

1 International Criminal Court
2 Trial Chamber I - Courtroom I
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and
4 Judge René Blattmann
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
6 In the case of the Prosecutor versus Thomas Lubanga Dyilo
7 Closing Statements
8 Thursday, 25 August 2011
9 The hearing starts at 2.31 p.m.
10 (Open session)

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

13 PRESIDING JUDGE FULFORD: Since the Chamber last sat, we have
14 received the extremely sad news that one of the members of the teams
15 representing victims in this case, Maitre Jean Mulamba passed away on the
16 17th of June in Kinshasa. He is survived by his wife and five children,
17 the eldest of whom is following in his father's footsteps, having just
18 passed his law degree. For more than 30 years, Maitre Mulamba was a
19 member of the bar of Kisangani in the Orientale Province of the DRC, and
20 he was elected several times as a member of his professional body, the
21 Bar Council. He taught ethics to young lawyers of the Kisangani Bar,
22 and he was a professor at the university law faculty in that city. He
23 joined the list of counsel at the ICC in 2006, and he has represented
24 victims in this trial since 2008.

25 His submissions were always clear, concise, to the point, and of

1 real assistance to the Chamber. He was a distinguished member of the
2 legal profession of the DRC, and he provided valuable service to this
3 Court.

4 I am sure, therefore, that I speak on behalf not only of the
5 Bench but also the bar and the court as a whole when I say that his
6 significant contribution will be missed, and his untimely passing is
7 greatly to be regretted.

8 As a mark of respect, we will pause for a moment in tribute to
9 the life and work of Maitre Jean Mulamba.

10 Thank you all very much.

11 By e-mail of the 24th of August, the Defence inform the Chamber
12 that Mr. Lubanga would like to make a brief oral statement not exceeding
13 five minutes in accordance with Article 67(1)(h) of the Statute. The
14 accused has a statutory right to make an unsworn oral or written
15 statement in his or her defence. Although notice of his wish to avail
16 himself of this opportunity was received extremely late, that delay does
17 not warrant refusing this application. It goes without saying that if
18 any significant consequential matters arise from his observations, the
19 Prosecution will be entitled to address us on the issue. We have some
20 considerable confidence, however, that Maitre Mabilie will have ensured
21 that this will not be necessary.

22 Now, ladies and gentlemen, this Chamber has generally avoided
23 setting timetables for counsel's questions and submissions. However,
24 this stage of the case is an exception. We set the framework for the
25 final closing oral statements as far as back as the 12th of April of this

1 year, and no application to vary that order has been received.
2 Accordingly, the two-hour slots that have been allocated to the
3 Prosecution, the victims and the Defence will be adhered to. I note that
4 15 separate advocates are due to address the Court, and I'm afraid that
5 if any advocate overruns his or her allotted time, it is likely it will
6 be at the expense of another member of the team. In other words, the
7 chequered flag will come down at or about the two-hour point.

8 Over the next two days, the available sitting time is
9 seven hours, which leaves very little room for flexibility. Now, I'm
10 sure you have all carefully calculated the length of your individual
11 contributions, and I anticipate they will be choreographed impeccably,
12 but just in case anyone gets carried away with the force of their own
13 advocacy, I want to stress that we are going to ensure fairness to all
14 the teams in court, and that critically includes an equal distribution of
15 the available allotted time.

16 Yes, Ms. Bensouda.

17 MS. BENSOU DA: Mr. President, your Honours, at the beginning of
18 this trial, the Office of the Prosecutor submitted that the evidence we
19 will present will prove beyond any reasonable doubt that between the
20 1st of September, 2002, and the 13th of August, 2003, Mr. Thomas Lubanga,
21 in a common plan with others, systematically recruited children under the
22 age of 15 as soldiers in his political movement known as the UPC/FPLC and
23 used them in hostilities.

24 Today we stand before this Chamber to submit that the evidence
25 presented in this case has proved not just beyond a reasonable doubt but

1 beyond any possible doubt that Mr. Thomas Lubanga is guilty of the war
2 crimes charged against him, crimes that affected hundreds of children.
3 Those children were trained in about 20 camps around Ituri, a territory
4 bigger than the Netherlands. They were used to fight in conflicts. They
5 were used to kill, rape, and pillage throughout the 12-month period of
6 these charges.

7 Mr. President, your Honours, crimes of this scale and of this
8 nature did not just happen. They required Mr. Thomas Lubanga's essential
9 contribution in the planning and organisation. They required
10 Mr. Thomas Lubanga's will to be executed.

11 The Prosecution presented 25 witnesses. Seven were former
12 members of Mr. Lubanga's militia, the UPC/FPLC. Some of them were foot
13 soldiers, and others were commanders. Some had close working
14 relationship with Mr. Lubanga, others did not. There were four
15 testimonies of members of NGOs and international organisations, neutral
16 external observers of the crimes committed by the accused. In many cases
17 they recorded what they saw at the time of the events. These records
18 were introduced during the trial to corroborate the testimony of these
19 witnesses. Some were from Ituri, some were not. Most of those living in
20 Ituri had to be protected by this court.

21 Testifying to the Chamber created many problems for them. It
22 exposed them to the possibility of retaliation from some of Mr. Lubanga's
23 supporters. All of them were removed from the region, making them lose
24 their connection with their place of birth, with their communities, with
25 their education, with their family and friends. It is their courage,

1 Mr. President, that allowed this trial to happen.

2 Additionally, the Prosecution presented nine former child
3 soldiers as witnesses. They had to remember and relive yet again the
4 details of the horrors that they were trying to forget, to leave behind.
5 They had to tell this Court and, indeed, the whole world the miseries
6 that they suffered. They are now on record, and we hope we can help them
7 to understand that they are not alone, that the failure to protect them
8 will not be repeated by this Court. The evidence is now on record in
9 this case.

10 The Chamber afforded Mr. Thomas Lubanga a fair trial. He chose
11 his own lawyers to represent him. They had the opportunity and, in fact,
12 did cross-examine the Prosecution witnesses. They tested documentary and
13 video evidence that incriminate the accused. The Defence, Mr. President,
14 was also given full opportunity to present its own witnesses, evidence
15 and arguments, and even to inquire in great detail in the Prosecution's
16 investigation of this case.

17 Mr. President, the Chamber ensured respect for the law, respect
18 for the victims and the witnesses and respect for the accused. The
19 Chamber ensured a fair trial, which is a cornerstone for the authority of
20 the International Criminal Court.

21 Mr. President, your Honours, the Prosecution received a mandate
22 from 116 states to represent the victims of crimes where no one is
23 protecting their rights, and it is in furtherance of this mandate that we
24 summarise the Prosecution's case before you today. My colleagues will
25 further address you on various aspects of our case against

1 Mr. Thomas Lubanga.

2 Ms. Nicole Samson will start by highlighting some of the
3 testimonies and documents that we presented as evidence, proving beyond
4 all reasonable doubt that the crimes occurred. Then Mr. Manoj Sachdeva
5 will reveal the evidence of the individual responsibility of
6 Thomas Lubanga, in particular, the knowledge of Mr. Lubanga and his
7 intention to commit the crimes. Ms. Olivia Struyven will present a
8 summary of the videos that was presented evidence to prove
9 Mr. Thomas Lubanga's guilt.

10 As the Chamber is aware, there is also the issue of whether these
11 crimes occurred in the context of an international armed conflict.
12 Mr. Tim McCormack will present the Office of the Prosecution's position
13 on the legal character of the armed conflict ongoing in the
14 Democratic Republic of Congo and how these crimes were part of a national
15 armed conflict. And finally, Mr. President, Mr. Benjamin Ferencz will
16 conclude, analysing the gravity of child recruitment, showing the gravity
17 of Mr. Thomas Lubanga's crimes. Mr. Thomas Lubanga's crimes, Mr.
18 President, are not just crimes committed against the community in Ituri.
19 Nor are they a concern only for the Democratic Republic of Congo. These
20 crimes have even wider and far-reaching ramifications. They are a
21 concern for the entire international community as a whole.

22 The Prosecution's case against Mr. Lubanga is not based only on a
23 single piece of evidence. Rather, Mr. President, it is based on the
24 totality of the evidence of the witnesses and documentary and video
25 evidence presented. These all corroborate one another and establish

1 Mr. Lubanga's responsibility.

2 Significantly, however, there is one piece of evidence that
3 encapsulates much of Lubanga's case and I draw your attention to it now.
4 It is the video, Mr. President, that was filmed at Rwampara training camp
5 set up by the UPC/FPLC. This video, the Prosecution submits, is
6 Thomas Lubanga's voluntary and public confession of the crimes and
7 charges that are currently before you. It is Thomas Lubanga,
8 Mr. President, in his role as supreme commander of his militia addressing
9 his recruits and inspiring them to fight.

10 The Prosecution invites you, as you view this video, to
11 carefully, Mr. President, observe the sizes, the faces of some of these
12 recruits, and to ask yourself if it is possible that anyone could look at
13 these recruits and assume that they were above the age of 15.

14 Thomas Lubanga is in military uniform, flanked by his top
15 military commanders. Mr. President, he started his address by saying,
16 and I quote, "It is the second time I come here." Mr. President, this
17 statement is showing that supervising -- that supervising his troops was
18 a regular and normal activity.

19 COURT OFFICER: I'm sorry, Madam Prosecutor. Just to clarify to
20 everyone that to be able to view the video, you would have to press the
21 "PC 1" tab in front of you. Thank you.

22 MS. BENSOU DA: Thank you.

23 (Video-clip played)

24 PRESIDING JUDGE FULFORD: Carry on, Ms. Bensouda.

25 MS. BENSOU DA: Thank you, Mr. President.

1 Mr. President, just to go back, Mr. Lubanga says in this video,
2 "It is the second time I come here." This phrase, this sentence,
3 Mr. President, is showing that his supervision, supervising his troops,
4 was a regular and normal activity.

5 Then he said, Mr. President, and again I quote Mr. Lubanga, "When
6 you were still civilians, you saw us on television," referring again to
7 the recruits, and this statement, Mr. President, I submit, confirms that
8 the children formed in this video were considered soldiers.

9 Lubanga stated again, "You are used to seeing our commanders.
10 They are helping us carry out training, managing the army. I see them
11 every day." And I'm submitting, Mr. President, that this statement again
12 is confirming Lubanga's command and control.

13 Again, Mr. President, Mr. Thomas Lubanga says, "It is difficult
14 for me to always be in touch with you. The Chief of Staff,
15 Commander Bosco, should come and see you here." And, Mr. President, we
16 are submitting that that sentence is also showing that Bosco's authority
17 was delegated by Mr. Thomas Lubanga.

18 And finally, Mr. President, Mr. Thomas Lubanga says, "We come --
19 we have come to see you and encourage you. Why give you courage?
20 Because the work we are doing, we are doing with you. The work you know,
21 being enlisted in the army," he continues, "trained, using weapons, is
22 blessed." Mr. Lubanga said this.

23 Mr. President, the Prosecution is submitting that this video is a
24 taped confession of Mr. Thomas Lubanga.

25 Mr. President, States from all over the world decided that child

1 recruitment is one of the most serious crimes of concern for the
2 international community as a whole, and they created this permanent
3 institution to end impunity for such crimes. Furthermore, they provided
4 a special mandate to the Prosecution to pay particular attention to
5 gender crimes and crimes against children. For the first time,
6 Mr. President, these crimes were codified.

7 And in furtherance of such specific mandate, the Prosecution
8 presents its first case, a case focusing exclusively on crimes committed
9 against the most vulnerable, the weakest, our children. The Prosecution
10 is giving a voice to those children that Mr. Thomas Lubanga conscripted
11 on their way to school; those children that Mr. Lubanga transformed into
12 killers; those girls that Mr. Lubanga offered to his commanders as sexual
13 slaves.

14 Mr. Thomas Lubanga took these children and subjected them to the
15 more -- to the most cruel training. He forced them to stay in camps
16 where boys and girls were beaten when they were sick or when they were
17 tired. They were forced to beat and to abuse fellow child soldiers just
18 to train them to obey orders. They lived in constant fear. They were
19 taught to hate and to shoot and to kill unarmed civilians, the elderly,
20 women, and children. These are the children, Mr. President, that the
21 world has resolved to protect.

22 As the evidence showed, girls were particularly singled out for
23 particular abuse. They were either raped by fellow soldiers or were
24 handed over to Lubanga's commanders as sexual slaves and forced to be
25 wives to these commanders.

1 The Prosecution submits that the war crime of enlisting and
2 conscripting children under the age of 15 is a crime of a continuous
3 nature committed as long as the child remains in the armed group or is
4 underage. The crime encompasses all the acts suffered by the child
5 during the training and during the time they were forced to be a soldier.
6 This interpretation is particularly relevant to capture the gender abuse,
7 a crucial part of the recruitment of girls.

8 The Prosecution requests the Chamber to make clear that these
9 girls are not the wives, are not the wives, of commanders. They also are
10 the victims of the crimes of recruitment and have to be particularly
11 protected by the demobilisation programmes and by this Court.

12 The Prosecution submits that even those children who survived the
13 tortures suffered during training continue to be tortured, that those who
14 have no visible scars of the wounds received have internal scars that
15 will remain with them for years to come, that even if you see no blood on
16 the body of a former child soldier, they are internally bleeding.

17 The Prosecution, Mr. President, met with former child soldiers
18 from other conflicts, and in order to better understand the particular
19 consequence of these crimes, its endurance, one of them, Mr. President,
20 who is an artist, expressed the idea that children need mothers, not
21 commanders. And, Mr. President, if you will allow me, I will just
22 present this idea by using his own words when he said, "I carry the
23 banner of trauma, war child, child without a mama."

24 The evidence, Mr. President, proves that Mr. Thomas Lubanga's
25 individual responsibility for the crimes committed against the children

1 of Ituri. His conviction, we submit, will give justice for thousands of
2 victims and will send a clear message: There will be no impunity for
3 those who recruit children.

4 Thank you, Mr. President, your Honours. I will now turn it over
5 to trial lawyer Nicole Samson to address the Chamber.

6 PRESIDING JUDGE FULFORD: Thank you very much, Ms. Bensouda.
7 Ms. Samson.

8 MS. SAMSON: Your Honours, I will now address the commission of
9 these crimes.

10 The UPC did not enlist, conscript, and use children under the age
11 of 15 by accident. This was part of a deliberate and clearly conceived
12 plan. The plan, approved by Thomas Lubanga, reached hundreds of children
13 across Ituri. Inside the largest of Thomas Lubanga's 20 military
14 training camps, we heard that around 35 per cent of the recruits from an
15 estimated 2.500 to 5.000 were under the age of 15. This came from one of
16 Mr. Lubanga's former commanders, Witness 0016.

17 Another of his former commanders, Witness 0055, had this to say
18 about recruitment, and I will quote his evidence:

19 "Recruitment did not happen in one single place. It would happen
20 at different places, different locations throughout the region that the
21 UPC had control over. It's a wide region that was controlled by the UPC
22 and where recruitment was happening."

23 This plan to recruit children took place at least between
24 September 2002 and 13 August 2003. Throughout this period, Witness 0031
25 observed that the numbers of child soldiers in Ituri was continually

1 rising.

2 Why did the UPC/FPLC want to use children as soldiers? Well, it
3 was because they could exploit their youth and their experience, because
4 children are daring. They don't understand the consequences of their
5 actions. They could manipulate them, and they could control them.

6 Witness 0041 testified that he had escorts under the age of 15 in
7 his own body-guard. He explained that everyone in the UPC/FPLC had
8 children as body-guards. Most of them, he said, were about 10 or 13 to
9 22. He said, and I quote, "We preferred to use young persons as
10 body-guards." It was a conscious choice.

