

SEPARATE AND DISSENTING OPINION OF JUDGE ODIO BENITO

1. I agree with the final decision of the Trial Chamber as regards the individual criminal responsibility of Mr Lubanga Dyilo. However, I have a separate and dissenting opinion on three particular aspects of the Judgment. I hereby explain the reasons for my dissent.

A. Legal definition of the crimes of enlistment, conscription and use of children under the age of 15 to actively participate in the hostilities

2. I respectfully disagree with the conclusions of the Majority of the Chamber as regards the legal definition of the crimes of enlistment, conscription and use of children under the age of 15 to participate actively in the hostilities.

3. The Majority of the Trial Chamber stated, and I agree, that:

Addressing the three relevant acts, namely enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities, in each instance the conduct is not defined in the Statute, the Rules or the Elements of Crimes. Accordingly, the scope of the activities covered by Article 8(2)(e)(vii) of the Statute must be determined in accordance with Articles 21 and 22(2) of the Statute [...].¹

4. However, the Majority of the Trial Chamber is failing to address two key elements: i) the concept of “national armed forces” within Article 8(2)(b)(xxvi) of the Rome Statute; and ii) the activities covered by Articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Rome Statute, namely those that should be included within the legal definition of enlistment, conscription and “use to participate actively in the hostilities”. Consequently, I consider that it is important to evaluate these two elements, which the Majority of the Trial Chamber has failed to address.

¹ Judgment, para. 600.

5. A distinction must be made between: a) the legal definition of the crimes (in this case enlistment, conscription and use of children under the age of 15 to participate actively in the hostilities); and b) the evaluation of the evidence presented in this case within the limits of the facts and circumstances of the alleged crimes.
6. Article 8 of the Rome Statute includes as war crimes the enlistment, conscription and use of children under the age of 15 to participate actively in the hostilities. Since neither the Statute nor the Elements of Crimes define further these three criminal conducts, the Chamber is required to define them taking into consideration other applicable law.² Furthermore, pursuant to Article 21(3) of the Rome Statute, the Chamber is compelled to interpret and apply the law consistent with internationally recognised human rights.³ The recruitment of children under the age of 15 is prohibited under the Rome Statute, international treaties⁴ and international customary law.⁵ All these sources of law seek to protect children under the age of 15 from the multiple and different risks which they are subject to in the context of any armed conflict, such as ill treatment, sexual violence and forced marriages. It would consequently be

² See, for example, Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, UNICEF, 1997; the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, adopted in February 2007; African Union Solemn Declaration Gender Equality, adopted in June 2006.

³ Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, 14 December 2006, ICC-01/04-01/06-772, para. 37.

⁴ Article 38 of the Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990; Article 3, International Labour Organization (ILO), Convention 182, Worst Forms of Child Labour, adopted on 17 June 1999, Conference Session 87, entry into force on 19 November 2000; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entry into force 12 February 2002; Article 22, African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force 29 November 1999.

⁵ SCSL, Prosecutor v. Norman (CDF Case), Appeals Chamber Decision on the Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment) of 31 May 2004, SCSL-2004-14-Art.72, paras 17-24.

contrary to the “object and purpose” of the Rome Statute,⁶ contrary to international recognised human rights and discriminatory under Article 21(3), not to define the legal concepts of enlistment, conscription and use to participate actively in the hostilities, independently of the evaluation of the evidence tendered during trial or the scope of the charges brought against the accused.

7. Although the Rome Statute’s provisions are applied and interpreted in relation to specific charges brought against individuals, the Chamber must not disregard the interests that these provisions are meant to protect. In the present case, the statutory provisions are meant to protect the life and personal integrity of children under the age of 15. It would thus be impermissible for a Chamber to decline to enter a comprehensive legal definition of a crime and leave it open to a case-by-case analysis or to the limited scope of the charges brought against the accused. This would be a step backwards in the progressive development of international law.⁷

8. I deem that the Majority of the Chamber addresses only one purpose of the ICC trial proceedings: to decide on the guilt or innocence of an accused person. However, ICC trial proceedings should also attend to the harm suffered by the victims as a result of the crimes within the jurisdiction of the Court. It becomes irrelevant, therefore, if the prosecution submitted the charges as separate crimes or rightfully including them as embedded in the crimes of which Mr. Lubanga is accused. The harm suffered by

⁶ Article 31(1) of the Vienna Convention on the Law of the Treaties, adopted in Vienna on 23 May 1969, entry into force on 27 January 1980, United Nations, *Treaty Series*, vol. 1155, p. 331.

