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The Case of the Prosecutor v. Thomas Lubanga Dyilo

ICC-01/04-01/06

Opening Statement

The Hague

26 January 2009

Mr President,

Your Honors,

The Prosecution will present evidence proving beyond a reasonable doubt that Thomas Lubanga Dyilo committed crimes under the Rome Statute; he committed some of the most serious crimes of concern to the international community as a whole: crimes against children.

The evidence will prove that between 1 September 2002 and 13 August 2003, Thomas Lubanga Dyilo systematically recruited children under the age of 15 as soldiers of his political military movement called *Union des Patriotes Congolais* (UPC) and its armed militia the *Forces Patriotiques pour la Libération du Congo* (FPLC). Lubanga's armed group recruited, trained and used hundreds of young children to kill, pillage and rape.

Hundreds of children still suffer the consequences of Lubanga's crimes. They cannot forget what they suffered, what they saw, what they did. They were 9, 11, 13 years old. They cannot forget the beatings they suffered; they cannot forget the terror they felt and the terror they inflicted; they cannot forget the sounds of their machine guns; they cannot forget that they killed; they cannot forget that they raped and that they were raped. Some of them are now using drugs to survive, some of them became prostitutes and some of them are orphaned and jobless.

However, some of them will come to Court to be witnesses. They will come to confront the past crimes and the present prejudices, in particular within their communities. It takes courage. They will tell the Court what happened to them. They will speak for themselves and for all the others, for those who could not overcome the past or face the present.

They will tell you the facts. First, the facts about enlistment and conscription.

They will explain how they were abducted and transported to military camps controlled by Thomas Lubanga. You will hear from a boy who was just eleven when Lubanga's militia abducted him, as he was walking home from school with his friends. Another boy will tell you how he was abducted while playing football with friends.

You will hear from a girl who was 13 when she was abducted whilst trying to flee from attacks in Bunia. Let me quote her statement to our investigators: *"I fled together with my family... we were with a lot of people and then I got separated from my family and everybody was running away, ..., then some soldiers came out of the forest and they stopped us on ... on the road. And they ... captured us, me and some other girls and other boys and some other younger boys. And then they took us."*

Hundreds of children, some of them abducted, some of them enlisted I quote "voluntarily" unquote, were transported by Lubanga's militia to more than 10 different training camps in and around Ituri. There, Lubanga's men used beatings and killings to force the children to follow orders.

As the Pre-Trial Chamber established, the act of conscripting and enlisting continues to be committed as long as the children remain in the armed group.

The Prosecution will present evidence showing the meaning of remaining in an armed group; the environment of terror that Lubanga's men created in the camps. In the following section, I will use some quotes.

The children will tell you the facts, the facts about training. As one of them described: *"Our training discipline was also very strong. If you were beaten 250 times with a stick they would say you were beaten only a little".* He added *"Soldiers would often give you an order for you to assault your friend, if you refused they would say that you refused to follow orders and they would beat you".* Finally, he said: *"I was beaten twice during my stay at Bule, the first time was when I informed them that I was sick and needed some medication. The soldiers got some sticks and beat me saying 'here is your medication'. The other time was when we had to present our weapon for inspection. I didn't have some bullets as they were stolen from me. The commanders then ordered that I was beaten."*

You will hear how a child soldier younger than 10 was shot by one of Lubanga's men because he had lost his weapon.

You will hear another boy telling what happened to those who tried to escape. I quote: *"They caught him on the road and they brought him back and in front of everybody they killed him. ...they said, 'in the army you're not supposed to run away so he's here as an example'".*

The children were terrorized. One child said to our investigators: *"Many times during my training I thought about escaping but I was scared as those who were caught were often beaten to death".* He saw three young boys and one girl who were beaten to death with sticks in front of everyone.

In order to ensure obedience to any instruction, Lubanga's commanders ordered the children to beat and kill fellow child soldiers. As one witness said: *"I remember on one occasion... we found a former soldier about my age who had escaped. We arrested him, and a Commander... instructed us to take him back to the camp and beat him. [...] We beat him all over his body and head. We did it without*

control or aiming at a particular part of the body. [...] It was well known that if you escaped and were caught you were beaten; I was just following an order."

You will hear former child soldiers describing how the first thing they were taught was that their gun would be their "father and mother" and would feed and clothe them. One child witness said to our investigators: *"As I did not understand how a gun could do so many things, a boy explained to me that the instructors were using this expression to mean that we had to kill the enemy with our gun and then pillage what they had, so taking their food and clothes"*.

