

1 International Criminal Court

2 Trial Chamber I

3 Situation in the Democratic Republic of Congo - Case ICC-01/04-01/06

4 Hearing - Open Session

5 Monday, 26 January 2009

6 The hearing starts at 10.03 a.m.

7 COURT USHER: All rise. The International Criminal Court is now
8 in session. Please be seated.

9 PRESIDING JUDGE FULFORD: Good morning. Can I welcome everyone
10 to the opening of this trial. The Prosecution today are represented by
11 Mr. Moreno-Ocampo and Ms. Bensouda and a significant number of others
12 from their team. The Defence by Maitre Mabilille, Mr. Biju-Duval, and
13 again a number of other members of the Defence team. The Registry today
14 by the Registrar herself, Ms. Arbia. For the victims, can I say straight
15 away that we are extremely sorry to hear that Mr. Mulenda has very
16 recently been taken ill. Mr. Walleyyn, I'm going to ask you to keep the
17 Judges closely informed as to what the problems are so that we can know
18 more about his state of health, and if there are any logistical problems
19 that are consequential to this very unfortunate event, please do not
20 hesitate to let us know.

21 MR. WALLEYN: Thank you for that, Mr. President.

22 PRESIDING JUDGE FULFORD: Ms. Bapita, as I've just indicated,
23 Mr. Walleyyn, Mr. Keta, Mr. Kabongo, Mr. Diakiese, and the last advocate,
24 Mr. Mulamba. The OPCV are represented by Ms. Massidda and again other
25 members of the team from the OPCV.

1 The first formal part of today's proceedings is that the charges
2 should be read out now, please, to the accused in French, and I would ask
3 that the Court Officer does that straight away.

4 COURT OFFICER (interpretation): Thank you, your Honour.
5 Thomas Lubanga Dyilo is responsible as co-perpetrator for enlisting and
6 conscripting of children under 15 in the FPLC and for using them actively
7 in hostilities under 8(2)(b)(xxvi) between early September 2002 to
8 2 June 2003.

9 Thomas Lubanga Dyilo is responsible as a co-perpetrator of
10 enlisting and conscripting children under the age of 15 into the FPLC and
11 using them to participate actively in hostilities in the context of an
12 armed conflict under Articles 8(2)(e)(vii) of the Rome Statute between
13 the 2nd of June, 2003, and the 13th of August, 2003.

14 PRESIDING JUDGE FULFORD: There are two statutory duties which at
15 this stage are imposed on the Judges. The first is to ensure, and this
16 is undoubtedly a formal requirement, that the accused has had the charges
17 explained to him and that he understands them. I'm sure that you have
18 explained this to the accused a very considerable time ago, and I'm sure
19 you will have satisfied yourself that he does understand the charges, but
20 formally I'm obliged to ask you whether this is the case.

21 MS. MABILLE (interpretation): Yes, your Honour. We explained
22 the charges to Thomas Lubanga which are held against him.

23 PRESIDING JUDGE FULFORD: Second formal obligation is to indicate
24 that under the Statute this is either the or certainly an opportunity for
25 the accused to indicate whether he is guilty or not guilty. It is, I

1 need to underline, not in any sense compulsory for him to do so. He can,
2 of course, remain entirely silent at this point in time, but we are
3 obliged to ask whether or not at this point in time either the accused
4 himself or you on his behalf wish to indicate whether he is guilty or not
5 guilty.

6 MS. MABILLE (interpretation): At this stage our client would
7 like to plead not guilty.

8 PRESIDING JUDGE FULFORD: Very clear. Thank you very much.

9 Before I call on Ms. Bensouda to open the case for the
10 Prosecution, I want to say a word about timing. It is necessary for the
11 Bench to hold an ex parte hearing today to try to resolve the outstanding
12 issues as regards redactions, and those are redactions to the annex that
13 need to accompany our decision lifting the stay of proceedings. Because
14 this needs to be dealt with as soon as possible, today's schedule will be
15 slightly changed. We propose to sit between now and 12.00. We will then
16 resume at 1.30 and sit in open court through to 3.30, and there will then
17 be at 4.00 a Status Conference with the Prosecution only present to
18 resolve the outstanding issues as regards redactions to that annex.

19 Finally, can I remind everyone about speed. It is very easy to
20 forget that there are stenographers and interpreters. Rather than
21 speaking in an unnaturally slow -- at an unnaturally slow pace, could you
22 please try and build in very short gaps as you go through to give the
23 interpreters and the stenographers an opportunity to catch up. If I feel
24 it is running away and you see my hand going up and down, that is not an
25 indication to speak more quietly. It's an indication to slow down.

1 Thank you.

2 Ms. Bensouda, could you now please -- Mr. Moreno-Ocampo.

3 MR. MORENO-OCAMPO: Thank you, Mr. President.

4 PRESIDING JUDGE FULFORD: I'm sorry, because Ms. Bensouda was
5 sitting on the left I had assumed that she was opening the case,
6 Mr. Moreno-Ocampo. I was not meaning to be impolite. I call on you,
7 please, to open the case for the Prosecution.

8 MR. MORENO-OCAMPO: Thank you, Mr. President. My mistake is I
9 like the corridor.

10 Mr. President, your Honours, the Prosecution will present
11 evidence proving beyond any reasonable doubt that Thomas Lubanga Dyilo
12 committed crimes under the Rome Statute. He committed some of the most
13 serious crimes of concern for the international community, crimes against
14 children.

15 The evidence will prove that between 1st September 2002 and
16 13 August 2003, Thomas Lubanga systematically recruited children under
17 the age of 15 as soldiers in his political military movement called
18 Union des Patriotes Congolais, UPC, and its armed militia the
19 Forces Patriotiques pour la Liberation du Congo, FPLC. Lubanga's armed
20 group recruited, trained and used hundreds of young children to kill,
21 pillage, and rape.

22 The children still suffer the consequences of Lubanga's crimes.
23 They cannot forget what they suffered, what they saw, what they did.
24 They were 9, 11, 13 years old. They cannot forget the beating they
25 suffered. They cannot forget the terror they felt and the terror they

1 inflicted. They cannot forget the sounds of their machine-guns, that
2 they killed. They cannot forget that they raped and that they were
3 raped. Some of them are now using drugs to survive. Some of them became
4 prostitutes, and some of them are orphaned and jobless.

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

11 They will tell you the facts. First, the facts about enlistment
12 and conscription. They will explain how they were abducted and
13 transported to military camps controlled by Thomas Lubanga. You will
14 hear from a boy who just -- was just 11 when Lubanga's militia abducted
15 him as he was walking home from school with his friends. Another boy
16 will tell you how he was abducted while playing football with friends.

17 You will hear from a girl who was 13 when she was abducted whilst
18 trying to flee from attacks in Bunia. Let me quote her statement to our
19 investigators:

20 "I fled together with my family ... we were with a lot of people
21 and then I got separated from my family and everybody was running
22 away ... then some soldiers came out of the forest and they stopped us
23 on ... on the road. And they ... captured us, me and some other girls
24 and other boys and some other younger boys. And then they took us."

25 Hundreds of children, some of them abducted, some of them

1 enlisted, I quote, "voluntarily" were transported by Lubanga's militia to
2 more than ten different training camps in and around Ituri. There,
3 Lubanga's men use beating and killings to force the children to follow
4 orders.

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

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

12 Mr. President, your Honours, the children will tell you the
13 facts, the facts about training. As one of them described:

14 "During our training, discipline was also very strong. If you
15 were beaten 250 times with a stick, they will say you were beaten only a
16 little."

17 He added:

18 "Soldiers will often give you an order for you to assault your
19 friend. If you refuse, they will say that you refused to follow orders
20 and they will beat you."

21 Finally he said:

22 "I was beaten twice during my stay at Bule. The first time was
23 when I informed them I was sick and needed some medication. The soldiers
24 got some sticks and beat me saying, 'Here is your medication.' The other
25 time was when we had to present our weapon for inspection. I did not

1 have some bullets as they were stolen from me. The commanders then
2 ordered that I was beaten."

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

5 You will hear another boy telling what happened to those who
6 tried to escape. I quote:

7 "They caught him on the road, and they brought him back, and in
8 front of everybody they killed him ... they said, 'In the army you are
9 not supposed to run away, so he's here as an example.'"

10 The children were terrorised. One child said to our
11 investigators:

12 "Many times during my training I thought about escaping, but I
13 was scared as those who were caught were often beaten to death."

14 He saw three young boys and one girl who were beaten to death
15 with sticks in front of everyone.

16 In order to ensure obedience to any instruction, Lubanga's
17 commanders ordered the children to beat and kill fellow child soldiers.
18 As one witness said:

19 "I remember on one occasion ... we found a former soldier about
20 my age who had escaped. We arrested him, and a commander ... instructed
21 to us take him back to the camp and beat him ... we beat him all over his
22 body and head. We did it without control or aiming at a particular part
23 of the body. It was well known that if you escaped and were caught you
24 were beaten. I was just following an order."

25 You will hear former child soldiers describing how the first

1 thing they were taught was that their gun will be their "father and
2 mother" and could feed and clothe them. A child witness said to our
3 investigators:

4 "As I did not understand how a gun could do so many things, a boy
5 explained to me that the instructors were using this expression to mean
6 that we had to kill the enemy with our gun and then pillage what they
7 had, so taking their food and clothes."

8 As soon as they arrived at the camps, the commanders informed
9 them that if they did not -- if they did not pillage, they will not eat
10 properly. A boy will explain:

11 "Hunger would start to bother you. And then you will go inside
12 somebody's house, and then you will threaten those people and ask for
13 money ... and take their goods."

14 The Prosecutor will follow a map, a map showing places in Ituri
15 where Thomas Lubanga's group trained the children who will testify. The
16 map show first the entire Congo, and then will focus in where is Ituri
17 and the camps. And now I will show the list of the camps. The source of
18 this map are just the testimony of the children. They are in Centrale,
19 Mandro, Rwampara, Irumu, Sota, Barriere, Lopa, and Bule. But the
20 office -- I'm sorry, you missed the map.

21 The office will present further evidence suggesting the existence
22 of additional training camps under Thomas Lubanga's control.

23 Important, whenever the children were recruited, they ended up in
24 these places. Such complex operations moving hundreds of children around
25 all these camps reflect the sophisticated organisation that Thomas

1 Lubanga managed.

2 Mr. President, your Honours, let me explain the meaning of
3 participating in hostilities using again the voice of the children.

4 Once the training had ended, the child soldiers were issued a
5 uniform and a weapon of their own. They were ready to participate in
6 military operations or to become bodyguards of senior officials or be
7 employed in any other military duty that was deemed fit.

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

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

15 One former child soldier explained to us:

16 "The first time I shot the gun it hurt. It hurt my ears a lot.
17 The more I shot, the more my ears would hurt."

18 He added:

19 "They also taught us to kill the person so they will die on the
20 spot. We should shoot them in the middle of the forehead."

21 Another child described being ordered to kill:

22 "Well, on that first time, I was very scared. But then they told
23 us that we should go on doing it, so then I ... came to see that's
24 something normal, but I still got scared all the time. It was just the
25 commanders who kept pushing us forward ... pushing us to go on and

1 fight."

2 A child soldier explained:

3 "You did not really have a choice. If they told you, 'You have
4 to go,' you would go, because if you tried to refuse ... they will kill
5 you there."

6 Another child told us how during fighting at Lipri the
7 commanders:

8 "... Really encouraged us to rape women, and the commanders will
9 send to look for women. So we took them and brought them to the camp,
10 and then we did those bad things."