⁷ Unlike the crimes of enlistment, conscription and use, which are not defined by the Statute or the Elements of Crimes, there are other crimes in the ICC provisions which are defined more in detail pursuant to international customary law. For example, the crime of rape, as defined in the Elements of Crimes, has a gender neutral definition which foresees rape not only of a female but also of a male victim. Likewise, the perpetrator could also be male or female. It would be incomprehensible for a Chamber to define rape in a restricted manner (for example in a gender-specific manner) simply because a case brought by the prosecution focuses strictly on the concept of rape committed by men against women.

victims is not only reserved for reparations proceedings, but should be a fundamental aspect of the Chamber's evaluation of the crimes committed.

The concept of "national armed forces" under Article 8(2)(b)(xxvi) of the Statute

9. Article 8 of the Rome Statute treats the notion of the armed group in a slightly differentiated manner in depending on whether this was committed in the context of an international or a non-international armed conflict. Whereas (Article 8(2)(b)(xxvi) refers to "national armed forces" in the context of an international armed conflict, Article 8(2)(e)(vii) refers "armed forces or groups" in the context of a non-international armed conflict. Thus, a key question that needs to be addressed by the Chamber is whether the concept of "national armed forces" includes non-State actors such as the Union Patriotique Congolose (UPC/FPLC).

10. In light of the above, the Pre-Trial Chamber in the present case concluded that the concept of "national armed forces" is not limited to the armed forces of a State.⁸

11. The Majority of the Trial Chamber concluded as follows:

Given the Chamber's conclusion that the UPC was engaged in a non-international armed conflict throughout the period of the charges,⁹ it is unnecessary to interpret or discuss Article 8(2)(b)(xxvi) of the Statute. Subject to one significant difference in wording (conscripted or enlistment of children into "national armed forces" (Article 8(2)(b)(xxvi) of the Statute) as opposed to "armed forces or groups" (Article 8(2)(e)(vii) of the Statute)), the elements of these two crimes are similar.¹⁰ Therefore, the extent to which the crimes of conscription, enlistment and use of children below the age of 15 under Article 8(2)(b)(xxvi) of the Statute have previously been the subject of

⁸ ICC-01/04-01/06-803-tEN, paras 268-285.

⁹ See Section IX on the nature of the armed conflict.

¹⁰ See wording of the respective elements of crime for Article 8(2)(b)(xxvi) and 8(2)(e)(vii). See also Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court, Sources and Commentary* (2003), page 471; Roy S. Lee (eds.), *The International Criminal Court, Elements of Crimes and Rules of Procedure and Evidence* (2001), page 206; William Schabas, *The International Criminal Court - A Commentary on the Rome Statute* (2010), page 252.

interpretation and consideration will be relevant to the Chamber's analysis of Article 8(2)(e)(vii) of the Statute [footnotes omitted].¹¹

12. I respectfully disagree with the Majority of the Chamber. Although the Chamber has concluded that the crimes were committed in the context of a non-international armed conflict, this case has been argued by the parties and participants pursuant to the decision on the confirmation of the charges, which encompasses both Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii) of the Statute. In fact, the defence has from start to finish argued that the armed conflict in question is an international armed conflict, and thus, it is foreseeable that this aspect could be the subject matter of an eventual appeal. Thus, the discussion on the concept of "national armed forces" is required as this is a live issue in the present case.