As soon as they arrived at the camps, the commanders informed them that if they did not pillage, they would not eat properly. A boy will explain: *"hunger would start to bother you, and then you would go inside somebody's house. And then you would threaten those people and ask for money and ... and take their goods"*.

The following map shows the places in Ituri where Thomas Lubanga trained the children who will testify: Centrale, Mandro, Rwampara, Irumu, Sota, Barrière, Lopa and Bule. The Office will present further evidence suggesting the existence of additional training camps.

Whenever the children were recruited, they ended up in these places. Such complex operations reflect the sophisticated organization that Lubanga managed.

Mr President,

Your Honors,

Once the training had ended, the child soldiers were issued a uniform and a weapon of their own, they were ready to participate in military operations, or

to become bodyguards of senior officials, or be employed in any other military duty that was deemed fit.

The children's testimonies and other evidence will also show that Lubanga used child soldiers to actively participate in hostilities.

The children were launched into battle zones where they were instructed to kill everyone, regardless of whether their opponents were military or civilian, regardless of whether they were men, women or children. They were forced to kill all Lendu because the Lendu were the enemy.

One former child soldier explained to us: *"The first time I shot the gun it hurt my ears a lot, the more I shot the more my ears would hurt"*. He added: *"They also taught us to kill the person so they would die on the spot: we should shoot them in the middle of the forehead"*.

Another described being ordered to kill: *"Well, on that first time, I was very scared. But then they told us that we should go on doing it so then I ... came to see that's something normal but I still got scared all the time. It was just the commanders who kept pushing us forward to ... pushing us to go on and fight."*

A child soldier explained *"You didn't really have a choice. If they told you, 'You have to go', you would go, because if you tried to refuse ... they would kill you there"*.

Another told us how during fighting at Lipri, the commanders - I quote - *"really encouraged us to rape women and the commanders would send to ... to look for women. . . So we took them and brought them to the camp... and then we did those bad things"*.

Pillaging also occurred during combat operations as commanders would give orders to kill and loot during the attack. Child soldiers who were present in Lipri indicate that before the attack, the recruits were clearly instructed to take all the goods they found in the village. After the attack, the looted goods were gathered for the commanders. Sometimes, they were also instructed to burn everything.

Children participated in the attacks on Nyankunde; on Libi, Mbau, Kpandroma, and Songolo; on Zumba and Kasenyi; on Lonio, Mandro, Centrale, Lipri and Solenyama; on Katoto, Lopa, Largu, and Marabu; on Iga-Barrière, Bogoro, Chai, Lenga and Fataki; on Bunia ; and on Djugu and Mongbwalu.

Children were also used to provide security; children were used as bodyguards.

The Prosecution will show your Honors, as a visual aid, few excerpts of a video.

They present clearly the scenes where the crimes occurred. I will allow this Court to see the extent to which the children were part of the military operations, when protecting Lubanga as he moved around Bunia.

The Prosecution will play a few scenes showing Thomas Lubanga leaving a reception and you will see his body guards in a truck.

At least two of them are manifestly under 15 years old.

Before I conclude my presentation on the facts, let me address the particular issue of sexual violence in the context of child recruitment and the fate of girl soldiers enlisted, conscripted and used in combat by Lubanga's militia.

In the camps, child soldiers were exposed to the sexual violence perpetrated by Lubanga's men in unspeakable ways. As I said before, young boys were instructed to rape. In the training camps, girl soldiers were the daily victims of rape by the commanders.

Girl soldiers, some aged 12 years old, were used as cooks and fighters, cleaners and spies, scouts and sexual slaves. One minute they would carry a gun, the next minute, they would serve meals to the commanders, the next minute, the commanders would rape them. They were killed if they refused. One child soldier became severely traumatised after killing a girl who refused to have sex with a commander. You will hear that as soon as the girls' breasts started to grow, Lubanga's commanders could select them as their forced "wives" and transform them into their sexual slaves. One of our witnesses will describe how he observed daily examples of his commanders raping girl soldiers. You can still meet many of them in the DRC, kept as so-called wives by the commanders or in the streets of Kinshasa and Bunia, rejected by their communities and struggling to make a living as prostitutes. These girl combatants are left on the margins of many Disarmament Demobilization and Reintegration projects. As emphasized by the Special Representative of the United Nations Secretary-General Radhika Coomaraswamy, in her *amicus* brief to this Court, girl combatants are too often invisible because they are also wives and domestic aids and slip away or are not brought forward for Demobilization programmes.