11 Witness 0038 and Witness 0017 are two former military officers.
12 They explained that children were enlisted because they are fearless,
13 because they strictly obey orders. They don't ask much of the
14 commanders. They don't have wives or girlfriends or children to burden
15 themselves or to burden the responsible commander. A child, they said,
16 only needs to wash and to eat, but an adult soldier demands much more.
17 It was simply easier and more convenient to use children.

18 So how was it that these children ended up in the UPC/FPLC? Most
19 of them were victims of coercive recruitment campaigns. In other words,
20 they were conscripted. Eight former child soldiers testified that they
21 were abducted by UPC/FPLC soldiers, trained and used to participate in
22 hostilities. Five of them told this Chamber that they were abducted when
23 they were at or near their school.

24 Your Honours will recall the evidence of Witness 0297. He was
25 one of these children. He was 12, and he vividly described how UPC/FPLC

1 soldiers were catching children from his school. He was conscripted.

2 The UPC/FPLC also forced families to give up their children on
3 pain of military punishments or fines. As Witness 0031 described it, if
4 parents didn't send their children, it was at the risk of their own life.
5 This, your Honours, is conscription.

6 If the villages refused to hand over their children for
7 Thomas Lubanga's army, the villagers would be left unprotected during
8 attacks. Witness 0038 confirmed this. He attended these village
9 meetings with Chief Kahwa. He heard Chief Kahwa tell parents, "Send your
10 children to the army or else the day that war would come to their town
11 the UPC/FPLC would not rescue them.

12 In the context of an ethnic war, this is a serious threat. It's
13 a scare tactic and it's one that worked. The children -- the villagers,
14 excuse me, had no choice, and they sent their children. This, too, we
15 submit, is conscription.

16 Your Honours heard as well about a particular village meeting
17 called together by Deputy Chief of Staff Bosco and Chief of Staff
18 Kisembo. The assembled villagers, regardless of their age, were told to
19 board vehicles or else they would be buried.

20 Witness 0297 was there. He was 12. This is the second time
21 Witness 0297 was conscripted by Thomas Lubanga's soldiers. He was set
22 aside with a group of children at that meeting, considered strong enough
23 for military training.

24 So the children were brought to training camps far from the
25 protection of their families. Witness 0157 told the Court that the

1 moment he arrived at the centre with those he had been abducted with, he
2 was immediately whipped. "They beat us everywhere, on our hands, on our
3 heads, our feet and our nails." I quote, "They beat us and they called
4 us recruits."

5 These children were punished for being tired, for not being able
6 to keep up with the gruelling physical exercises, for expressing fear or
7 for trying to leave. As former military soldier and trainer himself,
8 Witness 0089 said:

9 "There was no distinction between big and small, younger or
10 older, when it came to being punished. If a person has committed an
11 infraction, then they will be whipped."

12 Some parents tried to get their children back. Witness 0017
13 recalled an instance where a mother came to the camp. He said, "For days
14 she cried at the camp's entrance. We had to chase her away. She kept
15 saying, 'Give me my son back. He's only 12.'" But the children were
16 there to be prepared for military service. They were being taught how to
17 fight, how to kill. They learned combat tactics. They learned how to
18 disassemble and assemble weapons. They learned how to shoot at an enemy
19 target.

20 At the end of their training, they were given weapons and
21 military uniforms. Then they were ready to serve the army as soldiers.
22 They were ready to be used to participate actively in hostilities by the
23 UPC/FPLC.

24 Child soldiers were given no special treatment, no advantages.
25 Witness 0016 explained it this way: "Once you leave the centre, you're

1 no longer a recruit. You're a soldier. They had become soldiers
2 regardless of their age, and they were deployed the same way as everyone
3 else. There was no difference."

4 Witness 0055, in his own way, said it like this, and I quote:
5 "When a kadogo finishes his training, he's deployed. He joins a brigade.
6 He's given a weapon, and obviously he's going to go and fight." What is
7 the job of a soldier? He said, "The job of a soldier means waging a war.
8 If there is a battle, he has to go and fight."

9 Witness 0038 fought alongside children who were under 15. He
10 fought with them in the battle of Mongbwalu in November 2002, again in
11 the battle at Kobu in February 2003, and again during the battle for
12 Bunia in May 2003. He recalled that during these battles, children under
13 the age of 15 were shot at, were wounded, and some were killed.

14 Witness 0294, a former child soldier, said that he was given hemp
15 before he went off to battle. He fought in Songolo, in Bule, and in
16 Kasenyi. He said he was fighting to kill the Lendu and the Ngiti.

17 Your Honours, active participation in hostilities does not only
18 mean direct participation in combat. The Pre-Trial Chamber held that
19 active participation can encompass combat-related activities such as
20 scouting, spying, being a messenger, guarding military check-points.
21 Guarding military objectives such as a military premises or, in fact, a
22 military commander is also part of active participation in hostilities.

23 Witness 0294, for example, said that he had a variety of tasks
24 when he was the body-guard of a commander. His first duty was to
25 guarantee the security of his commander wherever he went, but he had

1 other duties as well. He was sent on errands. He was sent to arrest
2 people, people who could give the commander weapons, people who could
3 give the commander money, girls so that the commander could sleep with
4 them. All of these ways in which Witness 0294 was used, we submit, is
5 used to participate actively in hostilities, and it is a crime.

6 An entire unit of children under the age of 15 were used as
7 guards at the Main Staff headquarters of the UPC/FPLC. The unit was
8 called the Kadogo Unit. Your Honours will recall that Witness 0055
9 described a kadogo as a child, a small child, between the ages of 13, 16,
10 or 17. Witness 0038 described a kadogo as a child under 15.

11 The use of child soldiers under the age of 15 reached the highest
12 levels of the UPC/FPLC. Witness 0055 said that Thomas Lubanga's
13 presidential escort included somewhere between 150 to 200 soldiers,
14 including children.

15 Witness 0030 visited the accused at his house two or three times
16 a week. He saw children protecting the president. The youngest in the
17 group, he said, was about 9 or 10. Witness 0031 also visited the accused
18 in October 2002. He saw children at his residence as young as 9 years
19 old holding Kalashnikovs. Witness 0010, herself a child soldier and
20 body-guard to a senior commander, testified that she would escort the
21 senior commander to meetings at Thomas Lubanga's residence. She saw
22 children her age and younger, wearing camouflage uniform, guarding the
23 residence.

24 Finally, Witness 0016, a senior Main Staff officer stationed in
25 Bunia, staying just 50 metres away from the headquarters of the

1 presidential guard, said that some of the children in Thomas Lubanga's
2 personal protection unit were 13 and 14 years old.

3 Let me highlight for your Honours the reliability of the evidence
4 showing the age of children recruited by Thomas Lubanga's militia.

5 The Defence contends that although the UPC/FPLC may have
6 recruited children under the age of 18, they certainly did not recruit
7 children under the age of 15. How was it that the Prosecution has been
8 able to establish, we say, that children in the UPC/FPLC were indeed
9 under 15? First, through the testimony of these critical insider
10 witnesses and of those who worked closely and assisted child soldiers
11 throughout Bunia and Ituri. These witnesses gave specific evidence of
12 the age of the children they saw and worked with. One of these insider's
13 own child was trained, and he said his child was 11.

14 Former commander Witness 0017 said, "You can easily see if they
15 are under 15." He described being at the headquarters of the UPC/FPLC
16 the day a foreign journalist was given special permission by Chief of
17 Staff Kitembo to interview one of the child soldiers from this very
18 kadogo unit that I described moments ago. He said that the interview
19 took place, that the child holding his weapon was at the most 13.

20 And Witness 0016, another military commander, explained precisely
21 how he could tell that the children in the UPC/FPLC were underaged, and
22 I'll quote his evidence:

23 "As a parent and as a man of experience," he said, "I told you
24 that you can, from physical appearance and from the behaviour of a
25 person, you can determine that person's age. You could always see that

1 they were children, because after training, they would create groups, and
2 everything they did resembled what children do. They were always on the
3 ground and playing little games." He said the children made toys for
4 themselves. He said, and I quote again: "They would put their weapons
5 down, they'd play marbles, and then they'd return to look for their
6 weapons, and that demonstrated that they were not yet mature."

7 Among these children was a child that Witness 0016 himself knew
8 and occasionally used for errands. He said that child was 13.

9 The second elements that the Prosecution proposes establish the
10 age of these children is the video evidence where child soldiers and
11 impartial witnesses themselves have given evidence on the age of the
12 children concerned. We've seen some images from the Rwampara video taken
13 at the Rwampara training camp. The images speak for themselves, but in
14 addition, Witness 0030 has indicated that some of the children in the
15 video were 9 years old. Witness 0010, present for the video, identified
16 herself. She said that she was under 15. She identified another friend,
17 a soldier, who she said was 12. She identified yet another child. She
18 said he was 10.

19 Thirdly, your Honours, the Prosecution has called witnesses who
20 have identified and assisted child soldiers and whose evidence is
21 supported by contemporaneous documents. These witnesses are neutral
22 observers. They had direct contact with child soldiers, in some cases
23 for weeks, even months. They interviewed these children. They recorded
24 their information. They observed them over sometimes a long period of
25 time. Their work was specifically with children aged 9 through to 18.

1 As they walked through the streets or visited the UPC/FPLC
2 premises, they were always on the lookout for child soldiers in that age
3 range.

4 Take the example of Witness 0024. He belonged and worked with a
5 Congolese organisation involved in child protection. He described how he
6 was detained at the UPC/FPLC premises in October 2002. He was placed in
7 a pit, and he was guarded by two child soldiers aged 10, 11, or 12. He
8 told the Court that he saw other child soldiers aged 10 to 12 within the
9 UPC/FPLC premises. At the time, this witness was 21 year old.

10 We heard from him that in this same period, October through
11 November 2002, he saw UPC/FPLC soldiers aged 9 to 18 throughout the town
12 of Bunia threatening everybody. He's a person who was a teacher himself
13 of children aged 12 to 18. He worked with children of the same age
14 range, even younger. This eyewitness's evidence as to the age of the
15 children he saw in the UPC/FPLC can be relied upon by the Chamber.

16 Lastly, your Honour, we submit that the age of these children can
17 be determined by the testimony of the Prosecution's former child soldier
18 witnesses, corroborated by scientific assessments of their bone and
19 dental growth. In some cases, the testimony of these child soldiers was
20 corroborated by their parents or by other witnesses. The expert
21 scientific analysis of each of these witnesses's growth maturity
22 corroborates their age. In some cases the scientific data provides a
23 precise age. In other case it is provides an age range, and in yet other
24 cases a minimum age, but all of these various age assessments can put
25 those children under the age of 15 and corroborates their testimony.

1 The Prosecution's legal challenge is to prove beyond reasonable
2 doubt that children under 15 were in the UPC/FPLC, that they were
3 enlisted, conscripted, or used. It is not our challenge to prove exact
4 dates of birth.

5 There's no doubt that obtaining reliable birth records in Ituri
6 is difficult. The Court-appointed expert explained that the war in Ituri
7 had a detrimental effect on rural civil registries, many of which
8 disappeared during the war. He indicated that there was an error in his
9 own birth record. Records were lost. Witness 0299 told the Court that
10 his son's birth certificate was burned during the war.

11 As for school records, even Defence Witness 0029 confirmed that
12 school records in Ituri contain serious mistakes and major errors, even
13 on dates of birth.

14 Before concluding, your Honours, I would like to briefly address
15 the Prosecution's witnesses and an assessment of their credibility.

16 Is it really possible that all witnesses are lying or that
17 they're somehow wrong about the age of the children they saw, they met,
18 they trained, or they used? Let's consider this for a moment.

19 The Prosecution's witnesses inside the UPC/FPLC held different
20 and unrelated positions throughout the chain of command. They were not
21 all from Ituri. Some of them knew Thomas Lubanga and worked closely with
22 him; some of them didn't. Some were soldiers, some were commanders, some
23 were senior, some were political officers.

24 As for the NGO and UN witnesses, including Witness 0046, a
25 United Nations child protection officer, these were neutral observers of

1 the crimes committed by Thomas Lubanga's militia, and as I've mentioned
2 previously, in many cases they recorded what they saw.

3 From their various positions, all of these witnesses have
4 described in detail that the UPC/FPLC recruited and used children under
5 the age of 15.

6 As for the evidence of the former child soldier witnesses
7 themselves, the Defence would have this Chamber accept that every single
8 one of them has fabricated his or her account, given at length and in
9 great detail, for some undefined benefit from the Court or because they
10 were part of a large plot to convict the accused.

11 These witnesses have been consistent on all material facts. They
12 have remained steadfast in their testimony that they were abducted, they
13 were enlisted, they were trained, and they were used. They corroborate
14 each other in the recruitment methods employed, in the training, in their
15 use, and in the cruel treatment that they received at the hands of the
16 UPC/FPLC. Crucially, their evidence is corroborated by the 20 other
17 witnesses who have described in detail the same thing, that the UPC/FPLC
18 enlisted, conscripted, and used child soldiers under the age of 15. The
19 videos, the documents, and forensic reports consistently support their
20 testimony.

21 There is no credible evidence suggesting that the testimonies of
22 all of these witnesses, including former child soldiers, witnesses inside
23 the movement, neutral observers, was the result of one big, organised
24 plot. A plot of such magnitude, a plot that would include the variety
25 and diversity of the witnesses such as those presented by the

1 Prosecution, in our submission, is impossible. The specific and
2 distinctive details of each of the witnesses's accounts confirm that
3 their narratives are the result of their own experience and not of any
4 general script.

5 Your Honours, I will now hand over to my colleague Mr. Sachdeva.

6 PRESIDING JUDGE FULFORD: Just before you do, Ms. Samson, and
7 it's a point of clarification only, don't scroll back, but at page 15,
8 line 15, for those who are interested, you advance the submission that as
9 one of the ingredients of participating actively in hostilities,
10 Witness 0294 sought out girls for commanders to sleep with.

11 Now, as I'd understood your principal written submissions, the
12 Prosecution was -- is broadly accepting the Pre-Trial Chamber's dividing
13 line between those tasks which are, as it were, far removed from what
14 could be called the battle-field, cleaners, cooks, et cetera, and those
15 who play perhaps not a front-line role but an ancillary role.

16 Now, I want there to be no confusion about this. You are
17 saying - is this right? - that if an individual is sent out to select
18 women, young women, for commanders to sleep with, that falls on the side
19 of the dividing line of participating actively in hostilities.

20 MS. SAMSON: Your Honour, the Prosecution's position is this:
21 That there are child soldiers, in this instance Witness 0294, who had a
22 variety of tasks that he was requested to do at the behest of the
23 commander.

24 This is a witness who had, in fact, participated directly in
25 combat. He had also, according to his testimony, been a body-guard to a

1 commander. He was actively participating in hostilities in the sense
2 that he was in a noncombat, sometimes a combat, related activity but one
3 that is protected.

4 MR. MORENO-OCAMPO: Your Honour, if I may.

5 PRESIDING JUDGE FULFORD: In a moment, Mr. Ocampo. I'm just
6 asking some questions of Ms. Samson at the moment.

7 MR. MORENO-OCAMPO: Yes, she represents my office.

8 PRESIDING JUDGE FULFORD: Really, I don't think counsel should be
9 receiving e-mails during the course of closing submissions, Mr. Ocampo.

10 Now, Ms. Samson, I ask you to focus on the point simply because
11 at line 21 you use the words "all of these ways in which Witness 0294 was
12 used."

13 Now, this may be something of importance, so dividing up the ways
14 individually, am I right in understanding you are, in fact, not saying
15 that selecting young women by itself constitutes participating in
16 hostilities, but you have to look at the position in the round. Is that
17 right?

