

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Thomas Lubanga Dyilo - ICC-01/04-01/06
5 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito
6 and Judge René Blattmann
7 Hearing pursuant to Article 76(2)
8 Wednesday, 13 June 2012
9 (The hearing starts in open session at 9.34 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FULFORD: Maître Mabilille, what we propose is that we start
14 straightaway with the witness who is now waiting to give evidence. Once her
15 evidence is concluded, we will have a break so that you can speak with the next
16 witness to establish whether or not we need to consider an application for some form
17 of protective measures. Is that acceptable to you?
18 MS MABILLE: (Interpretation) That is perfect, your Honour.
19 PRESIDING JUDGE FULFORD: Then with the help of the representative of the
20 Registry in Bunia, can the witness please be sworn.
21 (The witness testifies via video link)
22 WITNESS: DRC-D01-WWWW-0039
23 (The witness speaks French)
24 THE WITNESS: (Interpretation) I solemnly declare that I will speak the truth, the
25 whole truth and nothing but the truth.

1 PRESIDING JUDGE FULFORD: Excellent. Thank you. Mr Desalliers.

2 QUESTIONED BY MR DESALLIERS: (Interpretation)

3 Q. Good morning, madam.

4 A. Good morning.

5 Q. We have met before, but I will introduce myself once again. My name is Marc
6 Desalliers, I am a lawyer, and I am going to put a few questions to you today on
7 behalf of the Defence of Mr Thomas Lubanga. Can you hear me very well?

8 A. Yes, I can hear you very well.

9 Q. Madam, can you begin by stating your full name?

10 A. My name is Sifa Magay Alida.

11 Q. What is your date of birth?

12 A. I was born on 5 May 1975.

13 Q. Thank you. I am going to ask you questions on the events that you lived
14 through in 2002/2003. My first question is as follows: What was your occupation
15 in 2002/2003?

16 A. In 2002 I was working as the protocol officer in the presidency.

17 Q. Which presidency are you referring to?

18 A. I worked for President Thomas Lubanga, because in the political party there
19 was the department responsible for the presidency. The political party was divided
20 into two; there was a service for the presidency and a service for the directeur de
21 cabinet, so I worked as protocol officer in the presidency service.

22 Q. Can you briefly explain to us how you got about being appointed to this
23 position?

24 A. Before that, I worked as secretary at the UNTC, that is the National Union of
25 Congolese Workers, so I worked as a secretary in that organisation and then I sent in

1 an application to the political parties, and in my application, I stated clearly that I was
2 working as a secretary somewhere and that I wanted to find work. I received an
3 answer indicating that I would be recruited, but I would begin as a protocol officer
4 and that would change later.

5 Q. Can you tell us when you started working in that position?

6 A. It was in October 2002.

7 Q. And where was your place of service? Where did you work as the protocol
8 officer?

9 A. I worked in the presidential service.

10 Q. Concretely, where was the location?

11 A. If you are familiar with Bunia, there is the EPO field, and it was on the number
12 avenue. I do not remember the number, but the office of the president was located
13 just before you reached EPO.

14 Q. Now, as the protocol officer, what were your duties?

15 A. As the protocol officer, I was responsible for receiving visitors. Once those
16 visitors arrived, there was a particular room, there was a house for them. Then
17 I would come and report to the president that such-and-such a visitor had arrived.
18 And if there was a positive answer, that person would be received by the president
19 on the same day.

20 Q. Very well. Madam Witness, can you describe the layout of the presidency?
21 Can you describe those premises for us briefly?

22 A. There was an entire family; there was the president, the bodyguards of the
23 president, the president's family, children and others.

24 Q. Thank you. Now, you were responsible for welcoming the visitors. Now,
25 can you tell us who were those people who visited the office of the president?

1 A. There were all types of visitors. To begin with, all those who wanted to meet
2 the president, including those who worked for the organisation or those who came
3 from outside, all of them were received without any problem at all, without any
4 discrimination. We also received students, members of the general population who
5 wanted to discuss with him, that is anyone who had grievances to express to the
6 president. We welcomed them.

7 We also received the notables and we even welcomed the members of staff of the
8 office who wanted to speak with the president on appointment. So we did not
9 discriminate at all. We welcomed anyone who wished to meet with the president.

10 Q. At the outset, you mentioned that you received people from the organisation or
11 from outside. What do you mean by that?

12 A. When I talk of the organisation staff, I think this was referring to the people
13 working for the UPC. So apart from the premises where we were, there were other
14 services. There was an entire office or an entire service functioning elsewhere, and
15 those who wanted to meet with the president had to come to the office of the
16 president and we welcomed those people.

17 That is why I described those people as belonging to the organisation because they
18 were members of our political party, and regarding those who came from outside
19 those were members of the general population who wanted to express their
20 grievances to the president, and these people were possibly not members of our
21 political party. That was the distinction I wanted to make between visitors from the
22 organisation and those from outside.

23 Q. Thank you. Now, what were your instructions regarding all those people who
24 showed up at the presidency?

25 A. The instructions that I had received from the president was, first of all, not to

1 discriminate amongst those people who wanted to see the president. Anyone who
2 showed up and who wanted to speak with him had to be received at all times. So
3 there was no distinction at all indicating what type of visitor we had to welcome,
4 whether it was a child or an adult or any person of any rank at all, we were instructed
5 to receive them, to listen to them and then submit a report.

6 Q. You stated that there were notables who came to visit at the presidency. Who
7 were those notables?

8 A. Amongst the notables, there were Lendu notables; there were Alur notables and
9 even Bira elderly men. There were also Hema notables.

10 Q. Do you remember the frequency with which those notables visited the
11 president's office?

12 A. Regarding the frequency of the visits, I can tell you that there was no particular
13 timetable indicating that those people would be received on such-and-such a day.
14 In the event that there was a problem or in case of need those people would be
15 received without problem, whether it was during the day or in the evening.

16 Q. To your knowledge, which was the main reason that prompted the notables to
17 visit the office of the president?

18 A. They came there because during that period we were living through a critical
19 situation. There were attacks in almost every locality. There were problems
20 practically every day. The president had given those people free access in order for
21 them to come and explain the situation in their various localities, and those people
22 came because, to begin with, the president's main concern was to negotiate. All the
23 actions that he initiated were intended to pacify the situation and to negotiate with
24 those notables because in case of problems those notables were on the ground.
25 During that period, for example, it was not easy for a Lendu, Bira, or Hema people to

1 pass through areas where there was conflict. A Hema person would not have easy
2 access to areas occupied by the Lendus, so in all his actions the first thing that he
3 underscored at all times was pacification, and in order to reach the population he
4 needed intermediaries who would have the ear of the members of the general public,
5 and so either this message from the president was to be conveyed, or the words of the
6 president.

7 So any time there was a problem he would even call on those notables, and if there
8 were attacks here and there, his first concern would be to meet with the notables and
9 try to find a comprise or come up with a strategy to be able to reach the area that was
10 in conflict. And in order to do so, it was necessary to identify the person from that
11 area who had the ear of the inhabitants of the area so that the message could be
12 effectively conveyed.

13 It was for that reason that those notables were received in the presidency, and on
14 each occasion together they tried to find a strategy to be adopted to restore calm
15 whenever there was a problem.

16 Q. Thank you very much, madam, for those complete and comprehensive answers.
17 I would simply like to request that you try to speak very slowly so as to enable the
18 interpreters to hear you correctly and interpret accurately. So if it is possible at all,
19 please try to slow down.

20 A. Thank you.

21 Q. You made reference to the members of the general population who came to the
22 presidency to express their grievances. Now, what was the ethnicity of those
23 citizens?

24 A. All the ethnic groups were involved. There was no specific ethnic group that
25 came to the presidency. We received people from all ethnic groups; our ethnic

1 group, the Hema, the Lendu, even people from Butembo and Kisangani came to see
2 us. People felt that they had been aggrieved, that one or other of their rights had
3 been violated, came and see the president.

4 Q. Now, those people who came to express their grievances, what happened as
5 from the moment of their arrival?

6 A. Those who came explained their problems and their grievances to the president.
7 For his part, he always tried to find a solution.

8 Q. Let me back-track to the meetings with these people that you referred to as "the
9 notables." Did you ever personally attend any of those meetings?

10 A. Yes, sir. Given that my duties included welcoming the visitors, once I received
11 them I would take them to the room, the meeting room, and it was possible for me to
12 give them something to drink, and this meant that I was pretty much always at the
13 place of the meetings. And, of course, during those meetings I would be able to
14 listen to some of what was being said, that is, during the specific moments when
15 I was present in the room.

16 Q. Thank you. You have already touched briefly on this aspect, but I would like
17 you to explain at length to us the people who were located at the presidency in
18 2002/2003?

19 A. To begin with, in 2002/2003 at the presidency, there was the family of the
20 president, including the children of the president. I can also give you some
21 clarification.

22 When I was working at the presidency, I was sometimes at the house. I worked like
23 everyone else, coming to work at 8 a.m. and going back home at 4 p.m., but at one
24 point, given that there was a huge volume of work, I actually moved into the
25 presidency and it was possible for me to spend the nights there. In the morning,

1 I would go to work and also work in the evening. So you had the president's family
2 at the presidency --

3 PRESIDING JUDGE FULFORD: Mr Desalliers, there's been an observation from the
4 translators that it's going too fast. Secondly, historically, there has been a problem
5 with asking a witness a very general question and then essentially leaving then, in
6 inverted commas "to get on with it," without any control at all over the information
7 that the witness is giving. Might I suggest, therefore, first of all that you slow this
8 down but, secondly, you provide more structure please to the questions rather than,
9 as I say, putting a very general question and then sitting back letting the witness give
10 a very long answer.

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

12 Q. Madam, let me be more specific with my question. I'm sure you have fully
13 understood what the Presiding Judge has said, who is requesting us to speak more
14 slowly so as to allow the interpreters to perform their duties accurately.
15 Now, let me rephrase my question: Were there any individuals actually living in the
16 presidency?

17 A. Yes, there were people living there, and amongst those people there was the
18 family of the president. In addition to the president's family, there were nine
19 children who had been brought back by the field commanders. Amongst those nine
20 children, there were three girls while the other six were boys. And in addition to
21 those children, you had the president's bodyguards.

22 Q. There was the family of Mr Lubanga, there was the bodyguards of the
23 presidency and there were nine children. Were there other persons who were living
24 at the presidency?

25 A. Myself, I was also there at the presidency.

1 Q. And during this period, 2002/2003, were there other persons, other than those
2 who you have mentioned, who were living at the presidency?

3 A. Apart from the people who I've just mentioned, there were visits from children
4 who came, either to pay visit to their father, because among the presidential guards
5 there was family fathers, and the family father who had his children, had his wife,
6 and the children would come from time to time in order to pay a visit to their father
7 who was a guard of the president, but that happened there. They just -- they didn't
8 stay there, though, they just came to visit.

9 THE INTERPRETER: The interpreter would like to point out that there's heavy
10 pixelation of the image and lack of synchronisation with the sound. If this could be
11 pointed out to the technical booth.

12 MR DESALLIERS:

13 Q. I would like to ask you for positions with regards to the nine children that you
14 have mentioned, that you mentioned a bit earlier. Please, could you tell us where
15 these children came from?

16 A. These children, as I told you before, they came from the field. Sometimes there
17 were attacks in the field, and these attacks, they were continual. One day, the
18 commander who was operating in the field, well, it was that commander who
19 was -- these nine children were not brought there in one go. Now, the first group,
20 well, the first ones who were taken, there were four of them, and these four children,
21 well, what did they say to the president? This is the proof, the evidence, that we
22 give to you is needed because there -- there was an attack in the Bunia hinterland and
23 during the intervention after the attack, when the soldiers left, they deployed the
24 soldiers in that area and they found the children roaming the streets, there were no
25 parents there, and they brought these four children back to show them to the

1 president and they did that every time there were -- they wanted to show them that
2 every time there were attacks there were victims, such as children who have no place
3 of shelter, no parents, and the others said that their parents were killed. And among
4 them they said that they didn't know where their parents were.

5 This meant that they -- they had no place of shelter, nowhere safe, and they brought
6 these children to the presidency in order to show the president everything that was
7 happening in the hinterland, how the population was threatened. It was a way of
8 showing evidence so that the president could really believe what was happening on a
9 day-to-day basis, that there was attacks on a day-to-day basis, they were victims of
10 these attacks.

11 Q. When you speak about the interior, which you mentioned, what do you mean
12 by this "interior"?

13 A. When I speak about interior, I'm talking about outside Bunia. Well, if you
14 imagine Bunia, the location of Bunia, so it's outside Bunia from Centrale Barrière, the
15 interior, these are the villages which are in the interior, so they are outside of Bunia.