Mr President,

Your Honors,

It is a responsibility of the Office of the Prosecutor of the International Criminal Court to prove the crimes committed against the most vulnerable and during the course of this Trial, my Office will make it its mission to ensure that Thomas Lubanga Dyilo is held criminally responsible for the atrocities committed against those little girl soldiers, when he enlisted and conscripted them to be used as sexual prey, when he used them in combat.

Your ruling on this case could change the life of these girls; never again should they be left out of the assistance provided by demobilization programs. In this International Criminal Court, they will not be invisible.

Mr President,

Your Honors,

These are the facts. Let me now turn to the law to be applied.

In 2004, in a landmark decision, the Special Court for Sierra Leone concluded that recruiting children under the age of fifteen was a crime under customary international law at least since 1996.

“Recruiting” is the term used by the Geneva Convention and the Convention on the Rights of the Child. After careful analysis, the drafters of the Rome Statute more precisely defined the way children are obtained as soldiers by replacing recruiting with “conscripting or enlisting”.

Under the Rome Statute, crimes related with children involved in armed groups can be committed in three ways without making any distinction as to

gravity: by conscripting children, by enlisting them or by using them to participate actively in hostilities.

Conscripting - forced recruitment as described by the Pre-Trial Chamber - implies compulsion, albeit sometimes in the form of general rules. It could apply to abductions but also to Lubanga's decree that all Hema families had to contribute a child. It is a crime.

Enlisting – voluntary recruitment as described by the Pre-Trial Chamber – means accepting and enrolling children when they volunteer or when they are volunteered by family. It is a crime.

The Rome Statute renders irrelevant that children joined “voluntarily”, or that parents entrusted them “voluntarily” to the Lubanga's militia. Accepting for military service so-called volunteers under the age of 15 constitutes criminal conduct.

In reality, there was no free will for those children and their parents in the violent context of Ituri. Power belonged not to the law but to those bearing weapons. The oppressive environment deprived freedom of choice of its meaning in the same manner as it would deprive consent of a woman to sexual intercourse with a militia man of any meaning. There were repercussions, including death threats, to the refusal to give a child to be a soldier. In some cases family members were killed or their goods looted.

But the Prosecution will not need to argue in this regard. As decided by the Pre-Trial Chamber, consent is not a valid defence for recruitment of children under 15. There is no such thing as lawful voluntary enlistment of children under 15 in the Rome Statute. There is no such thing as lawful conscription of

children under 15 in the Rome Statute. The prohibition is absolute and suffers no exception. This issue, Mr President, Your Honors, has been argued and settled legally by the drafters of the Rome Statute, nearly 11 years ago.

With this provision, the Rome Statute has exhaustively defined the crime. The Court can now affirm, once and for all, that “voluntariness” or so called “consent” is not a valid defence, and such a ruling must be a cornerstone of protection for children in war zones.

Mr President,

Your Honors,

Let me now turn to the meaning of active participation in hostilities.

Originally, the Geneva Conventions and commentary addressed the issue by establishing a causal link between the active or direct participation in hostilities and the consequences on the opponent – the harm done to the enemy. They were concerned with defining the obligations of adverse parties in a conflict. Indirect participation – such as the war effort of an entire nation through its war industry – was not included.

In more recent years, and especially since the 1996 report of Graça Machel to the United Nations on the impact of wars on children, the international community’s concern has turned back to the rights of those principally affected, the children.

The crux of the matter is to both ensure that those children, whatever the function they perform, are recognized as child soldiers and benefit from all the protection afforded to child soldiers under human rights law, while ensuring at

the same time that they keep the widest protection afforded to civilians under international humanitarian law. It is, for this Court, a challenging mission.

The Pre-trial chamber recognized that participation in hostilities can include the use of children to guard military objectives or the safety of military commanders.

The Prosecution will follow the jurisprudence established by the Pre-Trial chamber on the meaning of active participation.

Mr President,

Your Honors,

Let me now move to the age requirement. Different witnesses will express that the presence of child soldiers in the Lubanga militia was “massive”; the Lubanga militia was “an army of children”. Estimations fluctuate; but around 30% of soldiers in the Lubanga militia were child soldiers.

The commanders themselves called the child soldiers “kadogo”. According to the Swahili-French dictionary “Kadogo” means “*très petit, minime*”. The Swahili-English dictionary defines “kadogo” as “a small child; microscopic; midget; miniature”.

Establishing the specific and conclusive dates of birth for most of the “Kadogo” is not needed by the law. What is required is to prove that they were under 15. As a result of the conflict, most of them never had a birth certificate or lost any identity document. They were displaced, their homes burned, their families lost. State and school records in the Ituri region were largely destroyed. To prove they were under the age of 15, the Prosecution has relied on different sources including testimonies, videos, documents and scientific analysis.