18 MS. SAMSON: That's correct, your Honour.

19 PRESIDING JUDGE FULFORD: Thank you.

20 MR. MORENO-OCAMPO: If I may, your --

21 PRESIDING JUDGE FULFORD: Mr. Ocampo, really, can we please have
22 some order to how the submissions are advanced. You have selected six
23 advocates to address the Court. Can we remain with them. I'm sure that
24 messages can be passed forward if there's something else that needs to be
25 said at some stage.

1 MR. MORENO-OCAMPO: I'm sorry, your Honour, if I may, the Office
2 of the Prosecutor is represented by me here also and I'd like to answer
3 your question if I may.

4 PRESIDING JUDGE FULFORD: Mr. Ocampo, no, not at the moment. In
5 due course, if there are supplementary matters that need to be dealt
6 with, we will ask for your assistance, but I'm not going to have
7 different people jumping up and intervening during what needs to be a
8 very tightly controlled hearing, because at the moment both Prosecution
9 advocates have overrun by ten minutes from the original time estimates we
10 were given.

11 MR. MORENO-OCAMPO: Yeah, I --

12 PRESIDING JUDGE FULFORD: Thank you very much, Ms. Samson.
13 Mr. Sachdeva.

14 MR. SACHDEVA: Thank you very much, Mr. President. I will now
15 address your Honours on the evidence that we say proves Thomas Lubanga's
16 criminal responsibility for the crimes charged.

17 Thomas Lubanga, along with other top UPC/FPLC officials, devised
18 a criminal plan to further the UPC war effort by recruiting voluntarily
19 or forcibly young people into the UPC/FPLC, including children under the
20 age of 15 and to use them in hostilities. As Ms. Samson has canvassed,
21 these crimes were committed over a period of 12 months and throughout the
22 entire region of Ituri. At least hundreds of children under the age of
23 15 were recruited and used in hostilities.

24 These crimes did not happen by accident. These crimes happened
25 because Thomas Lubanga intended them to take place.

1 Thomas Lubanga's essential contribution to the realisation of the
2 crimes stems from his leadership and functional control over the
3 UPC/FPLC. Your Honours have heard evidence that the UPC/FPLC was a
4 highly efficient and well-structured organisation with a fluid chain of
5 command. Thomas Lubanga embodied the UPC/FPLC. His title conferred on
6 him the positions of president and Commander-in-Chief. He was its
7 supreme leader in all respects. The evidence on this point is so
8 irrefutable that the Defence do not try to deny this.

9 But, Mr. President, the evidence shows that Thomas Lubanga also
10 had full *de facto* control over his organisation and, in our submission,
11 this is demonstrated by the following points: Firstly, he defined the
12 strategy and made all final decisions in relation to the UPC/FPLC.
13 Your Honours have heard from a senior military officer, Witness 0055, who
14 testified, and I quote:

15 "The head of all of us was His Excellency, Thomas Lubanga, and
16 Kisembo was under the orders of President Lubanga.

17 Similarly, speaking about Thomas Lubanga, Witness 0016, another
18 senior officer in Thomas Lubanga's military said, and I quote:

19 "Everything that was done militarily, the Chief of Staff would
20 report to him because all reports were submitted to him."

21 Indeed, top-level UPC politicians also confirmed that
22 Thomas Lubanga had an indispensable role in the functioning of the
23 organisation.

24 The second point, Mr. President: Thomas Lubanga appointed his
25 military commanders. Both Witness 0016 and Witness 0055 testified that

1 Thomas Lubanga was responsible for their appointments in his military.
2 Witness 0016 recalls seeing a document where the names of persons
3 assigned to the Main Staff posts were listed, saying that it must have
4 been forwarded to Thomas Lubanga, because all reports had to be submitted
5 to him.

6 The third point, Mr. President, is that Thomas Lubanga would hold
7 regular meetings with his Chief of Staff, Floribert Kisembo and his
8 Deputy Chief of Staff, Bosco. Witnesses 0016, 0030, and 0299 all
9 testified that Thomas Lubanga would meet with Kisembo and Bosco on
10 average several times a week.

11 Witness 0016 said that Kisembo and Bosco were in, and I quote,
12 "the habit of going to the residence of the president." And that they
13 had immediate access to the home of the president. He explained that the
14 staff meetings were primarily reserved for the two chiefs of staff,
15 namely, Kisembo and Bosco, whom Thomas Lubanga met often.

16 The fourth point, Mr. President, is that military documents were
17 always copied to Thomas Lubanga. For example, Prosecution Exhibit 745 is
18 a report from the Chief of Staff to all brigade commanders, copied to
19 Mr. Lubanga. The report related to the purchase of military assets. In
20 fact, Thomas Lubanga involved himself in minute details in the
21 functioning of his military, and Prosecution Exhibit 510 is a clear
22 example of that. This report emanating from his justice secretary alerts
23 Thomas Lubanga to the theft of a FPLC motorbike by one of his officers.

24 The fifth point, Mr. President, is that Thomas Lubanga was
25 integrally involved in the planning of military operations. Indeed, as

1 the Defence concede in its closing brief, Thomas Lubanga was responsible
2 for arranging the logistics and finance for military operations.

3 As Ms. Struyven will explain later, your Honours have seen
4 contemporaneous video records that demonstrate Thomas Lubanga's
5 functional control in the UPC/FPLC. These videos show Thomas Lubanga in
6 uniform, they show him visiting and addressing troops and recruits, they
7 show him flaunting his *de jure* and *de facto* control.

8 In sum, Mr. President, Thomas Lubanga made the final decisions
9 and dictated the strategy and policy of the UPC and its military wing,
10 the FPLC. He had functional control over all levels of the UPC/FPLC.
11 This over-arching control in this hierarchical organisation enabled his
12 essential contribution to the commission of the crimes. Given his
13 position, common plan could only have been conceived and implemented if
14 it was endorsed and willed by Thomas Lubanga.

15 In our submission, this evidence of this control thus proves
16 Thomas Lubanga's essential contribution pursuant to Article 25(3)(a). It
17 was simply not possible for the UPC/FPLC to have functioned in the way
18 that it did without its single top leader Thomas Lubanga.

19 Furthermore, Mr. President, the inescapable inference from the
20 evidence is that the crimes charged could not have been committed without
21 the direct intention of Thomas Lubanga that these crimes be committed and
22 his knowledge that they will be committed. Thomas Lubanga's supreme role
23 over the FPLC/UPC and the efficient manner in which he ran his
24 organisation meant that he was regularly put on notice of the crimes that
25 were being committed and was in a position to order for their cessation.

1 He did not do so, and children kept being recruited, trained, and used in
2 hostilities. He must have intended for these crimes to be committed.

3 But, Mr. President, the evidence in this case also shows that
4 Thomas Lubanga was directly and personally involved in the commission of
5 the crimes. This involvement, this personal involvement in the
6 commission of the crimes, clearly demonstrates both his intention and
7 knowledge to commit the crimes charged and his essential contribution to
8 their commission.

9 In our submission, his personal involvement in the crimes is
10 demonstrated by the following aspects of evidence: Firstly,
11 Thomas Lubanga was personally involved in using children under the age of
12 15 in his own personal protection unit. He clearly knew about children
13 under 15 present in his militia. He was literally surrounded by them.
14 Witness 0016 and Witness 0030 both gave clear evidence on this issue.
15 Similarly senior military officer Witness 0055 also confirmed that
16 kadogos, as he called them, were part of the president's protection unit.
17 But it was not only just military officers. Witness 0031, an NGO worker
18 who visited the accused regularly, testified and confirmed that children
19 under the age of 15 were deployed at Thomas Lubanga's residence as
20 body-guards during the period of the charges. And as your Honours will
21 see in a moment, all their testimonies are corroborated by the
22 contemporaneous video records that were taken during the period of the
23 crimes.

24 Thomas Lubanga also saw children at his recruitment rallies and
25 at training camps that he visited such as the one in autumn 2002 at Bunia

1 headquarters, and of course, there were children present at the Rwampara
2 visit on the 12th of February, 2003.

3 The evidence is that Thomas Lubanga made no effort to determine
4 the age of his presidential guard. Even his own private secretary,
5 Defence Witness 0011, did not know, could not recount whether there were
6 any official UPC procedures to verify the ages of children. Of course,
7 if there had been, then there would not be children aged 10 within
8 Thomas Lubanga's protection unit.

9 The second aspect of evidence, Mr. President, that demonstrates
10 Thomas Lubanga's personal involvement in the crimes is that he personally
11 took charge of all recruitment activities. He took charge of the drives
12 that sought to mobilise the Hema youth to join the UPC and to take up the
13 struggle against the Lendu. Witness 0055 testified that Thomas Lubanga
14 would often meet with village elders or wise men, as he called them, to
15 influence the youths in the villages to join the army. One of these
16 influential wise men was called Mafuta, the most important of these wise
17 men. Witness 0030 confirmed that Mafuta had a special role within the
18 UPC, saying, and I quote: "He was a special advisor to the president
19 and, at the same time, a military advisor to the UPC."

20 Your Honours will recall Prosecution Exhibit 582, a video that
21 depicts Mafuta giving an address about the contribution of children to
22 the UPC, and again your Honours will see in a moment video evidence
23 demonstrating Thomas Lubanga's personal role in the recruitment of
24 children.

25 Additionally, Thomas Lubanga also used persons known as cadres to

1 recruit young people in the army. These persons were trained in order to
2 mobilise persons to join the army and, as Witness 0055 pointed out, the
3 training was organised by Chief Lubanga.

4 This recruitment activity was a continuous process and spread
5 throughout the whole region of Ituri. It was not isolated, and it was
6 not sporadic. One of Thomas Lubanga's Main Staff officers at the FPLC,
7 the G5 Eric Mbabazi, was entrusted with the task of recruiting young
8 people. Witness 0055 testified, and I quote:

9 "Often Eric would be involved in recruiting young people so that
10 they would join the army, and he was supported by the cadres. So it was
11 an activity that allowed him to meet up with the Chief of Staff and
12 President Thomas Lubanga and see whether or not people in the villages
13 were willing to allow children to come or not."

14 And this is precisely what Eric Mbabazi did. He reported to the
15 Chief of Staff, Kisembo, on developments regarding recruitment?
16 Prosecution Exhibit 457 is a clear example of that. This is a seven-page
17 monthly report written by Mbabazi and sent to Kisembo, outlining what the
18 FPLC was doing in terms of recruitment during the month of October and
19 early November 2002.

20 In one section, he reported on the effects deserters were having
21 on their child recruitment efforts, and he writes this:

22 "Their friends and these deserters are discouraged and therefore
23 we no longer have the means of obtaining more children for the army."

24 The next item of evidence, Mr. President, that we say
25 demonstrates Thomas Lubanga's personal involvement in the crimes is, of

1 course, his address at the Rwampara training camp on the
2 12th of February, 2003. This video depicting Thomas Lubanga in full
3 military attire demonstrates his knowledge and intention to commit the
4 crimes. Thomas Lubanga is flanked by his top military commanders and he
5 addresses an FPLC/UPC unit that included new recruits and children under
6 the age of 15 in uniform. In our submission, his words and his actions
7 taken in front of these children under the age of 15 amount to an
8 admission of responsibility for the crimes he is charged. It is almost
9 as if Thomas Lubanga had been asked to describe the Prosecution's case.
10 Let's examine these words closely, Mr. President.

11 First of all, he confirms his role as president of the UPC, and
12 he also confirms his supreme military role by referring to his daily
13 military meetings with his commanders.

14 Secondly, he confirms his active role in the military by
15 reminding them that this was the second time he visited a training camp
16 outside of headquarters and in the field of his area of responsibility.

17 Thirdly, he tells the children that their enlistment is a blessed
18 activity. He underscores the importance of their training, warning them
19 that it would involve suffering.

20 And lastly, he talks about the provision and weapons -- provision
21 of weapons and uniform at the end of their training.

22 This evidence is so incriminating that even the Defence appear to
23 concede in their closing brief that it demonstrates Thomas Lubanga is
24 encouraging the enlistment of young persons and that it could form the
25 basis of a charge pursuant to Article 25(3)(b). Of course they argue it

1 could not amount to co-perpetration as charged under 25(3)(a).

2 Now, Mr. President, Thomas Lubanga's speech that day, on the
3 12th of February, brings me fittingly to the fourth point we say
4 demonstrates Thomas Lubanga's knowledge and intention to commit the
5 crimes and his essential contribution, and that is demobilisation.

6 We submit that these demobilisation decrees were used as a
7 cover-up for the crimes that were being committed. They were used as a
8 cover-up to cover the crimes that were being committed before the decrees
9 were issued, and more importantly, after the decrees were issued. These
10 demobilisation decrees show that Thomas Lubanga was on notice that there
11 were child soldiers in his army. They confirm that he knew this was not
12 allowed and they confirm that he had the important to stop it, but
13 Thomas Lubanga did not stop the recruitment. Rather, he continued to
14 entrust his security to child soldiers under the age of 15, and he
15 continued to rally recruits at training camps, including some barely able
16 to hold weapons.

17 These continuous efforts to keep recruiting after the
18 demobilisation orders were issued prove, we say, Thomas Lubanga's
19 intention and knowledge. They show that Thomas Lubanga attempted to
20 cover up the crimes.

21 These orders of October 2002, January 2003, and June 2003 were
22 used to cover up the crimes and stave off the mounting criticism and
23 complaints from the United Nations, the media and other non-governmental
24 organisations. As Thomas Lubanga's own witness, Defence Witness 0037
25 said, during the months of October and November 2002 and early 2003, he

1 received complaints from the UN and other organisations over the
2 recruitment of children.

3 The Prosecution submits that by examining the realities on the
4 ground just before and after each of the demobilisation orders were
5 issued, it can be clearly seen that the attempts at demobilisation were a
6 sham and used as a cover-up.

7 Firstly, on the 21st of October, 2002, Thomas Lubanga issued a
8 letter directing demobilisation of children under 18. Before this
9 letter, Witness 0031 testifies that he met with the accused in October
10 and saw children in Thomas Lubanga's body-guard unit between aged 9 and
11 16. He raised this issue of children directly with Thomas Lubanga, who
12 explained that if there were children in his army, well, it's because
13 they had nothing else to do, and because they wanted to be there, they
14 had developed a taste for it and did not want to leave.

15 During that same period, Witness 0016 said that Thomas Lubanga
16 visited the Main Staff headquarters in Bunia with the Chief of Staff
17 Kisembo and gave an encouraging speech to the assembled soldiers amongst
18 whose ranks were children aged under 18 and children as young as 13. And
19 critically, Mr. President, at the same time Witness 0024, an NGO worker,
20 in describing the demobilisation attempts at that period said that the
21 UPC/FPLC were simply pretending to demobilise. They were, as he said, a
22 sham.

23 Next, on the 6th of November, Eric Mbabazi, the G5 of the
24 UPC/FPLC, compiles a seven-page report when he notes the difficulties in
25 recruiting children. Even after the alleged attempts in October 2002,

1 the UPC army is continuing to recruit and lamenting its difficulties in
2 enlisting children.

3 Also, Mr. President, the evidence shows that during that period
4 Thomas Lubanga continued to use children under the age of 18 in his
5 personal protection unit. Was this unit disbanded? It was not. Were
6 there children demobilised? No, they weren't.

7 At the end of January 2003, Thomas Lubanga issued a follow-up
8 order on demobilisation. Roughly two weeks later, on the
9 12th of February, 2003, he made the visit to Rwampara training camp.
10 With the demobilisation fresh off his desk, at this visit he addressed
11 children under the age of 15, promising them weapons and encouraging them
12 to fight.