16 Q. So these children who were taken to the presidency, could you explain to us this?
17 You mentioned that they were living there. Why did they live in the presidency?

18 A. The children lived in the presidency because they didn't have any parents.
19 The children who were brought from this hinterland area without parents, they were
20 taken to the presidency. Now, -if they were released where would they stay? The
21 president had decided that these children should be left at the presidency, that they
22 would be looked after until their parents were found, but others testified that their
23 parents had died, were killed during the hostilities.

24 Q. To the best of your memory, how old were these children?

25 A. Well, what I can say is that it's difficult to determine somebody's age when you

1 don't have any proof of that. But when we saw these people, among these nine
2 children, one could consider their ages to be from five to 12, because among them
3 there was even a small girl. She -- she might have been -- you could estimate her age
4 as five so -- and the oldest you could see was at least 12 years old. That's just an
5 estimation though; I can't be exact on that. I can't tell the exact age of these children.
6 That is just an estimation on my part.

7 Q. And who looked after these children at the presidency?

8 A. At the presidency, myself, I looked after these children. While my task was to
9 receive visitors, in addition to that I could also look after these children and all the
10 children of the president who were at the presidency.

11 Q. To your knowledge, these children, did they carry out the work of soldiers?

12 A. These children did not carry out the work of soldiers.

13 Q. In addition to these nine children, were there other persons who might have
14 been looked after at the presidency, to the best of your knowledge?

15 A. Yes. Apart from these nine children, and the family of the president, we also
16 had a woman who was recovering during that time of war. This was a Lendu
17 woman, called Isalel (phon). We were looking after her within the presidency until
18 the presidency was destabilised, and then I went back and then I took that woman
19 back home with us.

20 Q. Why was this Lendu woman being looked after at the presidency?

21 A. This Lendu woman was being looked after at the presidency because, firstly,
22 she had been stopped by the soldiers, apprehended by the soldiers, and in this team
23 there was -- there were men -- she was the only woman and there were men who had
24 been stopped.

25 Now, the president, because of his ideology, because what he tried to do was to listen

1 to these people who had been apprehended, and among them there was this woman,
2 and when he listened to this woman, because the -- when the woman explained the
3 situation, he found that this person was innocent. And among those apprehended,
4 it was -- she wasn't alone, she was with other men. And even the men, having
5 questioned them, he found that these were innocent men. They were freed.
6 When this woman was to be freed, she said that she had nowhere to go, and that's the
7 reason why he asked that she be looked after at the presidency and thereafter she
8 could go. But the woman refused to leave because she had nowhere to go. That's
9 why we put her up until the president left for Kinshasa. Myself, I left -- I stayed
10 with her at the house, in the house, and the day that we were forced out of the
11 presidency, then I left with her from the presidency and I went to my home and she
12 got married. She's now been at her home for 2 years.

13 Q. Thank you. You spoke about a meeting of the president with notables, or
14 prominent figures from different ethnic groups, to have discussions with regards to
15 the pacification of the region. Could you give us examples, to your knowledge, of
16 efforts that Mr Lubanga made in order to achieve the pacification of the region?

17 A. Thank you. I think that these meetings had a positive effect. And why do I
18 say "positive?" Because whenever there were meetings, the idea was to get to the
19 point where every prominent figure would then take this message forward in their
20 relative respective location and that there would be an agreement thereafter which
21 could lead to a positive result. And this positive result was seen. Towards the end
22 of 2002, there was a meeting of all the prominent figures, the notables, whether the
23 Lendu, Hema, Bira and others.

24 There was a meeting, and during this meeting there was a document which was
25 signed by all, or signed by everyone, by every notable, appended their signature

1 thereto in order to go back to their respective location, in order to preach the issue of
2 pacification. And after this meeting there was a command because -- or an order
3 because each person had to go back to his area and in order to facilitate that the
4 president and his political party had the idea to order the vehicles from Dubai in
5 order to provide each notable with it with a view to being able to spread the message,
6 which was that there was a common agreement, and the idea was to spread that
7 message. But unfortunately, the vehicles that were got only got to Kampala and
8 from Kampala it was there that the destination of the vehicles became unknown
9 thereafter, after Kampala.

10 MR DESALLIERS: (Interpretation) Your Honour, with your permission, I would
11 like to show some video extracts or a video extract to the witness. As there is a lack
12 of certainty with regards to the protective measures, I would ask for us to go into
13 closed session for this part.

14 PRESIDING JUDGE FULFORD: Have we had notification of this, Mr Desalliers,
15 that there was going to be a video shown to the witness? When was notification
16 given?

17 MR DESALLIERS: (Interpretation) Yes, your Honour, the Registry was notified of
18 the use of this video with the witness.

19 PRESIDING JUDGE FULFORD: When?

20 MR DESALLIERS: (Interpretation) I don't remember the exact date, your Honour.
21 Several days ago. I can check if the Chamber so desires.

22 PRESIDING JUDGE FULFORD: Any objections?

23 MR SACHDEVA: No objection, Mr President.

24 PRESIDING JUDGE FULFORD: Right. And you are persuaded, Mr Desalliers,
25 that it is necessary for the public to be excluded from this part of the testimony; is that

1 right?

2 MR DESALLIERS: (Interpretation) The problem, your Honour, is that the images
3 or pictures show an individual, and later in the day it will have to be decided
4 whether protective measures are needed or not, later this day and, as such, as they'll
5 be questions put to this individual, I think that by way of prudence it would be
6 possible to go into private session. I can't tell any more to the Chamber, because the
7 Defence is currently unable to determine whether protective measures will be asked
8 for or not. So it's just a prudential measure in this case.

9 PRESIDING JUDGE FULFORD: Well, we have no choice. It would have been
10 useful to have known in advance so that we could have viewed the video and made a
11 determination beforehand as to whether or not this was going to be necessary. But
12 we'll go into private session, please.

13 (Private session at 10.18 a.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Hearing pursuant to Article 76(2)

(Open Session)

ICC-01/04-01/06

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 15 redacted – Private session.

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Open session at 10.25 a.m.)

17 THE COURT OFFICER: We are in open session, your Honours.

18 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

19 MR DESALLIERS: (Interpretation)

20 Q. So this person who we've just seen on the video, could you tell us if you know
21 what this person did, what this person's activities were during 2002 and 2003?

22 A. The person who you have just shown me, that's somebody I recognise and he
23 was one of the bodyguard of the president.

24 Q. And in what place did that person carry out his work?

25 A. He was a member of the team of the presidency.

1 Q. So he was in the UPC presidency, if I understand that correctly?

2 A. Yes.

3 MR DESALLIERS: (Interpretation) Your Honour, with your permission, I would
4 like to consult my team for a moment.

5 PRESIDING JUDGE FULFORD: Certainly.

6 (Defence counsel confer)

7 MR DESALLIERS: (Interpretation) Thank you very much, madam. I have no
8 more further questions, your Honour.

9 PRESIDING JUDGE FULFORD: Thank you very much, Mr Desalliers.

10 I want to ask the representatives of the Registry whether it's possible for a moment to
11 cut the connection with the video booth in the DRC to be restored shortly in a
12 moment or two?

13 (Pause in proceedings)

14 PRESIDING JUDGE FULFORD: Mr Sachdeva, are you conducting questions for the
15 Prosecution?

16 MR SACHDEVA: Yes.

17 PRESIDING JUDGE FULFORD: Right. The Prosecutor tells me you are. It's been
18 brought to our attention that there are a few documents that you had in mind that
19 you may wish to use for -- right. Do we forget all of them?

20 MR SACHDEVA: Excuse me, Mr President, yes, I'm not planning to use any
21 documents.

22 PRESIDING JUDGE FULFORD: Can we restore the link with the DRC, please.

23 (Pause in proceedings)

24 PRESIDING JUDGE FULFORD: Thank you very much. Madam, there will now be
25 questions put to you by Mr Sachdeva on behalf of the Office of the Prosecutor.

1 Yes, Mr Sachdeva.

2 MR SACHDEVA: Thank you, Mr President.

3 QUESTIONED BY MR SACHDEVA:

4 Q. Good morning, madam. My name is Manoj Sachdeva and I'm going to ask
5 you some very short questions on behalf of the Prosecution.

6 A. Very well.

7 Q. You've told us about your work in the protocol office with the presidency, and I
8 just want to get one or two issues clear with you. When these meetings took place
9 with the notables and other persons, were you present all of the time during those
10 meetings?

11 A. Some meetings took place at home, and the president could receive people at
12 his home or at the office, and as I was working at the home I was present when those
13 meetings took place there...

14 Q. So if I understand your evidence correctly, you were only present at the
15 meetings when they took place at the home; is that right?

16 A. Yes.

17 MR SACHDEVA: Mr President, no further questions.

18 PRESIDING JUDGE FULFORD: I think that must be one of your shortest
19 examinations, Mr Sachdeva. Thank you very much. Mr Walley, we've received
20 an application from you to ask questions of this witness. Whilst we are not going to
21 stop you from asking questions, we wish to lay down a very firm marker that, given
22 at this stage the Chamber is considering the evidence relevant to the sentence to be
23 imposed on this accused, indeed, this person has been convicted, it is absolutely
24 critical that there is neither the reality nor the appearance of there being two
25 Prosecutors in this Court, and so although you can ask questions that are relevant to

1 the concerns of the victims that you represent, that will be of assistance to us in
2 reaching our determination, you must ensure that the content of your questions and
3 that the way that they are framed do not in any sense trespass in the way that I've just
4 outlined.

5 MR WALLEYN: Thank you, Mr President, but for this witness I have no questions.

6 PRESIDING JUDGE FULFORD: My firm warning was clearly unnecessary. It may
7 be relevant in relation to the next witness, Mr Walley, and if it is then I will not need
8 to repeat it. Thank you very much.

9 Madam -- I assume there's no re-examination? No.

10 Madam, thank you very much indeed for your assistance. That now brings your
11 evidence to a conclusion. As with all witnesses in this case, I want to thank you on
12 behalf of all three Judges for the assistance that you have provided to us. In order to
13 enable us to reach the decisions that we have to in this case, it is crucial that people
14 such as yourself are prepared to come forward to give evidence to help us. So thank
15 you very much indeed.

16 (The witness is excused)

17 PRESIDING JUDGE FULFORD: We will now take a quarter of an hour break and sit
18 again at 10-to-11. I'm sorry? Right. I'm told this needs --

19 (Pause in proceedings)

20 PRESIDING JUDGE FULFORD: Well, Mr Desalliers, I am told, we were unaware of
21 this, that from the moment that Mr Sachdeva commenced his questions of the last
22 witness there needs to be an hour before Witness 40 is going to be ready to commence
23 his evidence. It seems to me that is quite a lengthy break in order to get the next
24 witness ready, but if that is the reality there is probably little that we can do about it.
25 During that hour, can you, or some other member of your team, please discuss with

1 the witness whether any form of protective measures are going to be sought and can
2 we please be alerted before we come back into Court as to whether or not a request is
3 going to be made and, if it is going to be made, what the essential elements are of the
4 request?

5 MR DESALLIERS: (Interpretation) Yes, Mr President.

6 PRESIDING JUDGE FULFORD: Thank you. Unless we are told otherwise, we will
7 sit again at 20-to-12. Thank you all very much.

8 THE COURT USHER: All rise.

9 (Recess taken at 10.37 a.m.)

10 (Upon resuming in open session at 11.41 a.m.)

11 THE COURT USHER: All rise.

12 Please be seated.

13 PRESIDING JUDGE FULFORD: With the help of the representative of the Registry
14 in the DRC, could the witness please be sworn.

15 (The witness testifies via video link)

16 WITNESS: DRC-D01-WWWW-0040

17 (The witness speaks French)

18 THE WITNESS: (Interpretation) Solemn declaration: I hereby declare that I will
19 speak the truth, the whole truth and nothing but the truth.

20 PRESIDING JUDGE FULFORD: Thank you very much. Yes, Mr Desalliers.

21 QUESTIONED BY MR DESALLIERS: (Interpretation)

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. We have already had the opportunity to be introduced to each other, but let me
25 introduce myself again. My name is Marc Desalliers, I am counsel, and I will be

1 putting questions to you today on Mr -- on behalf of Mr Thomas Lubanga's
2 Defence team.

3 A. Very well.

4 Q. I would like to start by finding out if you hear me clearly?

5 A. Yes, I can hear you very clearly.

6 Q. Before delving into the questions proper, I would like to ask you to pay keen
7 attention and to speak slowly so that the interpreters here in The Hague can interpret
8 your statement. I would urge you to observe a small break, or pause, between the
9 questions and your answer so that the interpreters can do their work. Is that fine
10 with you?