13. As I previously stated, the recruitment of children under the age of 15 is prohibited under international customary law, regardless of whether this was committed in the context of an international or non-international armed conflict and regardless of the nature of the armed group or force that recruited the child. It would be contrary to the "object and purpose" of the Rome Statute and contrary to internationally recognised human rights (and thus contrary to Article 21(3) of the Rome Statute) to exclude from the prohibition of child recruitment, and armed group, solely for the nature of its organization (State or non-state armed group).

14. Consequently, the concept of enlistment, conscription and use in both Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii) of the Rome Statute should be understood as encompassing any type of armed group or force, regardless of the nature of the armed conflict in which it occurs.

¹¹ Judgment, para. 568.

Towards a comprehensive legal definition of “use to participate actively in the hostilities”

15. I respectfully disagree with the Majority’s decision that declines to enter a legal definition of the concept of “use to participate actively in the hostilities”, but instead leaves it to a case-by-case determination, which ultimately will be evidence-based and thus limited by the charges and evidence brought by the prosecution against the accused. Additionally, this case-by-case determination can produce a limited and potentially discriminatory assessment of the risks and harms suffered by the child. The Chamber has the responsibility to define the crimes based on the applicable law, and not limited to the charges brought by the prosecution against the accused.

16. Although the Majority of the Chamber recognises that sexual violence has been referred to in this case, it seems to confuse the factual allegations of this case with the legal concept of the crime, which are independent. By failing to deliberately include within the legal concept of “use to participate actively in the hostilities” the sexual violence and other ill-treatment suffered by girls and boys, the Majority of the Chamber is making this critical aspect of the crime invisible. Invisibility of sexual violence in the legal concept leads to discrimination against the victims of enlistment, conscription and use who systematically suffer from this crime as an intrinsic part of the involvement with the armed group.

17. I thus consider it necessary and a duty of the Chamber to include sexual violence within the legal concept of “use to participate actively in the hostilities”, regardless of the impediment of the Chamber to base its decision pursuant to Article 74(2) of the Statute.

18. It is also important to state that although I agree with the Majority when it concludes that the decisive factor, in deciding if an “indirect” role is to be treated as active participation in hostilities is whether the support provided by the child to the combatants exposed him or her to real danger as a potential target, it is crucial to determine that, regardless of the specific task carried out by that child, he or she can suffer harm inflicted by the armed group that recruited the child illegally (for example, for the purposes of supporting the combatants through the use of their bodies for sexual violence).
19. Children are protected from child recruitment not only because they can be at risk for being a potential target to the “enemy” but also because they will be at risk from their “own” armed group who has recruited them and will subject these children to brutal trainings, torture and ill-treatment, sexual violence and other activities and living conditions that are incompatible and in violation to these children’s fundamental rights. The risk for children who are enlisted, conscripted or used by an armed group inevitably also comes from within the same armed group.
20. Sexual violence committed against children in the armed groups causes irreparable harm and is a direct and inherent consequence to their involvement with the armed group. Sexual violence is an intrinsic element of the criminal conduct of “use to participate actively in the hostilities”. Girls who are used as sex slaves or “wives” of commanders or other members of the armed group provide essential support to the armed groups. Sexual assault in all its manifestations produces considerable damage and it demonstrates a failure in the protection of the life and integrity of its victim. There is additionally a gender-specific potential consequence of unwanted pregnancies for girls that often lead to maternal or infant’s deaths, disease, HIV, psychological traumatisation and social

isolation. It must be clarified, however, that although sexual violence is an element of the legal definition of the crimes of enlistment, conscription and use of children under the age of 15 to participate actively in hostilities, crimes of sexual violence are distinct and separate crimes that could have been evaluated separately by this Chamber if the Prosecutor would have presented charges against these criminal conducts.

21. In other words, sexual violence or enslavement are illegal acts and in this case a harm directly caused by the illegality of the war crime of enlisting, conscripting and the use of children under the age of 15 in support of the combatants. Sexual violence and enslavement are in the main crimes committed against girls and their illegal recruitment is often intended for that purpose (nevertheless they also often participate in direct combat.) If the war crimes considered in this case are directed at securing their physical and psychological well being, then we must recognize sexual violence as a failure to afford this protection and sexual violence as acts embedded in the enlisting, conscription and use of children under 15 in hostilities. It is discriminatory to exclude sexual violence which shows a clear gender differential impact from being a bodyguard or porter which is mainly a task given to young boys. The use of young girls and boys bodies by combatants within or outside the group is a war crime and as such encoded in the charges against the accused.