13 Now, Mr. President, let us not overlook Prosecution Exhibit 518.
14 Your Honours may recall that this is the contemporaneous internal UPC
15 report from Thomas Lubanga's own national secretary for youth and sports,
16 dated the 12th of February, 2003, the same day as the Rwampara visit.
17 This report is sent to the G5 responsible for recruitment and discusses
18 how to train officers so that they may be able to demobilise children,
19 and I quote, "Between the ages of 10 and 16 years of age who are willing
20 to demobilise."

21 This, then, is the situation in February 2003, following the
22 purported October 2002 and January 2003 demobilisation. If anything, the
23 efforts to demobilise decreased and the efforts to conscript increased.
24 Into the summer months up to the June 2003 demobilisation order, the
25 sequence of events is the same. The international community knew that

1 these demobilisation initiatives were fake and that recruitment and use
2 of children continued, so they continued to make their complaints and
3 exert pressure. Witness 0017 testified about the demobilisation at that
4 time. Your Honours may recall that Witness 0017 was a section commander
5 in one of the UPC/FPLC brigades, and he returned to Bunia in May 2003,
6 and in relation to an order on demobilisation, he said the following:

7 "When the UPC had them, well, it wasn't felt to be a crime, but
8 when the media arrived, this was disseminated. There was pressure that
9 was exerted. There was sort of a concern, why these child soldiers?
10 Well, the answer was it was a crime. I think it was more the influence
11 of the media which meant that this decision was therefore taken, but
12 throughout the period of the time that I lived there, I saw child
13 soldiers. They had never been concerned."

14 Witness 0046, the senior child protection officer for the United
15 Nations in Ituri, visited Thomas Lubanga on the 30th of May, 2003, just
16 days before the 1st June 2003 order. She warned him specifically about
17 the Rome Statute and the rights provided to children and the obligation
18 not to use child soldiers. So on the 1st of June, it is not surprising
19 that Thomas Lubanga again prohibited the use of children under the age of
20 18, a prohibition that Witness 0046 described as a masquerade.

21 In reality, Mr. President, the evidence is that recruitment
22 continued and, in fact, increased throughout the period when the
23 purported demobilisation decrees were issued. Witness 0031 observed that
24 the numbers of child soldiers in the UPC/FPLC were increasing all the
25 time in 2002 and 2003. He addressed this issue with the accused in

1 October 2002, but he again had to raise the issue several months later,
2 because nothing had changed. By May 2003, he observed that the UPC/FPLC
3 continued to enroll children. Even in July/August 2003, he visited a
4 UPC/FPLC training camp where children under 15 were still present.

5 In sum, yes, there were demobilisation orders, but they were a
6 cover-up, and they prove intention and knowledge to recruit children.
7 They prove knowledge that it is wrong to conscript and to enlist and to
8 use children in hostilities. That Thomas Lubanga continued to rally the
9 recruited children and continued to select children to serve as his
10 body-guards proves that he had the knowledge and the intention to
11 continue to commit the crimes.

12 And lastly, Mr. President, I want to go back to Exhibit 518,
13 again the internal UPC report from Thomas Lubanga's national secretary.
14 Critically, this report is an admission at first of knowledge that there
15 were children as young as 10 in the UPC/FPLC.

16 Secondly, it is an admission that in February 2003, after the
17 October 2002 and January 2003 demobilisation decrees, there were still
18 children aged between 10 and 16 in the UPC.

19 Thirdly, it is also an admission that children need not
20 demobilise. Incredibly, that decision was left up to the children
21 themselves. In fact, this document is so important, so incriminating,
22 that the Defence take great pains to distance the UPC and FPLC from it,
23 to say that it referred to some other groups, some local defence forces.
24 But who signed the memo? Thomas Lubanga's national secretary. Who was
25 it addressed to? Thomas Lubanga's military officer in charge for

1 recruitment. And who was it copied to? Thomas Lubanga himself. What
2 local self-defence forces were included in this memo? None. So why
3 would this memo about the training of military officers from a UPC
4 national secretary to a UPC/FPLC G5 in charge of recruitment copied to
5 the Commander-in-Chief of the UPC be distributed if it had nothing to do
6 with the UPC? Well, the simple answer is that it would not have been.

7 Mr. President, in our submission this evidence read in
8 conjunction with our closing brief establishes Thomas Lubanga's guilt
9 beyond reasonable doubt that he is responsible for the crimes charged.

10 I thank you.

11 PRESIDING JUDGE FULFORD: Very clear, Mr. Sachdeva. Thank you
12 very much, and impeccable timing. We've now got to give the
13 stenographers and the interpreters a break. We will sit again on the dot
14 of half past 4.00. A gentle word of warning. I think the Prosecution
15 now have 40 minutes of their allotted time left.

16 Half past 4.00.

17 COURT USHER: All rise.

18 Recess taken at 3.59 p.m.

19 On resuming at 4.29 p.m.

20 (Open session)

21 COURT USHER: All rise. Please be seated.

22 PRESIDING JUDGE FULFORD: Ms. Struyven.

23 MS. STRUYVEN: Your Honours, before I start, the Court Officer
24 would like to provide some technical information.

25 PRESIDING JUDGE FULFORD: Certainly.

1 COURT OFFICER: Your Honours, I would like to advise everyone
2 that since the following section is going to be filled with video
3 excerpts, it will be advisable to remain -- keep your tab remained on the
4 "PC 1" so that you can view the video excerpts. Thank you.

5 PRESIDING JUDGE FULFORD: Carry on Ms. Struyven.

6 MS. STRUYVEN: Your Honours, during the trial you have seen a
7 significant amount of video footage that corroborates the evidence just
8 cited by my colleagues. These videos don't lie. They weren't
9 fabricated. They were filmed at the time of the events. Most of them
10 were even commissioned by Thomas Lubanga himself.

11 What did these videos show? First, they showed the absolute
12 authority of Thomas Lubanga over the UPC/FPLC.

13 Second, they showed that Thomas Lubanga's militia recruited and
14 used children under 15.

15 Third, they showed that Thomas Lubanga knew it, approved it, and
16 participated in it.

17 Let me start with the first point. From the moment
18 Thomas Lubanga returned to Ituri in August 2002, he acted and was
19 recognised as the absolute leader of the UPC/FPLC.

20 (Video-clip played)

21 MS. STRUYVEN: You saw footage filmed throughout the period of
22 the charges of Thomas Lubanga attending public rallies where he was
23 cheered by hundreds, if not thousands of people. In a region where cars
24 are scarce, you saw Thomas Lubanga move around in a special presidential
25 convoy composed of his own golden jeep and several other trucks full of

1 heavily armed soldiers. You saw how he was received and greeted by the
2 population.

3 Often you saw Thomas Lubanga addressing the population or
4 attending meetings wearing a military uniform.

5 As the leader, Thomas Lubanga was involved in all the workings of
6 his organisation. As already said, you saw one video filmed on the
7 12th of February, 2003, that simply shows it all. In the video,
8 Thomas Lubanga, dressed in military uniform, addresses a group of UPC
9 soldiers at the Rwampara training camp. Allow me, your Honours, to first
10 show you who Thomas Lubanga addressed that day.

11 (Video-clip played)

12 MS. STRUYVEN: All of the children that you see in this video are
13 UPC soldiers. Those with sticks, those without sticks, and those in
14 uniform are all UPC soldiers.

15 Witness 0010 who was present that day, identified the soldier
16 that you see on the right as being 12 years old when the video was
17 filmed. Witness 0030 testified that he saw children of all ages at the
18 camp. He said the youngest was only 9 years old. But the images clearly
19 speak for themselves. Several of the children that you see are without
20 any doubt under the age of 15.

21 Allow me, your Honours, to show you what Thomas Lubanga told the
22 children that day.

23 (Video-clip played)

24 MS. STRUYVEN: At the end of the video, you see Thomas Lubanga
25 being saluted by his commander. As already stated, your Honours, this

1 video shows that Thomas Lubanga had the ultimate authority over the
2 UPC/FPLC, that he visited and inspected his troops regularly, that he was
3 in daily contact with his commanders who trained the children, and that
4 he delegated his authority to Bosco Ntaganda, who also visited the
5 children regularly.

6 In addition, your Honours, this video shows that Thomas Lubanga
7 clearly knew there were children under the age of 15 in his army. He saw
8 them with his own eyes. It also shows that Thomas Lubanga himself
9 participated in the crimes by encouraging children to join the army, to
10 follow the training and use weapons in battles.

11 In the months that followed, Thomas Lubanga didn't end child
12 recruitment. To the contrary, he personally ensured that it continued.
13 In a video filmed in June of 2003, Thomas Lubanga addresses the
14 population and requests the young people to take up arms and to join the
15 army. Your Honours will remember the scene depicting Thomas Lubanga
16 picking up a Kalashnikov.

17 (Video-clip played)

18 MS. STRUYVEN: While he picks up the Kalashnikov, he says, "And
19 that's why I would like to ask you and all the young people, I ask all
20 our young people, don't fall asleep, don't fall asleep."

21 Finally, your Honours, the videos show that throughout the period
22 covering the charges, Thomas Lubanga himself, as well as other UPC
23 commanders, used children under the age of 15.

24 In addition to the children that were shown at the Rwampara
25 training camp, you saw child soldiers at the public rally that

1 Thomas Lubanga attended on the 11th of January, 2003. This, your Honour,
2 constitutes the crime of using children in hostilities.

3 (Video-clip played)

4 MS. STRUYVEN: You saw child soldiers escorting a UPC delegation
5 who debriefed Thomas Lubanga on the 14th of January, 2003. Again, this
6 constitutes the crime of using children under 15 in hostilities.

7 (Video-clip played)

8 MS. STRUYVEN: You saw child soldiers in Thomas Lubanga's escort
9 and around Cinema Zanga, when Thomas Lubanga gave a press conference
10 there on the 23rd of January, 2003. This proves that Thomas Lubanga
11 personally committed the crime of using children under 15 in hostilities.

12 Your Honours, saw child soldiers in uniform and armed at
13 Thomas Lubanga's office, at his own office, on the 24th of February,
14 2003.

15 (Video-clip played)

16 MS. STRUYVEN: As you can see, one of the child soldiers is
17 playing with an insect.

18 (Video-clip played)

19 MS. STRUYVEN: Clearly, Thomas Lubanga himself committed the
20 crime of using children.

21 Your Honours, you also saw them at a rally organised by
22 Thomas Lubanga on the 5th of June of 2003.

23 (Video-clip played)

24 MS. STRUYVEN: Finally, you saw them in a documentary. One child
25 proudly shows the journalist how he's capable of using heavy weaponry.

1 (Video-clip played)

2 MS. STRUYVEN: Witness 0014 recognised the child in charge of
3 these children and testified they belonged to the UPC.

4 These videos, your Honours, summarise Thomas Lubanga's essential
5 contribution to the common plan. They show that Thomas Lubanga was fully
6 aware of the plan to recruit and use children under 15, that he intended
7 the plan to be executed, and that he personally participated in its
8 implementation.

9 If there are no further questions, your Honour. Mr. McCormack
10 will now address the character of the conflict.

11 PRESIDING JUDGE FULFORD: Thank you, Ms. Struyven. Just one
12 technical issue. Could you make sure, please, that we have a list of the
13 EVD numbers of all of the sections you've relied on in a way that
14 identifies the particular portion, start to finish; and second, to the
15 extent that you rely on what can be heard on the videos, can you make
16 sure that there is a transcript already available to us, because during
17 the section when you sat down, when it was said that the accused was
18 speaking, there was no English interpretation of what he said. So if you
19 wish us to consider what was said at that stage, there must be already in
20 evidence a transcript which reflects it.

21 MS. STRUYVEN: Yes, your Honours. If it may reassure you,
22 your Honours, we've taken the translation from the existing corrected,
23 reviewed transcript that was made by the Registry while the evidence was
24 presented.

25 PRESIDING JUDGE FULFORD: All I was referring to, Ms. Struyven,

1 was the section when you asked us to sit and listen, there was no
2 transcript before us then. I just want to make sure that there is a
3 transcript in evidence of what it is said Mr. Lubanga said at that stage.

4 MS. STRUYVEN: Very well, Mr. President.

5 PRESIDING JUDGE FULFORD: Thank you very much. Thank you very
6 much for your assistance.

7 Mr. McCormack.

8 MR. MCCORMACK: Mr. President, your Honours, the Prosecution has
9 two submissions on the legal character of the armed conflict. First, the
10 conflict in which the UPC/FPLC was engaged is properly characterised as a
11 non-international armed conflict. This Chamber decided that it may
12 re-characterise the conflict on the basis of Regulation 55(2), and
13 through our submissions we will urge you to do so.

14 Second, this non-international armed conflict did not end in
15 May 2003 with the withdrawal of Ugandan forces but continued at least
16 until the end of the period of the charges.

17 Turning to the first submission that the armed conflict was a
18 non-international armed conflict, I have three arguments. The first two
19 of them are legal, and the third is factual.

20 The first argument is that the involvement of Rwanda, Uganda, and
21 the Congolese government did not render the armed conflict international.
22 An international armed conflict only exists where the armed forces of two
23 or more states are engaged in military hostilities against each other.
24 This customary norm is reflected in Common Article 2 to the
25 Geneva Conventions, in the ICRC commentaries to the conventions, and in

1 the practice of many States. States can oppose each other directly
2 through their own armed forces or indirectly through proxy forces which
3 are subject to the overall control of a State.

4 In the absence of either direct or indirect State-on-State
5 hostilities, the probable characterisation of the situation is of a
6 non-international armed conflict.

7 In the present case there was some direct intervention by Ugandan
8 armed forces in the armed conflict in the DRC, but at no stage during the
9 period covered by the charges did Ugandan forces directly fight against
10 either Rwandan or Congolese government forces. Neither is there evidence
11 establishing that Uganda, Rwanda, or the Congolese government had overall
12 control of Thomas Lubanga's militia or any other armed group. From late
13 2002, the UPC/FPLC shifted its alliance away from Uganda to Rwanda. In
14 the battle for Bunia in March 2003, Uganda, the FNI, and FRPI fought
15 against the UPC. Hypothetically, if the UPC/FPLC had been operating
16 under the overall control of Rwanda, then the conflict may have been
17 international during that particular battle. However, as demonstrated by
18 the graph now showing on your screens --

19 Through you, Mr. President, I'll ask if the Court Officer wishes
20 to make the same announcement about switching of channels here.

21 COURT OFFICER: Your Honours, I would just want to advise
22 everyone to remain on "PC 1" for this excerpt. Thank you.

23 MR. MCCORMACK: Thank you. As demonstrated by the graph now
24 showing on your screens, the evidence identified by both the Prosecution
25 and Defence does not satisfy the test of overall control. To be under

1 overall control, it is -- here I'm quoting from the Appeals Chamber
2 judgement in Tadic in 1999. "It is not sufficient for the group to be
3 financially or even militarily assisted by a State. The State must have
4 a role in organising, coordinating, or planning the military actions of
5 the military group."

6 There is no evidence of Rwandan organisation or co-ordination or
7 planning of the actions of the UPC/FPLC.

8 The lack of evidence of either direct or indirect State-on-State
9 hostilities leads to the determination that Thomas Lubanga's UPC/FPLC was
10 engaged in a non-international armed conflict for the period of the
11 duration covered by the charges.

12 The second argument is that Uganda's occupation has no
13 consequence for the legal characterisation of the conflict. The
14 Prosecution fundamentally disagrees with the Trial Chamber's finding
15 that, and I quote here from the confirmation decision of the 14th of May,
16 2007, paragraph 220:

17 "As a result of the presence of the Republic of Uganda as an
18 occupying power, the armed conflict which occurred in Ituri can be
19 characterised as an armed conflict of an international character from
20 July 2002 to the 2nd of June, 2003, the date of the effective withdrawal
21 of the Ugandan army."