11 A. Yes.

12 Q. Thank you. I would like you to start by telling us your full names.

13 A. My names are Augustin Mbogo Malobi.

14 Q. What is your date of birth?

15 A. I was born on 8 April 1983.

16 MR DESALLIERS: (Interpretation) Thank you. Your Honour, Mr President,
17 I would like the document ERN-DRC-D01-0003-5977 to be shown to the witness.

18 PRESIDING JUDGE FULFORD: Certainly. With the help of the representative in
19 the DRC.

20 THE COURT OFFICER: (Interpretation) Would you please kindly confirm the
21 confidentiality level of this document?

22 MR DESALLIERS: (Interpretation) Witness, please, this question is for me and
23 I would answer it. It is a public document.

24 THE COURT OFFICER: (Interpretation) Please press "PC1" to view the document.

25 MR DESALLIERS: (Interpretation) Mr President, we have hard copies of the

1 document available for participants and for the Chamber. We may want to
2 distribute those now.

3 PRESIDING JUDGE FULFORD: Thank you very much. Could you collect the
4 documents, please.

5 MR DESALLIERS: (Interpretation) Mr President, the document is in tab 1 of the
6 documents that have just been circulated.

7 THE COURT OFFICER (DRC): (Interpretation) Mr President, let me confirm that
8 document DRC-D01-0003-5977 is now being shown to the witness.

9 MR DESALLIERS: (Interpretation)

10 Q. Sir, can you tell us whether you recognise the document before you?

11 A. Yes, I do.

12 Q. What document is it?

13 A. This is my voter's card.

14 Q. The document before you is a photocopy. I would like to know whether you
15 still are in possession of the original of that document today.

16 A. Yes.

17 MR DESALLIERS: Thank you. I have no further questions on this document, and
18 I would like to request an EVD number for the document.

19 PRESIDING JUDGE FULFORD: Please.

20 THE COURT OFFICER: Your Honour, can we just have one second, please.

21 (Pause in proceedings)

22 THE COURT OFFICER: The document DRC-D01-0003-5977 will be assigned a
23 number EVD-D01-01111.

24 PRESIDING JUDGE FULFORD: Thank you. Yes, Mr Desalliers.

25 MR DESALLIERS: (Interpretation) I would now like to show the witness another

1 document bearing number DRC-D01-0003-5979. It is in tab 2 of the documents that
2 have just been distributed.

3 PRESIDING JUDGE FULFORD: Certainly.

4 THE COURT OFFICER: Could counsel please confirm the level of confidentiality?

5 MR DESALLIERS: (Interpretation) It is also a public document.

6 THE WITNESS: (Interpretation) I do recognise this document. It is my state
7 diploma or certificate.

8 MR DESALLIERS: (Interpretation)

9 Q. Thank you very much. Now, what you have before you is a photocopy of the
10 document. I would like to know whether you are still in possession this day of the
11 original version of that document?

12 A. Yes.

13 MR DESALLIERS: (Interpretation) Mr President, I would like to apply for an EVD
14 number for this document.

15 PRESIDING JUDGE FULFORD: Please.

16 THE COURT OFFICER: Thank you, Mr President. Document DRC-D01-0003-5979
17 will be assigned a number EVD-D01-01112.

18 MR DESALLIERS: (Interpretation) Thank you.

19 Q. Witness, can you tell us what your professional occupation was in 2002 and
20 2003?

21 A. Thank you for that question. In 2002 and 2003 I was in military service.

22 Q. Which armed group were you working for?

23 A. The army was the UPC.

24 Q. Could you be specific as to what your duties were in 2002 and 2003?

25 A. I was part of the Presidential Guard.

1 Q. When did you join the Presidential Guard?

2 A. I no longer remember the date. I don't remember the day, nor do I remember
3 the month.

4 Q. As far as you can recall, can you tell us approximately what time frame it was,
5 what time frame it was?

6 A. It was after my president returned from Kinshasa.

7 Q. Thank you. And still as far as you can recall, for how long did you serve as
8 Presidential Guard?

9 A. I worked in that capacity until he left, until he left for Kinshasa, and that is
10 when my duties stopped.

11 Q. Thank you. Can you tell us how many soldiers were part of or made up the
12 Presidential Guard?

13 A. Between 25 to 30 persons.

14 Q. Did you know all of those people?

15 A. Yes, yes.

16 Q. While you were a member of the Presidential Guard, during that period, what
17 was the age of the youngest soldiers who were part of the Presidential Guard?

18 A. While we served as Presidential Guards, the youngest of us were 17, 18,
19 19 years old.

20 PRESIDING JUDGE FULFORD: Mr Desalliers, Mr Sachdeva's on his feet. Not to
21 anticipate entirely what he is going to say, but it might be observed that this is
22 evidence more relevant to the issues that were litigated during the trial rather than at
23 sentence. But before you answer that, Mr Sachdeva, your point is?

24 MR SACHDEVA: Precisely that, Mr President.

25 PRESIDING JUDGE FULFORD: Right. Now, Mr Desalliers, I think you need to be

1 careful not to use this as an opportunity for further litigating the issues that we
2 needed to resolve during the substantive proceedings, and you need to focus on
3 matters that are relevant to the sentence to be passed on this convicted individual.
4 These proceedings should not be abused so as to form some form of collateral attack
5 on the Article 74 decision.

6 MR DESALLIERS: (Interpretation) Obligated, Mr President.

7 Q. Can you tell us, witness, the location at which you worked as a Presidential
8 Guard?

9 A. We were at the Lumumba neighbourhood, near the Bunia courthouse.

10 Q. What was that location known as?

11 A. The location was known as Thomas Lubanga's residence.

12 MR DESALLIERS: Thank you.

13 Your Honour, I would like to show this witness the same video excerpt that we
14 looked at earlier on today. Video EVD-OTP-0074 -- ERN -- DRC-OTP-0127-0061
15 and, more specifically, from 1 hour 48.34 to 1 hour 49.08.

16 PRESIDING JUDGE FULFORD: Certainly. We need to go into private session
17 please.

18 MR DESALLIERS: (Interpretation) I'm sorry, Mr President. We had requested to
19 go into private session pending a decision on the protective measures. Now that has
20 been resolved.

21 PRESIDING JUDGE FULFORD: So video played, please.

22 THE COURT OFFICER: (Interpretation) Please press "PC1" to view the video.

23 MR DESALLIERS: (Interpretation) So let us have that extract in its entirety to
24 begin with.

25 (Video excerpt played)

1 MR DESALLIERS: (Interpretation)

2 Q. Did you see that video footage, sir?

3 A. Yes.

4 Q. There is someone with an insect on his shoulder and a cap on his head in that
5 footage. Do you recognise that person?

6 A. Yes. It is -- I am the one. In fact my name is written on my arm, "Mbogo."

7 MR DESALLIERS: (Interpretation) Thank you. Let us please come back to 1
8 hour 48.34 and play this image in slow motion so as to be able to see what is written
9 on the arm of the witness. A bit further, please.
10 Your Honour, we are going to try to manipulate that image very delicately because it
11 is only a few seconds long but I believe there is a point at which we can see the entire
12 writing on the arm. So can we go to 1 hour 48.41 or thereabouts to see what is
13 written on the arm.

14 PRESIDING JUDGE FULFORD: Just pause for a moment, please, before that
15 happens. What's the point of this, Mr Desalliers?

16 MR DESALLIERS: (Interpretation) Your Honour, the witness has recognised his
17 name written on his arm, and I simply wished --

18 PRESIDING JUDGE FULFORD: What's the point, what's the point of the evidence?
19 We have a witness who is being called, who has identified himself, who presumably
20 is going to give evidence about relevant circumstances at the time that will have an
21 impact as regards the sentence that we should pass -- that we should pass.

22 What is the relevance of getting this individual to identify writing on his arm in a
23 video that also shows an insect? How is that going to help us?

24 MR DESALLIERS: (Interpretation) Your Honour, the objective of this evidence is
25 to present these images that would clearly establish that the witness recognises those

1 pictures and that it is that person indeed.

2 The reason for adducing this evidence is to establish that in the area of the

3 circumstances of the crime, the issue of determining the number of child soldiers of

4 less than 15 years who might have been in the UPC in 2002/2003, as far as we

5 understand, is based solely on visual assessments of the age of the witness.

6 This witness will enable us to establish that that visual assessment of the age of

7 witnesses could be extremely complex. This witness was considered -- presented as

8 someone who could be less than 15 years old, so the fact that we are able to establish

9 his age today clearly allows the Defence to support our argument to the effect that

10 using visual assessment as the sole element to determine the number of child soldiers

11 under 15 in the UPC is an exercise that is extremely difficult.

12 PRESIDING JUDGE FULFORD: Well, it's as I feared, Mr Desalliers. This is gravely

13 in danger of amounting to a -- an attack on the Article 74 decision.

14 We have reached conclusions as regards the use of child soldiers at the relevant time

15 that involved this accused and, in part, what you are seeking to do is to question part

16 of the basis on which the Trial Chamber reached that decision. That is, I'm afraid,

17 impermissible.

18 We are going to adjourn for five minutes so that the Judges can decide together

19 exactly how much of this evidence, if at all, we're going to permit to proceed but I

20 personally have grave concerns about it.

21 We will sit again at 20-past-12.

22 THE COURT USHER: All rise.

23 (Recess taken at 12.08 p.m.)

24 (Upon resuming in open session at 12.18 p.m.)

25 THE COURT USHER: All rise.

1 Please be seated.

2 PRESIDING JUDGE FULFORD: Mr Desalliers, we gave the Defence leave to
3 introduce the documents so that the identity civil status of the witness could be
4 established. That has happened.

5 We consider that you should now move on, please, to the other points that you
6 indicated that you wished to establish through this witness, part of which is
7 corroborating, as we understand it, the testimony of the previous witnesses -- the
8 previous witness and any other matters that are relevant as to sentence.

9 MR DESALLIERS: (Interpretation) Much obliged, your Honour. I would like to
10 take just one moment, please.

11 (Pause in proceedings)

12 MR DESALLIERS: (Interpretation) Your Honour, we have no further questions.

13 PRESIDING JUDGE FULFORD: In a sense, Mr Desalliers, that is troubling in that
14 you indicated that this witness would be in a position to corroborate and add to the
15 testimony of the previous witness as regards the way in which orphans and others
16 were dealt with.

17 If you are not intending to raise those issues at all, that serves to reinforce the concern
18 that I expressed earlier, that this is in fact an attempt to mount a collateral attack on
19 the Article 74 decision, and I'm sure as an advocate who understands his
20 responsibility you wouldn't have used it for those purposes. But I repeat, I am
21 troubled by the fact that now having dealt with his identity you are now not asking
22 any further questions.

23 Is there anything you wish to say on this?

24 MR DESALLIERS: (Interpretation) Just one moment, your Honour, please.

25 (Defence counsel confer)

1 PRESIDING JUDGE FULFORD: Yes, Mr Biju-Duval.

2 MR BIJU-DUVAL: (Interpretation) Yes, your Honour, I believe that there should
3 be no misunderstanding about the evidence of this witness.

4 Our intention in the Defence team was very clear. The evidence of this witness had
5 two objectives: The first point in the Defence submissions on the sentencing is the
6 issue of the assessment of the scope of the crime, and within the framework of that
7 issue on the scope of the crime the number of victims, we drafted our submissions
8 and we had a subtitle "Deceptive appearances," and the evidence of this witness was
9 intended to support that argument. It is not a collateral attack on the decision of
10 14 March. We are just going further in-depth into the issue so as to enable the
11 Chamber to assess the scope. That was the first point. We are not using a
12 roundabout way to attack the decision of the Chamber. That is not our intention.
13 Secondly, if necessary, our intention was also to corroborate the testimony of a
14 previous witness. It seems to us that that previous witness provided a very
15 comprehensive, precise and clear testimony and, at this present time, it does not seem
16 to us to be indispensable to dwell any further on that testimony, but we can go
17 further and ask a few more questions on that testimony.
18 I hope this explanation has dissipated any misunderstanding that the Chamber might
19 have had.