Videos filmed between September 2002 and August 2003 will show the presence of child soldiers manifestly under the age of 15 in Lubanga's military compounds or their use as bodyguards.

The Trial Chamber will also hear the evidence of nine former child soldier witnesses who were under 15 when they were taken by Lubanga's men. The Prosecution will present documents, testimonies and forensic analysis based on an x-ray of their bones. They will consistently, with the inevitable difference of a variety of authentic sources, prove that the children were between 11 and 15 years old at the time of their recruitment. For instance, one of the children stated he was 12 at the time and the x-ray indicates he was between 11 and 12. In another case, a child said he was 11, his birth certificated says 12, his cousin, and the forensic study says 14. The range demonstrates that the threshold established by the law is met.

To conclude this section the Prosecution will show your Honors a few brief video excerpts showing Thomas Lubanga visiting the Rwampara military training camp on 12 February 2003.

The video shows a training camp that is isolated from the village population. All of the children seen in this video are soldiers. Those who have weapons, those who carry sticks, and those who carry nothing: all of them are soldiers. Those with uniforms, and those without: all of them are soldiers.

They are assembled to receive their Commander in Chief. You will see Thomas Lubanga talk to them.

You will also see Bosco Ntaganda, one of the co-perpetrators, still at large, wearing purple.

Let me play now a few scenes of Thomas Lubanga leaving the Rwampara camp followed by his body guards. Watch the child while he tries to put his weapon in the back of the truck. He is so short that his chin does not even reach the edge of the truck.

In sum, the Prosecution will prove beyond a reasonable doubt that between 1 September 2002 and 13 August 2003 children under the age of 15 years old were enlisted, conscripted and used to participate actively into hostilities by the armed group led by Thomas Lubanga.

Mr President,

Your Honors,

With your permission, Deputy Prosecutor Fatou Bensouda will now present the background and existence of an armed conflict in Ituri during the period relevant to the charges, the mode of liability and Thomas Lubanga's knowledge of the crimes.

Mr President,

Your Honors,

The Prosecution will now address the existence of an armed conflict in Ituri between September 2002 and August 2003.

The armed conflict in Ituri is connected with the 1994 genocide in Rwanda and the two Congo wars. All of them are rooted in history and colonization. Let me summarize some key aspects.

After the genocide, hundreds of thousands of persons, including some leaders and perpetrators of the mass killings fled Rwanda to the two Kivu provinces, in the eastern part of the country then called Zaïre. Some started to plan new attacks against Rwanda, triggering the “First Congo War” in 1996. Uganda and Rwanda supported a Congolese rebel group led by Laurent-Désiré Kabila against Zaïre ruler Mobutu Sésé Seko. They reached Kinshasa and ousted Mobutu in May 1997.

The “Second Congo War” started in 1998 after relations between Laurent-Désiré Kabila, the new President, and his former allies deteriorated. Rwanda and Uganda withdrew to eastern DRC, an area rich in natural resources such as gold, diamond, coltan, timber and oil. Rwanda consolidated its presence throughout the two Kivus and Uganda did so in large parts of Province Orientale, including Ituri. At least nine African countries and many local militias were involved in those wars. From 1999 on, the Kivus and Ituri were under the control of a political/military movement, the *Rassemblement Congolais pour la Démocratie – Mouvement pour la Libération*, supported by Uganda and Rwanda.

Close to 4 million people are estimated to have died in DRC between 1998 and 2004, in particular due to starvation or disease resulting from the war. This is considered the highest number of civilians killed as a consequence of war since the Second World War.

In April 2002, the States involved in the conflict and some of the main Congolese armed groups started discussions in “Sun City” in South Africa. Ituri was represented by a leader of the *Rassemblement Congolais*, Mbusa Nyamwisi. He became a member of the new Government of national unity under the leadership of Joseph Kabila. Lubanga and his group were excluded. Under the “Sun City” agreement, the Uganda army withdrew from the DRC in June 2003 and the second Congo war ended.

However, from 2002 onwards, and despite the ongoing peace negotiations, a sustained and extensive armed conflict persisted in the Province Orientale, including the District of Ituri.

Lubanga had organized his own group, the UPC in September 2000 and received support from Uganda. In January 2001, he joined the *Rassemblement Congolais* Government as Commissioner for Youth and Sports and later was appointed Defence Commissioner. He deliberately used his position to incorporate hundreds of Hemas into the army of the *Rassemblement Congolais*.