22 The law of international armed conflict applies to a military
23 occupation, but there is no legal basis on which to find that an
24 occupation automatically determines the legal character of an armed
25 conflict. A military occupation is not *ipso facto* an armed conflict. An

1 occupation often results from an armed conflict, but as Common Article 2
2 to the Geneva Conventions clearly states an occupation can also
3 materialise in the complete absence of military hostilities. The Article
4 says, "even if the occupation meets with no armed resistance."

5 If an armed conflict is occurring within or in close physical
6 proximity to militarily occupied territory, the legal character of that
7 conflict must still be determined by reference to the identity of the
8 parties to the conflict. As already submitted, an international armed
9 conflict occurs when two or more States engage in hostilities with each
10 other; whereas an occupation occurs when territory is actually placed
11 under the effective authority of a hostile army. They are not one and
12 the same. And there is no contradiction in finding that an occupying
13 power is under one set of legal obligations vis-a-vis its occupation and
14 under another set of obligations if it engages militarily in hostilities
15 with organised armed groups.

16 The armed conflict here involved multiple armed groups and not
17 State-on-State hostilities. The conflict was not connected to the
18 occupation and its legal character is not determined by the law
19 applicable to that occupation.

20 The third argument is the factual argument. Uganda's occupation
21 was limited to the area of the Bunia airport, and because of this highly
22 limited territorial scope, the occupation could not have altered the
23 character of the separate armed conflict occurring across a wide
24 geographic area. Let me quote Article 42 of The Hague Regulations of
25 1907, which is the authoritative definition of a military occupation.

1 "Territory is considered occupied when it is actually placed
2 under the authority of the hostile army. The occupation extends only to
3 the territory where such authority has been established and can be
4 exercised."

5 PRESIDING JUDGE FULFORD: Mr. McCormack, forgive me for
6 interrupting. Very clear and very concise submissions. I'm afraid
7 they're slightly too speedy. The stenographers and interpreters are
8 finding it difficult to keep up with you.

9 MR. MCCORMACK: My apologies.

10 PRESIDING JUDGE FULFORD: So could you slow down slightly.

11 MR. MCCORMACK: I will. Thank you.

12 PRESIDING JUDGE FULFORD: Thank you.

13 MR. MCCORMACK: It's been said before, Mr. President. I'm very
14 sorry.

15 PRESIDING JUDGE FULFORD: Me too, Mr. McCormack. So you're not
16 alone.

17 MR. MCCORMACK: I'm in good company.

18 The evidence in this case establishes that Uganda was in military
19 occupation of the Bunia airport and possibly parts of Bunia city. The
20 map now displayed on your screens here - I think we shift to "PC 1" for
21 that option - marks the location of Bunia. The evidence in the case
22 shows that Ugandan occupation did not extend beyond this tiny pocket of
23 Ituri. First, by mid-October 2002, all Ugandan troops had withdrawn from
24 Ituri save for one reinforced battalion in Bunia.

25 Second, a number of massacres of civilians by various non-State

1 armed groups occurred elsewhere in Ituri during the period in which
2 Uganda was in occupation of Bunia airport. The sites of these massacres
3 and their scale is now being indicated on your screens.

4 Hostilities occurred in a number of locations outside of Bunia.
5 These locations are also marked now on your screen. These factors all
6 indicate that Uganda was not exercising effective authority over Ituri
7 outside of the Bunia airport and parts of Bunia city.

8 I ask you to look closely at the map on your screens, your
9 Honours, and note, please, that the airport symbol next to Bunia is not
10 to scale. If it were, the symbol would be impossible to see without
11 massive magnification. Uganda occupied a few square kilometres of a
12 physical territory of 62.900 square kilometres, one and a half times the
13 size of the Netherlands. That proportion of Ituri territory was just
14 0.0001, maybe 2. One ten-thousandth of the territory of Ituri. Across
15 much of the rest of the 99.9999 per cent of the territory of Ituri, an
16 armed conflict between non-State armed groups raged. That armed conflict
17 was unrelated to Uganda's military occupation, and yet the Defence would
18 have you follow the Pre-Trial Chamber's finding and accept that this
19 Ugandan control of a minuscule proportion of Ituri territory determined
20 the legal character of the conflict continuing across vast swathes of the
21 district.

22 Even if your Honours adopt the Pre-Trial Chamber's approach, the
23 impact would be limited. Either the Pre-Trial Chamber meant that
24 hostilities within the occupied area are subject to the law of
25 international armed conflict, in which case the two sets of hostilities

1 in Bunia, in August 2002 and March 2003, would both be characterised as
2 international; or alternatively, the Chamber meant that any hostilities
3 involving Uganda as the occupying power are international in character,
4 which would render the hostilities in Bunia, as well as in Zumbe, which
5 is marked in yellow and orange on your map, international in character.
6 However, as the map displayed illustrates, the UPC/FPLC and other armed
7 groups were still engaged in a distinct non-international armed conflict
8 entirely unrelated to and outside the physical area of the Ugandan
9 occupation.

10 The Prosecution's second submission follows necessarily from our
11 first, and it is that the non-international armed conflict did not end
12 when Uganda withdrew its forces from the DRC. There was certainly a
13 significant reduction in the scale and the intensity of military clashes
14 in Ituri after May 2003. However, there were ongoing and devastating
15 massacres of civilians from May to at least 13th of August, 2003. The
16 Defence would have you believe that these massacres were perpetrated by,
17 and I quote from their closing brief, paragraph 697, "individuals or
18 groups of individuals who do not constitute organised armed groups within
19 the meaning of international humanitarian law." However, both the
20 geographic spread and the intensity of these massacres belies the
21 suggestion that they could have occurred randomly as the Defence implies.
22 The Defence further submits that there was no armed conflict,
23 international or non-international, during this period.

24 Our submission is that there clearly was an ongoing armed
25 conflict in this period. There was no peaceful settlement achieved prior

1 to the end of the period covered by the charges. The presence of the
2 multinational force between June and September and the increase of the
3 MONUC mandate to encompass the use of force under chapter 7 of the
4 UN Charter on the 28th of July, 2003, both indicate that the
5 international community clearly considered the conflict to be ongoing. A
6 non-international armed conflict continued throughout the entire period
7 covered by the charges, and the involvement of Uganda, Rwanda and the
8 Congolese government did not alter the legal character of the conflict in
9 which Thomas Lubanga's UPC/FPLC was engaged.

10 That concludes the Prosecution's submissions on the legal
11 characterisation of the conflict, and I'll hand to Mr. Ferencz now.

12 PRESIDING JUDGE FULFORD: Very clear, Mr. McCormack. Thank you
13 very much.

14 Mr. Ferencz.

15 MR. FERENCZ: May it please your Honours. This is an historic
16 moment in the evolution of international criminal law. For the first
17 time, a permanent international criminal court will hear the closing
18 statement for the Prosecution as it concludes its first case against its
19 first accused, Mr. Thomas Lubanga Dyilo.

20 I witnessed such an evolution. As an American soldier, I
21 survived the indescribable horrors of World War II and served as a
22 liberator of many concentration camps. Shortly thereafter, I was
23 appointed a prosecutor at the Nuremberg War Crimes Trials, which mapped
24 new rules for the protection of humanity. I was 27 years old then. I am
25 now in my 92nd year. Having spent a lifetime striving for a more humane

1 world governed by the rule of law, I am honoured to represent the
2 Prosecutor and to share some personal observations regarding the
3 significance of this trial.

4 The most significant advance I have observed in international law
5 has gone almost unnoticed. It is the slow awakening of the human
6 conscience. In 1948, the Universal Declaration of Human Rights
7 proclaimed inalienable fundamental rights of all members of the human
8 family as a foundation of freedom, peace and justice in the world.

9 Countless human rights declarations have been made over many
10 years by many dedicated persons and organisations, but legal action to
11 enforce those promises have been slow in coming. In Rome in 1998, when
12 the Statute that binds this court was overwhelmingly approved, over a
13 hundred sovereign States decided that child recruitment and forcing them
14 to participate in hostilities were, and I'm quoting now from the Statute,
15 "among the most serious crimes of concern for the international community
16 as a whole."

17 Punishing perpetrators was recognised as a legal obligation.
18 What makes this court so distinctive is its primary goal to deter crimes
19 before they take place by letting wrong-doers know in advance that they
20 will be called to account by an impartial international criminal court.
21 The law can no longer be silent but must instead be heard and enforced to
22 protect the fundamental rights of people everywhere.

23 The Prosecutor's office spoke at length meticulously detailing
24 grim facts establishing the responsibility of the accused for the crimes
25 alleged. The evidence showed that waves of children recruited under

1 Mr. Lubanga's command moved through as many as 20 training camps, some
2 holding between 8 and 1.600 children under age 15. But words and figures
3 cannot adequately portray the physical and psychological harm inflicted
4 on vulnerable children who were brutalised and who lived in constant
5 fear. The loss and grief to their inconsolable families is immeasurable.
6 Their childhood stolen, their childhood stolen, deprived of education and
7 all human rights, the suffering of the young victims and their families
8 left permanent scars. We must try to restore the faith of children so
9 that they may join in restoring the shattered world from which they came.

10 Imagine the pain of mothers crying and pleading at the door of
11 the camps, still suffering and wondering what happened to their children.
12 Picture the agony of the father who said, "He is my first son. All of my
13 hopes were laid on him. The child was ruined. Today he can do nothing
14 in his life. He has abandoned his education, and this is something which
15 affects me greatly."

16 All of the girls recruited could expect to be sexually violated.

17 All of these events which the Prosecution has carefully presented
18 have been proved beyond reasonable doubt. Once again the case we present
19 is a plea of humanity to law. It was a call for human beings to behave
20 in a humane and lawful way. The hope of humankind that compassion and
21 compromise may replace the cruel and senseless violence of armed
22 conflict, that is the law as prescribed by the Rome Statute that binds
23 this court, as well as the UN Charter that binds everyone. Vengeance
24 begets vengeance. The illegal use of armed force, which is the soil from
25 which all human rights violations grow, must be condemned as a crime

1 against humanity. International disputes must be resolved not by armed
2 force but by peaceful means only. Seizing and training young people to
3 hate and kill presumed adversaries undermines the legal and moral
4 firmament of human society.

5 Let the voice and the verdict of this esteemed global court now
6 speak for the awakened conscience of the world.

7 Thank you.

8 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Ferencz.

9 Ms. Bensouda, arising out of your submissions there is a
10 particular question that Judge Odio Benito would like to put to you.

11 JUDGE ODIO BENITO: Thank you, Mr. President.

12 Ms. Bensouda, in the OTP closing brief, document 2748,
13 paragraph 205, 227, 234, and again this afternoon in your presentation,
14 it was stated, and I quote:

15 "That girls who were recruited were even in a worse situation
16 than boys, as they were used as sex slaves and were subject to systematic
17 sexual abuse. This resulted in pregnancies, abortions and a
18 psychological state that is quite catastrophic."

19 However, the Prosecution never mentioned sexual violence in the
20 document containing the charges against the accused. Sexual violence was
21 also not included in the charges confirmed against the accused by
22 Pre-Trial Chamber I. Bearing in mind Article 74, my question is as
23 follows: How is sexual violence relevant to this case, and how does the
24 Prosecution expect the Trial Chamber to refer to the sexual violence
25 allegedly suffered by girls if this is not in the facts and circumstances

1 described in the charges against Mr. Lubanga Dyilo? Thank you very much.

2 MS. BENSOUDA: Your Honour, the Prosecutor would like to respond
3 to this question.

4 PRESIDING JUDGE FULFORD: Thank you, Ms. Bensouda. Yes,
5 Mr. Ocampo.

6 MR. MORENO-OCAMPO: Thank you, your Honour. Thank you for your
7 question. I would like to answer the question.

8 We believe the facts are that the girls were abused, used as
9 sexual slaves and raped. We believe this suffering is part of the
10 suffering of the conscription. We did not allege and will not present
11 evidence linking Thomas Lubanga with rapes. We allege that he linked it
12 with the conscription and he knows the harsh conditions. So what we
13 believe in this case is a different way to present the gender crimes. It
14 presents the gender crimes not specific as rapes. Gender crimes were
15 committed as part of the conscription of girls in -- in the militias.
16 And it is important to have the charge as confined to the inscription,
17 because if not - and that's the point that Ms. Coomaraswamy did here - if
18 not, the girls are considered wife and ignored as people to be protected
19 and demobilised and cared. That is why the Prosecutor decided to confine
20 the charges -- to present the suffering and the sexual abuse and the
21 gender crime suffered by the girls in the camps just as conscription,
22 showing this gender aspect of the crime.

23 PRESIDING JUDGE FULFORD: Thank you.

24 Ms. Massidda --

25 MR. MORENO-OCAMPO: I think I have one minute.

1 PRESIDING JUDGE FULFORD: Sorry, Mr. Ocampo, I thought you'd
2 finished.

3 MR. MORENO-OCAMPO: No, I'd like to answer the previous question
4 properly because I think your question was very important. I'd like to
5 answer properly in a few seconds --

6 PRESIDING JUDGE FULFORD: Well, I thought you'd finished your
7 submission.

8 MR. MORENO-OCAMPO: No, I never said that.

9 PRESIDING JUDGE FULFORD: All right. If there's something else
10 you want to say, if so, please do so.

11 MR. MORENO-OCAMPO: Thank you very much, your Honour. I think
12 your question was very important, the (* indiscernible) submission of the
13 Prosecutor is very important on this point. I have to be clear. We
14 agree with the Chamber idea: their act, they are not used in hostility.
15 However, factually we believe when a commander ordered to abduct girls to
16 use them as sexual slaves or rape them, this order is using the children
17 in hostility. That is the submission we are doing. So to summarise, we
18 agree with the Chamber there is a line, there's a border between
19 hostilities and no hostilities, and cooking could be a good example,
20 maybe, but ordering to abduct girls in order to rape them is an order
21 to -- and use children in hostilities. Thank you.

22 PRESIDING JUDGE FULFORD: That's very clear. I'm not sure if
23 it's the same as the submission given by Ms. Samson, but nonetheless,
24 your position is clear, Mr. Ocampo.

25 MR. MORENO-OCAMPO: Yes, because I am the Prosecutor, I think the

1 Chamber should take my word as the position of the office. Thank you.

2 PRESIDING JUDGE FULFORD: Well, I'm going to ignore that last
3 remark.

4 Ms. Massidda, we now turn to you. The submissions we've just
5 heard have indicated how difficult it is to arrive at a good estimate in
6 relation to the length of speeches. The Prosecution had originally
7 indicated they were going to leave 30 or 40 minutes spare at the end of
8 their submissions for questions. That completely evaporated.

9 Now, you're the first speaker. I'm going to, I'm afraid, give
10 you the responsibility of trying to make sure that all of the speeches by
11 the victims' representatives are completed within the two hours that's
12 been allotted, and as I understand it, you are the first advocate to
13 contribute on behalf of the victims.

14 MS. MASSIDDA: Thank you, your Honour. I will not use the
15 40 minutes allocated to the OPCV team, if this could be of help.

16 (Interpretation) Mr. President, your Honours, the first case
17 before the International Criminal Court is coming to a close today. It
18 is not necessary to state that this trial is historical as such, both for
19 international justice as well as for the entire international community.
20 This trial is also historical for the thousands of victims in Ituri who
21 hope that justice will be done following the commission against them of
22 the most heinous crimes that have hit the international community, that
23 go beyond imagination and that go against human consciousness.

24 It is of note and noteworthy that this very first trial deals
25 with crimes against one of the most vulnerable groups, that is, children.