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

17 Let me show another map. The following map shows you some of the
18 places where the children fought.

19 Children participated -- in the period between 1st September
20 2002, August 13 2003, children participated in the attacks on Nyankunde,
21 Libi, Mbau, Kpandroma, Songolo, Zumbe, Kasenyi, Lonio, Mandro, Centrale,
22 Lipri, Solenyama, Katoto, Lopa, Largu, Marabu, Iga-Barriere, Bogoro,
23 Chai, Lenga, Fataki, Bunia twice, Djugu, and Mongbwalu.

24 Children were also used to provide security. Children were used
25 as bodyguards.

1 The Prosecution will show your Honours as a visual aid few
2 excerpts of a video. They present clearly the scenes where the crimes
3 occurred. It will allow this Court to see the extent to which the
4 children were part of the military operation when protecting Lubanga as
5 he moved around Bunia.

6 The Prosecution will play a few scenes showing Thomas Lubanga
7 leaving a reception and you will see his bodyguards in a truck.

8 (Videotape played)

9 MR. MORENO-OCAMPO: This is Thomas Lubanga leaving the meeting.
10 There's a car with some bodyguards, but then after the car this truck is
11 coming. You see the meaning of bodyguards. They are bodyguards in a war
12 zone. That's why it's a military operation. But important also to see
13 the weapons, the number of people in the truck, but I like you pay
14 attention. We did in slow motion this visual aid. Then you can pay
15 attention to the two kids in the back. At least these two are manifestly
16 under 15 years old.

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

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

25 Girl soldiers, some aged 12 years, were used as cooks and

1 fighters, cleaners and spies, scouts and sexual slaves. One minute they
2 will carry a gun, the next minute they will serve meals to the
3 commanders, the next minute the commanders will rape them. They were
4 killed if they refused to be raped. One child soldier became severely
5 traumatised after killing a girl who refused to have sex with the
6 commander.

7 There were very little girls. You will hear that as soon as the
8 girl's breasts started to grow, Thomas Lubanga's commanders could select
9 them as their forced wife. "Wife" is the wrong word. And they were
10 sexual slaves, and transformed them into sexual slaves.

11 One of our witnesses will describe how he observed daily examples
12 of his commanders raping girl soldiers. You can still meet many of them
13 in the Democratic Republic of Congo. Some of them kept as so-called
14 wives by the commanders, some of them in the streets of Kinshasa and
15 Bunia, rejected by their community and struggling to make a living as
16 prostitutes. These girl combatants are left on the margins of many
17 disarmament, demobilisation and reintegration project. As emphasised by
18 the special representative of the United Nations Secretary-General
19 Ms. Radhika Coomaraswamy in her amicus brief to this court, girl
20 combatants are too often invisible, because they're also wives and
21 domestic aids and slip away or are not brought forward for demobilisation
22 programmes.

23 Mr. President, your Honours, it is a responsibility of the
24 Office of the Prosecutor of the International Criminal Court to prove the
25 crimes committed against the most vulnerable, and during the course of

1 this trial my office will make it its mission to ensure that
2 Thomas Lubanga is held criminally responsible for the atrocities
3 committed against those little girl soldiers when he enlisted and
4 conscripted them to be used as sexual prey when he used them in combat.

5 Your ruling in this case can change the life of these girls.
6 Never again should they be left out of the assistance provided by the
7 demobilisation programmes. In this International Criminal Court, the
8 girl soldiers will not be invisible.

9 Mr. President, your Honours, these are the facts. Let me now
10 turn to the law to be applied.

11 In 2004, in a landmark decision, the Special Court for
12 Sierra Leone concluded that recruiting children under the age of 15 was a
13 crime under customary international law at least since 1996.

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

19 Under the Rome Statute, crimes related to children in armed
20 groups can be committed in three ways without making any distinction as
21 to gravity, by conscripting children or by enlisting them or by using
22 them to participate actively in hostilities.

23 Conscripting, forced recruitment as described by the
24 Pre-Trial Chamber, implies compulsion, albeit sometimes in the form of
25 general rules. It could apply to abductions but also to Thomas Lubanga's

1 decree that all Hema families had to contribute a child to his armed
2 group. It is a crime.

3 Enlisting, voluntary recruitment as described by the
4 Pre-Trial Chamber, means accepting and enrolling children when they
5 volunteer or when they are volunteered by family. Enlisting, it is also
6 a crime.

7 The Rome Statute renders irrelevant that children joined
8 "voluntarily," or that parents entrusted them "voluntarily" to the
9 Lubanga militia. Accepting for military service so-called volunteers
10 under the age of 15 constitutes criminal conduct.

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

19 But the Prosecution will not need to argue in this regard. As
20 decided by the Pre-Trial Chamber, consent is not a valid defence for
21 recruitment of children under 15. There is no such thing as lawful,
22 voluntary enlistment of children under 15 in the Rome Statute. There is
23 no such thing as lawful conscription of children under 15 in the
24 Rome Statute. The prohibition is absolute and suffers no exception.
25 This issue, Mr. President, your Honours, has been argued and settled

1 legally by the drafter of the Rome Statute nearly 11 years ago. With
2 this provision, the Rome Statute has exhaustively defined the crime. The
3 Court can now affirm, once and for all, that voluntariness, also called
4 consent, is not a valid defence and such a ruling must be a cornerstone
5 of protection for children in war zones.

6 Mr. President, your Honours, let me now turn to the meaning of
7 active participation in hostilities.

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

15 In more recent years, and especially since the 1996 report of
16 Graca Machel to the United Nations on the impact of wars on children, the
17 international community's concern has turned back to the right of those
18 principally affected, the children.

19 The crux of the matter is to both ensure that those children,
20 whatever the function they perform, are recognised as child soldiers and
21 benefit from all the protection afforded to child soldiers under human
22 rights law, while ensuring at the same time that they keep the widest
23 protection afforded to civilians under international humanitarian law.
24 It is, for this Court, a challenging mission.

25 The Pre-Trial Chamber recognised that participation in

1 hostilities can include the use of children to guard military objectives
2 or the safety of military commanders. The Prosecution will follow the
3 jurisprudence established by the Pre-Trial Chamber on the meaning of
4 active participation.

5 Mr. President, your Honours, let me now move to the age
6 requirement. Different witnesses will express that the presence of child
7 soldiers in the Thomas Lubanga militia was massive. The Lubanga militia
8 was an army of children. Estimations fluctuate, but around 30 per cent
9 of soldiers in the Lubanga militia were child soldiers.

10 The commanders themselves called the child soldiers "kadogo."
11 According to the Swahili-French dictionary, "kadogo" means "tres petit,
12 minime." The Swahili-English dictionary defines "kadogo" as "a small
13 child; microscopic; midget; miniature."

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

22 Videos filmed between September 2002 and August 2003 will show
23 the presence of child soldiers manifestly under the age of 15 in
24 Lubanga's military compounds or their use as bodyguards. The
25 Trial Chamber will also hear the evidence of nine former child soldier

1 witnesses who were under 15 when they were taken by Lubanga's men. The
2 Prosecution will present documents, testimony, and forensic analysis
3 based on an X-ray of their bones and teeth. They will consistently, with
4 the inevitable difference of a variety of authentic sources prove that
5 the children were between 11 and 15 years old at the time of their
6 recruitment. For instance, one of the children stated he was 12 at the
7 time and the X-ray indicates he was between 11 and 12. In another case,
8 a child said he was 11, his birth certificate said 12, his cousin and the
9 forensic study says 14. The range demonstrate that the threshold
10 established by the law is met.

11 To conclude this section, the Prosecution will show your Honours
12 a few brief video excerpts showing Thomas Lubanga visiting the Rwampara
13 military training camp on 12 February 2003. The video shows a training
14 camp that is isolated from the village population. All of the children
15 seen in this video are soldiers. Those who have weapons, those who carry
16 sticks, and those who carry nothing, all of them are soldiers. Those
17 with uniforms and those without, all of them are soldiers. They are
18 assembled to receive their Commander-in-Chief, Mr. Thomas Lubanga. You
19 will see Thomas Lubanga there.

20 You will also see Bosko Ntaganda, one of the co-perpetrators,
21 still at large, wearing purple. Let me show the video.

22 (Videotape played)

23 MR. MORENO-OCAMPO: This is Thomas Lubanga addressing them. He
24 is in his uniform and all around are the soldiers. This is
25 Bosko Ntaganda in purple. You see behind him there's no house. The camp

1 is isolated from the village. You see these two are girls. These two
2 are under 15. The Prosecutor will prove that. And this is -- this now
3 is the boy. You started to see the others. You start to see who are
4 under 15. These ones. This one, way under 15, way below. This one,
5 this one, this one. We go like this because he is behind. This one,
6 this one, this one. This one, this one, this one. This one, who like
7 this other, because he is so small you cannot see him.

8 Let me play now a few scenes of Thomas Lubanga leaving this --
9 leaving the Rwampara camp followed by his bodyguard. Watch the child
10 while he tries to put his weapon in the back of the truck. He's so short
11 that his chin does not even reach the edge of the truck. See the video.

12 (Videotape played)

13 MR. MORENO-OCAMPO: Thomas Lubanga leaving, taking his car. The
14 bodyguards are in the other car. See the children. He cannot see the
15 other side of the truck. Under 15.

16 In sum, the Prosecution will prove beyond a reasonable doubt that
17 between 1 September 2002 and 13 August 2003, children under the age of
18 15 years old were enlisted, conscripted, and used to participate actively
19 in the hostilities by the armed group led by Thomas Lubanga.

20 Mr. President, your Honours, with your permission,
21 Deputy Prosecutor Fatou Bensouda will now present the background and
22 existence of an armed conflict in Ituri during the period relevant to the
23 charges, the mode of liability, and Thomas Lubanga's knowledge of the
24 crimes committed.

25 PRESIDING JUDGE FULFORD: Thank you very much indeed,

1 Mr. Moreno-Ocampo.

2 Yes, Ms. Bensouda.

3 MS. BENSOUDA: Thank you, Mr. President.

4 Mr. President, your Honours, the Prosecution will now address the
5 existence of an armed conflict in Ituri between September of 2002 and
6 August of 2003.

7 The armed conflict in Ituri is connected with the 1994 genocide
8 in Rwanda and the two Congo wars. All of them are rooted in history and
9 colonisation. Let me summarise, Mr. President, some key aspects.

10 After the genocide, hundreds of thousands of persons, including
11 some leaders and perpetrators of mass killings, fled to Rwanda to the two
12 Kivu provinces in the eastern part of the country then called Zaire.
13 Some started to plan attacks against Rwanda, triggering the
14 First Congo War, and this was in 1996. Uganda and Rwanda supported a
15 Congolese rebel group led by Laurent-Desire Kabila against Zaire's ruler
16 Mobutu Sese Seko. They reached Kinshasa and ousted Mobutu in May of
17 1997.

18 The second war started in 1998 after relations between
19 Laurent-Desire Kabila, the new president, and his former allies
20 deteriorated. Rwanda and Uganda withdrew to eastern Democratic Republic
21 of the Congo, an area that is rich in natural resources such as gold,
22 diamonds, coltan, timber and oil. Rwanda consolidated its presence
23 throughout the two Kivus, and Uganda did so in large parts of Province
24 Orientale, including Ituri.

25 At least nine African countries and many local militias involved

1 in those wars. From 1991 onwards, the Kivus and Ituri were under the
2 control of a political/military movement, the Rassemblement Congolais
3 pour la Démocratie - Mouvement pour la Libération. This is supported by
4 Uganda and Rwanda.

5 Close to 4 million are estimated to have died in the DRC between
6 1998 and 2004, in particular due to starvation and disease resulting from
7 war. This, your Honours, is considered the highest number of civilians
8 killed as a consequence of war since the Second World War.