20 PRESIDING JUDGE FULFORD: Well, I'm grateful to you for the explanation,
21 Mr Biju-Duval. The difficulty, though, with the suggestion that this is a means of
22 developing in a wider sense the problem with a visual assessment of age, is that this
23 is one of the individuals in relation to whom the Chamber in the Article 74 decision
24 made specific findings, and so this is an attack on one of the findings that we made
25 related to a particular individual that we addressed, rather than dealing with it in a

1 more general sense. He's only able to assist in relation to himself, but there we are.
2 You have explained why you wished to call him, and the Chamber is not requiring
3 you, as it were, simply to fill the space to ask more questions if, in your assessment,
4 the previous witness has sufficiently comprehensively dealt with the matters you
5 wished her to deal with.
6 And so unless you press the point, we will take that as being the end of your
7 questions to this witness.
8 MR BIJU-DUVAL: (Interpretation) Just a moment.
9 (Defence counsel confer)
10 MR BIJU-DUVAL: Mr Desalliers has just told us that it is not necessary to continue
11 with the questioning of this witness.
12 PRESIDING JUDGE FULFORD: Thank you. Well, in those circumstances,
13 Mr Sachdeva, do you have any questions?
14 MR SACHDEVA: No questions, Mr President.
15 PRESIDING JUDGE FULFORD: No. Mr Walley?n?
16 MR WALLEYN: (Interpretation) With your leave, your Honour, I would like to
17 ask this witness a few questions on the documents that have been produced to
18 establish his identity, and this is because such documents have been at the centre of
19 witness testimonies but also with relation -- in relation to the witnesses that I
20 represent. So you have school documents and a voter registration cards that have
21 always been crucial in these proceedings.
22 PRESIDING JUDGE FULFORD: Sorry, Mr Walley?n, those go to the issues that we
23 considered during the course of the trial leading up to the Article 74 decision. They
24 are not relevant to the issue of sentencing. Brave attempt, thank you, but no
25 questions.

1 MR WALLEYN: (Interpretation) I have no further questions, your Honour.

2 PRESIDING JUDGE FULFORD: Thank you.

3 Sir, thank you very much indeed for your assistance this morning. That now brings
4 your evidence to an end. The Chamber wishes to express its gratitude for the fact
5 that you have co-operated by way of giving evidence and for assisting us through
6 your testimony.

7 (The witness is excused)

8 PRESIDING JUDGE FULFORD: Thank you. The link with the DRC can now be
9 terminated.

10 (Pause in proceedings)

11 PRESIDING JUDGE FULFORD: Now, Mr Ocampo, it is for the Prosecution to make
12 its general submissions on sentence first. We are in your hands as to whether we
13 start now or after the luncheon adjournment.

14 MR MORENO-OCAMPO: We estimate our presentation will be around 20 minutes,
15 or 15 minutes. I would like to have opportunity the Judge has questions. So for us
16 it would be better to do it after lunch, to have one session all the presentation.

17 PRESIDING JUDGE FULFORD: We'll hear your submissions, then, after lunch.
18 Thank you very much, Mr Ocampo. We will sit again at 2 p.m.

19 MR MORENO-OCAMPO: Thank you.

20 THE COURT USHER: All rise.

21 (Recess taken at 12.29 p.m.)

22 (Upon resuming in open session at 2.00 p.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE FULFORD: Maître Mabilille, it would be helpful for the Registry

1 to know whether we're likely in fact, given progress today, to conclude the
2 submissions this afternoon. At the moment, we are due to finish at 4. If by sitting a
3 little longer we will conclude this afternoon, the Registry would be prepared to assist,
4 but it would be useful for them to know in advance.

5 Do you have any views on what's likely to happen?

6 (Defence counsel confer)

7 MS MABILLE: (Interpretation) Yes, your Honour.

8 PRESIDING JUDGE FULFORD: Good. Thank you. We then put the Registry on
9 notice that we may ask for a short extension a little later this afternoon.

10 Yes, Mr Ocampo.

11 MR MORENO-OCAMPO: Mr President, your Honours. The Prosecution will
12 request a very severe sentence. Thomas Lubanga, Mr Thomas Lubanga, is guilty of
13 enlisting and conscripting children under the age of 15 and using them in hostilities.
14 In 1998, more than 100 states from all over the world decided that this crime is one of
15 the most serious crimes of concern to the international community as a whole.

16 Mr President, your Honours, your judgment recognised the fact that children are
17 particularly vulnerable and require privileged treatment in comparison with the rest
18 of the civilian population. Therefore, the sentence of the International Criminal
19 Court will confirm the special protection and the gravity of this crime.

20 As a consequence, the Prosecution will request a sentence in the name of each child
21 recruited; in the name of the Ituri community, including the members of the Hema
22 community directly affected by the crimes. They were living in fear that the
23 different -- their children could be taken from home. But the Prosecutor will request
24 a sentence also in the name of the members of the Lendu and other communities
25 attacked by Lubanga's, Mr Lubanga's militia. And finally, the Prosecutor will

1 request a sentence in the name of citizens concerned from all over the world, and 121
2 States Parties who provided a specific mandate to this office, and are committed to
3 any impunity of these crimes and to contribute to their prevention.
4 Mr President, your Honours, the Prosecution requests the Chamber to impose a
5 sentence of 30 years of prison to Mr Thomas Lubanga.
6 The Prosecution will provide its reasons. First, the Prosecutor is talking about the
7 crimes. The gravity of the crimes defines the gravity of the sentence. In a domestic
8 prosecution each separate act committed against a child will call for a serious
9 punishment. The International Criminal Court should not be more lenient. The
10 seriousness of Mr Lubanga's crimes, crimes committed for almost a year against
11 many victims, calls for a very severe punishment.
12 But in addition, the Prosecution will consider four aggravating factors: First,
13 Lubanga bears the greatest responsibility for the UPC actions. He was the top leader,
14 he was the top commander, he approved and supervised the common plan. No one
15 in his militia can refuse to follow his orders. For that reason, Mr Thomas Lubanga
16 was involved in each child recruitment, in each use of children into hostilities.
17 This is not about the mode of liability, it is about his role in the militia.
18 Second, Mr Thomas Lubanga's recruitment included particularly cruel treatment.
19 Children were abducted, their families or their families forced to accept the situation.
20 Children were trained instead of obeying their mothers, children had to obey their
21 commanders. The training was by terror. The children were trained to kill and to
22 rape. The children were launched into battle zones where they were instructed to
23 kill everyone, regardless of whether they were men, women or children; all were the
24 enemy. That was the education Mr Lubanga provided to the children recruited by
25 the militia.

1 The harm produced by this crucial treatment continue even after demobilisation.
2 Those who did not die as soldiers have permanent physical effects or have ongoing
3 psychological trauma; all them still suffer.
4 In addition to these two aggravating factors, the Prosecution will like to highlight two
5 aspects that should not be invisible. The crime of committing -- of recruiting
6 children as soldiers included as a fundamental aspect a gender discrimination and
7 additionally, the crime of recruiting children as soldiers denied these children and
8 their generations of their right to education.
9 Let me briefly elaborate on each of these two aspects.
10 Embedded in the recruitment of girl soldiers was their special use as sex slaves. In
11 the training camps, girl soldiers were the daily victims of rape by the commanders
12 and soldiers.
13 The Prosecution chose not to charge this gender aspect as a separate crime because
14 gender abuse is an essential part of the crime of recruiting girls as soldiers.
15 All the girls recruited as soldiers would be raped and abused because they are girls.
16 And the consequences, as emphasised by Ms Radhika Coomaraswamy in her amicus
17 brief to this Court, girl soldiers are too often invisible. "Wife", "wife" is the word
18 used to make this crime invisible.
19 A severe sentence will ensure that the gender suffering of these girls and other girls
20 will no longer continue to be invisible.
21 Let me be (indiscernible).
22 The special protection of children include not only protect them from violence and
23 injuries, but also protection of their rights to education. This education to be
24 lawyers, to be here in this Court, education is key, and victims and those close to
25 them repeatedly identified the loss of education as their immediate reality and one of

1 their greatest concerns.

2 The interruption, delay and/or denial of education to child soldiers deeply affected

3 their lives forever. And it's not just child soldiers, other families did not send their

4 children to the schools for fear of the recruitment. Schools were attacked.

5 Mr Lubanga's crimes affected the education system in Ituri in its entirety.

6 These are the four factors who make to consider aggravating the sentence, and the

7 Prosecutor cannot find any mitigating factor in order to reduce the sentence.

8 Mr Lubanga made a deliberate choice to use children in his militia. He knew he was

9 breaking the basic, the law, he was breaking the basic rules that the world established

10 to protect children. He tried to mislead and appease the international community

11 on this topic. He pretended to demobilise, and then went to Rwampara to

12 encourage the child recruits.

13 During the opening statement I put the Defence on notice that the Prosecution

14 anticipates to call for a severe punishment, very severe, close to the maximum.

15 Today, and for the reasons mentioned, the Prosecutor requests a 30-year prison

16 sentence.

17 However, and before I conclude my presentation, the Prosecution would like to offer

18 Mr Lubanga a last chance to mitigate his guilt. Today, or maybe tomorrow, but in

19 this courtroom Mr Lubanga can offer a genuine apology.

20 Mr Lubanga can commit himself to try to repair part of the harm that he produced.

21 A witness today said Mr Lubanga is a man of peace. The evidence of the shows

22 Mr Lubanga is -- was not a man of peace, but Mr Lubanga can take advantage of this

23 trial, of the intervention of the International Criminal Court. He can offer a genuine

24 apology to the children recruited. Mr Lubanga can offer a genuine apology to the

25 Hema families and, in particular, Mr Lubanga should offer a genuine apology to the

1 other Ituri communities, especially the Lendu community.

2 Mr Lubanga has to show genuine remorse. He had to prevent, he had to help to

3 prevent. He can help to prevent future crimes in Ituri.

4 So the Prosecution is ready to request -- to take this into consideration. The

5 Prosecution will be ready to consider this a mitigating factor, but he has to show

6 commitment, he has to use his leadership and position of respect to promote peace,

7 advocate for measures to unify and heal and improve injured communities. He has

8 to promote reconciliation and the reintegration of the child soldiers back into the

9 communities, in particular the girl soldiers.

10 Especially, Mr Thomas Lubanga has to promote education. The schools in Ituri

11 should be rebuilt. The Ituri teachers should be able to present the International

12 Criminal Court case of Mr Lubanga as the corner-stone of a new comprehensive effort

13 to re-establish lasting peace in Ituri. And Mr Lubanga has to lead that.

14 This is a chance that the Prosecutor's office is inviting Mr Lubanga to try to remedy

15 the harm he inflicted to all the affected communities. If Mr Lubanga does that, if he

16 seriously commits himself to work to prevent future crimes, to educate in peace the

17 new generations, to explain the importance of this trial, the Prosecution is ready to

18 recommend a reduced sentence of 20 years.

19 Thank you very much, your Honour. We are ready if you have questions, but the

20 Prosecution Office rests its case.

21 PRESIDING JUDGE FULFORD: Thank you very much, Mr Ocampo. Mr Walley. n.

22 Take your time, don't worry.

23 MR WALLEYN: (Interpretation) Your Honour, your Honours. Thank you for

24 having given me the floor here. I would like to thank you for having given us the

25 possibility to be the voice of victims in today's proceedings, the voice that the

1 Defence tried to quieten in its application of 2 May, the voice that Mr Lubanga never
2 wanted to hear, neither at the time of the crimes, nor during the trial, nor when the
3 crimes had been established.

4 And, of course, it is the right of all accused to challenge the criminal responsibility.
5 When the person who is convicted tries to minimise the suffering of the victims it
6 hurts, and this is the impression that the reading of the Defence submissions would
7 give. There's certainly some references to the intrinsic gravity of the crimes or even
8 the will not to minimise certain facts. But the main line of these observations is
9 denial of the seriousness of the crimes or a denial of the crimes.

10 On page 4, page 5, the enlistment of children under of the age of 15 years into the
11 UPC wasn't done in a generalised way nor on -- at a wide-spread level. On page 7
12 and 8, the number of these children was minimal. The witnesses in the field who
13 said the contrary were influenced by the deceiving appearances and an erroneous
14 opinion that was wide-spread given the lack of serious verification. Page 8 to 10, the
15 forced recruitment was extremely rare and all those who came to testify of such facts,
16 which they claim that they are victims of, are either liars or usurpators or false
17 witnesses. Even the demobilisation organisations essentially -- even the
18 demobilisation organisations essentially took in young cheats.

19 Ultimately, the ill-treatment in the camps, including the severe punishment, which
20 sometimes even -- and here I quote the Defence, "even degenerated into the death of
21 the person punished," are to be put within their context.

22 President, Honourable Judges, it is precisely to challenge such language that our
23 clients decided to participate in these proceedings so that the world, but above all the
24 population of Ituri and even their own parents understand finally that using these
25 children in this conflict was a crime of extreme gravity.

