷⁶.

31. To this end, the Prosecution submits that the sexual violence and rape to which the girl child soldiers were subjected show that the crimes were committed with particular cruelty and against victims who were particularly defenceless, as contemplated in Rule 145(2)(b)(iii).

⁷² EVD-OTP-00621.

⁷³ ICC-01/04-01/06 – 2842, paras. 630 and 631.

⁷⁴ ICC-01/04-01/06 – 2842, paras. 348 and 869.

⁷⁵ ICC-01/04-01/06 – 2842, paras. 890 to 896.

⁷⁶ ICC-01/04-01/06 – 2842, para. 896, last sentence.

32. The evidence reveals that sexual violence was routinely inflicted on the girl child soldiers – rape and sexual abuse were an integral part of their horrific experience at the hands of the UPC/FPLC. W-0046 stated that the children she spoke to provided her with a “clear account of systematic violence in the camps”⁷⁷. Female recruits were raped by their trainers and commanders, irrespective of their age. It was common practice for the UPC/FPLC high ranking officials to use young girls as domestic servants in their private residences.⁷⁸

33. W-0038 confirmed that he trained girls under the age of 15 in the UPC/FPLC training camp in Mongbwalu.⁷⁹ The girls were used as bodyguards and to prepare food and provide sexual services to the commanders.⁸⁰ Commanders Abelanga and Njdabu used girls under 15 as bodyguards, as did other brigade commanders.⁸¹ At the commanders’ houses, the witness saw young girls preparing food, and stated that at night the girls could be heard saying “I don’t want to.”⁸² W-0017 told the Court that Commander Abelanga had young girls in his bodyguard and that he was criticised for abusing a young girl.⁸³ He also testified that girls under 15 were in the Salumu Mulenda brigade of the UPC/FPLC.⁸⁴ W-0055 indicated that he received complaints regarding rapes of the PMFs.⁸⁵

⁷⁷ ICC-01/04-01/06 – 2842, para.. 890.

⁷⁸ ICC-01/04-01/06 – 2842, paras. 892.

⁷⁹ T.114, p.81, line 22 to p.82, line 5 to p.83, line 16.

⁸⁰ T.113, p.36, lines 11-23; T.114, p.23, lines 13-19.

⁸¹ T.114, p.23, line 16 to p.24, line 1.

⁸² T.114, p.27, lines 2-7.

⁸³ T.154, p.28, line 9 to p.29, line 23.

⁸⁴ T.154, p.81, line 7 to p.82, line 8.

⁸⁵ T.178, p.78, line 18 to p.79, line 7, *PMFs - Personnel Militaire Féminin*.

34. The Prosecution submits that the evidence of sexual violence and rape ought to be considered as an aggravating factor at sentencing. Even though Thomas Lubanga was not convicted of these acts, the Prosecution submits that there is no prejudice to incorporating them for sentence. The Chamber permitted the introduction of this evidence. The Defence was sufficiently on notice that these activities occurred in the context of UPC/FPLC child conscription and enlistment and use; in fact, it cross-examined witnesses on this evidence⁸⁶.

ii. Commission of the crime for the motive involving gender discrimination – sexual violence and rape

35. The Prosecution contends that the evidence above on sexual violence shows that the harms committed were gender-based, and, as envisaged in Rule 145(2) (b)(v), should be considered an aggravating factor. Article 21(3) obliges the Court to apply and interpret the law governing the ICC without adverse distinction on specific grounds - such as gender - and to be consistent with internationally recognised human rights.

36. Thus, consistent with Article 21(3) of the Statute, under international human rights standards ⁸⁷, sexual violence is gender-based and ought to be considered an aggravating circumstance. The evidence reveals the female recruits were subjected to sexual violence, rape and conjugal subservience

⁸⁶ T.191, page 11, lines 7 to 17.

⁸⁷ See Report of the Secretary-General to the General Assembly, *"In depth study on all forms of sexual violence against women"*, a/61/122/Add.1, 6 July 2006.

(commander's wives, domestic work⁸⁸) purely because they were female. This gender discrimination should be taken into account in sentencing.

iii. Abuse of power or official capacity

37. Thomas Lubanga's position of supreme authority and his high level of education⁸⁹ gave rise to a duty/ trust which he abused by using his power and position to recruit and use children under 15. As the President and Supreme Commander of the UPC/FPLC⁹⁰, he exercised an overall coordinating role over UPC/FPLC activities and was constantly informed of the details of UPC/FPLC operations.⁹¹ He had the authority and ability to order and effect the cessation of the crimes. Yet he did not. As demobilisation orders were issued, children under 15 were simultaneously recruited or re-recruited⁹².

iv. Commission of the crime where the victim is particularly defenceless

38. The Prosecution recognises that the age of the victims cannot be considered an aggravating factor because it is an element of the crime. However, the fact that some of the children recruited by the UPC/FPLC were as young as 5 or 6 years old cannot be ignored by the Chamber, and accordingly the Prosecution submits that this fact also qualifies as an aggravating one. The recruitment

⁸⁸ ICC-01/04-01/06 – 2842, para 882.