9 In April of 2002, the States involved in the conflicts and some
10 of the main Congolese armed groups started discussions in Sun City in
11 South Africa. Ituri was represented by a leader of the Rassemblement
12 Congolais, Mbusa Nyamwisi. He became a member of the new government of
13 national unity under the leadership of Joseph Kabila. Lubanga and his
14 groups were excluded.

15 Under the Sun City agreement, the Ugandan army withdrew from the
16 DRC in June of 2003 and the second Congo war ended. However,
17 your Honours, from 2002 onwards, and despite the ongoing peace
18 negotiations, a sustained and extensive armed conflict persisted in the
19 Province Orientale, including in the District of Ituri.

20 Lubanga had organised his own group, the UPC, in September of
21 2002 -- excuse me, your Honours. In September of 2000. And he received
22 support from Uganda. In January of 2001, he joined the Rassemblement
23 Congolais government as the minister for youth and sport, and later was
24 appointed defence commissioner. He deliberately used his position to
25 incorporate hundreds of Hemas into the army of the Rassemblement

1 Congolais.

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

8 Mr. President, your Honours, the evidence will show that from the
9 1st of September onwards, Lubanga and his co-perpetrators, with the goal
10 of maintaining and enlarging their control over the area, launched
11 attacks against the Lendu, the other large community living in Ituri, who
12 had also formed militias.

13 Massive violence then developed in a context characterized by the
14 lack of national government -- national government control over the
15 territory, the involvement of foreign troops, and the struggle to control
16 the natural resources.

17 The Prosecution will tender evidence showing that more than
18 8.000 civilians were deliberately killed or were victims of
19 indiscriminate use of force in Ituri from January 2002 to December of
20 2003.

21 Mr. President, your Honours, in order to demonstrate the
22 existence of an armed conflict, the Prosecution will tender documents
23 into evidence, including the United Nations Security Council Resolutions
24 confirming the existence of the armed conflict in Ituri during the
25 relevant period.

1 Consistent with the Trial Chamber's decision of 13 December 2007
2 and the amended document containing the charges, the Prosecution will
3 present the totality of its evidence relating to both international and
4 non-international aspects of the conflict. The evidence will enable the
5 Chamber to determine whether the Ugandan occupation of Ituri between the
6 1st of September, 2002, and early June 2003 transformed the character of
7 the conflict into an international armed conflict.

8 The Prosecution will lead evidence proving that the Ugandan army
9 has been an occupying force, substituting its own authority for the
10 authority of the Democratic Republic of Congo government.

11 The Prosecution will also show, your Honours, that Uganda and
12 Rwanda officials supported different armed groups involved in the
13 conflicts in Ituri. They provided military training and expertise,
14 weapons and ammunition, uniforms and financial support. You will hear,
15 your Honours, of the training received by Lubanga's officers in camps in
16 Ituri, in Uganda, and in Rwanda. You will hear Prosecution witnesses
17 describe the parachuting of weapons and ammunition from Rwanda planes
18 around the military training camp at Mandro and explain the connection
19 between Bosco Ntaganda and the Rwandan authorities.

20 The Prosecution, your Honours, will also tender evidence to show
21 that Ugandan officials supported Lubanga, and this they did from 2000 to
22 at least the end of October 2002 and that Rwandan officials provided
23 support between mid-2002 and mid-2003.

24 The evidence will show the operational support provided by
25 Uganda. It will also show the support provided by the army, as well as

1 the break up of this relation, a relation, your Honours, full of
2 manoeuvres. The Uganda government arrested Lubanga in June of 2002 and
3 sent him to Kinshasa with nine of his supporters at the time of the
4 Sun City discussions. At the same time, your Honours, on the ground the
5 Ugandan officials continued to support Lubanga's group.

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

8 The Ugandan army then changed sides, started supporting Lendu
9 militias, and in March of 2003 Lubanga's group was ousted from Bunia.
10 Two months later, in May of 2003, the Ugandan army left Bunia in the
11 context of its withdrawal from the DRC. Immediately, Lubanga's group
12 chased Lendu militias and recovered the town.

13 Mr. President, your Honours, as I just described, the evidence
14 will show that until the 2nd of June, 2003, Ituri was under Ugandan army
15 occupation. However, the evidence in the Prosecution's possession does
16 not prove that Ugandan officials had overall control of Lubanga's group.
17 The issue of the classification of the conflict as an international one
18 relates primarily to the tests to be applied by this Chamber, occupation
19 or overall control.

20 Mr. President, your Honours, let me now turn to the individual
21 criminal responsibility of the accused.

22 The Prosecution will prove that Thomas Lubanga Dyilo is
23 criminally responsible as a co-perpetrator, and this we'll prove,
24 your Honours, in accordance with Article 25(3)(a) of the Rome Statute.
25 At least from September of 2002 until 13 August 2003, a common plan

1 existed between Thomas Lubanga Dyilo, Bosco Ntaganda, and other
2 co-perpetrators. The goal was to maintain and expand political and
3 military control over the Ituri region. The plan's implementation
4 included the enlistment, conscription and use of children under the age
5 of 15 to actively participate in hostilities.

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

10 Thomas Lubanga was born on the 29th of December, 1960, of a
11 Hema family from the Gegere subgroup. By 2002, the Gegere community
12 recognised him as their political leader. They called him Raisi, a
13 Swahili word that means "President" or "highest authority."

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

22 Thomas Lubanga Dyilo had ambition. He wanted political power and
23 army to build his power upon. The evidence will show how he combined his
24 talents as an educated man, as a trader, how he used his connections, the
25 loyalty of the Gegere elite while harming the Gegere families at the same

1 time, how he carefully selected the most opportunistic methods to build
2 his power, recruiting children, recruiting children as soldiers, shifting
3 alliances whenever necessary, trying to play with the international
4 community.

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

8 He announced programmes of pacification, and he was sending his
9 troops to kill all the Lendus at the same time.

10 He promised to demobilise the child soldiers, and he was
11 recruiting them at the same time.

12 The evidence will show that at all times relevant to the charges
13 he had total control of his group. Those who opposed his will had to
14 leave.

15 Mr. President, your Honours, let me briefly tell you how it all
16 really came together and why Thomas Lubanga Dyilo, his political and
17 military career, is built on the use of child soldiers.

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

1 Lubanga, an educated Hema leader, at the time a minor member of
2 the Ituri Assembly, saw his chance, his opportunity. He volunteered to
3 go to Kampala to deal with the problem. He impressed the Ugandan
4 officials and started to develop the idea to create a political party.
5 Ugandan officials offered to provide him and his followers with training.
6 Lubanga took advantage of this situation. He set off to send for
7 training to Kyankwanzi in Uganda, not only the child mutineers, but any
8 soldier he could get his hands on. Lubanga's house became a clearing
9 centre through which the recruitment and transport of soldiers, of
10 children, Hema, in particular Gegere, to different training camps in
11 Uganda and the DRC was organised.

12 In sum, Lubanga used the opportunity of the Hema mutiny to
13 establish a political alliance with Ugandan officials and to build within
14 the Rassemblement Congolais an army that is loyal to him and him alone.

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

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

23 On the 9th of August, 2002, Lubanga's militia launched an
24 offensive against the Rassemblement Congolais, and from this moment on,
25 the UPC controlled Bunia. On the 13th of August, 2002, Lubanga, from his

1 cell in Kinshasa, issued a declaration explaining that his group, and I
2 quote, "controlled the situation there perfectly," that they would pursue
3 a programme pacification in Ituri and call for the establishment of an
4 international criminal tribunal to investigate massacres in Ituri.

5 With the authorisation of the DRC government, Lubanga allowed to
6 provisionally return to Bunia by the 28th of August and reassume
7 leadership of the UPC. He was accompanied by the DRC minister for human
8 rights, but his detained followers had to stay back in Kinshasa in
9 detention. As is his custom, Lubanga dealt with the situation violently
10 and deftly. His commanders took the minister as hostage. They demanded
11 that Lubanga be allowed to remain in Ituri and that his nine associates
12 be freed in exchange for the minister. By 1st September 2002, this deal
13 was made.

14 On the 3rd of September, 2002, Lubanga was appointed president of
15 the UPC. His first written decrees as president specifically stated that
16 defence and security matters would derive from him, the UPC presidency.
17 From then on, Lubanga had a total hold on power and did not tolerate "the
18 least contestation of his authority." This, Mr. President, your Honours,
19 is what happened to Chief Kahwa, Minister of Defence. He was demoted,
20 downgraded for challenging Lubanga, and he then left the UPC and created
21 his own movement, the PUSIC. On the 13th of August, 2003, the last day
22 within the period relevant to these charges, Lubanga was still the
23 president of the UPC.

24 Mr. President, your Honours, Thomas Lubanga had knowledge of the
25 crimes committed. Thomas Lubanga had control of his group. He ordered

1 and supervised the recruitment of child soldiers in his militia.
2 Bosko Ntaganda and other co-perpetrators shared his intentions. One
3 piece of evidence, Mr. President, your Honours, is going to stand out.
4 The Court will hear Lubanga himself talking to child soldiers, explaining
5 the role of Bosko Ntaganda, confirming the chain of command. In the
6 video of his visit to the Rwampara training camp, he said, and I want to
7 quote him with your permission:

8 "I am Thomas Lubanga, the president of our party, the UPC. You
9 are used to talking to ... our commanders who are helping with this work
10 of training, who are building the army every day. I am with them all the
11 time, but there is a lot of work. Continue your training. We are
12 keeping an eye on you all the time. You said a while ago that the
13 operations commander, Bosko, comes to see you regularly. If you have
14 difficulties, tell him and they will get to a higher level of our
15 leadership because he is a senior leader of our army, the FPLC. What we
16 are doing, we are doing it together with you. It's to build an army. I
17 wish you good training. Do it, persevere, and tomorrow you will stand
18 with a weapon and a uniform."

19 This is quoting from Thomas Lubanga Dyilo.

20 The evidence will show that the massive campaign of recruitment
21 carried out by Lubanga's group could not have been implemented without
22 the direction and approval of Lubanga. All the evidence that the
23 Prosecution will submit to you will show that Lubanga was in full control
24 of his group and that recruitment was a key activity for him.

25 The evidence will show that he organised recruitment campaigns

1 and he sent emissaries to Bunia and surrounding areas to persuade or
2 compel the Hema families to send their children to join his group.
3 Documentary evidence that we will tender will show that in December 2002,
4 peace committees from the Ituri area liaised with Lubanga's group to
5 campaign amongst youngsters for massive integration into its militia.

6 The Prosecution will tender documents, your Honours, showing that
7 Lubanga himself publicly decreed that each Hema family must support his
8 military efforts by providing a child. A witness will explain that
9 Lubanga gave an order to recruit, I quote, "everyone they could find."

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

14 The evidence will also show that many of those recruited were
15 under the age of 15 and that Lubanga knew this. Lubanga established and
16 visited military training camps to prepare those child recruits for use
17 in combat. Lubanga saw child soldiers every day in his organisation. He
18 was regularly in the presence of soldiers under his command who were
19 obviously under the age of 15. Lubanga and his senior commanders used
20 child soldiers under the age of 15 to provide security to buildings and
21 to themselves. You will see, your Honours, during the Prosecution's
22 case, complete videos showing how children, some of these -- how young
23 some of these children were as bodyguards. You will hear evidence that
24 Lubanga used soldiers to guard his own residence, as well as the
25 check-points leading to his house.