1 Of course, it has been said to you repeatedly, that everybody did that in the Congo.
2 It was even an army of kadogos which liberated the Congo from the dictatorship in
3 '97. That's true, and it's inadmissible, but these kadogo, who were demobilised in '97,
4 they didn't make themselves up into a group of victims. Some, many are even
5 proud of that. Why should it be different for the young people who had fought the
6 war in Ituri within the UPC?
7 Yes, it's different I think, your Honour.
8 First of all, because in the meantime, there was the entry into force of the Rome
9 Statute which was meant to put an end to such practices, but not only that, but also
10 because in Ituri it wasn't just children who had taken up arms to defend their families,
11 it was also a matter of enlistment in very precise circumstances: Forced recruitment,
12 inhuman treatment, degrading treatment, humiliation, hunger, violence and sexual
13 slavery. When we speak with our clients, what comes out of their discourse, the
14 stuff of their nightmares, is that often it was the case that it was these acts which were
15 worse than having been confronted with combat, when they had to bear a weapon to
16 protect themselves from the fire of the enemy.
17 The Defence also points out that some aggravating circumstances which were already
18 mentioned in our observations, and the observations of the Prosecutor, and even in
19 your own verdict of 14 March, could have been followed as charges. He could have
20 been prosecuted as charges under them.
21 We do share this opinion, and we have submitted this proposal, but it is not because
22 the Court is of the view that these crimes can no longer be considered under charges
23 that we should now ignore them when we discuss the circumstances in which these
24 crimes were committed.
25 Contrary to certain national legal systems, the Rome Statute does not enumerate the

1 aggravating circumstances which are constitutive elements of a particular crime or as
2 elements which would mean that a particular crime be punished with a stronger
3 sentence according to a specific parameter.

4 Article 78(2) is not in reality limited in any way to the circumstances that the
5 Chamber can take into considerations as those already taken up in the indictment.
6 Quite the contrary, Rule 145(1)(b) does specifically provide for the fact that the
7 Chamber can take into account all relevant considerations when it imposes its
8 sentence.

9 Certainly the Defence has a point in pleading that the aggravating circumstances
10 should be made imputable to the person who's convicted and not third parties, but
11 we've never claimed that Mr Lubanga would have executed children or whipped
12 children or confined little children in a damp well or raped young girls.

13 I can admit that in his residence he behaved as a person who was friendly with his
14 entourage. However, and independent of all the responsibility that Mr Lubanga has
15 to assume as a commander of these troops, he had to know that by launching a
16 recruitment campaign for young people of both sexes in a non-professional militia, in
17 the context of the DRC in a civil war which it had been for years, and without giving
18 precise instructions in order to protect children, there was the risk that children
19 without defence would be submitted to ill treatment or even sexual abuse and that
20 that was more than probable.

21 Your Honour, your Honours, issuing a sentence is to judge the gravity of the crimes
22 before taking into account the condition of the author, the perpetrator. In terms of the
23 victims but also for public opinion and for those who are committing similar acts
24 today, as well as for the sentenced person himself, the sentence gives a signal, will
25 give a signal, a signal in one sense or in another. A signal, a discouraging signal is

1 what we would ask for.

2 In other proceedings before ad hoc tribunals, in Cambodia and also recently before
3 this Chamber here, the accused have, while challenging their individual
4 responsibility, at least admitted the gravity of the crimes. They have expressed
5 regret for what happened. They have recognised the suffering of victims and, until
6 now indeed, this has not been the case in these proceedings here. And it is perhaps
7 what is the hardest, indeed, for our clients.

8 After your verdict on guilt, we went to see one of our clients and one of them -- well,
9 we went to see our clients. One of them told us that "If Mr Lubanga were to
10 apologise, I could pardon him."

11 In our observations of 14 May and even before, we offered our hand to the accused
12 and formulated proposals which could contribute to reconciliation between his
13 community that of our clients. And between this community and its own youth, but
14 there was no reaction, neither in the submissions to the Court nor in any other way.

15 Your Honour, your Honours, it is in the name of this youth that we would ask that
16 the decision that you take takes into account the gravity of the crimes and that they be
17 recognised by your Court.

18 Thank you very much.

19 PRESIDING JUDGE FULFORD: Thank you very much, Mr Walley. Ms Bapita?

20 MS BAPITA: (Interpretation) Your Honour, President, your Honours, honourable
21 members of the Court. After six years the first historic trial of the International
22 Criminal Court is arriving at the phase of pleadings for the determination of the
23 applicable sentence of the accused that your august Chamber has found guilty in
24 view of the evidence submitted to you by the parties and participants, and which
25 have been widely debated.

1 As you know, the victims, participants and non-participants, reassured by the verdict
2 that you rendered on 14 March 2012, expect now that your august Chamber will
3 impose a sentence which is sufficiently dissuasive such that the crimes which the Ituri
4 population has suffered are not committed again, and that the militia who are still
5 operational in the region renounce the use of arms and stop committing atrocities.
6 The sentence that you hand down is also expected and awaited as an avenue which
7 will make possible reconciliation between the populations of the region, in particular
8 the Hema and the Lendu.

9 The team V02, the legal representation of the victims undertook with a view to
10 impartiality and reconciliation to try to find what could constitute attenuating factors
11 of the responsibility of Mr Lubanga for the events of 2002/2003. This was an
12 arduous task which led absolutely to nothing. The team V02 of the legal
13 representation of victims has not, on the other hand, had any difficulty in finding
14 some aggravating elements to the responsibility of Mr Lubanga. Referring to his
15 personality and his behaviour. Firstly, the fact that Mr Thomas Lubanga Dyilo is an
16 educated person, a graduate of psychology from the University of Kisangani, it
17 should have made it possible for him to be aware that children under the age of 15,
18 girls and boys, are vulnerable people.

19 Furthermore, the means that were used in most abductions and crimes were moral
20 and physical constraint on these children under the age of 15 and also on their
21 parents who may or may not be members of the Hema community of Ituri.

22 Furthermore, it is also essential to take into consideration the harm done to victims,
23 both direct and indirect harm, that has resulted from these events. The scale of the
24 harm caused to the victims and to the members of their families is enormous.

25 Indeed, most of these child soldiers have not been able to finish their studies and they

1 have been abandoned by their families and the community which
2 considered -- consider them to be persons who have the blood of innocents on their
3 hands. These children have become disobedient and delinquent. The girls, for the
4 most part, were victims of rape and had involuntary pregnancies. Others were
5 forcibly married with their commanders who abused their young age.
6 These crimes make their reintegration into society difficult because they are
7 considered as persons who have brought misfortune and desolation to their
8 community.
9 The crimes that Mr Lubanga has been found guilty of are grave indeed; enlisting,
10 conscription, and the participation of child soldiers in hostilities, have made them
11 criminals and robbed them of their childhood.
12 These children have been forced to abandon studies, to learn no trade other than to
13 bear arms. They are of no use to their families nor to their communities, whilst they
14 have been exploited to fight in a war from which they have had no benefit but which
15 on the other hand was profitable for Mr Lubanga, his armed group and his partners.
16 With regards to the degree of participation of Thomas Lubanga Dyilo in the
17 commission of these crimes which have been -- that has been addressed by the
18 Prosecutor, I shall not go back to that. I have made my observations thereon.
19 Your Honour, your Honours, the International Criminal Court has the onerous duty
20 of setting a significant precedence in international criminal justice in that it is the first
21 international judicial institution which has given a statutory and official place to
22 victims. May the cry -- may their cry continue to be heard until the final stage of this
23 trial so that all the world can hear the conclusion thereof with a special mention of the
24 east -- of the Democratic Republic of Congo which has been the theatre of atrocities
25 witnessed by your Chamber, and continues to be.

1 We believe in international criminal justice. We are pleased with your decision
2 rendered on 14 March 2012, and we hope that the logical follow-on from there will
3 also be to the satisfaction of all such that future generations may believe in peace.

4 May it please the Chamber, to take account thereof and to hand down a significant
5 sentence which will discourage such practices. I would thank you.

6 PRESIDING JUDGE FULFORD: Very grateful Ms Bapita. Thank you.

7 Maître Mabilie.

8 MS MABILLE: (Interpretation) Mr President, we shall make our comments in the
9 following order: Marc Desalliers, myself and Jean-Marie Biju-Duval will conclude.
10 Then Mr Thomas Lubanga will make a statement.

11 MR DESALLIERS: (Interpretation) Your Honours, before we delve into the crux of
12 the matter which my colleagues will do after me, let me speak a few words about the
13 unfolding of these proceedings, the trial of Mr Lubanga, how it unfolded.

14 Defence would like to invite the Chamber, as it comes to its determination of an
15 appropriate sentence, to determine such a sentence bearing in mind that

16 Mr Lubanga's fundamental rights have been breached mainly because of significant
17 failures on the part of the OTP relating to its statutory obligations. First of all, about
18 dead-lines in this case. At the time of the judgment on 14 May 2012 Mr Lubanga
19 was in detention and had been in detention under the Court's authority for six years.
20 During that time, the Chamber on more than one occasion underscored the fact that
21 the protective measures applied to Prosecution witnesses had been done with
22 significant and unjustified delays and had therefore delayed the commencement of
23 the trial.

24 The Chamber, in its decision relating to the interview of Madam Le Fraper Du Hellen,
25 recalled that the Prosecutor's failure to disclose significant volumes of potentially

1 exculpatory evidence had led to inexcusable delays in the trial. That failure to
2 disclose led to the first stay of proceedings on 13 June 2008. The proceedings were
3 stayed for about four months.

4 The Chamber also indicated that the deliberate refusal by the Prosecutor to comply
5 with an order to disclose issues relating to the identity of an intermediary had led to a
6 second stay of proceedings which lasted another four months, thereby delaying the
7 proceedings for that long.

8 Such a situation, to the best of our knowledge, is unprecedented in the area of
9 International Criminal Law. A Trial Chamber, being forced to stay proceedings
10 twice because of failures of the Office of the Prosecutor and thus having to order the
11 release of the accused person, these are unprecedented. There were failures in
12 investigation by the Prosecutor, which led to the Chamber spending significant time
13 examining evidence relating to individuals whose testimony was, at least to some
14 extent, inaccurate or fraught with dishonesty.

15 Yet, it is the fundamental right of an accused to be tried without undue delay. When
16 an individual is accused of serious crimes, such individual should not be needlessly
17 kept in a situation of extended uncertainty, particularly when such person is held in
18 detention during proceedings.

19 Against this backdrop, it is therefore clear that Mr Lubanga has suffered prejudice
20 because the trial, to a very large extent, went beyond what could be considered as a
21 reasonable time frame.

22 These two stays in proceedings only go to further aggravate the prejudice against
23 Mr Lubanga. The Trial Chamber had to order the suspensions or stay of
24 proceedings in order to uphold the principle of the fairness of trial, and to sanction
25 the OTP, and this all led to Mr Lubanga spending some eight months in detention

1 without even knowing whether the trial against him was going to continue or not.
2 Those delays in proceedings were not the only result of the failures by the Office of
3 the Prosecutor. Late disclosure of some elements of proof or evidence deprived
4 Defence of certain opportunities to investigate matters for its own case and also in
5 relation to questioning of some Prosecution witnesses.
6 The fact that Prosecutor himself did not cross-check evidence led to a false picture of
7 the events being painted, particularly regarding Mr Thomas Lubanga.
8 In its judgment, the Chamber indicated that the nine individuals who were presented
9 as former child soldiers were identified early in the trial and the Prosecutor
10 frequently referred to their story to demonstrate the manner in which the children
11 were allegedly enrolled, conscripted and used in the FPLC. Their story stands at the
12 very centre of this trial and was carried in the media extensively over all the years the
13 trial lasted. And although the Chamber in its judgment of 14 March completely set
14 aside the entire testimony of those alleged child soldiers their lies, however,
15 necessarily leave an mark on public opinion as to the manner in which events
16 unfolded in Ituri.
17 In its decision relating to an interview granted by a representative of the Office of the
18 Prosecutor, Madam Le Fraper Du Hellen, the Chamber severely criticised her for the
19 statements made by that person relating to this trial. The Chamber deplored the fact
20 that testimonies had been distorted and an improper picture of the trial had been
21 portrayed. The Chamber availed itself of that opportunity to recall that it was
22 necessary for all parties and participants to be exact and to show reserve in their
23 statements relating to evidence and to the procedures.
24 Yet the very next day after the judgment of 14 May -- of 14 March rather, the Office of
25 the Prosecutor granted a press conference at which a special homage was paid to all

1 child soldiers who had overcome their suffering and who had come to testify about
2 their painful experiences during this trial without mentioning that the entire content
3 of those testimonies had been thrown out by the Chamber.

4 I must also refer to some of the points that have been raised by the Prosecutor today.
5 Today the Prosecutor has called on you to take into consideration many aggravating
6 circumstances because soldiers were instructed that men, women and children were
7 to be killed regardless of their origins. Where do we find such material in the
8 evidence?

9 It is being argued today that Mr Lubanga is being accused today of crimes which
10 deny the children of the Ituri their right to education. The argument is made before
11 this Court today that the children of Ituri stopped going to school because they were
12 afraid of being enlisted by Mr Lubanga. That at the very least is a surprising
13 allegation because, your Honours, the Defence clearly brought evidence to show that
14 those stories by those alleged child soldiers were untruthful and this was
15 substantiated by documentary evidence that those children were still attending
16 school.