By April 2002, when he was excluded from the “Sun City” deal, Lubanga was ready to move. He broke away from the *Rassemblement Congolais*, taking with him its loyal Hema soldiers. Integrating other small militias, Lubanga built his own army. Lubanga, supported by the Ugandan army, then turned against the *Rassemblement Congolais* and in August 2002, chased them out of Bunia.

Mr President,

Your Honors,

The evidence will show that from the 1 September 2002 onwards, Lubanga and his co-perpetrators, with the goal of maintaining and enlarging their control

over the area, launched attacks against the Lendu, the other large community living in Ituri, who also formed militias.

Massive violence then developed in a context characterised by the lack of national Government control over the territory, the involvement of foreign troops, and the struggle to control natural resources.

The Prosecution will tender evidence showing that more than 8.000 civilians were deliberately killed or were the victims of indiscriminate use of force in Ituri from January 2002 to December 2003.

Mr President,

Your Honors,

In order to demonstrate the existence of an armed conflict, the Prosecution will tender documents into evidence, including the United Nations' Security Council resolutions confirming the existence of the armed conflict in Ituri, during the relevant period.

Consistent with the Trial Chamber's Decision of 13 December 2007 and the amended document containing the charges the Prosecution will present the totality of its evidence relating to both international and non-international aspects of the conflict. The evidence will enable the Chamber to determine whether the Ugandan occupation of Ituri between the 1 September 2002 and early June 2003 transformed the character of the conflict into an international conflict.

The Prosecution will lead evidence proving that the Uganda army has been an occupying force, substituting its own authority for the authority of the DRC Government.

The Prosecution will show that Uganda and Rwanda officials supported different armed groups involved in the armed conflict in Ituri. They provided military training and expertise, weapons and ammunition, uniforms and financial support. You will hear of the training received by Lubanga's officers in camps in Ituri, Uganda, and Rwanda. You will hear Prosecution witnesses describe the parachuting of weapons and ammunitions from Rwandan planes around the military training camp at Mandro and explain the connection between Bosco Ntaganda and Rwandan authorities.

The Prosecution will tender evidence to show that Ugandan officials supported Lubanga from 2000 to at least the end of October 2002 and that Rwandan officials provided support between mid-2002 and mid-2003.

The evidence will show the operational support provided by the Ugandan army and the break up of this relation. A relation full of manoeuvres: the Uganda Government arrested Lubanga in June 2002 and sent him to Kinshasa with 9 of his supporters at the time of the "Sun City" discussions; at the same time, on the ground, Uganda officials continued to support his group.

At least from January 2003, Lubanga, now supported by Rwanda, started to publicly request that Uganda withdraw its forces.

The Uganda army then changed sides, started supporting Lendu militias and, in March 2003, Lubanga's group was ousted from Bunia. Two months later, in May 2003, the Uganda army left Bunia in the context of its withdrawal from

DRC. Immediately Lubanga's group chased the Lendu militias and recovered the town.

Mr President,

Your Honors,

As I just described, the evidence will show that until 2 June 2003 Ituri was under Ugandan army occupation. However, the evidence in the Prosecution possession does not prove that Ugandan officials had overall control of Lubanga's group. The issue of the classification of the conflict as international relates primarily to the test to be applied by the Chamber, occupation or overall control.

Mr President,

Your Honors,

Let me now turn to the individual criminal responsibility of the Accused.

The Prosecution will prove that Thomas Lubanga Dyilo is criminally responsible as co-perpetrator in accordance with Article 25 (3) (a) of the Rome Statute. At least from September 2002 until 13 August 2003, a common plan existed between Thomas Lubanga, Bosco Ntaganda and other co-perpetrators. The goal was to maintain and expand political and military control over the Ituri region. The plan's implementation included the enlistment, conscription and use of children under the age of 15 to actively participate in hostilities.

The evidence will show the critical role of Lubanga, himself in pursuing the common goal and in controlling its execution, in particular in the recruitment and use of child soldiers.

Thomas Lubanga Dyilo was born on 29 December 1960 of a Hema family, from the Gegere subgroup. By 2002, the Gegere community recognized him as their political leader. They called him “*Raisi*”, a Swahili word that means President or highest authority.

Lubanga is an educated man; in 1985 he graduated in psychology from the University of Kisangani, although he never worked as such. He obtained a job in a warehouse in Bunia’s market, selling beans and other goods to the armed forces present in Bunia at the time, and worked in various small business ventures, including gold. In parallel, he became involved in political activities. In 1990, he joined a political party, the *Union pour la Démocratie et le Progrès Social*. In 1999, he was elected as a member of the provincial assembly in Ituri.