1 Compelling evidence of his knowledge, his knowledge of the
2 recruitment and the use of child soldiers within the ranks are his orders
3 to demobilise child soldiers. The Prosecution will tender documents, and
4 these documents, at least three of them, signed -- were signed by
5 Lubanga, purporting to demobilise child soldiers from his group. These
6 orders alone, your Honours, demonstrate that Lubanga knew these children
7 were soldiers in his army and that he knew that recruitment and use of
8 child soldiers was prohibited.

9 The Prosecution will tender a decree dated the 21st of October,
10 2002, and addressed to the Chef d'Etat Major of the FPLC, where Lubanga
11 states that contrary to the official ideology of the movement, the
12 practice of enlisting minors of both sexes has been developing within the
13 movement's ranks. He adds that he formally prohibits this practice in
14 agreement with his previous agreement with the NGO SOS Grand Lacs.

15 On the 1st of June, 2003, Lubanga issued a decree ordering
16 demobilisation of all persons under 18 years old from his group. The
17 decree indicates that this is done taking into consideration the will of
18 the international community to continue its programme of demobilisation
19 and reintegration of child soldiers, a programme supported by NGOs such
20 as Save the Children and SOS Grand Lacs. However, the Prosecution will
21 tender evidence showing that these orders were never, in fact,
22 implemented.

23 The Prosecution will tender evidence showing that these orders to
24 demobilise child soldiers were issued merely to appease the international
25 community while Lubanga continued to recruit children. The orders

1 reflect his attempt to mislead the international community. Two weeks
2 after his second alleged demobilisation order, he is visiting one of his
3 training camps, encouraging children to train, to learn to fight. Only
4 two weeks after.

5 Lubanga knew that international organisations were aware of and
6 monitoring his recruitment efforts. In 2001, UNICEF and the local NGO
7 SOS Grand Lacs found the child soldiers that Lubanga had sent to be
8 trained in Uganda. The international and the local community supported
9 an initiative to repatriate them. One hundred and sixty-three children
10 were demobilised and reintegrated into their families. As a result of
11 this initiative, Lubanga's plans could have been severely undermined.

12 However, your Honours, the Prosecution will tender evidence
13 showing that in 2003, Lubanga re-recruited 130 of these 160 children who
14 had been demobilised by UNICEF and SOS Grand Lacs and sent them into
15 fighting units.

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

20 In particular, your Honours, you will hear evidence about what
21 happened with a pastor and human rights activist in Ituri. The pastor
22 approached Lubanga different times to express his concerns over the use
23 of children under 18 years old. He did it in January 2002, in October of
24 2002, and in November of 2002. The first time, Lubanga replied that he
25 had to discuss this issue "with his hierarchy," adding that it was a way

1 to occupy children who hung around in the streets. The second time,
2 Lubanga said he would discuss this issue with his "collaborateurs," but
3 that it would be a difficult task, he says, because the children had come
4 to like their work. These are his words.

5 The third time, Lubanga accused him, this pastor, of trying to
6 demobilise the children "needed to defend the Hema community from Lendu
7 attacks," and further threatened him by saying that "this time, he would
8 let him go, but he should consider himself warned." A few days later,
9 the pastor was told by a Lubanga assistant that he must stop his attempts
10 to demobilise child soldiers or run the risk of being killed.

11 In sum, Mr. President, your Honours, both the recruitment orders
12 and the sham orders issued by Lubanga to demobilise child soldiers are
13 conclusive evidence of Lubanga's knowledge of the practice of recruiting
14 and of using children as soldiers.

15 Mr. President, your Honours, let me now, with your permission,
16 pass the floor on to the Prosecutor, who will address the nature of the
17 Prosecution evidence and will conclude his statement.

18 PRESIDING JUDGE FULFORD: Thank you, Ms. Bensouda.

19 Yes, Mr. Moreno-Ocampo.

20 MR. MORENO-OCAMPO: Mr. President, your Honours.

21 THE INTERPRETER: Microphone, please.

22 MR. MORENO-OCAMPO: The Prosecution will present evidence from
23 over 30 viva voce --

24 THE INTERPRETER: Microphone, please.

25 MR. MORENO-OCAMPO: -- and three expert witnesses. Those --

1 those witnesses will include witnesses who met on regular basis with
2 Thomas Lubanga, who were involved in high-level meetings with him and
3 other co-perpetrators, and who were in positions of sufficient importance
4 to be informed of the daily activities of the Lubanga group. The
5 Prosecution will also present some of the 1.671 documents of
6 incriminatory evidence that we have disclosed for this case. Many of
7 these documents were written contemporaneously and stem from the Lubanga
8 group. Many of these documents are either signed by or copied to Lubanga
9 himself. We will present videos.

10 In addition, we will -- we will be calling nine former child
11 soldiers to take the stand. With respect to these children, to these
12 witnesses, children, I would like to make a couple of remarks.

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

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

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

25 For each of them, it is the first time in a courtroom, and the

1 first time in a different country, away from their communities. These
2 unfamiliar surroundings, the weather, everything, the formality of the
3 process, when combined with the trauma they have already experienced in
4 their short life make the prospect of testifying in court daunting.

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

11 Mr. President, your Honours, in the sentencing phase, should the
12 Chamber find that the charges are proved, the Prosecution will analyse
13 the individual circumstances of the accused. However, I want to put the
14 Defence on notice that the Prosecution anticipates to call for a severe
15 punishment, very severe, close to the maximum.

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

23 As the Prosecutor, I have the mandate to pay particular attention
24 to the suffering of the victims, to what happened with child -- with
25 children. I will listen to the children to evaluate the appropriate

1 penalty to be requested for Lubanga. I remember the statement provided
2 by one of the children to our investigators during the investigation a
3 few years ago:

4 "I was dreaming all the time and thinking about all the work, all
5 the things that I had done. I was thinking about killing people all the
6 time. Thoughts are coming to me now."

7 The children's feelings of complicity and shame will haunt them
8 for the rest of their life. The past suffering, the present suffering,
9 and the continued suffering that Lubanga inflicted will be a factor.
10 Lubanga affected not just one child. Lubanga affected an entire
11 generation, and this must be reflected as a powerful aggravating factor
12 in his sentence, if convicted.

13 The Rome Statute ratified by 108 States and supported by citizens
14 and institutions across the globe have given me a mandate. I have to
15 investigate and prosecute the perpetrators of the most serious crimes of
16 concern to the international community as a whole. The aim is to end
17 impunity and contribute to the prevention of future crimes. Crimes like
18 Thomas Lubanga's crimes.

19 Thomas Lubanga knew what he was doing so clearly that he
20 consciously tried to mislead and appease the international community by
21 issuing demobilisation orders on paper even as he kept recruiting child
22 soldiers in practice. He knew he was committing a crime not just against
23 his own Gegere and Hema community, not just against national law. He
24 knew he was breaking the basic rules that the world established to
25 protect those with the least power among us: Little children.

1 Thomas Lubanga has to learn that the Rome Statute could not be
2 circumvented. Children are not soldiers.

3 If convicted, Thomas Lubanga's sentence will send a clear
4 message: The era of impunity is ending. Thanks.

5 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Moreno-Ocampo.

6 Ms. Bapita, what order has been arranged between -- well, I was
7 addressing Ms. Bapita, but I see you're on your feet, Ms. Massidda.

8 MS. MASSIDDA: Good morning, your Honours. I will start. My
9 colleague Mr. Diakiese will continue, and I think it will be the end at
10 least until lunchtime or probably not. We are going to close at noon if
11 I am correct.

12 PRESIDING JUDGE FULFORD: Ms. Massidda, let's take a step back
13 for a moment. I was addressing Ms. Bapita, asking what order we're going
14 in. Are you now rising to say that, in fact, you're going first and this
15 has been agreed between all counsel --

16 MS. MASSIDDA: Yes. Yes, your Honour.

17 PRESIDING JUDGE FULFORD: -- representing the victims.

18 MS. MASSIDDA: Yes. And then Mr. Diakiese, Mr. Keta, Ms. Bapita,
19 Ms. Kabongo, Ms. Mulamba, and Mr. Walley.

20 PRESIDING JUDGE FULFORD: Right. All right, yes. Well,
21 Ms. Bapita, is there anything you'd like to say about that order?

22 MS. BAPITA (interpretation): Yes. There's an amendment. As
23 Mr. Mulenda is absent, we had to change the order of presentation. So
24 Ms. Paolina will start first, then Mr. Joseph Keta, then Mr. Diakiese.
25 And I will then intervene and then Mr. Paul Kabongo, and Jean Chrysostome

1 fifth, and Luc will finish, because he's in the same team as Mr. Mulenda.
2 So he will use his presentation.

3 PRESIDING JUDGE FULFORD: Right, Ms. Massidda. Please start now
4 but bear in mind that at 12.00 we must rise. So can you find a
5 convenient point in your address just before or just after 12.00 that
6 will enable us to give the interpreters and the stenographers a break
7 over lunch. Thank you very much.

8 MS. MASSIDDA: Thank you, your Honour. I think that my
9 introduction will last no more than 15 minutes, so I'm confident that we
10 can break at noon. Thank you.

11 (Interpretation) President, your Honours, it is with much emotion
12 that we take the floor today so the voice of victims is heard during the
13 first trial before the International Criminal Court. Indeed, crimes
14 punished by international criminal law result in a very large number of
15 victims. Over 5 million Jews were exterminated during the
16 Second World War. In Rwanda, in the space of a hundred days in 1994, the
17 genocide resulted in 800.000 deaths. In Srebrenica, in July 1995,
18 between 7.000 and 8.000 Muslim men from Bosnia were killed
19 systematically. In the Democratic Republic of the Congo, as the Office
20 of the Prosecutor was saying earlier on, the conflict led to thousands of
21 deaths amongst civilians, and thousands of people were also displaced
22 within their country or elsewhere.

23 However, for a long time victims were considered as simple
24 witnesses.

25 After the Second World War, the Tokyo and Nuremberg tribunals

1 never took the fate of victims into account except through the punishment
2 of the crimes they had endured. International humanitarian law treaties,
3 in particular the four Geneva Conventions of 1949 and the two additional
4 protocols of 1977, provide that those who infringe them are punishable
5 under criminal law but do not provide that victims have a right to
6 compensation. They do not contain a right for victims to initiate
7 judicial proceedings against those who perpetrate the war crimes to
8 intervene in the proceedings on the issue of guilt or right to obtain
9 reparations.

10 Treaties on human rights and the development of thinking about
11 human rights in general were what progressively introduced the idea that
12 victims have an individual right to justice and reparations for the harm
13 suffered in international law. As such, the International Covenant on
14 Civil and Political Rights and a number of regional treaties grant
15 victims the right of petition and compensation for victims whose
16 fundamental rights were infringed.

17 The international recognition of victims' rights made a
18 significant step forward with the adoption of the declaration on basic
19 principles of justice for victims of crime and abuse of power adopted by
20 the UN General Assembly on the 29th of November, 1985. This declaration,
21 which is the first of a kind, gives a general overview of victims'
22 rights, the right of petition, the right to dignity and rehabilitation,
23 restitution of property, compensation, medical, psychological and social
24 assistance.

25 However, when the International Criminal Tribunals for the

1 former Yugoslavia and Rwanda were created victims were somewhat
2 forgotten. It was only with the creation and the adoption of the
3 Rome Statute that victims were put at the very heart of international
4 criminal justice. From then on, great emphasis was placed on the rights
5 and interests of victims which could, from then on, participate in
6 proceedings and ask for reparations for the harm they had suffered.