B. Dual Status Victims/Witnesses

22. I respectfully dissent with the manner in which the Majority of the Chamber dealt with witnesses who have the dual status of victims, when evaluating their status as victims participating in this case.

23. I agree with the evaluation the Chamber does as regards witnesses P-0007, P-0008, P-0010, P-0011 and P-0298,¹² particularly that the Chamber cannot rely on their testimony for the purposes of determining the individual criminal responsibility of the accused beyond reasonable doubt.

24. However, I respectfully disagree with the Majority of the Chamber when it concludes:

Witnesses P-0007, P-0008, P-0010, P-0011, and P-0298 were granted permission to participate in the proceedings as victims (see the Chamber's Decision of 15 December 2008), as the information submitted was sufficient to establish, on a *prima facie* basis, that they were victims under Rule 85 of the Rules. Given the Chamber's present conclusions as to the reliability and accuracy of these witnesses, it is necessary to withdraw their right to participate. Similarly, the father of P-0298, P-0299, was granted permission to participate on account of his son's role as a child soldier. The Chamber's conclusions as to the evidence of P-0298 render it equally necessary to withdraw his right to participate in his case. In general terms, if the Chamber, on investigation, concludes that its original *prima facie* evaluation was incorrect, it is necessary that it should amend any earlier order as to participation, to the extent necessary. It would be unsustainable to allow victims to continue participating if a more detailed understanding of the evidence has demonstrated that they no longer meet the relevant criteria [footnotes omitted].¹³

Witnesses P-0007 and P-0008

25. I deem that the contradictions and weaknesses of these two individuals as witnesses in the present trial should not affect their status as victims with right to participate in the trial proceedings. Although their accounts as witnesses were inconsistent for the Chamber to rely on them as evidence to determine the responsibility of the accused beyond reasonable doubt, I consider that these individuals could have well been recruited, albeit not in the exact circumstances described in their numerous accounts (witness statements, application forms and live testimony) and in at least one of the cases there was video evidence of one of the witnesses as a soldier.

¹² See also P-0299, who is the father of P-0298.

¹³ Judgment, para. 484.

Witness P-0010

26. I agree with the conclusions of the Trial Chamber that there is no doubt that at some stage this individual served as a soldier within the UPC. I also agree that the Chamber does not have evidence beyond reasonable doubt that this occurred when she was under 15 years of age, and thus her testimony in this regard is not to be relied on for the purposes of determining the individual criminal responsibility of the accused.

27. I nevertheless suggest that the contradictions and weaknesses of this witness, especially given the unreliability of establishing accurate birth dates in the Democratic Republic of Congo in the present trial, should not affect her status as victim with participatory status. There is incontestable evidence that she was recruited, although it is impossible to determine with absolute certainty her exact age at the time of recruitment. This witness was most probably under the age of 18, and thus a child at the time of her first meetings with the OTP investigators in 2005.¹⁴ She additionally was a victim of sexual violence as a result of her recruitment.¹⁵ This life experience of a young woman has to be taken into account, notwithstanding that these aspects of her testimony cannot be relied on for the purposes of an Article 74 decision. Her victim status, however, should remain unchanged.

Witness P-0011

28. I firmly believe that any contradictions and weaknesses of this witness in the present trial should not affect his status as victim with participatory status. Even though his accounts as a witness were inconsistent, and cannot be relied upon to convict the accused, I deem that he could have been recruited, albeit the contradictory evidence presented in this trial.

¹⁴ See para. 32 below.

¹⁵ T-145-Red-ENG, page 29, lines 15 to 25 and page 30, line 25 to page 31, line 9.