17 What else can I say when the Prosecutor claims that all the girls were raped? Where
18 can we find that in the evidence? Under such circumstances, your Honours, how
19 then can the public understand that these horrible stories that were told by these
20 child soldiers before this Court were not entertained by the Chamber?

21 Let me say a word on the publicity of trials, the open nature of our trials. It is true
22 that much of this trial took place in closed session because many witnesses asked for
23 protective measures. Defence does not today attempt to argue that all these requests
24 were baseless, or unreasonable. No, we cannot say so. However, the child soldiers,
25 or those individuals who were presented before you as child soldiers, who argued

1 that their lives were in danger if they testified in open session because of their past,
2 clearly, when the Chamber is placed in such a situation it has no choice but to grant
3 protective measures. The Court has the duty of ensuring the protection of witnesses.
4 But upon full examination of the evidence, once it became clear that at least those
5 witnesses were not sincere, or were part of a fraudulent undertaking, then we can
6 only say that the grounds for protective measures are false and that a very significant
7 part of the trial was held in closed session for reasons that cannot be justified.
8 I therefore conclude by stating that the International Criminal Tribunals have
9 established that where the fundamental rights of an accused person have been
10 breached, such a person's rights must be restored and that such restoration in case of
11 conviction can be done by a reduction of the sentence. Such a restoration must be
12 effective and not merely symbolic. It must be real and concrete.
13 For this reason, Defence prays the Chamber to take into consideration the breach of
14 the fundamental rights of the Mr Lubanga as it comes to its determination.
15 Thank you.

16 PRESIDING JUDGE FULFORD: Just before you sit down, Mr Desalliers, and thank
17 you for your submissions, the Chamber would not accept one element of what you've
18 submitted. It may be that this is possibly something that's come out incorrectly as a
19 result of translation, excuse me, but in the English, don't look it up now, but I'll just
20 cite what was said at page 55, line 12, you advanced a submission that the
21 Prosecution's late disclosure had led to a deprivation of an opportunity for the
22 Defence to investigate matters for its own case.

23 Now, should that submission ever be repeated elsewhere for the purposes of other
24 proceedings, there would need to be very careful investigation of all the applications
25 that were made by the Defence in relation to opportunities to prepare its case as a

1 result of late disclosure by the Prosecution.

2 And unless my memory fails me, Mr Desalliers, I don't think any of your applications
3 for time were ever refused and the Chamber, to the contrary, took steps to ensure that
4 all the requests that -- all the reasonable requests that you made for time to
5 investigate for your case were granted.

6 And so I want to make it clear that that particular submission is not accepted by the
7 Chamber.

8 MR DESALLIERS: (Interpretation) Mr President, we as Defence are ready to agree
9 with you because indeed we did make a number of applications for extensions for the
10 purposes of conducting some investigations and those requests were granted by the
11 Chamber. Yes, indeed, the Chamber assisted the Defence in these matters of
12 investigations and we do acknowledge and recognise that fact.

13 I was not in any way reproaching the Chamber for anything but, Mr President, there
14 comes a time -- you see, when I started my statement I talked about the delays that
15 this trial had suffered. Well, it could be argued that maybe Defence opted not to ask
16 for an extension. That was a choice. Proceedings must come to an end at some
17 point.

18 Now, if the Defence gets information about links between a witness who testified in
19 2009 and an intermediary which evidence becomes available in 2012, it might be
20 necessary for additional investigations to be conducted for the witnesses of 2009 to be
21 called back and so on and so forth, and this would put us in a vicious, unending cycle.
22 That is exactly what I meant to say, Mr President.

23 I did not at all intend to criticise the assistance granted to the Defence by the
24 Chamber in conducting its investigations. Thank you.

25 PRESIDING JUDGE FULFORD: Thank you for your explanation. I wanted to

1 ensure there was no misunderstanding, Mr Desalliers. Mr Biju-Duval. Oh,
2 Maître Mabilille. Sorry, I've forgotten the order.

3 MS MABILLE: (Interpretation) Your Honours, your Chamber found Mr Lubanga
4 guilty of enlistment, conscription and use of child soldiers in hostilities. That is in
5 your judgment of 14 March 2012.

6 You will hand down a sentence taking into account considerations such as the gravity
7 or seriousness of the crime, and the personal situation of the convicted person, and
8 I would like to talk about the gravity and scope of the crime.

9 Defence has never disputed the fact that the crimes charged against Mr Lubanga are
10 intrinsically very serious. At the time of handing down its sentence, the
11 Chamber will need to take into account the scope of the crime but the question that
12 arises today and which is very crucial is the following:

13 Do we actually know the number of children under 15 years old who were enlisted in
14 the FPLC? What do we know at this stage of the proceedings about the number of
15 children that were forcibly enlisted or the number of children who actually took part
16 in hostilities?

17 I would say at the very least that we are certain of only one thing, which is a major
18 uncertainty, on which evidence can the Chamber rely on today to assess the scope of
19 the crime? This is not the least of the paradoxes in these proceedings, because we
20 are at the heart of a crime which is enlistment, conscription and use in hostilities of
21 child soldiers, whereas all the children who came and testified here, their testimonies
22 have been set aside.

23 In its judgment, the Chamber stated that the crimes of conscription and enlistment are
24 committed when a child less than 15 years old is forcibly enlisted into a group, armed
25 group, or he joins the group voluntarily, and the Chamber pointed out that the crime

1 ceases when the child reaches the age of 15 years or leaves the armed group.
2 But these criteria set out by the Chamber, if evidence was available to assess the
3 degree of gravity of the crime, would have allowed us to make a determination but,
4 yet again, we have no evidence that would indicate exactly what a young person did
5 – when a particular young person was enlisted, when he was forced to join an armed
6 group, an armed group, did that child leave the armed group after two months? We
7 have no serious evidence attesting to that before us.
8 Your Chamber excluded the testimonies of the child soldiers that were called here,
9 the so-called child soldiers, and used or relied on other evidence; such as video
10 footage, the testimonies of other Prosecution witnesses who based their testimonies
11 on visual assessments and documentation.
12 I would like to draw the attention of the Chamber to the degree of uncertainty of that
13 evidence. The Defence submits that very frequently appearances can be deceptive.
14 We would like to point out that the assessment of age through video footage, and a
15 determination of the age of the persons in question, is a particularly delicate exercise.
16 It is for this reason, and the Chamber understood this, that we called a witness to
17 testify that physical appearance is deceptive, and when it comes to analysing video
18 footage - and I will go even further and include other elements - this physical
19 appearance can constitute a real concern and it seems to us crucial to draw the
20 attention of the Chamber to the margin of error involved which can be significant.
21 What I would refer to as this optical illusion or deceptive appearances can be
22 explained in several ways. There are physical specificities linked to community
23 affiliation and these appearances can also be explained by the fact that those young
24 people suffered from dietary deficiencies at a crucial time in their development which
25 can have an impact on their physical appearance leading to these children looking

1 younger than they really are.

2 We would like to submit that the Chamber cannot make a determination simply by

3 looking at video footage to assess the number of children that would have been

4 recruited while under 15 years old. The margin of error could be considerable, and

5 it could also be significant, even for the witnesses who came to testify in this

6 courtroom, in your courtroom, about the presence of young people under the age of

7 15 in the armed groups.

8 Even if they were speaking based on real good faith, they could have thought that

9 these young people were younger than they really were, so we are saying that there is

10 great uncertainty about the number of young people recruited into the FPLC.

11 We also have the same concerns regarding the number of children under 15 who

12 actually were used in hostilities. I shall not redo my demonstration but I am saying

13 that we have no clear and precise evidence. Those who came to this Chamber and

14 testified about their use in hostilities have been excluded from the evidence.

15 The same applies as regards the third crime, where there is even greater uncertainty

16 regarding the number of children under 15 who were allegedly victims of

17 conscription, and I would like to point out that all the testimonies of the witnesses

18 who claim to have been abducted have been set aside by the Chamber.

19 I would like to draw the attention of the Chamber to another element that might have

20 been taken into consideration to establish the scope of the crime. This is a

21 phenomenon, which has been raised before this Chamber, the phenomenon of fraud

22 within the framework of the demobilisation activities.

23 Witness 0023 told us not that these were fraudsters, as one of the legal representatives

24 said, but that the misery brought about by the war prompted many civilians to pass

25 themselves off as former soldiers when they went to CONADER in order to receive

1 financial benefits.

2 Similarly, Witness 0031 admitted that some of the children who went to the

3 demobilisation centres declared a lower age in order to be able to benefit from certain

4 advantages that were made available to children of a younger age, and that some

5 children even tried to register themselves in more than one demobilisation centre

6 sometimes using a different name.

7 So Ituri was devastated, and it was in this context that the children declared

8 themselves as child soldiers in the demobilisation centres so as to receive certain

9 benefits.

10 The only conclusion that the Defence can draw is that the proceedings have produced

11 less than reliable statistics on the real number of child soldiers.

12 I would like to conclude this point by stating the following: Your Chamber found

13 that the UPC/FPLC carried out a large-scale campaign aimed at recruiting young

14 people including children younger than 15 years old forcibly or voluntarily. At the

15 time of handing down the sentence, the question that arises is the following: What is

16 the proportion of the children less than 15 years old? And that question remains

17 unanswered.

18 I believe it is reasonable for me to conclude by saying that the evidence adduced

19 during the trial does not make it possible to have any certainty about the scope.

20 Very briefly, I would like to touch on the aggravating factors that were raised in the

21 Prosecution's submissions. I would also like to refer the Chamber to our written

22 submissions on the other aggravating factors.

23 PRESIDING JUDGE FULFORD: So I can be merciful to the transcribers and

24 interpreters, shall we move on to the next point after a short break, Maître Mabilie?

25 We'll sit again at 25-past-3.

1 THE COURT USHER: All rise.

2 (Recess taken at 3.11 p.m.)

3 (Upon resuming in open session at 3.26 p.m.)

4 THE COURT USHER: All rise.

5 Please be seated.

6 PRESIDING JUDGE FULFORD: Yes, Maître Mabilie.

7 MS MABILLE: (Interpretation) Mr President, your Honours, in his submission the
8 Prosecutor set out five aggravating circumstances. I would like to refer you to our
9 own submissions on that, but I also would like to make some clarification about the
10 aggravating circumstance that is supposed to be sexual violence.

11 But before that I would like to say that I am surprised, flabbergasted and even
12 alarmed that a short while ago the Prosecutor stated things that are not established in
13 the evidence at all, at least the way I have read it, and I am only referring to evidence
14 relating to sexual violence.

15 And I would like to read out the sentence of the Prosecutor. "All the girls who were
16 recruited were raped." I know that there is a love of sensationalism, of aggravating a
17 situation that is sufficiently serious, but I believe that it is scandalous for such a
18 statement to be made, that all the girls who were recruited were raped; whereas, we
19 have a record of the proceedings so far. What evidence is there in that record to
20 prove such a statement? I'm simply quoting that statement to indicate that it is
21 absolutely abnormal and unusual to make such a statement that has not been
22 established on the record.

23 The Prosecutor should be ethical enough to stick to the evidence. He also wishes to
24 consider as aggravating circumstances the allegations of certain witnesses according
25 to which some members of the FPLC allegedly perpetrated sexual violence against

1 certain recruits.

2 Let me point out that the Prosecutor has never tried Thomas Lubanga for sexual

3 violence, which is a specific crime provided for in the Statute. He has never applied

4 for additional charges, and at that time even opposed it, stating that it would be

5 unfair for to the accused to be prosecuted on the basis of that charge.

6 In the notification of charges document of August 2006, as well as in the confirmation

7 of charges decision, there is no allegation about sexual violence. So it would be

8 totally unfair today, using the pretext of aggravating circumstances, to introduce new

9 charges which could not have been effectively challenged by the Defence, given that

10 the Chamber knows that the Defence did not carry out any investigation, they did not

11 cross-examine witnesses on those charges and did not call any witnesses because the

12 charges were not included in the accusations made against Mr Thomas Lubanga.

13 And even if sexual violence was admitted to have been perpetrated, there is nothing

14 to attribute the responsibility for this to Thomas Lubanga under 23(3)(a) as a

15 co-perpetrator. No evidence shows that the accused persons ordered, encouraged

16 such violence or that he was personally aware of it.

17 It goes without saying that the sexual crimes cannot be considered as inevitable

18 consequences in the normal order of events related to enlistment and conscription,

19 which are the charges against the accused. It is not because those procedures were

20 carried out that inevitably there would be rapes. The Prosecutor can therefore not

21 request the Chamber today to take into consideration allegations relating to crimes

22 for which Mr Lubanga was neither tried nor convicted.

23 The Chamber, therefore, cannot take these aggravating circumstances into account

24 with regard to Mr Lubanga. And I would like to finish there, your Honour.