7 But why, President, your Honours, do victims want to participate
8 in the proceedings? Before I give you the reasons for their
9 participation, it is important for me to introduce the victims we
10 represent. They are mainly child soldiers, so young when they're
11 recruited, some even under 10 years old, that it is almost impossible to
12 imagine them carrying weapons and wearing a uniform. However, that is
13 what happened to some of them and their parents. They were recruited to
14 participate actively in the -- in the hostilities that were carried out
15 by the Union des Patriotes Congolais, UPC, between September 2002 and
16 August 2003. They committed the crimes of enlisting children under 15 in
17 armed groups and using them to participate actively in hostilities as
18 sanctioned by Article 8 of the Rome Statute.

19 Some will say that this first historic trial before the
20 International Criminal Court which is opening today is about a minor
21 crime, but that is not our opinion, and not what the victims we represent
22 think either. This crime is an extremely serious crime. It is all the
23 more serious because it concerns children. But the fact that the group
24 of victims we represent is heterogenous should not draw our attention
25 away from specificity of each individual case. The victims have endured

1 physical and psychological harm and still have traces of these -- this
2 moral damage today, stigmatisation, for one. In particular, young girls
3 were subjected to sexual violence, sometimes even sexual slavery.

4 In the Democratic Republic of the Congo, a girl who was subject
5 to such a crime is often dishonoured, and even if she is not guilty,
6 generally she is considered bring disgrace on her family. Consequently,
7 many victims are afraid of talking about this aspect of the harm they
8 have suffered. But the group we work with, girls in the Democratic
9 Republic of the Congo, former child soldiers in Ituri, and young women in
10 particular, describe the situation as desperate and say that rape is
11 widespread even if it is rarely mentioned. And my learned colleague,
12 Carine Bapita will come back on the fate of young women in a moment.

13 The personal interest of victims in the proceedings of the court
14 coincide in particular with their right to justice. After having met the
15 victims we represent and having listened to the story of the harm they
16 have suffered, it appears natural that the right to justice be one of
17 their main concerns if not their main concern. But behind the claim to
18 enjoy this right are a number of reasons mentioned by the victims which I
19 will try to relay back to you as faithfully as possible and share with
20 you today.

21 First, the right to the truth is one of them. In this regard,
22 the central interest of victims in establishing the truth about the facts
23 and identification of those responsible and statement and declaration of
24 who is responsible is at the root of the right to truth which was
25 established for victims of serious violations, human rights violations.

1 In the implementation of this right through criminal proceedings,
2 victims have a central interest in the issue of such proceedings,
3 shedding light on what actually happened, to fill the gap that could take
4 place between procedural establishment of facts and the truth itself.
5 The victims are independent actors in the proceedings before this Court.
6 They have different concerns than the Office of the Prosecutor. Their
7 position is to contribute to the establishment of the truth.

8 If the issue of guilt or innocence of persons prosecuted before
9 this Court is essential for victims, it is so from the angle of
10 establishing the truth. In other words, if the identification,
11 prosecution, and punishment of people who -- of those who have led to
12 their victimisation is very important for the victims, it is because it
13 is an echo to the procedure each of them has to go through to recover
14 following the harm they suffered, and so it's through these words
15 expressed in public that victims can reconstruct their lives. The words
16 are not only spoken, because they have to come and give their -- testify
17 for one or other party at the trial, but because they have acquired the
18 right to share with the Judges who have to try a person that they have
19 identified as being the main person responsible for the harm suffered,
20 the right to know the truth about the facts experienced.

21 This whole procedure has cathartic and salutary virtues at the
22 individual level but also has restorative virtues at the family, society
23 and community level. This procedure is also part of another procedure,
24 that of the victims' fight against impunity, another essential part of
25 the search for justice. It will be owing to these expression of points

1 of views and concerns in the proceedings of the court at the individual
2 level that victims of the crimes will be participating in this fight.
3 The steps aim at preventing the perpetrators of the crimes from enjoying
4 impunity.

5 They -- this seems to be a part of their daily lives, a main part
6 of their daily life, which is more about surviving than living today,
7 about reconstructing their lives as adults because their childhood seems
8 to have been denied, stolen from them.

9 Eventually, President, your Honours, the participation of victims
10 in the trial against Mr. Lubanga -- Thomas Lubanga Dyilo will be the
11 expression of the wording of the preamble of the Rome Statute, which
12 establishes that during this century millions of children, women, and men
13 have been victims of unimaginable atrocities that deeply shock the
14 conscience of humanity, and also, the most serious crimes of concern to
15 the international community as a whole must not go unpunished.

16 President, your Honours, this concludes the introduction of the
17 opening statements of the legal representatives on behalf of the victims
18 we represent. Thank you.

19 PRESIDING JUDGE FULFORD: Thank you very much indeed,
20 Ms. Massidda. That's extremely good and fortunate timing. Well done.

21 We will rise now and sit again at half past 1.00 when the opening
22 addresses will continue. Thank you all very much.

23 COURT USHER: All rise.

24 Luncheon recess taken at 11.58 a.m.

25 On resuming at 1.31 p.m.

1 COURT USHER: All rise. Please be seated.

2 PRESIDING JUDGE FULFORD: I think we're still with the OPCV.

3 MS. MASSIDDA: No, your Honour. I have finished my opening
4 statement. Thank you.

5 PRESIDING JUDGE FULFORD: Good. Thank you very much. Thank you
6 very much.

7 MR. KETA (interpretation): Your Honours, Prosecutor, members of
8 the Bench, my learned friends of the Defence, my learned friends legal
9 representatives, ladies and gentlemen. Voluntary recruitment, like
10 forced recruitment, are crimes under international criminal law. On
11 behalf of the victims which I represent, I am going to address the Court
12 today on the matter of forced recruitment of children by armed groups in
13 Ituri, forcibly recruited as a military strategy and as a social
14 phenomenon.

15 In 1988 -- sorry, in 1998, a civil war broke out in the
16 Democratic Republic of the Congo, notably in the east. Ituri is a
17 district in the north-east of the DRC. Eleven ethnic groups live there,
18 and more than 5 million people. Ituri was the theatre of a multi-party
19 international and national conflict. Amongst these armed groups were the
20 UPC. Its objectives are unclear. It, like other armed groups, were born
21 in Ituri.

22 To achieve its objectives, it needed to adopt military
23 strategies, in particular recruiting, enlisting, and using children in
24 hostilities, including children under the age of 15 years old. The idea
25 was to have commanders recruit people from the target area.

1 In the current case I represent 47 victims, including 46 natural
2 persons and one legal person. The natural persons are children acting
3 either in a personal capacity or acting through a guardian. The adult
4 natural persons -- or the adult natural person was a victim of an attack.
5 He was in charge of a school for children.

6 One specific characteristic in my representation of my clients is
7 that the majority of my clients are schoolchildren. The place from which
8 they were forcibly recruited was their school, and the headmaster of that
9 school attempted to refuse that recruitment and became a victim of
10 violence, being beaten at the spot.

11 Amongst the victims some were forcibly recruited from public
12 places such as the marketplace and the environs of churches.

13 Forced recruitment of children as a military strategy, now, the
14 armed groups in Ituri including the UPC were created towards 2001. Human
15 resources were needed, in particular children. Why so children?
16 Children because they are docile. They are inclined to obey the
17 instructions of leaders and Kant says that they are easy to convince.

18 In Mahagi in Ituri, children were forcibly recruited by various
19 armed groups including the UPC and the FNI. It is 15 kilometres from
20 Kpandroma camp and more than 60 kilometres from some UPC training camps,
21 for instance, Bule camp.

22 This locality, Mahagi, was a favourite spot for the recruitment
23 of children. There were two transit centres there where children who had
24 been recruited were regrouped before being moved on to the training
25 camps, notably Bule camp.

1 Forced recruitment took the form of abduction, and where there
2 was resistance there was violence. Forced recruitment as a social
3 phenomenon. This is as a result of this military strategy.

4 The children forcibly recruited were young schoolchildren. Their
5 education, therefore, was stopped. This means that today they are behind
6 in their schooling. Some children, owing to the trauma, continue to
7 suffer from nightmares. Finally, these children are rejected by their
8 respective families, wrongly so because they are not responsible and
9 often rejected by their communities.

10 The adult natural person with victim status in these proceedings
11 is the headmaster of the school. To date he has not been able to garner
12 the resources necessary to rebuild his school. Furthermore, injuries
13 sustained to his head have caused trauma to him which continues. The
14 school has also been given victim status in these proceedings, and it has
15 not been rebuilt.

16 By way of conclusion, in relation to the question as to whether
17 my clients can be considered to be victims of -- or perpetrators of these
18 crimes before this Court, they cannot be seen as perpetrators because at
19 the time of the events they were minors and, therefore, are excluded from
20 criminal responsibility pursuant to international texts, not least of
21 that of the ICC.

22 In relation to the question as to whether my clients are victims,
23 there the answer is yes, because they were forcibly recruited, although
24 under the age of 15 years, and they were used in -- to participate in
25 hostilities, these being international crimes.

1 What my clients expect from the Court is, first of all,
2 recognition of the harm which they have suffered. Then compensation and
3 rehabilitation, and finally, protection to ensure that they are not
4 recruited anew.

5 Later I will have an opportunity to make observations regarding
6 the nature and the extent of the harm suffered by my clients. Thank you,
7 your Honours.

8 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Keta. And I
9 think, Mr. Diakiese, it's you next.

10 MR. DIAKIESE (interpretation): Your Honours, on behalf of the
11 victims we represent, we wish to highlight at the outset one of the most
12 historical aspects of this trial. This trial is historical on two
13 accounts. First of all because it is taking place, and because it almost
14 did not take place. This trial is historical because it is the first
15 trial in the first case before the court and at which the victims are
16 taking the floor for the first time, taking the floor to express their
17 views and concerns so that at its conclusion the criminal responsibility
18 of the accused is proven beyond reasonable doubt.

19 The trial is all the more historical because it almost did not
20 take place. The hiatus in the proceedings left the victims of the
21 Lubanga case with a feeling of great helplessness. That hiatus, most
22 unfortunately, coincided with the upsurge in the east of the
23 Democratic Republic of the Congo, in particular in Goma, Kiwandja, and
24 once again in Ituri. Names sadly made famous by the arrest warrants of
25 the Prosecutor of the court began reappearing in the press, revelling in

1 impunity and re-offending in this -- in theatre.

2 Joseph Kony and his LRA; Bosko Ntaganda, alias Terminator, have
3 reemerged, the latter thumbing his nose at the warning given to
4 Laurent Nkunda in connection with crimes currently being perpetrated in
5 the east of the Congo.

6 By helping create new victims, we can reasonably assume that
7 Bosko Ntaganda who previously collaborated with the accused Lubanga is
8 doing his utmost to have the sole charge levelled against him
9 supplemented with new charges to make his arrest warrant more impressive.
10 During that period, the children, abandoned entirely to their lot,
11 wondered whether the Convention on the Rights of the Child of 1989 was
12 also written for them. They wondered whether Convention 182 of the
13 International Labour Organisation on the worst forms of child labour, of
14 19th of June, 1999, which prohibits the forced or compulsory recruitment
15 of children for use in armed conflict also applies to them. They
16 wondered whether the International Criminal Court was also their court.

17 Your Honours, Chamber, the victims who I represent, at the time
18 of the events, were aged between 9 and 13 years. Only one of them is the
19 mother of some other victims. These children were abducted while
20 returning from the fields, abducted while going home from school, torn
21 from their mothers. They were taught to handle weapons and sent to
22 fight. The main reason was to defend their community.