Witnesses P-0298 and P-0299

29. I firmly believe that any contradictions and weaknesses of these two witnesses' testimonies in the present trial should not affect their status as victims with participatory status. Even though their accounts as witnesses could have been inconsistent, and cannot be relied upon to convict the accused, I truly believe that a real possibility exists that P-0298 was recruited, although not in the precise circumstances he stated in his testimony.

Conclusions as regards witnesses P-0007, 0008, 0010, 0011, 0298 and 0299

30. The Chamber called Ms Elisabeth Schauer as expert witness on the topic of children with trauma, particularly post-traumatic stress disorder. During her testimony, Ms Schauer stated that the trauma suffered by child soldiers has intellectual and cognitive consequences in the children's minds. Children who have suffered trauma have problems with their memory and may have learning difficulties, particularly as regards reading and writing comprehension.¹⁶ She also affirmed that this trauma never goes away.¹⁷ The expert further stated that although persons with post-traumatic stress disorder may recall events that occurred in the past, their ability to answer and remember these events will depend on the way questions are asked, and if they are asked chronologically. She literally stated "you probably have a hard time just wanting to know – jumping and wanting to know little details here and there."¹⁸

31. The Trial Chamber concluded in its Decision on victims' participation as follows:

¹⁶ T-166-ENG, page 27, line 20 to page 28, line 25.

¹⁷ T-166-ENG, page 56, lines 7-9.

¹⁸ T-166-ENG, page 56, lines 16-23.

[T]he trial Chamber will seek to achieve a balance between the need to establish an applicant's identity with certainty, on the one hand, and the applicant's personal circumstances, on the other. Bearing in mind the current situation in the Democratic Republic of Congo and the difficulties that applicants may often have in obtaining or producing copies of official identity documents, and the need in consequence of ensuring that victims are not unfairly deprived of an opportunity to participate for reasons beyond their control [...].¹⁹

32. These witnesses were subject to multiple interviews and strenuous examination and cross-examination, which took place on numerous occasions, during a period of time ranging from 2005 to 2009-2010. In all of these interviews and interrogatories they were asked to recall events that occurred between 2002 and 2003. Although there is doubt as to the exact age of these individuals at the time of the events, it has been proven that all of them were certainly children or adolescents at the time of their interviews with OTP investigators in 2005. Some of them could have also been under the age of 18 when they gave testimony in court in 2009-2010.²⁰ These witnesses (and anyone under those circumstances) could explicable and logically have difficulties in recollecting events since the time elapsed between the events (2002-2003), the first interviews with OTP investigators (2005) and the actual trial (2009-2010). In fact, with such elapses of time it would be suspicious if the accounts would remain perfectly alike and unchanged. Memory is faulty. This is more the case for children and adults having suffered any traumatic events.

¹⁹ ICC-01/04-01/06-1119, para. 87.

²⁰ For witness P-0007, the evidence suggests that he was born between 1987 and 1990; see EVD-D01-01103 (birth certificate), EVD-OTP-00655 (*declaration sur la carte d'électeur*), ICC-1/04-01/06-2270-Conf-Exp-Anx1, page 3 (Application for Reparations before the Court), and T-148-Red2-ENG, page 18, lines 14-21. For witness P-0008, the evidence suggests that he was born between 1989 and 1991; see EVD-D01-00055 (birth certificate) and T-135-Red3-ENG, page 65, lines 12 – 20. For Witness P-0010, the evidence suggests that she was born between 1988 and 1989; see T-144-Red2-ENG, page 12, line 25 to page 13, line 3, T-145-CONF-ENG ET, page 47, lines 14 – 22, EVD-D01-01102 (birth certificate), and EVD-D01-00082 (individual case story). For witness P-0011, the evidence suggests that he was born in 1992; see T-138-Red2-ENG, page 54, lines 1 - 5 and T-139-CONF-ENG, page 57, line 17 to page 58, line 15. For witness P-0298, the evidence suggests that he was born between 1989 and 1991 (see T-123-CONF-ENG) and his legal representatives submit that he was 11 at the time of the events and 18 at the time of his court appearance (see ICC-01/04-01/06-2746-Red-tENG, para. 53).