Thomas Lubanga Dyilo had ambition; he wanted political power, and an army to build his power upon. The evidence will show how he combined his talents as an educated man, as a trader, how he used his connections, the loyalty of the Gegere’s elite, while harming Gegere families at the same time, how he carefully selected the most opportunistic methods to build his power: recruiting children as soldiers; shifting alliances whenever necessary; trying to play with the international community.

He pretended that he was loyal to the *Rassemblement Congolais* when they were in power and he was conspiring against them at the same time.

He announced programs of pacification and he was sending his troops to kill all the Lendus at the same time.

He promised to demobilize the child soldiers and he was recruiting them at the same time.

The evidence will also show that at all time relevant to the charges he had total control of his group. Those who opposed his will had to leave.

Mr President,

Your Honors,

Let me briefly tell you how it all really came together and why Thomas Lubanga's political and military career is built on the use of children as soldiers.

During the summer of 2000, the *Rassemblement Congolais*, which was then controlling Ituri and the Kivus, started excluding Hema commanders from its army. The Hema commanders, including most of Lubanga's co-perpetrators then organised a mutiny. Most of the soldiers under the lead of the Hema mutineers were children. The *Rassemblement Congolais* called upon the support of the Uganda army. The children's parents sent a letter, dated 27 July 2000, complaining to the Ugandan authorities.

Lubanga, an educated Hema leader, at that time a minor member of the Ituri Assembly, saw his chance. He volunteered to go to Kampala to deal with the problem. He impressed Ugandan officials and started to develop the idea to create a political party. Ugandan officials offered to provide him and his followers with training. Lubanga took advantage of the situation. He set off to send for training to Kyankwanzi in Uganda not only the children mutineers, but any soldier that he would get his hands on. Lubanga's house became a clearing centre through which the recruitment and transport of children, Hema

and in particular Gegere, to different training camps in Uganda and the DRC was organized.

In sum, Lubanga used the opportunity of the Hema mutiny to establish a political alliance with Ugandan officials and to build within the *Rassemblement Congolais* an army loyal to him only.

Lubanga was soon to use them as the basis of his own army. As I described before, in April 2002, Lubanga severed all links with the *Rassemblement Congolais* and retained Hema soldiers and others to build the UPC army. Immediately, they entered into violent confrontations against the *Rassemblement Congolais*.

Even after his arrest in Kampala and his detention in Kinshasa from June to late August 2002, he retained the ability to manage his movement, including the recruitments.

On 9 August 2002, Lubanga's militia launched an offensive against the *Rassemblement Congolais*. From this moment on, the UPC controlled Bunia. On 13 August 2002, Lubanga, from his cell in Kinshasa, issued a declaration explaining that his group "controlled the situation there perfectly", that they would pursue a program of pacification in Ituri and call for the establishment of an international criminal tribunal to investigate massacres in Ituri.

With the authorization of the DRC Government, Lubanga was allowed to provisionally return to Bunia by 28 August, and re-assume leadership of the UPC. He was accompanied by the DRC Minister for Human Rights, but his detained followers had to stay in Kinshasa in detention. As is his custom, Lubanga dealt with the situation violently and deftly. His commanders took

the minister as hostage. They demanded that Lubanga be allowed to remain in Ituri and that his 9 associates be freed in exchange for the Minister. By 1 September 2002, the deal was made.

On 3 September 2002, Lubanga was appointed President of the UPC. His first written decrees as President specifically stated that defence and security matters would derive from him, the UPC Presidency. From then on Lubanga had a total hold on power and did not tolerate “the least contestation of his authority.” This is what happened to Chief Khawa, Minister of Defence, downgraded for challenging Lubanga, who then left UPC and created his own Movement the PUSIC. On 13 August 2003, the last day within the period relevant the charges, Lubanga was still the President of the UPC.

Mr President,

Your Honors,

Thomas Lubanga had knowledge of the crimes committed.

Thomas Lubanga had control of his group, he ordered and supervised the recruitment of child soldiers in his militia, Bosco Ntaganda and other co-perpetrators shared his intentions. One piece of evidence stands out. The Court will hear Lubanga himself talking to the child soldiers, explaining the role of Bosco Ntaganda, confirming the chain of command. In the video of his visit to the Rwampara training camp, he said, I quote:

“I am Thomas LUBANGA the president of our party, the UPC.... You are used to ... talking with our commanders ... who are ... helping with this ... work ... of training ... who are ... building the army ... everyday. I am with them all the time but there is a lot of work... [...] Continue your training. We are keeping an eye on you all the time.