1 For all of these victims, this first trial has given rise to tremendous
2 expectations, tremendous hope. First of all, the hope to see that both
3 in practice and effectively the rights and prerogatives granted to
4 victims by the Rome Statute will indeed be applied, in particular, the
5 right to be heard and the right to contribute to justice and truth.

6 From that point of view, this very first trial has, overall,
7 fully satisfied the victims' expectations. Indeed, the victims
8 participating in this trial have been recognised and have seen the rights
9 and prerogatives recognised to them as provided for in the fundamental
10 texts of the court. But in addition, other prerogatives have been
11 granted to them that were not specifically stated in those texts, in
12 particular, the possibility for victims to present evidence regarding the
13 guilt of the accused, to contest the admissibility or probative value of
14 certain evidence presented by the parties, and also the possibility to be
15 able to participate in person in the trial itself.

16 The victims, through their Legal Representatives, have also
17 benefitted throughout the trial to the right to attend and participate in
18 virtually all of the hearings held before this Chamber. That is, also
19 the right to have access to virtually all of the documents and materials
20 recorded in the case file and the right to participate during the
21 depositions of witnesses called both by the Prosecution and by the
22 Defence, as well as expert witnesses.

23 The victims were systematically invited by the Chamber to express
24 themselves, both orally and in writing, not only on the aspects that
25 relate to their own personal interests but also regarding virtually all

1 of the matters relating to the essential aspects of this case.
2 Therefore, the victims participating in this trial have contributed in an
3 essential fashion, no doubt thanks to this Chamber, in the implementation
4 in practice of the principles and rules regarding the participation of
5 victims at this stage in the trial before the Court, principles that have
6 been taken up by other Chambers within this court and will therefore take
7 on jurisprudential value and become case law.

8 Throughout this trial we've often heard the Defence proclaim that
9 the victims are the assistants of the Prosecution, but that's false.
10 Throughout the trial the victims have expressed themselves independently.
11 They have expressed their views and concerns to the best of their ability
12 in keeping with their own interests but also based on the legal reasoning
13 over and beyond the texts and case law of the court. They've expressed
14 themselves on universally recognised standards as regards international
15 law and also on the principles that come out of international case law,
16 and in some cases have adopted creative approaches in keeping with the
17 requirements.

18 In a number of cases, the victims have also taken initiatives
19 over and beyond what the Prosecution has requested. For example, the
20 victims have taken initiatives regarding the modification of the legal
21 characterisation of the facts in the charges against the accused as
22 formulated by the Prosecution and confirmed by the Pre-Trial Chamber. In
23 addition, the victims represented by the OPCV have requested that the
24 Chamber within their -- in the framework of their concluding remarks be
25 recognised -- recognise the accused as responsible for the commission of

1 crimes that he's accused of, not only as a co-perpetrator, as the
2 Prosecutor has requested, but also as a direct perpetrator. And
3 therefore it is logical that the victims -- it is clear to say that the
4 victims have participated in this trial, were no doubt the allies of the
5 Prosecutor, but in no case the assistants of the Prosecutor.

6 It's often been said as well that the Defence has argued that the
7 victims carried out the role of a second Prosecutor, and that -- that is
8 also false. That, too, is false. This thesis cannot be corroborated by
9 the reality of things and would be against the actual interests of the
10 victims in this trial. How could it be any other way in such a situation
11 where the victims have a direct link with the charges as confirmed
12 against the accused.

13 And in order to prove the vast range of interests represented by
14 the victims, one must recall the various categories of victims who
15 participated in this trial. We are talking here about child soldiers who
16 were recruited at a very early age, often under the age of 10, and it is
17 very difficult to imagine them bearing arms and wearing a uniform, but
18 they were not -- these children were not just enrolled within the forces
19 of the UPC/FPLC. Once they were enlisted, they were forced to follow
20 military training in UPC/FPLC training camps, side-by-side with adults,
21 in inhumane and degrading conditions. After their military training
22 these children were forced to participate actively in hostilities, often
23 in the front line. They had to use their weapons, kill soldiers, that is
24 enemy soldiers. Many of these children also became body-guards for the
25 UPC/FPLC commanders. Amongst these former child soldiers there were also

1 girls, girls who over and beyond the traditional tasks, that is
2 traditional military tasks, were used for sexual purposes and became
3 sexual slaves for the UPC/FPLC commanders.

4 According to certain commentators of this trial, child soldiers,
5 although they can be considered as victims of the crimes of which the
6 accused is accused, are also criminals because they committed as part of
7 their military experience certain crimes such as murder, rape,
8 mutilations, or looting. That is absolutely untrue. The nature of the
9 crime that the accused is here before this Court accused of is such that,
10 indeed, there is an absolute ban to recruit children under the age of 15
11 into an army and that goes against the very interests of children.
12 Indeed, it is the need to preserve the interests of children that was at
13 the very origin of the existing consensus during the negotiations of the
14 Rome Statute, that is, regarding the criminalisation of conscription and
15 enlistment of children under the age of 15 and their use in hostilities.

16 In addition, children under the age of 15 cannot reasonably give
17 their consent to recruitment in an army, and all the more so, their
18 consent cannot be used as consenting to be soldiers. Therefore, children
19 cannot be considered responsible for any acts that result from their
20 recruitment, and this applies throughout the period for which they
21 remained within an armed group.

22 Therefore, the former child soldiers can only be considered as
23 victims of the crimes that they were the victims of and can in no case be
24 considered responsible for acts that they committed in that context.

25 Amongst the victims, there are also the parents of former child

1 soldiers, these parents who very often saw their children abducted before
2 their very eyes, powerless. They had no news for months or for years or
3 never heard again of their children.

4 All of the former child soldiers participating in this trial have
5 no doubt undergone psychological damage because they lived through an
6 atrocious experience and traumatising because they were soldiers. Many
7 of them -- many of these former child soldiers underwent physical damage
8 and a wide range of injuries, violent acts against them including sexual
9 violence. The parents of the former child soldiers have suffered moral
10 damage, moral prejudice, and psychological suffering because of the
11 abduction of their children, because of the enlistment of these children
12 in the army and their participation in activities associated with adults
13 at the risk of being killed or injured.

14 The character of the prejudice undergone by the victims of such
15 crimes can never be totally repaired simply by the conviction of the
16 accused nor by any other form of reparations which might be granted to
17 the victims if the accused were convicted by this Chamber. Indeed,
18 nothing, no one can restore to the former child soldiers their stolen
19 childhood. No one can enable them to forget the inhumane treatment that
20 they underwent. No one, no one, can erase from their memories the
21 terrifying moments when they saw death face-to-face.

22 Virtually all of these former child soldiers still feel the
23 negative consequences of their military experience, both in physical
24 terms and psychological impact, and many of these children take drugs,
25 drink alcohol to chase away their fear and anxiety and to chase away this

1 feeling of their shattered life.

2 The main concern, the essential concern of the victims
3 participating in this trial, over and beyond the conviction of the
4 accused, is therefore to contribute to the establishment of the truth,
5 seeking for the truth and establishing the truth. In other words, the
6 identification and the prosecution and punishment of individuals who were
7 the cause of their victimisation is extremely important. It's crucial
8 for these victims. The possibility of being able to share with the
9 Judges their painful experiences, being able to tell their stories in
10 public, to make their voice heard from the various aspects related to the
11 case is something that will enable them to be at the very heart of the
12 judiciary mechanism of the court which is in charge of judging the
13 individual that they have identified as being the main -- the main person
14 responsible for the damage that these victims have undergone.

15 Generally speaking, this possibility is such that the victims may
16 be at the very heart of the process which includes the fight against
17 impunity which is another essential aspect in the search for the truth.

18 A trial is an opportunity to bring out the truth in public. It
19 enables the victims to be recognised as such and to make it clearly
20 unacceptable that the torturers be able to benefit from impunity. Many
21 specialists, indeed, agree that for the victims, the sanction itself is
22 less important than the symbolic ritual of the trial, and therefore the
23 victims await public -- the public recognition of what they have lived
24 through, and therefore the trial is a place for them to clarify
25 responsibility. The search for the truth often begins by collecting

1 testimony from direct victims and their families. It's -- it takes time,
2 because it's not easy for victims to go back into this painful period of
3 their lives. It takes time for them, because they tend to prefer to
4 erase such memories, but the recognition of victims in the trial has made
5 it possible for them to restore the dignity that they had lost in the
6 training camps or during ill-treatment that they had undergone.

7 For most victims the decision to participate in this case has
8 not been an easy decision. It meant major sacrifices, in particular as
9 regards their security, in particular for victims who accepted to
10 co-operate with the Office of the Prosecutor and to participate in this
11 trial as witnesses for the Prosecution. Indeed, the victims
12 participating in this trial as well as the victims benefiting from dual
13 status as witnesses and victims are all from the Ituri region, this
14 region where supporting the accused and his political and military
15 movement is still today very, very strong.

16 The evidence presented during the trial has clearly shown that
17 those who accepted to co-operate with the OTP and to present themselves
18 here as victims in this case have often been considered as traitors by
19 their own families and by their communities, and therefore have been
20 persecuted or even threatened in some cases, or at least rejected or
21 blamed for their participation. In such conditions, the victims who not
22 only accepted to co-operate with the OTP but also came here to The Hague
23 to testify in court, before the Judges, have been extremely courageous
24 but have also shown their intention to go the gamut, so to speak, in the
25 search for truth.

1 During their testimony, these victims have also had to respond to
2 the questions from all of the parties and participants, from the Judges,
3 and to do so in the presence of the accused, the very person they fear
4 and the very person they consider responsible for their suffering.

5 Protective measures in order to protect the victims were in
6 store, indeed, in particular under the Court's protection system, in
7 particular the victims of the OPCV. But although providing protection,
8 there were also restrictions that were imposed on victims. Having coming
9 out of a very traumatising experience, these victims had to change
10 their -- their lives, leave their home towns, stop having contact with
11 their families, their friends, their communities that they had just
12 barely gone back to, and some of them were covered by protective measures
13 granted by the Court, but they were not totally protected from potential
14 risk and danger. Some of the victims who testified here before the Court
15 were threatened or persecuted for having testified against the accused.

16 Mr. President, your Honours, the Defence has attempted in vain,
17 during the presentation of its evidence, to prove that those who accepted
18 to testify for the OTP were doing so for some sort of lucrative gain,
19 but, in fact, the Defence has indeed proven the opposite. It was out of
20 the mouths of the witnesses themselves that the Defence brought to the
21 Chamber that they heard that indeed there was an atmosphere of hostility
22 reigning in the Hema community that they had to deal with on a day-to-day
23 basis because they dared to speak out against the accused. They were
24 under pressure from their families and communities sometimes when they
25 decided to come to speak before the Court. And so it was clear that they

1 were not doing this for money. And, in fact, the Defence called
2 witnesses that had initially been ready to testify for the OTP in order
3 for them to testify, in fact, in favour of the accused.

4 Whatever the reasons advanced by the witnesses to explain the
5 miraculous reversal of their position, these explanations are clearly not
6 reliable. It is obvious that it would be simpler, much more reasonable
7 and, in any case, less risky, from the point of view of their security
8 and their well-being, to give in to certain pressure from their
9 communities and to -- at the end of this trial the victims' expectations
10 are now concentrated on justice being done. These expectations are not
11 abstract in nature but are most precise and founded on the evidence
12 presented during this trial.

13 The evidence produced, whether it's the documentary evidence,
14 testimony, audio-visual evidence, leaves absolutely no doubt that
15 Mr. Thomas Lubanga Dyilo is responsible for the commission of the crime
16 of enlistment and conscription of children under the age of 15 in the
17 UPC/FPLC forces and their active use in the hostilities which took place
18 between the beginning of September 2002 and the 13th of August, 2003.
19 This evidence was presented in detail in the written final conclusions
20 and orally today both by the Prosecutor as well as by the three teams of
21 Legal Representatives of Victims.

22 Mr. President, your Honours, today justice is in your hands.
23 Thousands of victims are looking to you with their expectations and
24 awaiting this very first verdict of the Court. The historical character,
25 the importance of this trial makes your task a difficult one, because it

1 requires the highest level of responsibility. The victims can only now
2 hope that the ruling that you will hand down in this case will respond to
3 the requirements of equity and justice and that their expectations will
4 not be dashed nor transformed into illusions lost.

5 PRESIDING JUDGE FULFORD: Thank you very much, Ms. Massidda.
6 Maitre Bapita.

7 MS. BAPITA: (Interpretation) Mr. President, your Honours,
8 honourable members of the Court. After five long years, this very first
9 trial of the International Criminal Court has reached the final phase of
10 conclusions. The Democratic Republic of the Congo, the 60th country to
11 have ratified the Rome Statute, has made it possible for the
12 International Criminal Court, at the end of this trial, to hand down a
13 judgement regarding the enlistment, the conscription, and the active
14 participation of child soldiers before the highest court in the world.
15 The purpose of this judgement is to convince the warlords that there will
16 be no compromise, that things have changed, and that never again in the
17 history of humanity will we accept that the reactions to events such as
18 those that took place in the RDC will take place and that the -- that
19 international justice will be on their heels.

20 As regards the Lubanga trial and the present pleadings before
21 this Bench, I would like to present the following three main points:
22 First of all, the historical context of the conflict seen by the victims,
23 the training camps and the ill-treatment undergone by children under the
24 age of 15, and lastly, the specific situation of girls in training camps.

25 Mr. President, your Honours, honourable members of the Court, at

1 the beginning of the year 1997, we noted the advance of the *Alliance des*
2 *Forces Démocratiques pour la Libération du Congo*, the AFDL, toward
3 Kinshasa, the capital of the DRC, former Zaire, and at the head of this
4 group was Mr. Laurent-Désiré Kabila, and they were supported by the
5 Ugandan army, the Ugandan People Armed Force, that is the UPDF, and the
6 Rwandan army, the APR.

7 On the 17th of May, 1997, Laurent-Désiré Kabila took over the
8 power in Kinshasa. Fourteen months later, in July of 1998, the relations
9 between Rwanda, Uganda, and the DRC deteriorated, and the DRC officially
10 requested the other two to leave its territory. Rwanda and Uganda
11 confirmed that they had done so and stated that had they had done so,
12 whereas, in fact, in the eastern part of the DRC troops remained, that
13 is, in Ituri.

14 This District of Ituri, which is in the Orientale Province, is
15 rich in natural resources, that is, gold, diamonds, oil, wood, and
16 coltan.

17 The majority of the population of Ituri, the Hema, the Lendu and
18 their southern subgroups, that is the Ngitis, the Alur and the Bira, who
19 used to live from farming, animal husbandry and fishing, this majority,
20 toward the year 1990, are to become more interested in these natural
21 resources such as trading in gold, diamond, and coltan.

22 The Witness DRC-OTP-WWWW-0360, Mr. Gérard Prunier, who is an
23 expert specialised in Africa, in his deposition before this very Chamber
24 indicated that the ethnic rivalries, rather than being the cause of the
25 conflict were, in fact, the instrument of armed groups in order to

1 promote their political interests and the interest of certain
2 neighbouring countries. The witness DRC-CHM-WWWW-0002, Mr. Roberto
3 Garreton, former Special Rapporteur on the situation of human rights in
4 the DRC, testified here before this very Chamber and indicated that the
5 Ugandan presence in the region exacerbated the underlying tensions, and
6 that within the Congolese population there was a general feeling that
7 whatever happened in Ituri had been decided in Kampala.