⁸⁹ EVD-OTP-00621.

⁹⁰ ICC-01/04-01/06 – 2842, paras. 1356, and 1357

⁹¹ ICC-01/04-01/06 – 2842, paras. 1356.

⁹² ICC-01/04-01/06 – 2842, paras. 1346.

and use of children so obviously young demonstrates the callous manner in which the UPC/FPLC set about implementing its plan for military control over Ituri. No one was spared from conscription or enlistment. W-014 explained that there was no age limit regarding the children enlisted or conscripted and he witnessed children aged between 6 and 15 years of age⁹³. W-0030 gave evidence of soldiers as young as 9 and 10 guarding Thomas Lubanga's residence⁹⁴.

v. Broader social impact of the crimes

39. The recruitment campaign of children orchestrated by Thomas Lubanga also had a broader social impact on the families and communities from which the children were taken. The Prosecution therefore submits that these consequences flowing directly from the recruitment strategy of Thomas Lubanga should be considered as aggravating circumstances.

40. Court expert witness Elisabeth Schauer testified that even children who were not recruited have been known to suffer from PTSD and other disorders from their traumatic experiences living in a situation of insecurity. The children living in Ituri were deprived of their right to education due to the recruitment of child soldiers by Thomas Lubanga. Several witnesses have testified of their fear of attending school due to insecurity and the recruitment at school or while going to and back from school.

⁹³ ICC-01/04-01/06 – 2842, para. 708.

⁹⁴ ICC-01/04-01/06 – 2842, para.717.

This disruption of access to education of the children not recruited is in violation of their fundamental right to education under Article 26 of the Universal Declaration of Human Rights and the consequences thereof will be felt for the rest of their lives.

Conclusion

41. The Prosecution notes that in its sentencing decision in the case against Sesay, Kallon and Gbao, the Trial Chamber I of the Special Court for Sierra Leone also considered the following aggravating factors in relation to the child soldier crimes:

- i) the scale and brutality,⁹⁵
- ii) the vulnerability of victims,⁹⁶
- iii) the number of victims,⁹⁷ and
- iv) The impact on victims and degree of suffering.⁹⁸

For these crimes, Sesay and Kallon were sentenced to 50 years and 35 years of imprisonment respectively.⁹⁹

42. Thomas Lubanga was in supreme control of the UPC/FPLC. He had every opportunity through the one year period to stop the commission of the crimes, yet he did not. Instead he visited training camps delivering speeches

⁹⁵ *Prosecutor v I. H. Sesay, M. Kallon, A. Gbao*, SCSL-04-15-T, Sentencing Judgment, 8 April 2009, paras. 180-181.

⁹⁶ SCSL-04-15-T, para. 182.

⁹⁷ SCSL-04-15-T, para. 183.

⁹⁸ SCSL-04-15-T, paras. 184 – 185.

⁹⁹ SCSL-04-15-T, dispositions.

to new child recruits¹⁰⁰; he employed under-age children in his own protection unit¹⁰¹; he personally involved himself in recruitment campaigns¹⁰² and only attempted to take measures to demobilise, which were not successful, when under pressure. His pre-meditated criminal actions, undertaken with extreme brutality and malice, with full knowledge of the vulnerability of those subjected to them, merit a severe joint sentence.¹⁰³

II. TIME REQUIRED FOR ORAL SUBMISSIONS TO BE MADE DURING THE SENTENCING HEARING SCHEDULED FOR 13 JUNE 2012

43. The Prosecution submits that it would require 40 minutes for oral submissions at the 13 June 2012 hearing. However, it reserves its right to seek leave to extend this period should this be necessary in light of the Defence sentencing submissions, to be filed on 28 May 2012.



Luis Moreno-Ocampo
Prosecutor

Dated this 14th day of May 2012
At The Hague, The Netherlands

¹⁰⁰ ICC-01/04-01/06 – 2842, para. 1242, 1266 and 1348.

¹⁰¹ ICC-01/04-01/06 – 2842, para. 1262, 1348.

¹⁰² ICC-01/04-01/06 – 2842, para. 1266.

¹⁰³ The Prosecution notes that *in Prosecutor v Charles Ghamkay Taylor*, the Prosecution is requesting 75 years for child soldier crimes, SCSL-03-01-T, “Prosecution Sentencing Brief,” page 46, 3 May 2012.