25 PRESIDING JUDGE FULFORD: Thank you very much, Maître Mabilie.

1 Mr Biju-Duval.

2 MR BIJU-DUVAL: (Interpretation) Your Honour, your Honours. Maître Mabilille

3 has just pointed out the major uncertainty that there has to be which should give rise

4 to the greatest prudence. Now I would like to highlight certain certainties that there

5 are which in our opinion the Chamber should take into consideration in order to

6 come to a just and fair sentence.

7 Firstly, Rule 145 invites the Judges to take into consideration the circumstances with

8 regards to exonerating circumstances under Article 31 of the Statute, and we consider

9 on this subject that the responsibilities of Thomas Lubanga as leader of the UPC

10 cannot be fairly sanctioned unless they are examined in light of the massacres which

11 were threatening the population of Ituri and in particular the Hema community

12 during the period covered by the charges.

13 Thomas Lubanga was at the head of the UPC/FPLC at a time when certain

14 communities within Ituri, and in particular the Hema community, were quite simply

15 threatened, threatened with extermination. And there is no doubt that the armed

16 forces which were organised on the initiative of Hema military leaders had as the

17 raison d'être to cope with this threat of extermination that there was. That is to say

18 that this armed force for which Thomas Lubanga was responsible constituted, in

19 exceptional circumstances, legitimate defence, and these exceptional circumstances

20 are mitigating circumstances.

21 We are talking about mass crimes here. They were committed before the eyes of

22 United Nations observers, Blue Helmets of the United Nations, and it was -- it's a

23 Srebrenica, a Congolese Srebrenica. Like ten Srebrenicas, not just one. And it's not

24 only the men of the fighting age who were killed, there were women, there were

25 children. There were old persons as well. Massacred without the United Nations

1 soldiers intervening in order to protect them. And it was in this context that the
2 armed force was established which would become the FPLC.
3 Clearly, there was massive and voluntary enlisting because there was a threat, there
4 was a threat of extermination, mass extermination, and the urgent establishment of
5 this armed group which Thomas Lubanga is accused of is -- came out of the
6 imperative need that there was to deal with crimes of extreme gravity.
7 So with regards to fairness, the fairness of the sentence, when it comes sentencing for
8 the enlistment of child soldiers, well, the must Chamber take into the account
9 exceptional circumstances which determined this enlistment.
10 PRESIDING JUDGE FULFORD: Mr Biju-Duval, forgive me interrupting just for a
11 moment. Maître Mabilie has just very fairly made the submission that the sentence
12 that we impose ought to be based carefully on the evidence that has been introduced
13 during the trial.
14 Extending that to the submission that you have just made in relation to the threat of
15 extermination or mass extermination leading to the creation of the force, are you able
16 in a convenient way to refer us to the evidence in the trial which supports that
17 general proposition?
18 It may be it's already set out in your written submissions, but I want to ensure that
19 the factors of this kind, which are clearly important to your submissions, are properly
20 made out and referenced in relation to the evidence that we've heard during the
21 course of the trial.
22 MR BIJU-DUVAL: (Interpretation) Yes, your Honour, of course these elements are
23 detailed in our submissions, and some examples that I have to my memory now, I
24 still remember the issue or the question that I put and the answers that were given by
25 the expert Prunier. We also went over all the massacres which I'm speaking about

1 today. I also remember the testimony of Witness 17 who was speaking about
2 massacres in his neighbourhood in Mudzipela neighbourhood and others are also
3 mentioned in our submissions.

4 PRESIDING JUDGE FULFORD: These were very general powerful and obviously
5 important submissions. I just wanted to ensure that the evidential basis for them has
6 been properly identified. It clearly has, so please carry on.

7 MR BIJU-DUVAL: (Interpretation) Thank you very much, your Honour. It is this
8 requirement of fairness, which in our mind should make the Chamber take into
9 account this threat of extermination, this criminal chaos that there was, makes it
10 necessary all the more given that this situation, where there were systematic and
11 wide-spread massacres in Ituri during this period, was created by the Ugandan and
12 Rwandan and Congolese governments, governments which were deliberately spared
13 by the Prosecutor.

14 We consider that today, the Prosecutor has lost all credibility, all legitimacy to call for
15 a sentence, and what sentence, 30 years? To call for a sentence against Thomas
16 Lubanga.

17 The mandate of the Prosecutor is the fight against impunity for the most high-ranking
18 people, the people really behind the crimes that were committed. From the very
19 start of these proceedings, the Prosecutor in his written submissions recognises that
20 the Ugandan and Rwandan governments are directly or indirectly involved in the
21 crimes which took place in Ituri, and the biggest international human rights
22 organisation denounced the active and direct role which was played by the Kinshasa
23 government, and I won't go back over that point, we've already raised it on multiple
24 occasions during which the Prosecutor has never responded. But this is -- there's an
25 additional obstacle which the Chamber meets with regards to a fair sentence, and also

1 in finding the right sentence.

2 When you hand down a sentence, naturally this is acting against impunity, but in this

3 case the fight against impunity is not being served here. Instead of making

4 from -- President Museveni, Kagame and Kabila, making them first-ranking accused,

5 the Prosecutor has made them privileged partners. How can the Prosecutor call for

6 such a sentence against Thomas Lubanga while everything that happens suggests

7 that the Prosecutor himself guaranteed impunity to the those most responsible for the

8 massacres committed in Ituri? How can justice find its place in that regard? How,

9 under these conditions, can a sentence be handed down which is recognised by all as

10 just and fair? How, under these conditions, can we avoid that on learning of the

11 sentence pronounced against Thomas Lubanga, the victim communities, who have

12 suffered these atrocities, say "it's not fair, it's not fair, those who organised the chaos

13 and profited from it, they've been spared.

14 And the one who has suffered amongst us is sentenced."

15 And in order to try to arrive at the just sentence, the fair sentence, you necessarily

16 have to have a situation whereby the Chamber takes into account this major injustice.

17 The sentence should be proportional to the guilt, and that's what Rule 145 tells us,

18 and it would seem to us that having assessed the culpability or guilt of Thomas

19 Lubanga, you can legitimately consider that amongst the leaders involved in the

20 events in Ituri it was -- he is the least guilty of all.

21 We also wish for the Chamber to examine the mobile -- the motives that led Thomas

22 Lubanga, his motives at the time, taking into account the profound reasons that

23 guided him in his behaviour and in his decisions at the head of the UPC during the

24 few months when he exercised power.

25 And it is not to personally enjoy power that Thomas Lubanga took control over the

1 revolt. When the revolt broke out in April 2002 he was in power, Minister of
2 Defence of the RCD, Mbusa Nyamwisi's RCD government; Mbusa Nyamwisi who
3 became a minister for President Kabila, having been defeated in Bunia.
4 And Thomas Lubanga could have followed, he could have followed this path. He
5 would have been able to follow Mbusa Nyamwisi in Kinshasa and also enjoy
6 benefiting from power. And he could have left Ituri as prey to massacres and that is
7 not the path that he chose. He resigned in 2002. He denounced the crimes of the
8 authorities, and he was immediately imprisoned for that on the orders of President
9 Kabila in Kinshasa, in the Demiap, political jail of Kinshasa. That wasn't the
10 behaviour of a person who wanted power and money. And what we would like to
11 highlight here is that behind the responsibility of Thomas Lubanga, the source of that,
12 there is not a criminal will behind that.

13 On the other hand, there is a moral standard. Behind the standard of Thomas
14 Lubanga there was not the will to commit a crime on the -- quite the opposite. He
15 wanted to put an end to the crimes that had were turning Ituri into a bloodbath.
16 And we have to finish with the caricatures. We have to finish with the stereotypes,
17 the media stereotypes, the false stereotypes of a warlord. We ask you, when you are
18 going to sanction, when you shall hand down the sentence, to try with prudence and
19 fairness the activities of a leader, a political leader, who was in a historic situation
20 where there was extreme confusion and one of extreme gravity, and in a period
21 which is characterised by a complexity which is extremely contradictory.

22 The period of charges is peppered with fighting, but what the trial has shown is that
23 the evidence, and the evidence has shown, and this is something that we've also
24 mentioned in our submissions, it's detailed in footnotes, the evidence shows that
25 Thomas Lubanga in his residence in Bunia, or in the villages, that he gave much of his

1 time to pacification efforts intending to bring communities together, and the witness
2 from this morning came once again to highlight this aspect.
3 Thomas Lubanga firstly brought together all the communities of Ituri in the
4 institutions, political institutions and the administrative institution, which he set up.
5 These are witnesses of the Prosecutor who confirmed that. Witness 41, for example,
6 and he increases the meetings throughout the territory and it was the videos that
7 were transmitted by the Office of the Prosecutor which demonstrate that, too.
8 In his residence in Bunia, he received prominent figures from all the communities.
9 We've come -- we've heard about that in the testimony from this morning, who will
10 say that this approach, the steps taken for the pacification, that this work, constant
11 work that he carried out, is not sincere. Who is coming to say that this is a
12 masquerade? Nobody. And how can't we take it into account when the time
13 comes to judge fairly, the responsibility and guilt of Thomas Lubanga? And what
14 about the ideology that he proposes and that he puts forward, is he a warlord who
15 would aggravate ethnic hatred to mobilise a community around him seeking revenge,
16 seeking vengeance? Is he a politician without scruples, who uses hate to be able to
17 gain power, to impose his power? In Ituri 2002/2003 that would have been
18 extremely easy all over the Africa Great Lakes Region, all that area, for years it was
19 almost the rule, the normal rule in order to gain power, but that is not the case for
20 Mr Thomas Lubanga.
21 And there too, it was the -- it was the evidence that's in the case file, the case record,
22 that shows that. We've got in the case record his speeches, the speeches in Bunia, the
23 speeches in the villages. They are in the case record, and in 2002/2003 Thomas
24 Lubanga, he does not miss an opportunity to address the populations, and the
25 Chamber knows that. In his speeches, he didn't call for violence, he didn't speak a

1 word against a rival community.

2 The Chamber knows that in his speeches he unceasingly denounced the ethnic

3 rivalries that there were. He does not flinch from calling for reconciliation. He

4 calls for peace, and there too, all his speeches, which are in the case record, were they

5 just a masquerade? And the numerous documents from the UPC archives on this

6 pacification policy, which are in the case record, are they all -- all these documents,

7 are they just propaganda instruments? Are they hypocritical, insincere, misleading?

8 The massacres, interethnic massacres which took place during the same period, do

9 they take all credibility, all sincerity from these speeches and documents? Of course

10 not. One can't say that, one doesn't have the right to say that, because it's false.

11 We -- he was -- people wanted to present him as a Hema warlord calling for

12 mobilisation against the Lendu enemy. A few moments ago Prosecutor stated the

13 following: "Thomas Lubanga did not stop saying to the population and the soldiers

14 of the FPLC, and here I quote, "That they are all enemy, that the children were -- had

15 instructions to kill everybody without consideration for women and children.

16 Everybody was an enemy, that is the education that Thomas Lubanga gives to the

17 population and to the FPLC recruits."

18 Mr Prosecutor, this way of -- and here I go back to what was said with a lot of

19 moderation, by Catherine Mabilile, what she said, this is inadmissible, inadmissible,

20 and why? Because this it is a misrepresentation, a distortion of what we've heard all

21 these years during the trial.

22 And I would quite simply propose to the Chamber and to the Prosecutor to listen for

23 a last time to what Thomas Lubanga says to the recruits in Rwampara camp on

24 12 February 2003, and this is evidence, evidence that was discussed, over and over

25 again, which is known by everyone.

1 And here I quote -- it's Thomas Lubanga who is speaking here, and here I quote:
2 "What we are trying to do and what we are trying to do with you is to set up an army
3 which is capable of avoiding killings, preventing killings, with all ethnic groups, all
4 the tribes present here in Ituri. Our army does not have an enemy on the basis of an
5 ethnic group. It is not the Bira who are our enemies. It's not the Lendu. It's not
6 the Hema who are our enemies. No, our enemy is anyone who doesn't want peace,
7 who doesn't wasn't peace to be re-established here. Our enemy is the enemy of
8 peace. Yes, we've all suffered a lot, we've all suffered, and this is the feeling that
9 should guide us all here." End of quote.

10 That is really what Thomas Lubanga says. That is the conviction that is behind
11 Thomas Lubanga on 12 February 2003, and that's the conviction that he wants to
12 share with the recruits. Yet this visit to Rwampara it has even been made the
13 foundation of the conviction of Thomas Lubanga. We consider that fairness requires
14 that the Chamber takes into account this speech, the sincerity of which has never been
15 discussed. Fairness requires that we must not forget that if such young -- too young
16 -- recruits listen to this speech, Thomas Lubanga, he himself was preaching to them
17 reconciliation, ethnic reconciliation, and was giving them the message -- the mission
18 not to bring war, but peace to Ituri.