[...]You said a while ago that the Operations Commander ... Bosco comes to see you regularly. If you have difficulties, tell him. And they will get to a higher level ... of our leadership. Because he is a senior leader of our army, the FPLC. What we are doing, and we are doing it together with you, is to build an army....I wish you ... good training, do it, persevere, and tomorrow you will stand with a weapon and a uniform”.

The evidence will show that the massive campaign of recruitment carried out by Lubanga’s group could not have been implemented without the direction and approval of Lubanga. All the evidence will show that Lubanga was in full control of his group and that recruitment was a key activity for him.

The evidence will show that he organized recruitment campaigns and sent emissaries to Bunia and surrounding areas to persuade or compel the Hema families to send their children to join his group. Documentary evidence will show that in December 2002 “peace committees” from the Ituri area liaised with Lubanga’s group to campaign amongst youngsters for massive integration into its militia.

The Prosecution will tender documents showing that Lubanga himself publicly decreed that each Hema family must support his military efforts by providing a child. A witness will explain that Lubanga gave an order to recruit “everyone they could find.”

The evidence will show that Lubanga’s orders to recruit children did not establish any minimum age; the criterion was the ability to carry a weapon. The commanders instructed children to recruit other children, even if they were small, as long as they could carry a weapon.

The evidence will also show that many of those recruited were under the age of 15 and that Lubanga knew it. Lubanga established and visited military training camps to prepare these child recruits for use in combat. Lubanga saw child soldiers every day in his organisation. He was regularly in the presence of soldiers under his command who were obviously under the age of 15. Lubanga and his senior commanders used child soldiers under the age of 15 to provide security to buildings and to themselves. You will see the complete videos showing how young some of these bodyguards were. You will hear evidence that Lubanga used child soldiers to guard his own residence, as well as the checkpoints leading to his house.

Compelling evidence of his knowledge of the recruitment and use of child soldiers within his ranks are his orders to demobilize child soldiers. The Prosecution will tender three documents signed by Lubanga purporting to demobilise child soldiers from his group. These orders alone demonstrate that Lubanga knew these children were soldiers in his army, and that he knew that recruitment and use of child soldiers was prohibited.

The Prosecution will tender a decree dated 21 October 2002 and addressed to the Chef d'Etat Major of the FPLC, where Lubanga states that contrary to the official ideology of the movement, the practice of enlisting minors of both sexes has been developing within the movement's ranks. He adds that he formally prohibits this practice, in agreement with his previous agreement with the NGO "SOS Grands Lacs".

On 1 June 2003, Lubanga issued a decree ordering the demobilisation of all persons under 18 years old from his group. The decree indicates that this is done taking into consideration the will of the international community to continue its programme of demobilisation and re-integration of child soldiers, a

programme supported by NGOs such as « Save the Children » and « SOS Grands Lacs ».

However the Prosecution will tender evidence showing that these orders were never implemented.

The Prosecution will tender evidence showing that these orders to demobilize child soldiers were issued merely to appease the international community while Lubanga continued to recruit children. The orders reflect his attempt to mislead the international community. Two weeks after his second alleged demobilisation order, he is visiting one of his training camps encouraging children to train, to learn to fight.

Lubanga knew that international organizations were aware of and monitoring his recruitment efforts. In 2001, UNICEF and the local NGO's " SOS Grands Lacs " found the child soldiers that Lubanga had sent to be trained in Uganda. The international and local community supported an initiative to repatriate them. 163 children were demobilized and reintegrated into their families. As a result of this initiative Lubanga's plans could have been severely undermined.

The Prosecution will tender evidence showing that in 2003 Lubanga re recruited 130 of those 163 children who had been demobilized by UNICEF and "SOS Grands Lacs" and sent them into fighting units.

The Prosecution will also show that Lubanga was personally informed by various NGO officials that there were child soldiers in his militia and made admissions to these officials regarding his practice of utilizing child soldiers.

In particular, you will hear evidence about what happened with a pastor and human rights activist in Ituri. He approached Lubanga different times to express his concern over the use of children under 18 years old. He did it in January 2002, October 2002 and November 2002. The first time, Lubanga replied he had to discuss the issue with "his hierarchy," adding that it was a way to occupy children who "hanged around in the streets". The second time Lubanga said he would discuss the issue with his "*collaborateurs*" but that it would be a difficult task because the children "had come to like their work". The third time Lubanga accused him of trying to demobilize the "children needed to defend the Hema community from Lendu attacks" and threatened him by saying that "this time, he would let him go but he should consider himself warned". A few days later, the pastor was told by a Lubanga's assistant that he must stop his attempts to demobilize child soldiers or run the risk of being killed.