8 The UPDF, that is the Ugandan army, supported the creation of the
9 MLC in 1999, and the Rwandan Patriot Army, the APR, which, since 1998,
10 supported the RCD in order to force Laurent-Désiré Kabila's regime to
11 accept the alienation of Congolese national sovereignty in that Rwanda
12 and Uganda had in fact taken control in the eastern part of the DRC. The
13 RCD, which was a political and military movement, expressed both this
14 duality and this division within the group. The RCD/Goma was supported
15 by Rwanda. The RCD-K/ML, led by Nyamwisi, was supported by Uganda with
16 the rear base in Kisangani. And the RCD/N of Roger Lumbala was supported
17 by Uganda with its rear base in Bafwasende.

18 At the time, Thomas Lubanga was a member of the RCD-K/ML and
19 occupied the position of minister of defence. He was to leave the
20 RCD-K/ML to found a political party named the -- *l'Union des Patriotes*
21 *Congolais*, UPC, with other members, on September 15th, 2000, the
22 headquarters being in Bunia.

23 The UPDF used the Congolese rebel troops supported by the UPC and
24 the FNI for the control of the city of Bunia during the period from
25 September 2002 to August 2003. At the beginning of September 2002, the

1 UPC was renamed *Union des Patriotes Congolais pour la Réconciliation et*
2 *la Paix*, abbreviated UPC/RP, and Thomas Lubanga was appointed president.

3 Right after the creation of the FPLC, the *Forces Patriotes pour*
4 *la Libération du Congo*, that is the military wing of the UPC,
5 Thomas Lubanga Dyilo became the Commander-in-Chief. As
6 Commander-in-Chief of the FPLC, Thomas Lubanga Dyilo began, with other
7 members of the FPLC, during the same period, that is between July 2002
8 and December 2003, began massive -- massive enlistment of children under
9 the age of 15 who were then trained in the FPLC training camps that he
10 himself visited and when -- where he spoke with the combatants.

11 The aforementioned history shows, indeed, that there was an armed
12 conflict in Ituri, and the national or international character of this
13 conflict is of no major importance as regards the statutory jurisdiction
14 in this case -- of the Court in this case. The main thing is to note
15 that the scope imposed by the Rome Statute on the ban of enlistment and
16 conscription and the active participation of children under the age of 15
17 is identical, in fact, regardless of the qualification or, rather, the
18 characterisation of the armed conflict.

19 Your Honours, let me describe, the training camps where these
20 child soldiers were trained and the kind of ill-treatment that they
21 underwent. It has been proven and supported by various testimonies given
22 by -- by witnesses that children under the age of 15 were trained in the
23 training camps organised by the FPLC in Bule, Centrale, Mandro, Rwampara,
24 Bogoro, Sota, and Irumu, and that they actively participated in
25 hostilities which took place in particular in Libi, Mbau in October 2002

1 in Langu at the beginning of 2003, in Lipri and Bogoro in February and
2 March of 2003, in Bunia in May of 2003, and in Djugu and Mongbwalu in
3 June of 2003. These children underwent ill-treatment throughout their
4 stay in these training camps. In particular, they had to be -- they were
5 awakened extremely early in the morning. They had to undergo physical
6 exercise which was far too difficult for their age. And the training was
7 often very short and the commanders wanted to send them off to battle
8 without being absolutely certain that they actually mastered the methods,
9 and they also were made to eat the same food every day.

10 Children under the age of 15 were taught how to use fire weapons,
11 to kill, to face death, and to loot. In addition, any attempted escape
12 or if they lost a weapon, they would be beaten or even punished by death.
13 And I refer here to the witness DRC-OTP-WWWW-0298.

14 During their stay in the training camps, these children had no
15 clothes to change into. They had to keep the same clothes on. They had
16 no medical care. They raped and they were raped. They had to carry
17 heavy weapons, heavy rifles sometimes weighing 4 kilos, and they wore
18 clothing that was too big for them. And here I refer to
19 DRC-OTP-WWWW-0038 and DRC-OTP-WWWW-0299.

20 All this proves that during their stay in these military camps,
21 these children underwent obvious ill-treatment.

22 Mr. President, your Honours, honourable members of the Court, I
23 cannot conclude without emphasising the specific situation of girls in
24 these training camps and their participation in the hostilities. Girls
25 under the age of 15 in armed groups underwent the exact same procedures

1 and the same kind of training as boys. Girls under the age of 15 were
2 recruited in addition to that by the UPC and were used as sexual slaves,
3 were deflowered at a very early age. Others sometimes became pregnant,
4 had unwanted children. They were also submitted to household chores, and
5 many of them were used as well in armed operations as well, in particular
6 as scouts, in looting operations, killing, and fighting.

7 All of these criminal acts carried out against girls under the
8 age of 15 should be considered as aggravating circumstances to the crime
9 of enlistment, recruitment, and active participation of child soldiers
10 under the age of 15 in hostilities during times of war.

11 Mr. President, your Honours, sexual violence is indeed the result
12 of the enlistment.

13 Mr. President, your Honours, the future of children is the future
14 of an entire nation. To accept the presence of children in the armed
15 forces is endangering the future of an entire country. Children under
16 the age of 15 should be in school, not in armed groups.

17 We hope that this very first judgement handed down, historical
18 judgement, handed down by the ICC, by this very Chamber, on the matter of
19 the enlistment, the recruitment and conscription of child soldiers under
20 the age of 15 will have a positive impact on the future of this
21 phenomenon of the use of child soldiers for our country, that is, the
22 Democratic Republic of Congo, which is, at this very moment, about to
23 take a turn for the future, albeit fragile, with the upcoming elections
24 that we hope will be democratic scheduled for the month of November 2011.

25 Thank you, your Honour.

1 PRESIDING JUDGE FULFORD: Thank you, Maitre Bapita.

2 The next advocate is going to be Mr. Kabongo, but I think we'll
3 take the last break of the afternoon at this stage. We'll sit again at
4 20 past 6.00 and then we will rise for the day at 7.00.

5 COURT USHER: All rise.

6 Recess taken at 5.50 p.m.

7 On resuming at 6.21 p.m.

8 (Open session).

9 COURT USHER: All rise. Please be seated.

10 PRESIDING JUDGE FULFORD: Mr. Kabongo.

11 MR. KABONGO: (Interpretation) Your Honours, my presentation
12 will focus on the recruitment of children in practice and their
13 participation in combat as cannon fodder. From July 2002 to
14 December 2003, fully aware of his unique role within the *Union des*
15 *Patriotes Congolais, les Forces Patriotiques pour la Libération du Congo,*
16 namely UPC/FPLC, as president and as Commander-in-Chief, Thomas Lubanga
17 Dyilo, together with other members of the FPLC, started recruiting
18 children under the age of 15 massively, and these children were trained
19 in various training camps with a view to having them participate actively
20 in combat.

21 Your Honours, such recruitment and the manner in which these
22 children were made to participate in hostilities were carried out using
23 methods adopted and implemented by the UPC, which was an armed group
24 organised according to a hierarchical structure. Your Honours, what,
25 therefore, were the methods used for recruiting child soldiers within the

1 UPC, and what was their role in combat?

2 Before I answer these questions, I think it would be proper,
3 first of all, to look at the legal meaning of the expression "recruitment
4 of child soldiers" and the expression "active participation in combat."
5 By so doing, we will be able to analyse certain material elements of war
6 crimes, the war crimes which have been -- with which the accused have
7 been charged.

8 Your Honours, with respect to the recruitment of child soldiers,
9 it emerges in Article 8(2)(e)(vii) of the Elements of Crimes and in the
10 various international instruments and established jurisprudence that
11 recruitment is the act of conscripting or enrolling one or several
12 persons into an armed force or group or having them participate actively
13 in combat. In other words, conscription and enrollment are two forms of
14 recruitment, with conscription meaning forcible recruitment, while
15 enrollment refers to voluntary recruitment.

16 To determine the type of recruitment that is applicable,
17 according to certain experts such as Ms. Radhika, it is necessary to
18 collect the evidence related to the acts required of the children, to the
19 circumstances of their enlistment, and to the circumstances under which
20 they were separated from their families and their communities.

21 In the instance case and within the framework of their
22 recruitment, many children under the age of 15 were forced either at home
23 or on their way to school or in school itself or even in the market, in
24 various localities in Ituri, they were forced to join the FPLC.
25 Furthermore, other children under the age of 15 voluntarily joined the

1 FPLC or were put at the disposal of that movement by their parents in
2 response to an appeal for mobilisation launched by the UPC, and some of
3 them joined the FPLC out of a desire to exact vengeance for the loss of a
4 relative allegedly killed by militia groups fighting again the FPLC.

5 On this point, a Human Rights Watch report entitled "Ituri:
6 'Covered in Blood,'" violence targeted against certain ethnic groups in
7 North-Eastern RDC, speaks for itself. And that report states, and I
8 quote:

9 "On 8 November 2002, at 8.00 a.m., the UPC allegedly entered the
10 primary school of Mudzipela and allegedly took away about 40 children
11 from the fifth year to enroll them in military service. A similar
12 operation was conducted in Songolo, where the UPC encircled a
13 neighbourhood and abducted all the children who were found in that
14 neighbourhood.

15 "At the end of November 2002, a school headmaster complained that
16 half of his pupils had disappeared, and he spoke openly against their
17 forcible recruitment. The forum of Iturian mothers to President Lubanga
18 of the UPC at the end of 2002 about the recruitment of their children and
19 the UPC opened a small demobilisation centre, but according to the local
20 people, there was merely a public relations gimmick. The recruitment of
21 children continued."

22 The special report of MONUC on the events in Ituri adds the
23 following, your Honours, and I quote:

24 "There is no doubt that all armed groups systematically recruited
25 children from the ages of 7 to 17 in the entire District of Ituri, and

1 all armed groups recruited by calling for volunteers or resorting to
2 abductions, abducting children found in the markets or on the street, and
3 these children were taken away by force in lorries. The UPC conducted
4 recruitment campaigns all through the year 2002 and early 2003.
5 Furthermore, MONUC, through its radio station, Radio Okapi, revealed that
6 Mr. Lubanga had decreed that each family living in the areas under his
7 control had to mandatorially contribute to the war effort by providing
8 either a cow, money or a child to join the ranks of the rebels or the UPC
9 militia.

10 PRESIDING JUDGE FULFORD: Forgive me for interrupting. And I'm
11 not for a moment going to stop you in that these are your submissions and
12 you must take whatever course you think is appropriate, however, I must
13 warn you that the Chamber is only going to be looking at the evidence
14 that we've heard in the case, and referring us to reports that are not
15 part of the evidence in the trial is probably not the most helpful line
16 to take, because we will not be able to rely on -- well, it's not a
17 question of being able to. We simply will not rely on that material. So
18 you can take whatever you course you choose, but it's necessary for us to
19 make clear now that our decision will only be founded on the evidence
20 that has been received during the course of this case.

21 I hope that's clear.

22 MR. KABONGO: (Interpretation) Yes. Thank you, your Honour.

23 With respect to the victims whom we are representing before your
24 august Chamber, these victims state the following, and I quote:

25 "As we were returning from school -- when we returned from school

1 we went to the farm. Afterwards we heard that UPC militia members
2 entered our house and took away our clothes, and when we tried follow to
3 collect our clothes, they forced us to become militia members against our
4 will."

5 Another victim states:

6 "One day, militia members of the UPC came to our house and they
7 started threatening the whole family, including my parents. When they
8 saw my, they seized me by force and took me away to their camp."

9 Your Honours, I will talk about the active participation of child
10 soldiers in combat. Participating actively in combat does not only
11 relate to direct participation in fighting. It covers other aspects of
12 activities related to combat such as reconnaissance, espionage, sabotage,
13 the use of children as body-guards for commanders, scouts, errand boys,
14 or using them to man military check-points or to transport ammunition.
15 In the instant case, after they were recruited and trained in the various
16 camps, after which they were provided with uniforms, firearms and
17 ammunition, the children who were considered as ready for combat
18 participated at the front lines as cannon fodder in fighting in Ndrele,
19 in Libi, Mbau, Largu, Lipri, Bogoro, and Bunia itself, according to the
20 testimony of certain witnesses.

21 In light of the foregoing, your Honour, you will agree with me or
22 with us that there are substantial grounds to believe that from July 2002
23 to December 2003, within the framework of an armed conflict, the FPLC
24 embarked on the enrollment and the conscription of children under the age
25 of 15 into their armed group with view to having them participate

1 actively in combat, mainly as cannon fodder.

2 That is my submission. Thank you.

3 PRESIDING JUDGE FULFORD: Thank you very much indeed,

4 Mr. Kabongo.

5 Mr. Keta.

6 MR. KETA: (Interpretation) Mr. President, your Honours,

7 Mr. Prosecutor, learned colleagues of the Defence, Legal Representatives

8 of the Victims, ladies and gentlemen, after 31 months of trial

9 proceedings, the Prosecutor against Thomas Lubanga, it is important to

10 underscore the contribution of the victims in this pilot trial which is

11 the first before the ICC. My presentation will focus first of all on

12 Articles 68(3) and 69(3) of the Rome Statute, and secondly, on the

13 relevant case law of the Appeals Chamber of the ICC in the area of victim

14 participation in trial proceedings.

15 The capacity of victim in the ICC has a limited scope. In fact,

16 the victims admitted to participate in proceedings at the ICC are not

17 considered as parties to the proceedings but, rather, as participants.

18 In its ruling of the 11th of July, 2008, in the case the

19 Prosecutor versus Thomas Lubanga, in paragraph 93, the Appeals Chamber of

20 the ICC deemed it necessary to point out that the right to submit

21 evidence relating to the guilt or innocence of the accused and the right

22 to challenge admissibility of relevance are the sole preserve of the

23 parties, namely, the Prosecutor and the Defence.

24 In paragraph 94 of the same ruling, it is stated: However, the

25 Appeals Chamber is not of the opinion that these provisions exclude the

1 possibility for the victims to submit evidence relating to the guilt or
2 innocence of the accused and to challenge the admissibility or relevance
3 of evidence in the trial.

4 According to that ruling, the only parties before the Court are
5 the Prosecutor and the Defence. Nevertheless, the victims also have a
6 role to play.

7 Regarding the participation of the victims that I represent, I
8 will tell you how it came to be. On the 15th of September, 2008, the
9 Trial Chamber took a decision to admit participants in the trial of
10 Lubanga. Amongst those participants, 47 of my clients were granted the
11 capacity of participants. On the 10th of July, 2009, one other was
12 added. On the 8th of February, 2009, there were 15 clients added, and on
13 the 25th of July, there were four others, making a total of
14 67 participating victims.

15 On the 2nd of April, 2009, pursuant to Article 68(3) of the
16 Statute, three of my clients filed an application before Trial Chamber I
17 seeking to present their views and concerns in the trial process. In
18 your decision of the 26th of June, 2009, Trial Chamber I set out the
19 rights of those three participating victims in the proceedings in
20 paragraphs 14, 25, and 39. By appearing before your Chamber, the three
21 participating victims in the proceedings had only one concern, promote
22 their right to truth and justice, a right that was recognised by the
23 Single Judge in the Pre-Trial Chamber in the case the Prosecutor versus
24 Katanga and Ngudjolo.

25 By his testimony of the 11th of January, 2010, before

1 Trial Chamber I, Victim Witness 270/07 made use of that right to truth
2 and justice by declaring in answer to a question, "After the risks --
3 despite the risks concerned, why did you choose to come and testify?
4 What do you hope to accomplish?" And the victim responded, "I felt it
5 necessary to come and testify before this august jurisdiction to be able
6 to talk about what happened in the Mahagi territory."

7 As you know, Mr. President, the Mahagi territory was cast aside,
8 had been forgotten. It was not subjected to any serious investigations
9 by the international jurisdiction, whereas this was a territory in which
10 a lot of violence happened. We have given some examples, but it is only
11 a sample.