23 This trial is an opportunity for the victims to learn the truth
24 and to have right -- a right to justice. The truth about the real
25 motives that caused them to be torn from their families and sent to fight

1 and to die for the cause of defending their community. In fact, to date
2 the judgement of the International Court of Justice of the 19th of
3 December, 2005, on armed activities in the Democratic Republic of the
4 Congo, independent reports issued in particular by the United Nations and
5 non-governmental organisations, attest that the conflict in Ituri was
6 manipulated to loot the resources of the Democratic Republic of the Congo
7 with the complicity of Rwanda, Uganda, and certain local players.

8 The truth, in order to establish why they find themselves
9 abandoned in Bunia, Kasenyi, and across Ituri, with no prospects and no
10 chance of getting an education. How is it that weapons, munitions and
11 military uniforms could be bought for them to send them to the front but
12 there was no money to buy them pens, uniforms and school books to send
13 them to school?

14 Your Honours, members of this Chamber, these victims have a right
15 to justice so that what really happened to them can be taken into
16 account.

17 The Prosecutor's arrest warrant and the decision confirming the
18 charges eloquently set out the charges levelled at the accused, but
19 neither of these documents can make you hear the sobbing of these
20 children as they were torn from their families, their fear as guns
21 sounded on the front, the cries of their brothers, of their friends
22 struck down by bullets, their uncertainty when the order was given to
23 advance or to fall back, or when no order was given at all because there
24 was no one left to give one, although bullets continued to rain down on
25 them.

1 This mother whose stomach churned each time she heard a gunshot,
2 but who was bold enough to hope that her victim children who were also
3 forced players in this war would be spared.

4 Your Honours, members of this Chamber, the trial which opens
5 today will one day come to a close, but the war which these children have
6 been through will never end. They will relive it each day, each time
7 they wake from a nightmare at night. They will relive it at the sound of
8 gunfire, at the sight of any military uniform, and they are reliving it
9 still through this trial. That is to say if they have the good fortune
10 that someone lets them watch it on television. That is to say if they
11 are not sent packing because they have become outcasts, because they have
12 sunk into alcoholism, become addicted to the drugs that used to be put in
13 their food to make them aggressive and numb to danger.

14 Your Honours, members of this Chamber, when a ship sinks, the law
15 of rescue is simple: Women and children first. When hostage-takers want
16 to demonstrate good faith, they free the women and children first.

17 Women and children have been the hostages of warlords in Ituri
18 while the ship of their destiny has been submerged by blood. Women and
19 children first. Yes, women and children were given special treatment.
20 That is to say the women were raped. That is to say the children were
21 sent into combat in the case of boys, and also used as sex slaves when it
22 came to girls. These victims respectfully hope that their views and
23 concerns will be taken into account at this trial.

24 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Diakiese.
25 Ms. Bapita.

1 MS. BAPITA (interpretation): Your Honours, esteemed members of
2 the Chamber, the victims who I represent in these proceedings thank you
3 for the opportunity which you have afforded them to make an opening
4 statement. Having awaited the opening of this trial for two years, this
5 is the first time that the victims will fully participate in an
6 international criminal trial.

7 Your Honours, members of the Chamber, the history of the
8 Democratic Republic of the Congo demonstrates that the crime of
9 recruiting child soldiers, enlisting and conscripting them, has become
10 habitual. It is a practice known by all, seen by all, and to date which
11 enjoys entirety immunity. Many groups in the DRC have indulged in the
12 practice. The FTL, the RCD, the UPC, the FNI, the FRPI, the FPJC, the
13 CNDP, the Perico, the MLC, and I could name others. And even those
14 troops allied to the warring parties, including those of Rwanda and
15 Uganda have committed the same crime openly.

16 The fact of the matter is that the string of political events,
17 incidents and violations of human rights in the east of the
18 Democratic Republic of the Congo and in particular in Ituri stand witness
19 to the fact, and it has been going on since January 1998, and here I
20 would refer you to a report on the situation as regards human rights in
21 the DRC. Reference number E/CN.4/1998/65, submitted by special
22 rapporteur Garreton, demonstrates that it is a regular practice and which
23 is considered not to be a crime, or if it is an offence at all, simply to
24 be a misdemeanour in the eyes of the warlords.

25 Our duty as the representatives of the victims, these children

1 who have been recruited, enlisted and deployed in hostilities within the
2 UPC is not just to identify the person or persons responsible but also to
3 help find a solution to bring to an end this practice of enlisting child
4 soldiers in the Democratic Republic of the Congo.

5 To this end we do not wish to return to the crimes committed
6 against our clients by their persecutors, recalling the context in which
7 they became victims but, rather, above all we wish to look to the future,
8 and the future also depends on the judgement which will be issued in the
9 wake of an analysis of the evidence presented by the Prosecutor and the
10 Defence by this Chamber.

11 Given that there are victims, there must be people who are
12 responsible, and that is why we must support our victims by giving them a
13 voice, a voice to tell what they have been through, the distressing
14 situation in which they found themselves, how they were mistreated, and
15 how they were rejected by their community.

16 The victims which we represent went through recruitment. Some of
17 them signed up voluntarily owing, amongst other things, to the absence of
18 Social Services, the consequences of which are very hard for
19 unaccompanied and orphaned children who most often were seeking
20 protection and food. On the other hand, in the case of others, this
21 recruitment was not voluntary. It was forced. The children concerned
22 had no alternative whatsoever. Whether forced or voluntary, the
23 recruitment of child soldiers is illegal and punishable under
24 international law.

25 Your Honours, members of this Chamber, the majority of the

1 victims who I represent, 26 in number, were abducted in the street, on
2 the way to school, from their classrooms, from the market, or from their
3 homes. The victims whom I represent were used as spies, messengers,
4 porters, general dogsbodies or sex slaves.

5 Why did the UPC choose children? Four reasons have been put
6 forward or expressed by my clients. Some of them deliberately agreed to
7 enlist to escape poverty. Yes, indeed. They felt that the UPC was the
8 only place where they could be kept and their needs met in the wake of
9 their parents' death.

10 Secondly, UPC chose children because it felt that they were
11 docile. Minors are easier to enlist forcibly, to scare, and they're
12 accustomed to obeying authority.

13 Thirdly, yet others enlisted because -- or were enlisted because
14 of their fool-hardiness, because they were willing to act mercilessly and
15 cruel at all times, and others still were enlisted because of their
16 innocence and their naivete. The fact is that it is easier to drug a
17 child and to push him or her to commit grave crimes.

18 Your Honours, members of this Chamber, amongst the children who I
19 represent there are also girls who were recruited for the purpose of sex
20 and forced marriage. How does gender play in enlisting and conscripting
21 girls by the UPC? Amongst the 24 victims which I represent, there are
22 five girls who were recruited as child soldiers within the UPC armed
23 forces, that is to say the FPLC. These five girls have described from
24 their experience various forms of participation by children in
25 hostilities and, in particular, that of girl soldiers.

1 Indeed the girls filled a number of combat support functions, as
2 well as functions not linked to combat but essential for the functioning
3 of the armed force or group. And so it was that these girls could in
4 turn find themselves acting as combatant, wife or sex slave, domestic
5 servant and cook.

6 Sexual violence is part of the use of child soldiers and, in
7 particular, of girls. Most of the girls recruited by the UPC were very
8 young, and some were aged between 12 and 14 years. They were regularly
9 raped. Rape and other forms of sexual violence being an integral part of
10 the process of enlisting and conscripting girls in the UPC. All the girl
11 soldiers were raped and exploited by their leaders and the soldiers in
12 their units, their comrades.

13 In the case of certain former girl soldiers who I am
14 representing, rape began as soon as they were abducted and continued
15 throughout their stay with the UPC. In fact, often the abuses were
16 greatest in the initial stages of their abduction and in the training
17 camps where they were trained to become militia soldiers.

18 Most of these girls, victims of rape, suffer from psychological
19 trauma. Many girls have been tortured, abused or imprisoned for refusing
20 the sexual advances of their superiors which they then underwent against
21 their will.

22 A few girls were sent to fight. Very often they were used for
23 domestic work and for sexual purposes. Some girls allowed themselves to
24 be exploited sexually by their commanders in exchange for food.

25 During this period of training, the girls were sleep deprived and

1 forced to consume drugs. They learned to fight and to use weapons. Some
2 of the girls were chosen as bodyguards and forced to fight and to die.
3 Rape was thus an integral part of the daily life of girls recruited and
4 enlisted by the UPC.

5 The reality in the DRC and in Africa in general is that women and
6 girls are second-class citizens. They are subordinate to men and they
7 are afforded far few opportunities to study. There's also the fact that
8 many families living in rural areas prioritise sending boys to school at
9 the cost of girls. UNICEF can provide figures on school attendance and
10 school results in the DRC.

11 Before the war there was already great discrimination as regards
12 schooling. The recruitment of child -- of girl soldiers has had very
13 negative consequences on their lives. They have been denied the right to
14 a childhood, to be schooled, a right to safety, a right to be protected,
15 a right to physical integrity, a right to reproductive health and sexual
16 autonomy.

17 Some girls raped by UPC soldiers have had unwanted pregnancies.
18 They have received many internal and external injuries and have been
19 rejected by their families and their communities upon their return.

20 Rape as an arm of war divides families and communities. It
21 breaks individual and family networks. It fractures social and cultural
22 links and bolsters dominance through gender-based violence, sexual
23 violence and frequently rape.

24 The victims who I represent have lived through an environment of
25 terror far from their families and in an atmosphere of brutality within

1 the UPC.

2 In the case of conscripting and enlisting girl soldiers in the
3 UPC, their vulnerability as girls has been exploited and violated
4 intentionally and systematic.

5 The physical and psychological suffering and torture that girl
6 child soldiers have undergone may diminish but will never completely
7 disappear. In other words, they may be able to forgive but not forget
8 these atrocities.

9 Several victims have taken great risks in participating in these
10 court proceedings before the International Criminal Court. Their safety
11 is under threat as is that of their families. They have been relocated
12 and have lost their access to a family environment and their circle of
13 friends. These victims believe that those responsible should be
14 punished, that the harm done to them should be made good and that they
15 should be enabled to rejoin their communities.

16 To this end it should be established which adults were
17 responsible. The responsibility of Thomas Lubanga Dyilo in particular
18 should be recognised, because irrespective of the casus belli, there is
19 no justification to forcibly recruit children. No one can plead that
20 there was consent because we are speaking here of minors.

21 The determination of these victims to participate comes from a
22 desire to see the perpetrators of these crimes held responsible, to see
23 correctly documented the violence which they have survived and also to
24 prevent these crimes being recommitted in the future.

25 Your Honours, members of the Chamber, the crime of enlisting,

1 recruiting, conscripting child soldiers is a serious one indeed. With
2 great negligence the leaders of armed rebel groups trained people who, if
3 not supervised, lapse into criminality. They constitute a time bomb in
4 the east of the DRC. Rather than promoting schooling, schooling for the
5 young people who represent our future, the future of the country, of the
6 community, rather than promoting their schooling, their priority was to
7 train them and to -- thereby creating a pool of potential criminals if
8 they are not well supervised. It means that this region in the east of
9 the Congo has become a breeding ground where anyone can come and recruit
10 potential child soldiers who they see as ripe for the re-recruiting. In
11 practical terms, they have turn the youth of their provinces into a time
12 bomb, and that is not right.

13 The question is: Have these rebel leaders served their
14 communities well by enlisting these children? I think not, because a
15 proud, strong community is one which is made up of people who are
16 intellectuals, people who are workers, and, unfortunately, these children
17 are not being schooled to earn a living.