In sum, Mr. President, Your Honors, both the recruitment orders and the sham orders issued by Lubanga to demobilize child soldiers are conclusive evidence of Lubanga's knowledge of the practice of recruiting and using child soldiers.

Mr President,

Your Honors,

Let me now, with your permission, pass the floor to the Prosecutor who will address the nature of the Prosecution evidence, and conclude this statement.

Mr President,

Your Honors,

The Prosecution will present evidence from over 30 *viva voce* witnesses and 3 expert witnesses. Those will include witnesses who met on regular basis with Thomas Lubanga, who were involved in high level meetings with him and other co-perpetrators, and who were in positions of sufficient importance to be informed of the daily activities of the Lubanga group. We will also present some of the 1,671 documents of incriminatory evidence we have disclosed for this case. Many of these documents were written contemporaneously and stem from the Lubanga group. Many of these documents are either signed by or copied to Lubanga himself. We will present videos.

In addition, we will be calling 9 former child soldiers to take the stand. With respect to these witnesses, I would like to make a couple of remarks.

The nine former child soldiers you will see in this courtroom are remarkable individuals. We are impressed for the way they have - and continue to - overcome the adversity they have faced. Many of them have recently completed their high school exams. And yet even these nine still find it painful to recount what happened to them. Even these nine would prefer not to speak about the details of what they saw and what they did.

Testifying will force them relive traumatic experiences they are deeply ashamed of and wish to forget or ignore entirely.

These witnesses are vulnerable witnesses, your Honors. I need say no more. The Court is calling two expert witnesses who will explain the difficulties that the witnesses will experience as they testify, how these witnesses are always at risk of re-victimization.

For each of them, it is their first time in a courtroom, and the first time in a different country, away from their communities. These unfamiliar surroundings, the formality of the process, when combined with the trauma they have already experienced in their short lives, make the prospect of testifying in court daunting.

All of these factors place a particular challenge to the parties, the legal representatives and the Chamber to ensure that the process of testifying is not re-traumatizing. The prosecution is ready to request special measures pursuant to Rule 88 of the Rules of Procedure and Evidence whenever appropriate, and we are confident that the Court will implement such measures whenever necessary.

Mr President,

Your Honors,

In the sentencing phase, should the Chamber find that the charges are proved; the Prosecution will analyze the individual circumstances of the Accused. However, I want to put the Defence on notice that the Prosecution anticipates to call for a severe punishment, close to the maximum.

The Prosecution believes that the massive crimes litigated in this International Criminal Court, with hundreds or thousands of victims, with entire communities affected, warrant very high penalties. In this case, the defendant stole the childhood of the victims by forcing them to kill and rape. Lubanga victimised children before they ever had the chance to grow up into full human beings who could make their own decisions.

As the Prosecutor, I have the mandate to pay particular attention to the suffering of the victims, to what happened with children. I will listen to the children to evaluate the appropriate penalty to be requested for Lubanga. I remember the statement provided by one of the children to our investigators during the investigation a few days ago. *"I was ... dreaming all the time and ... and thinking about ...uh ... all the work, all the things that I had done. I was thinking about killing people all the time. Thoughts are coming to me now."* The children' feelings of complicity and shame will hurt them, for the rest of their lives.

The past suffering, the present suffering, and the continued suffering that Lubanga inflicted will be a factor. Lubanga affected not just one child. Lubanga affected an entire generation, and this must be reflected as a powerful aggravating factor in his sentence, if convicted.

The Rome Statute, ratified by 108 States and supported by citizens and institutions across the globe, have given me a mandate. I have to investigate and prosecute the perpetrators of the most serious crimes of concern to the international community as a whole. The aim is to end impunity and contribute to the prevention of future crimes.

Thomas Lubanga knew what he was doing, so clearly that he consciously tried to mislead and appease the international community by issuing demobilisation orders on paper, even as he kept recruiting child soldiers in practice. He knew he was committing a crime not only just against his own Gegere and Hema community, and not just against national law. He knew he was breaking the basic rules that the world established to protect those with the least power among us: Little children. Thomas Lubanga has to learn that the Rome Statute can not be circumvented. Children are not soldiers. If convicted, Thomas Lubanga's sentence will send a clear message: The era of impunity is ending.