19 And this takes me to my last point. Rule 145 invites us to take into consideration
20 what is called the degree of intent, the issue of the degree of intent. Otherwise said,
21 what is the situation with regards to the criminal intent of Thomas Lubanga?

22 The Chamber has stated that Thomas Lubanga was aware that recruitment operations
23 of the FPLC risked leading to the enlistment, enlisting of children under the age of 15,
24 and the Chamber also considered that these orders, aiming to ban this practice and to
25 demobilise minors, seemed insincere, they weren't credible, because they were at

1 variance with the reality of enlisting. That is something that was in the judgment,
2 but the Defence wishes -- or the Defence would ask the Chamber, however, to
3 reconsider this aspect of the case record at this stage, the issue is not debating the
4 existence of the psychological element of the crime; it is quite simply a matter relating
5 to the sentencing stage in terms of weighing up and looking at the scope of criminal
6 intent and the extent of criminal intent.

7 Put in other words, Thomas Lubanga, was he this ogre, children-eating monster that
8 the Prosecutor describes, this warlord who was only concerned with pressure from
9 MONUC or, on the contrary, was he sincerely and personally convinced that the
10 presence of child soldiers was something bad which had to be fought?

11 And your decision, your decision on sentencing should, it would seem to us, take into
12 account the fact that all the facts in all their complexity, take into account facts in all
13 their complexity, even when these facts might seem to be contradictory.

14 The Chamber has also mentioned the persistence there was in enlisting in its ruling.
15 You also mentioned the awareness that Thomas Lubanga had. But we would once
16 again ask here today to take into account also other facts which have incontestably
17 been established by evidence and which can appear in contradiction with the first
18 points you've noted.

19 And I'll just take one example here, just one exhibit. The report on the meeting of
20 military leaders of 16 June 2003. This report remained absolutely confidential right
21 up to the trial. Nothing that -- for no reason could it be suspected to be an
22 instrument of disinformation or one of the pieces of a masquerade. The
23 Chamber knows that -- you can read in this report the -- the report on it or the
24 transcript produced of this meeting, and you can read there that the child soldiers
25 also have to be demobilised where you find them -- "wherever you find them, bring

1 them to the NGOs," end of quote.

2 And a bit further in the same transcript on this subject of the demobilisation of child
3 soldiers, you can also read there, and here I quote, "Before the evil, we have
4 to -- before evil we have to act in the favour of the whole society, and this is the
5 argument presented by the president which we have adopted." End of quote.

6 This is what you find in this confidential report on the personal position, the personal
7 position of Thomas Lubanga regarding the child soldiers. Before this evil, we must
8 act in favour or on behalf of the entire society. These are Thomas Lubanga's words
9 in June 2003. He was not saying that to journalists, he was not talking to UN staff, or
10 to humanitarian staff of NGOs. He was talking privately at a meeting with military
11 officials.

12 That unquestionably is established in the evidence and reflects his deep feelings and
13 his true desires. That conviction, that conviction for demobilising minors is as
14 sincere as the conviction that is expressed in his statements on peace, his speeches on
15 peace and reconciliation.

16 Does that stand at variance with enlisting? Yes, it is possible. That does not mean
17 that the sincere conviction did not exist; it simply underscores the very extreme
18 complex nature of the situation, a situation over which Thomas Lubanga had only
19 very limited, and probably illusory, control.

20 Fairness, therefore, requires that your decision take into consideration the complex
21 nature of the situations and man's weaknesses. Even when he is referred to as
22 "president" and "commander-in-chief," the truth of the events and the truth about the
23 man, the truth about the facts, the truth about reality is that there are contradictions
24 and, therefore, it would be unfair and unjust to only take into consideration
25 incriminating circumstances while excluding exculpatory ones.

1 I have finished Mr President, your Honours, we may be far away from the Ituri, we
2 may be far away from those sufferings and those mysteries and those distances,
3 physical as well as in time, culture and history call for the greatest caution on your
4 part, caution and fairness, which must take into account the fair share of ignorance
5 that we may have.

6 It also calls on us not to forget what we already know, not to forget the facts, not to
7 forget the actions, not to forget the speeches which point to the fact that during that
8 time full of sound and fury Thomas Lubanga attempted as best he could to protect, to
9 pacify and to reconcile. I know that you will not forget these things when you come
10 to your determination on the sentence.

11 Thank you.

12 PRESIDING JUDGE FULFORD: Thank you, Mr Biju-Duval. Mr Lubanga.

13 MR LUBANGA: (Interpretation) Thank you for giving me the floor.

14 Mr President, your Honours, it was a shock for me when I heard your judgment of
15 14 March on which you will be handing out -- down a sentence. I was deeply
16 overwhelmed and saddened by it, appalled to note that after three years of trial we
17 have not been able to unmask all the exaggerations, lies and masquerades.

18 I have been portrayed as a warlord, pitilessly, taking hold of the children of the Ituri
19 in order to feed his desire for power. I have been convicted for the massive
20 recruitment of young persons, leading unavoidably to the enlistment of children
21 below 15.

22 Young witnesses tried in vain to appear or to pass for child soldiers before this Court,
23 but not a single one of the numerous so-called child soldiers alleged to be below 15
24 came to this Court and accused me of those crimes.

25 Out of an army of about 8,000 men, not a single child soldier below 15 was presented

1 to this Court by the Prosecutor. How is that possible? Some claimed that Hema
2 children have refused to testify against me because of community solidarity, yet in
3 this trial it has been established that there were soldiers from other ethnic groups in
4 the FPLC.

5 Why did the Lagwara and Kakwa of Aru, or the Nyali and the Bira from Irumu, and
6 the Mahagi or the Lendu who were part of our army, as well as other ethnic groups,
7 why did the Prosecutor not find a single one of them and call them before your
8 august Chamber?

9 Is this an indication that there was no child below 15 in the FPRC? Does that mean
10 that none of them believes that I am a criminal? Does that mean that there was such
11 a small number of them that it is today impossible to find even one?

12 As far as I am concerned, the uncertainty is great. And I thought that it would even
13 be greater in the minds of the Judges ten years after the events in a place so far
14 removed from the Ituri.

15 In 2002/2003 there was chaos in the Ituri, and no one can say with certainty that no
16 child below 15 was among the soldiers. What is certain however is that I, Thomas
17 Lubanga, I was always -- I always stood in a position to any such enlisting -- or was
18 opposed to that.

19 Of course this is not the case for example of our President Joseph Kabila, who each
20 year on 15 May organises a national celebration in honour of the kadogos, the
21 kadogos who overthrew Mr Mobutu. I, on the other hand, your Honours, I never
22 accepted or tolerated any such enlistment.

23 Mr President, your Honours, from 1999 to 2003 Ituri was struck by a tragedy that
24 could not even be given a name. I witnessed horrible massacres and killings. On
25 several occasions, I saw hundreds of bodies savagely chopped up by machetes,

1 bodies burnt alive in huts, villages completely destroyed, thousands of people fleeing
2 in desperation, and sometimes I fled with them in circumstances where often what
3 mattered was only one's life, and I have been deeply hurt by this situation; yet
4 unfortunately no political or military official genuinely undertook to attend to the
5 security of the people. Their lone concern was money and power.

6 Between the second half of 2002 and the first half of 2003 emblematic killings took
7 place in Nyakunde. Komanda Kasenyi, Tchomia, Bogoro, Nyamamba (phon),
8 Muzekere (phon), in Katoto, in Mongbwalu, and the list can go on up to about 300,
9 and all these massacres created thousands of victims.

10 The appalling case of Nyakunde was one where there were thousands of victims.
11 Then there were the massacres of Drodoro, of Kasenyi and Tchomia which were
12 established or directly established by the High Commission for Human Rights with
13 the assistance of a forensic expert. Those who are responsible for those massacres
14 are still in power in Kinshasa. Why have they not been prosecuted by this Court?
15 Similar killings caused thousands of young persons to go for training in Mandro. It
16 is those young people who, while I was in Kinshasa, drove out Lopondo from Ituri
17 and deployed across the Ituri. What then is my responsibility in this matter? When
18 it is said that I, Thomas Lubanga, sent Chief Kahwa to Rwanda to seek weapons is
19 not true; that is false.

20 To say that I made Lonema (phon) the interim head, that is again false. To claim
21 that I had telephone conversations with the Ituri during and after my stay in prison at
22 the Demiap once again is contrary to the reality that I experienced personally.

23 All these allegations amount to lies, as well as other such allegations made by
24 witnesses who are determined to wreak havoc in my life at all cost and to extricate
25 themselves from the black misery that most Congolese are experiencing. This

1 dishonesty is detestable.

2 I read in your judgment that a witness allegedly saw me at the Mongbwalu road

3 abducting a child for the purposes of enlisting the said child in an army. I would

4 like to assert before this Court that I never, I never could have stooped to such a low

5 level to commit an act which is contrary to all values that are dear to me.

6 Mr President, your Honours, I feel deeply saddened when in your judgment I am

7 portrayed as one who sought to dominate the Ituri. The question must be asked:

8 What would a -- what would power have served me in this vast cemetery that was

9 the Ituri at the time, Ituri which had no future? I know that people were interested

10 in power and money, but they did not feel like we did, the pain of the events that we

11 experienced in our own body.

12 I took up responsibility not for money, not for power, but for peace. We created the

13 UPC in 2000 in order to pursue peace. We created the FRP in 2002 in order to

14 pursue peace. It is in order to pursue peace that I wanted to organise with the

15 national secretaries and the notables of the Ituri a forum for exchange of views and

16 discussions. It is for peace that the FPLC soldiers needed to be trained for action.

17 That is my common plan. That is the so-called common plan on which I should

18 have been tried.

19 The results may have not always been satisfactory, but the efforts that I made were

20 genuine and sincere and real, and I want to make that assertion again on this last day.

21 The efforts were real, in the midst of the greatest perils.

22 Mr President, your Honours, throughout my life I have never escaped or dodged

23 responsibility. I have always been responsible for my choices, for my indignation,

24 for my revolt, even if it had to lead me to prison.

25 In 2000 when I rebelled against the Ugandan forces regarding their management of

1 security in the Ituri, I was imprisoned in Rwampara. In May 2002 I was again in jail
2 in the Demiap in Kinshasa having been thrown in jail by President Kabila. In 2005
3 once again I was thrown in jail by the political regime in Kinshasa. Then in 2006 that
4 very regime handed me over to the Prosecutor of the International Criminal Court
5 and I was transferred as the first ICC detainee taken some 6,000 kilometres away
6 from my native home in the Ituri.

7 Against the backdrop of what I have followed here over the last six years, and what I
8 have again followed here today in this courtroom, all hinged on lies and completely
9 disconnected from the reality that the people of the Ituri have experienced.

10 I would have wished that on this day instead of all these people who know nothing
11 about what happened in the Ituri, but who are following us here today, I would have
12 wished that those people of the Ituri who were concerned by these things that I am
13 being accused of, I wish that they could have been listening to what we are saying
14 and they would have been in a better position to judge me.

15 It is unfortunate that these people in whose name this trial was brought have not
16 been able to follow these proceedings. It is the people of the Ituri who know what I
17 did. It is the people of the Ituri who know exactly what I achieved.

18 Let me conclude by stating that I bear homage to the memory of all the victims of the
19 atrocities that were committed in the Ituri. I pray, or I hope, that the peace for which
20 I worked so hard can return definitively to the Ituri.

21 I thank you.

22 PRESIDING JUDGE FULFORD: Thank you very much, Mr Lubanga.

23 Maître Mabilie, we are confident that you will of course, in due course, indicate to

24 Mr Lubanga that although we will to the greatest extent possible take into

25 consideration the matters that he has raised personally this afternoon, to the extent

1 that they go to the facts as we have found them during the course of the judgment,
2 the judgment is of course final.

3 Some of the issues he raised went directly to factual issues that have been resolved by
4 the Chamber during the course of the trial, and the Defence had at that stage an
5 opportunity to introduce evidence including from the accused to deal with those
6 errors of evidence.

7 I think it is important that it is understood that the accused had an opportunity of
8 dealing with those matters, not only now but also during the course of the trial if he
9 chose to take that opportunity.

10 Our hope is that we will hand down the decision in relation to sentence and the
11 decision in relation to reparations at the same time. Nothing of course in this world
12 is ever absolutely certain, but that is our intention. We will give the parties and the
13 participants as much warning as we are able as to the date when that will happen.

14 I would wish to thank all applicants for their attendance today and for their
15 assistance in relation to the issues relating to sentence.

16 We'll rise.

17 THE COURT USHER: All rise.

18 (The hearing ends in open session at 4.21 p.m.)

19 CORRECTION REPORT:

20 The Court Interpretation and Translation Section has made some corrections in the
21 transcript.

22 Please note that the corrections have been implemented directly into the transcript.