18 Lubanga, in his area, has given rise to a pool of children who
19 are not being schooled but, rather, have been trained as child soldiers,
20 whereas the rest the world is fighting to ensure schooling for young
21 children. The UPC has worked against that aim and, rather, making little
22 girls into soldiers, enlisting and conscripting them, making them sex
23 slaves. How is it, however, that they feel it is normal to enlist other
24 people's children while sparing their own children? In other words, in
25 protecting their own children have they not demonstrated and recognised

1 themselves that forced enlistment is not a good thing? There lies the
2 matter to be adjudicated during these proceedings. The world and history
3 awaits your answer to the question.

4 Your Honours, members of the Chamber, in light of the which will
5 be presented by the Prosecutor throughout these proceedings, we wish to
6 reserve the right to request from your Chamber a classification of the
7 crime of sexual slavery against the accused Thomas Lubanga. These are my
8 submissions.

9 PRESIDING JUDGE FULFORD: Thank you very much, Ms. Bapita.

10 Mr. Kabongo, I think, next.

11 MR. KABONGO (interpretation): President, your Honours,
12 Prosecutor, learned colleagues from the Defence, learned colleagues
13 representing the victims, ladies and gentlemen, the opening statement
14 which I have the privilege and honour of pronouncing today on behalf of
15 the only victim I represent will be about child soldiers and whether or
16 not they are criminals or victims.

17 President, your Honours, the term "child soldier" applies to any
18 person under 18 which is a part of an armed group, whether regular or
19 irregular. Child soldiers are more likely to become child soldiers if
20 they are poor, far from their families, away from their home, and if they
21 live in a war zone or if they have limited or no access to education. As
22 these children, often without even understanding this and knowing it, are
23 likely to commit crimes, can we qualify them as criminals or characterize
24 them as criminals, or are they war victims?

25 President, your Honours, to answer this question I will first

1 talk about the criminal liability of child soldiers and then the criminal
2 liability of child soldiers.

3 Criminal liability is the responsibility of somebody for the
4 crimes they have committed, subjecting them to punishment. This means
5 that the person guilty is responsible. So this is an error of neglect or
6 lack of -- or -- because they are imprudent. This assumes a person is
7 free. However, President, children under the age of 15, as were most of
8 the children recruited between 2002 and 2003 in Ituri, are not conscious
9 and not free. Their will is extracted from them from the warlords, torn
10 from them from -- by those who believe they are strong to make them
11 participate actively in hostilities.

12 Responsibility implies the ability to understand and to want
13 something. However, all the child soldiers under 18 at the time of the
14 facts didn't have the capacity of understanding or wanting to participate
15 in committing a crime within the jurisdiction of the court.

16 President, now I would like to talk about the criminal
17 responsibility of child soldiers. The Rome Statute of the
18 International Criminal Court, under Article 26, excludes from your
19 court's jurisdiction children under 18. It's the principle of absolute
20 criminal responsibility in -- at the court. So in the eyes of the court,
21 people who have not reached the age of criminal responsibility cannot be
22 considered as being criminally responsible or be characterized as
23 criminals.

24 It is difficult to imagine that these children under 15 had
25 sufficient reasoning to be able to accuse them of any action which could

1 be called a crime. Moreover, President, it is important to take into
2 account the moral and physical coercion these children were subjected to
3 as they were vulnerable before accusing them of any -- or holding --
4 accusing them. This is the principle of criminal responsibility, which
5 is in Article 31 of the Rome Statute of the International Criminal Court.

6 President, often these children acted under the effect of drugs
7 which impeded them from understanding the wrongdoing or the nature of
8 their behaviour and to understand that their behaviour was a crime within
9 the jurisdiction of the court. Often they were drugged up not to fear
10 and not to be afraid of violence.

11 In the case of the victim I represent, who is, moreover, a young
12 girl, you can imagine, President, she was drugged. That means the whole
13 society was drugged, because, President, we are all human beings, and we
14 all have women here we consider our mothers.

15 President, your Honours, to turn children into cannon fodder in
16 an armed conflict is wrong. Children are not war weapons. They are
17 people that have rights, and they are therefore victims. President,
18 your Honours, they are victims of war crimes. They have suffered harm,
19 physical abuse, psychological abuse. They were taken away from school.

20 At the appropriate moment with the evidence we have, we will show
21 you, President, what type of harm was suffered by these victims, and
22 then, President, these children will expect from your venerable Chamber,
23 will expect reparations.

24 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Kabongo.

25 Mr. Walley, I think you're last.

1 MR. MULAMBA (interpretation): President, your Honours,
2 Prosecutor, learned colleagues from the Defence, Legal Representatives of
3 Victims, members of the Chamber, enlisting children as a war crime, is
4 this a crime within the jurisdiction of the court, the Rome Statute?
5 African tradition recognises children and women's rights. Women enable
6 parenthood, and within the family they are a vital force in the group.
7 Indeed, President, African tradition protects children for the benefit of
8 community life.

9 In his article on African tradition and human rights, Mr. Leger
10 claims that from the age of 5 onwards, little boys live with their
11 fathers. Their fathers bring them to the men's home, and young girls
12 live with the women and the family. From 10 years onwards, little boys
13 and little girls live together in their homes. They live together as
14 they have the same age.

15 In the African community, children have a lot of freedom.
16 President, your Honours, African children inherit the vital forces of the
17 group and can be corrected but not too harshly. In rural areas they work
18 a couple of days a week for their parents, but then spend their time
19 playing or supervising livestock. They represent vital potential, and
20 that is why they are not abandoned.

21 President, your Honours, in this type of community you won't ever
22 see this type of approach in the education of children. Your mothers are
23 your souls; they watch out for you day and night.

24 The gun is a source of power. It will protect you and give you
25 everything you need if you know how to use it. That is what was said

1 this morning -- quoted this morning by the Prosecutor. So enlisting
2 young children, little girls and little boys, in armed forces goes
3 against African traditions.

4 President, your Honours, the Democratic Republic of the Congo
5 ratified several international treaties on human rights and humanitarian
6 law. They banned their -- enlisting and conscripting children. And the
7 treaty on children of 1991, ratified in 1991, which was officially
8 published in 2002, 11 years later, states in Article 38 that the
9 States Parties will take all the necessary measures in practice to ensure
10 that those under 15 do not directly participate in hostilities.

11 The Geneva Protocols, which were also ratified by the
12 Democratic Republic of the Congo, also contained provisions on the use of
13 children in armed conflicts, in particular Article 77 of the first
14 Protocol. And you -- we should also mention the optional Protocol on the
15 right of children from the year 2000 that was ratified by the Democratic
16 Republic of the Congo in 2002, because under Article 2 it provides that
17 those under the age of 18 should not be enlisted in armed forces. For
18 armed groups there is a prohibition on enlisting and using children
19 under 18.

20 The African charter on the rights and welfare of children that
21 was ratified by the Democratic Republic of the Congo in 2002, in
22 Article 22(2), encourages parties to take all necessary measure to ensure
23 that no children are enlisted in the forces. And then there's customary
24 international law and the case law that shows that recruitment is
25 prohibited.

1 So other than these specific instruments on the rights of the
2 child, it is important to recall Security Council Resolutions and
3 relevant provisions on the Democratic Republic of the Congo which
4 prohibit the enlistment of children, enlisting children and using them in
5 hostilities.

6 I would like to quote the Geneva Conventions, and in particular
7 the fourth concerning the recruitment of civilians. Convention 182 of
8 the ILO against the worst forms of labour, child labour. And I would
9 like to add that Security Council Resolutions on the topic, the most
10 important being Resolution 1291 of 25 February 1999, under point 2
11 prohibits the use or condemns the use of children in armed conflict under
12 international law. Resolution 1314 of the 11 of August, 2000, under
13 point 4 asks -- requests Member States to sign and ratify the optional
14 Protocol on the convention -- on the rights of children concerning the
15 participation of children in armed conflict, and under point 16
16 encourages them, urges them, to take regional measures to generalise the
17 prohibition of the use of child soldiers as under international law.

18 And Resolution 1379 of the 30th of November, 2002, under point 8
19 demands of all parties in armed conflicts to respect international laws
20 of war, especially concerning recruitment of children in armed forces and
21 the Geneva Conventions, the optional -- the optional Protocol and --
22 states that the -- that enlisting children under the age 15 in armed
23 conflict is one of the war crimes under the Statute, taking specific
24 measures to ensure the rights and duties of young girls affected by armed
25 conflict and to put an end to all forms of violence and exploitation,

1 especially sexual abuse and rape.

2 President, under point 9 of the same Resolution, States are
3 requested to put an end to impunity and to prosecute those responsible
4 for genocide, crimes against humanity, and war crimes, and other
5 despicable crimes committed by children, and to exclude these crimes from
6 any amnesties or similar legislative measures, and to ensure that the
7 mechanisms to establish truth and reconciliation after the conflict deal
8 with the other grave, serious crimes children fall victim to during
9 conflict. And the same applies to Resolution 1539 of the 11th of April,
10 2004, and Resolution 1612 of the 26/12/2005.

11 But as regards enlisting children, the provisions on enlisting
12 children, the new nation congress [as interpreted] published on the
13 18th of February, 2006, does not explicitly ban recruiting children but
14 provides guarantees for the protection of children under -- or minors,
15 and provides protections for children who are under 18 under Article 41.

16 And then there's a law on the organisation of the defence and
17 armed forces. Under Article 7 it prohibits the use of civilians under
18 17. And there are other national provisions that reflect the commitment
19 of the Democratic Republic of the Congo, the commitment to exclude other
20 children from participating in armed conflict. For example, law 15 of
21 the 6th of February, 2002, from the Labour Code about Convention 182.

22 President, your Honours, can we be indifferent, blind to the fact
23 that a young woman aged 9, a young girl aged 9 looking for food is
24 captured and raped by child soldiers? Can we remain indifferent when
25 learning about the fact that a young child under 15 going to visit his

1 father or mother is enlisted by force, and when the mother or the father
2 ask for the child to come back to the family, for the child to point his
3 gun at the mother to show he is no longer part of the family.

4 In view of all these difficulties, victims I represent are
5 waiting to see what justice can bring them. By expressing themselves
6 before the Court, they want the sanctioning of the person responsible and
7 reparations for the harm suffered.

8 Thank you.

9 PRESIDING JUDGE FULFORD: Mr. Mulamba, thank you very much.
10 Mr. Walley.

11 MR. WALLEYN (interpretation): Your Honours, first of all, I
12 would like to read the statement which was prepared by Franck Mulenda
13 before moving on to my own statement.

14 Mr. Mulenda's statement recalled, notably, the difficulties which
15 the victims and the legal representatives have had to overcome to be here
16 today. It is all the more unfortunate that he, who has been working on
17 the case for the last three years, is unable to be here today owing to
18 the fact that he has been taken under observation this morning. I
19 might -- I would like to take this opportunity to say that our thoughts
20 are with him and his family and they hope that he will be able to join us
21 within a few days.

22 Mr. Mulenda wished to speak to you of the efforts made by the
23 former child soldiers and their families to have their voice heard.
24 After being assisted by the Registry, non-governmental, national and
25 international organisations and filling out a form with great difficulty,

1 a form which was extremely difficult for them to understand, the victims
2 whose schooling had brutally been put to an end when they were enlisted
3 into military life, these victims have long awaited this point in time,
4 this historic trial which should stand as an example and as a deterrent.

5 The victims, at least those who are still alive today and who are
6 taking the floor, we must remember that many have died and others do not
7 yet have access to justice. These victims have overcome many obstacles
8 and followed along a path over the last three years. These hurdles are
9 more numerous. Allow me but to mention a few.

10 First of all, difficulties in communicating with their legal
11 representatives, trying to manage the rumours and myths propagated by the
12 press, often without any foundation. In other words, "Thomas Lubanga
13 acquitted by the Court," "Thomas Lubanga returning to Ituri immediately,"
14 this combined with the lengthiness of the proceedings and the
15 difficulties in living in a post-conflict environment which is fraught
16 with difficulties.