12 Through their testimonies in January 2010 before Trial Chamber I,
13 my two clients, 225/06 and 229/06, did not only corroborate the testimony
14 of Victim Witness 270/07, but they also rendered the entire body of the
15 evidence or testimony produced before the Court more reliable.

16 Witness Victim 225/06 stated that he had been forcibly recruited
17 on the road, and Victim Witness 229/06 stated that he was forcibly
18 recruited on the way back home after having written his examinations.

19 The reliability of those testimonies was reinforced by the
20 testimonies of Defence witnesses W-0032 and W-0033 before
21 Trial Chamber I. Witness 0032 stated that the forcible recruitment of
22 children had been widespread during the years 2002/2003. Witness W-0033
23 also stated that he had belonged to the UPC armed group.

24 In its application claiming abuse of process, the Defence of the
25 accused challenged the credibility of my three clients as well as the

1 reliability of their testimonies, and this is surprising. My three
2 clients are all very credible. Victim number 270/07 is a teacher by
3 profession and a human rights militant in the region in which the crimes
4 charged against the accused were committed. His interaction with the ICC
5 is not limited to this area, and it has nothing to do with his political
6 activities. The allegations of the Defence according to which Victim
7 Witness 270/07 sought out and organised the presentation of false
8 testimonies before the Chamber are totally unfounded considering that
9 each of my clients took an oath and testified separately, and the parties
10 had the opportunity to examine them. At no time during the examination
11 of the Defence did Victim Witnesses 0225/06 and 0229/06 indicate having
12 being manipulated or incited to come and testify or lie. My clients
13 0225/06 and 0229/06 were pupils in a school in the area where the crimes
14 are charged. They testified in public under their own identities, and I
15 can refer you to the students' identity cards that were admitted into
16 evidence.

17 The allegations of the Defence in this case were proven wrong by
18 the results of the finger-print analysis, and it is, in fact, necessary
19 to point out that the Defence had waited for my clients to return home to
20 raise the so-called issue of identity theft.

21 The testimonies of my clients are therefore reliable, because not
22 only were they corroborated by the testimonies of Defence witnesses, but
23 particularly the fact that all the testimonies are consistent on the fact
24 that the criminal acts attributed to the UPC had been committed in the
25 Mahagi region between September 2002 and August 2003. The three victim

1 witnesses who testified before Trial Chamber I had taken an oath to speak
2 the truth, because that is what they had come to establish.

3 In conclusion, it is our considered opinion that the right to
4 justice and truth is the primary concern of the victims when they seek to
5 participate in proceedings before the ICC in application of Article 68(3)
6 of the Statute, even though the Statute also grants them the right to
7 reparation. In fact, Victim Witness 270/07 had expressed the general
8 concern of victims, and particularly the victims of the Mahagi territory,
9 when he stated, and I quote:

10 "This is an opportunity for us to tell the world what happened in
11 the Mahagi territory and ask for reparation if it is possible for that
12 reparation to be granted."

13 Victims Witnesses 270/07, 225/06 and 229/06 are only a sample of
14 thousands of victims who wished to participate in the Lubanga case. They
15 cannot be prevented from participating under the cover of allegations of
16 identity theft. This problem is clearly understood within the framework
17 of the civil status deeds and the functioning of sizable status
18 administrations in the Democratic Republic of Congo. Respectfully
19 submitted, your Honours.

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

21 Yes, Mr. Mulenda.

22 MR. MULENDA: (Interpretation) Mr. President, your Honours, I
23 totally subscribe to all the submissions made by the previous speakers,
24 and therefore I will focus on the civil status registration in the DRC
25 and the policies and expectations of the victims, as well as their

1 experiences of the trials before handing over to Mr. Luc Walley.

2 To begin with, the civil status registration in Congo is in an
3 advanced stage of degradation. Several programmes have been initiated to
4 rehabilitate the system either by national authorities, development
5 partners, or diplomatic missions. It was because of these difficulties
6 that the Congolese lawmakers opted for a flexible approach, and I will
7 give you three examples.

8 Article 72 of law number 87-010 of the 1st of August, 1987,
9 instituting the family code on proof of civil status registration states:
10 "Unless otherwise provided by law, the civil status of citizens
11 shall be established and proven exclusively by civil status
12 certificates."

13 This provision makes it possible for the lawmakers to enact
14 subsequent waivers.

15 There is also the Article 10 of law number 0428 of the 24th of
16 December, 2004, on voter registration. Mention is made of students'
17 cards, driving licenses, and calling individuals who can provide
18 testimony about the age of others. But the part that is of interest to
19 me is the following: In the absence of these documents, consideration
20 will be given to the testimony given at the office of the registration
21 centre by five witnesses who are already registered on the voter rolls of
22 the registration centre and who must have been residing there for at
23 least five years. So identity can be proven through testimony.

24 There is also Article 167, paragraph 2, of law number 06/018,
25 amending the Congolese Criminal Code and the punishment of sexual

1 violence. It is stated that any indecent acts perpetrated without the
2 use of violence, subterfuge or threats against or using a child under the
3 age of 18 shall be punished by a term of imprisonment from six months to
4 five years. And the last sentence states: "The age of the child may be
5 determined by a medical examination in the absence of civil status
6 documents."

7 So these are solutions envisaged by the lawmakers to overcome the
8 state of degradation of the civil status registries. All the victims are
9 Congolese, and their situation can be seen within the context of the
10 Congolese reality.

11 It is true that your Chamber is not bound by the settled law of
12 the Pre-Trial Chamber, but this does not mean that you cannot refer to
13 that jurisprudence. We appeal to you to refer to it.

14 With regard to Article 69(4) of the Rome Statute, this gives you
15 discretionary power to assess the admissibility of evidence presented.

16 The Pre-Trial Chamber concluded that in order to determine the
17 admissibility and probative value of evidence relating to civil status,
18 it has to attach particular importance to the context in which the
19 evidence was guarded, particularly in light of the fact that in certain
20 countries, a civil status certificate such as birth certificates,
21 marriage certificates, and death certificates may not be available. In
22 this regard, the Chamber continues:

23 "The jurisprudence of the Inter-American Human Rights Court
24 mentioned in its decision in the case Aloeboetoe and others, that
25 marriages and births are not always registered, and that when they are, a

1 certain amount of information relating to personal relationships are
2 lacking. This is a decision of the 10th of September, 1993, paragraphs
3 63 and 64.

4 This jurisprudence reflects the approach according to which even
5 though the birth certificates issued by the competent authorities in
6 accordance with national laws constitute the best proof of the age of
7 persons, it is not the only way to provide such proof. In the opinion of
8 the Chamber, this stems from the fact that a simpler and more flexible
9 approach to admissibility and the probative value of such evidence is the
10 only approach that is compatible with full respect of the specificities,
11 cultures, and customs of the various peoples of the world.

12 It must be pointed out that apart from those considerations,
13 there is a high rate of illiteracy in the DRC and this complicates the
14 efficient management of civil status registration.

15 The second point concerns the problem of names in Congo. I will
16 not dwell on this issue except to refer you to the testimony of the
17 expert witness WWW-0004, who underscored the rigidity of imported laws
18 and practices in the DRC. He gave the example of his own case, because
19 at birth he was registered under one name but the priest who wrote down
20 that name spelled it wrongly and he carries that name till today, which
21 raised a problem during his marriage. The reference has been given, and
22 the report of that expert witness is in the trial record.

23 The last point is the trial as experienced in the field. I am
24 happy that Madam Paolina touched on this point, but I would like to point
25 out that accepting to participate in trial proceedings within the

1 framework of international crimes is, in principle, to take a risk. The
2 examples of ad hoc tribunals clearly illustrate that. I will not come
3 back to the threats that have been reported by certain victims and
4 witnesses. There were some who were admitted into the protection
5 programme of the court, but I would like to point out that despite the
6 relocation, the victims are not as comfortable as they would have been in
7 Ituri. For the most part, they were under the age of 15 at the time of
8 the events, but now they have attained the age of majority, and they
9 would like to get married, for example, but they have been relocated and
10 most of them would like to return to the land of their ancestors, which
11 is Ituri.

12 I would also like to say that the Ituri war did not profit the
13 majority of the population. It was also not organised to save the
14 communities. On the contrary, it was the natural resources of Ituri that
15 attracted the various belligerents.

16 Our clients, that is the participating victims, have complete
17 trust in you. Luc Walleyne is going to make the final presentation, and I
18 will now hand over the floor to him to talk about the real wishes of the
19 victims with regard to this first trial of the ICC. That was my
20 submission. Thank you, your Honours.

21 PRESIDING JUDGE FULFORD: We're very grateful to you,
22 Mr. Mulenda. Thank you very much.

23 Mr. Walleyne, is it going to inconvenience you if we say until
24 tomorrow afternoon.

25 MR. WALLEYNE: I would prefer to finish as it is the conclusion of

1 our common submissions, but I reduce to more or less than -- less than
2 ten minutes.

3 PRESIDING JUDGE FULFORD: Less than 10 minutes. Let me look at
4 the booths. Ten minutes, ladies and gentlemen?

5 THE INTERPRETER: Yes, your Honours. That is fine with the
6 interpreters.

7 PRESIDING JUDGE FULFORD: Thank you very much indeed.

8 Yes, Mr. Walley. Thank you.

9 MR. WALLEYN: (Interpretation) Thank you, your Honour.

10 Your Honours, as the last speaker on behalf of the victims, I
11 would like to express their views and concerns on the central issue on
12 which you will have to give a ruling, namely, the criminal responsibility
13 of the accused. To that end, it would be proper to ask who was
14 President Lubanga Dyilo in the eyes of these young ex-combatants, who was
15 he in the eyes of the communities to which they belonged, the communities
16 for which they spilled their blood? For the Defence he was first and
17 foremost someone who took up arms, I quote, "to resist oppression." And
18 the Defence even quotes the Declaration of Human Rights of 1789 to state
19 his right to this last resort in order to combat violations of human
20 rights.

21 My Francophone colleagues know that during the French Revolution,
22 the human rights were often advanced as justification to violate the
23 rights of others. In any event, our clients have never known Thomas
24 Lubanga as a human rights activist. Some of them knew him as one of the
25 leaders of the Mbusa Nyamwisi rebellion, that is, the former RCD-K/ML,

1 which is not an entity that can easily be described as a human rights
2 movement. Others knew him only after he turned against his former
3 patrons in order to create his own movement, namely, the UPC.

4 Did he create that movement in order to institute parliamentary
5 democracy which is respectful of human rights, or did he create it to
6 institute another one-party military regime based on force and organised
7 around a powerful chief. Did he organise resistance against the
8 occupation of part of Congo by foreign forces, or did he, rather, seek to
9 secure the support of Uganda and Rwanda? Did he create the militia group
10 because that was his duty, and I quote, "to put an end to the serious
11 crimes committed against not only the Hema community but also all the
12 communities in Ituri"?

13 The Defence did not call here before the Chamber witnesses who
14 gave us testimony about the protection of the civilian population by the
15 UPC against serious crimes. According to many international observers
16 and witnesses who appeared before the Chamber, the militia members of the
17 accused and other warlords in Ituri did nothing to provide order or to
18 protect civilians. On the contrary, crimes against the civilian
19 population increased after the creation of these militia groups, and
20 after 2002, inter-ethnic violence mutated into generalised armed conflict
21 of unprecedented cruelty in the DRC.

22 For our clients, our clients were not given instructions to
23 protect civilians. On the contrary, they were asked to harass and hold
24 to ransom their own communities, and to participate in the commission of
25 war crimes against civilian populations considered to be hostile. For

1 his own people, Thomas Lubanga, contrary to what we are being told, was
2 not a civilian political leader or a member or an authority without any
3 real power. For them he was a real military leader, a charismatic leader
4 whose authority could not be challenged by anyone. For the child
5 soldiers, and despite the suffering which they underwent in the camps,
6 Papa Lubanga, as they referred to him, was some sort of a semi-god whose
7 praise was chanted during training and during the visits he made to the
8 camps, visits which were considered to be major events. Yes, the kadogos
9 also succumbed to his charisma and this even created conflicts of loyalty
10 among certain witnesses.

11 Right from the very first day of this trial, your Chamber did
12 notice that the physical presence of the accused made a big impression on
13 some young witnesses who had been his former subordinates, and you had to
14 take precaution to ensure that witnesses do not make any eye contact with
15 the accused during the proceedings.

16 Now, let's come back to the charges brought against the accused.
17 I would not like to dwell at length on the recruitment of children under
18 the age of 15. A lot has already been said on that. What's important
19 here is to respond to the Defence argument that even though there were
20 children under the age of 15 in the militia group of the accused, it was
21 not his responsibility to prevent them. As the Commander-in-Chief he
22 could not personally ensure that all the recruits were above the age of
23 15, and that this was the responsibility of unit commanders.

24 Of course it's not the army chief -- up to the army chief to
25 double-check every recruitment, but the recruitment process is decided at

1 the summit and not at the operational level. Who would believe that
2 Thomas Lubanga believed for one moment that his recruiters turned away
3 any adolescent who was not yet up to 15 years of age? Who would believe
4 that when he was addressing the Rwampara camp, he did not know that he
5 was speaking to people some of whom were below the age of 15? He is
6 supposed to know that some of his soldiers were below the age of 15 as
7 was the case in order militia groups.

8 The final argument of the Defence is that the accused cannot be
9 prosecuted for the recruitment policy of the UPC and that he was only --
10 well, if the Chamber had to follow this argument, then the Chamber would
11 have re-characterise the facts pursuant to Rule 55 of the Regulations of
12 the Court. And looking at the video footage taken in Rwampara, and as I
13 saw from the reaction of the Defence team, I would like to cite the --
14 the observations of the Defence: Encouraging the recruitment of young
15 recruits below the age of 15 cannot as such be -- cannot form the basis
16 for accusing Mr. Lubanga as a co-perpetrator.

17 In our humble opinion, we do not think it's proper to
18 re-characterise the facts. The military commanders who undertake the
19 recruitment of young people and set up training camps, set up a militia
20 group composed of children below the -- below the age of 15. They
21 encouraged the victims to participate in hostilities, and this -- and the
22 person who is responsible -- responsible for this should be charged as
23 co-perpetrator and not simply as an accomplice.

24 Your Honours, in this case, the most important thing -- or the
25 most difficult thing is not proving that there were children under the

1 age of 15 in the UPC. This was an open secret, and a lot of evidence in
2 this trial has proven this. But you have to give a ruling with respect
3 to individual criminal responsibility, and such a ruling has not yet been
4 given by any Trial Chamber.

5 As representative of victims, we believe that the rules of
6 Article 25 should be interpreted respecting the rights of the Defence,
7 but we should also bear in mind the ultimate goal of the Statute, which
8 is to punish those who bear the greatest responsibility for the most
9 serious crimes, and here I'm quoting the preamble of the Statute.

10 The Warrant of Arrest issued against Thomas Lubanga in 2006 dealt
11 a serious blow to the recruitment of child soldiers in the region. We
12 are convinced that any judgement you are going to hand down will have the
13 effect of discouraging those who are waiting for the least pretext to
14 continue with practices which have undermined the future of an entire
15 generation in Ituri, and that generation today is calling for justice.
16 That is the generation which we represent, and that is why on behalf of
17 our clients we would like the Bench or the Chamber to declare the accused
18 guilty. That is my submission. Thank you, your Honour.

19 PRESIDING JUDGE FULFORD: We're very grateful to you,
20 Mr. Walley. Thank you very much.

21 Maitre Mabilie, then 2.30 tomorrow afternoon.

22 Thank you all very much, and to the stenographers and
23 interpreters, a special thank you.

24 COURT USHER: All rise.

25 The hearing ends at 7.07 p.m.