17 The legal representatives have not had an easy time either.
18 Their work in an area which is not safe has been most demanding. They
19 are not safe, nor are their clients. More often than not the legal
20 representatives have had to battle to have the voice of the victims heard
21 in making multiple submissions in relation to submissions by the Defence,
22 for instance.

23 Although it can be said that the legal framework permitting the
24 participation of victims at proceedings before the International
25 Criminal Court does indeed exist, in practice it is still extremely

1 difficult for victims to participate. Headway has, nonetheless, been
2 made. The victims who appear before you today are filled with confidence
3 and thank this Chamber and thank the various services at the Registry for
4 having facilitated their task.

5 As regards the age of the children - and this was an issue of
6 some contention before the Pre-Trial Chamber - these victims who were
7 former child soldiers, some of whom are now over the age of 18, wish a
8 number of points to be made regarding their age at the time of the
9 events.

10 The discussions before the Pre-Trial Chamber had an outcome which
11 was in line with the realities in the field, in the DRC, the difficulty
12 of obtaining documentation to document one's age made it all the more
13 important that various international mechanisms be brought into play.

14 Congolese law-makers have recently expressed a new approach to
15 this in a new law, in the preamble to the law of -- law number 428 of the
16 28th of December, 2004, and paragraph 10 of that law. Furthermore,
17 voting cards can also be used as an ID card. Their issue offers more
18 than one advantage to the citizen. First of all, it allows them to
19 register on the electoral roll, but it also gives them a document which
20 allows them to vote at elections but also to prove their identity. Also,
21 Article 6, paragraph 2, of the same law states that the voting centre may
22 also base their decision on testimony given by persons accompanying the
23 individual as to the geographical origins, et cetera, of the person.

24 Article 10 refers to other -- other advances and increased
25 flexibility. It is also stated that if certain documentation is missing,

1 testimony given at the office will be considered valid.

2 All of this, I think it goes to demonstrate the difficulties
3 which are involved in obtaining and holding identity papers in the
4 Democratic Republic of the Congo, notably in the east and notably in the
5 District of Ituri which is war-torn. This Chamber will undoubtedly take
6 account of that.

7 Addressing now the situation as regards safety in the area. The
8 conflict is well documented. From the colonial era, two important tribes
9 living in the area have lived together and been obliged to operate
10 together. The victims here are under threat often because they are also
11 of the same tribe as the accused person. This whole matter is still
12 followed with great interest in the area. Many victims, intermediaries,
13 and even legal representatives have suffered threats and some of them
14 have needed to avail of protection.

15 Throughout this trial the Chamber will undoubtedly be attentive
16 to this issue of the safety of victims.

17 Turning now to the expectations of the victims in these
18 proceedings. The victims expect that justice will be done, even if no
19 outcome can compensate the harm which they have suffered. Some fled and
20 even recommenced schooling before being captured anew and being sent to
21 the front again only to be saved later by French troops. Another person
22 who was enlisted was sent to fight before being used as a sex slave of
23 her commander before being handed over to another commander.

24 Two further victims were enlisted forcibly after their elder
25 brother who was accused of treason had to eat and meet in their presence.

1 The father of one child was killed after refusing to fight and will never
2 see his son again. Other victims find themselves in similar if not worse
3 situations. Their dossiers reveal their situation.

4 All of these victims turn to this Chamber and hope that these
5 proceedings will proceed swiftly.

6 These are the submissions of Mr. Mulenda.

7 Your Honours, esteemed members of this Court, to conclude this
8 series of opening statements, I wish through this Court to address those
9 who are listening to us in Bunia and in Ituri, listening to transistor
10 radios or looking at computer screens, be they Hema, Lendu, Alur, or
11 other.

12 Today is a day of hope, not only for the International Criminal
13 Court which hereby opens its first trial but also for them, for the
14 thousands of victims of the Congolese conflict which seems to be without
15 end, for these former child soldiers who are attempting to rehabilitate
16 and rebuild their lives, for their families, and finally for those who
17 today are still somewhere in the bush, filthy, exhausted, anxious,
18 hungry, suffering aches and pains, crying themselves to sleep thinking of
19 their old friends and their old school, and with just a bit of hemp to
20 console them.

21 International justice must bring an end to the impunity for the
22 most serious crimes and also prepare the way for reconciliation. It must
23 identify those who bear the greatest responsibility and those who
24 followed, those who are innocent and victims. Justice offers an
25 alternative to stigmatisation of whole communities as being guilty.

1 The sentences handed down but also the reparations granted to
2 victims will help break the vicious circle and vicious circle of revenge.
3 And thus, your Honours, I think that you will be generous enough to allow
4 me to address my words to the accused himself.

5 Mr. Thomas Lubanga Dyilo, the victims who we represent are not
6 your enemies. They are not proxies of some government or other or NGOs.
7 They are your kadogos and their families, who are members of your people,
8 often minors, have accepted to testify before this Court at the request
9 of the Office of the Prosecutor. It was not an easy decision for them to
10 take because they are fragile, because they have taken risks and
11 sometimes have had to agree to the conditions of a protection programme,
12 but also because you were their president, their Papa Lubanga, the person
13 for whom they suffered and faced death. They did it because they -- or
14 they're doing it because they want the truth to be known. They merit
15 respect. They have been disappointed, but they are not clamouring for
16 vengeance. They ask to be recognised as victims. They want truth,
17 justice, and reparations. They hope that the Court will confirm that
18 their enlistment in the FPLC was a crime. The best reparation for them
19 would undoubtedly be that you, Mr. Lubanga, recognise them.

20 Your Honours, you have agreed to a hundred-odd victims and
21 families participating today. Behind the reference numbers, the
22 code-names, et cetera, there are many stories, stories of disaster but
23 also of courage. It is an honour for us, we, as lawyers, to represent
24 them at this court, to report to them, to be their voice and to be their
25 eyes and ears.

1 Thank you, Your Honours, for the time which you have given us.

2 PRESIDING JUDGE FULFORD: Mr. Walley, thank you very much
3 indeed.

4 There are two short matters arising out of those presentations
5 for which we're grateful and which fell entirely, save for two things I'm
6 about to mention, within our expectations, and we are genuinely grateful
7 for them.

8 Ms. Bapita, can I -- I'm very sorry. Ms. Bensouda, can I ask one
9 question in relation to the evidence we're going to hear. From my
10 reading of the papers, I think the name Joseph Kony doesn't really appear
11 at all.

12 MR. MORENO-OCAMPO: Mr. President, no. Mr. Kony is not
13 represented in this court, no.

14 PRESIDING JUDGE FULFORD: Thank you very much indeed.

15 Mr. Diakiese, I know it was to a very large extent something of a
16 flourish of oratory, but it was in a sense an example of something that
17 we've got to be very careful about in this case in that the ambit of
18 participation by the victims in this case must be focussed, must be
19 really directed at the evidence that we're going to be dealing with in
20 this trial and, in particular, the charges which this accused faces. So
21 it was not a significant or a serious transgression, and I'm only using
22 this as an example of territory which we really shouldn't visit. So
23 please accept this in the spirit with which it's meant. It's not a
24 strong observation. I'm simply using this as a demonstration.

25 Mr. Walley, similarly, I know that it was really just a device

1 of oratory, but can we please not in future have counsel directly
2 addressing their remarks at the accused. Indeed, remarks should not be
3 addressed at anyone apart from the Bench. I'm afraid it has the
4 potential for raising the temperature in the case wholly artificially and
5 in a very bad way.

6 So again said mildly, and I understand the spirit within -- in
7 which it was meant, but please not to be repeated.

8 Maitre Mabilille, you've had a considerable amount to listen to
9 today, as have we, an awful lot of which for reasons which are
10 understandable have not been set out in writing for your benefit in
11 advance. We are, in those circumstances, entirely in your hands if you
12 would prefer to commence your opening address tomorrow morning. That is
13 something in relation to which we would be sympathetic. However, if you
14 would prefer to start this afternoon, then of course you can. It's
15 entirely a matter for you.

16 MS. MABILILLE (interpretation): Your Honour, I would prefer to
17 take the floor tomorrow morning. I would like to reflect at what has
18 been said today. If the Chamber gives me its leave, we would like to
19 start tomorrow, because that is also the point in time which we had
20 estimated we might begin.

21 PRESIDING JUDGE FULFORD: Well, having just said what I have,
22 Maitre Mabilille, that is an application which is inevitably granted, and
23 so we'll say for tomorrow morning, I think it's 9.30. Is that right?
24 Can I have confirmation of this? I think it is. Yes.

25 It will be 9.30, then, for the Defence opening statement.

1 Ms. Bensouda, this means, therefore, we request sit a little bit
2 earlier this afternoon to deal with the ex parte matter. Is 3.30
3 convenient for the Prosecution's team?

4 MS. BENSOU DA: Very well, your Honour.

5 PRESIDING JUDGE FULFORD: Good.

6 One final matter for reflection overnight is the issue of leading
7 questions on the part of the Prosecution when witnesses are being asked
8 questions by the Prosecution, and these are witnesses who you have
9 called. This is a thought for your consideration, Ms. Bensouda.

10 Given that for the reasons that Maitre Mabil le explained at the
11 end of last week, no firm lines of defence, indeed no lines of defence at
12 all have been identified, and there has been no indication as to what
13 matters are in issue, it may be best to proceed on the basis that matters
14 of identity, general background, where people were born, where they were
15 educated, the circumstances of their past life, matters of that kind are
16 probably the areas where leading questions will not be inappropriate.
17 However, when it -- when we come to the point in the story, particularly
18 of those who were former child soldiers or who give evidence about what
19 happened to them, then a greater degree of caution should be exercised
20 and the presumption should be that the witness should really give the
21 evidence without the kind of artificial prompting by the Prosecution
22 which would be entailed by leading questions.

23 Now, that is a general suggestion for you to reflect on. It may
24 be, I don't know, that before particular witnesses are called if there
25 are particular issues which are in dispute which are brought to your

1 attention by Maitre Mabille, then a sensible device would be to avoid
2 leading in those areas, but we'll have to see how this unfolds.

3 What I want to try to avoid is the Prosecution having to ask
4 open-ended questions about absolutely everything simply because there has
5 been no indication given as to what is in issue in this trial. My
6 initial thoughts on this is that that is likely very substantially to
7 slow this trial down without any real justification for it. It's
8 something that needs reflecting on. Could you think about it, please,
9 overnight. It may be helpful to discuss this with Maitre Mabille, and if
10 there is any dispute in relation to this proposition, if either of you
11 have other thoughts on this, perhaps we can visit this at some convenient
12 time tomorrow.

13 MS. BENSOUDA: Thank you, Mr. President. The Office of the
14 Prosecutor has in fact been giving this matter due consideration largely
15 along the lines that Mr. President has just stated.

16 PRESIDING JUDGE FULFORD: If there are any issues arising as
17 regards self-incrimination for the first two witnesses, we must make sure
18 that they have been addressed fully in advance, and this really ought to
19 be tomorrow, so that there isn't a delay on Wednesday morning when those
20 witnesses are called.

21 MS. BENSOUDA: I will, Mr. President.

22 PRESIDING JUDGE FULFORD: Thank you very much indeed. Good.
23 Unless there is anything else then, we will rise now. We'll sit on the
24 trial at 9.30 tomorrow morning, but the Bench will sit again with the
25 Prosecution only in half an hour's time. Thank you all very much.

1 COURT USHER: All rise.
2 The hearing ends at 2.59 p.m.
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