33. The testimony of witness P-0046 further substantiates the difficulties and challenges presented in the present context. This witness stated:

[I]dentity cards and documents in the Congo are not very common. Very few people have official papers, in particular, children. ²¹

34. For all the reasons above, although I agree with the Majority of the Trial Chamber that the testimonies of these young individuals should not be used for the purposes of determining the individual criminal responsibility of Mr Lubanga, their victims' status should remain unaffected.

35. Additionally and critically, it is unfair and discriminatory to impose upon individuals with dual status a higher evidentiary threshold (beyond reasonable doubt) as regards their victims' status, while all other victims participating in the proceedings have not been subject to thorough examination by the parties and the Chamber, as these young persons have been. When reparations are evaluated, it will be up to the Trial Chamber to determine the criteria utilised in determining their final status. Consequently, I consider they should maintain their status as victims for the remaining proceedings in this trial.

C. Evidentiary value of video evidence

36. I respectfully disagree with the evidentiary value the Majority of the Chamber has given to some of the video footage introduced as evidence in this trial.

37. I agree with the conclusions of the Chamber that:

The evidence has established that during this period, the leaders of the UPC/FPLC, including Chief Kahwa, and Bosco Ntaganda, and Hema elders

²¹ T-206-ENG, page 9, lines 15-17.

such as Eloy Mafuta, were active in mobilisation and recruitment campaigns aimed at persuading Hema families to send their children to join the UPC/FPLC.²²

38. However, I consider that the Majority of the Chamber should have relied on the video footage within EVD-OTP-00571 (02:21:20 to 03:04:57), which was introduced through witness P-0030, in order to support its conclusion. Witness P-0030 stated that this video was filmed at a rally in Goma on 11 January 2003, at which certain UPC officials, including the accused, Mr Kisémbó and Mr Rafiki, were present.²³ Mr Lubanga addressed an audience that included children clearly below the age of 15. The accused's speech concerned a meeting with the RCD-ML and the tensions between the UPC and the UPDF, but most importantly, the accused clearly considered it appropriate to include children under the age of 15 when he spoke publicly about military and other issues concerning the UPC.

39. The Majority of the Chamber should have also considered video footage within EVD-OTP-00585 (from 00:40:00) and EVD-OTP-00586 (from 00:40:18), which was introduced through the same witness P-0030. The witness testified that this event (a UPC rally) took place in Iga Barrière, just after the UPC retook Bunia. The witness identified several UPC child soldiers and Mr Lubanga.²⁴ The accused was wearing military clothing and he addressed an audience that included many children who were clearly under the age of 15.

40. In the course of his speech to those assembled, the accused states the following:

Let's try to avoid the massacres we saw committed by the government soldiers. I'm saying this because what are we going to base ourselves on?

²² Judgment, para. 1354.

²³ T-128-Red2-ENG, page 50, line 8 to page 58, line 11.

²⁴ T-130-Red2-ENG, page 70, line 1 to page 72, line 1.

Our neighbours do not like us. The president sends the military to exterminate people. Where are we going to go to seek refuge? We cannot wait for aid to arrive. We have to try and be smart and guarantee our own safety.

[...]

People can complain the situation is bad and that we need aid. We could receive aid, but -- or assistance, but as I already mentioned, here in Bunia we should bear in mind that the assistance -- that we rely on you for assistance. We rely on you for assistance. I want you to understand that. I think that if there hadn't been any massacres in Bunia and if we had waited for assistance from elsewhere

[...]

We must look for people who will help us; and whoever will, we should collaborate with to improve the situation. But that won't stop us from doing our work because they could come for two or three months. The work, the help, might be limited. We must be aware and work in the way I have always asked you to work. If, in view of our experience, we are able to forecast the future, even if we are able to do so, we can't be distracted.

[...]

We are going to continue our activities, meet from time to time, because I don't want us to meet in our offices. We need to do our work, the work that will help our future. So, my brothers, that's what will bring us joy. I know that your stomachs aren't full. I know. We have to share our joy and eat together because that will enable us to do our work. You will be asked to do some work. You should know this. But please work to help all the Congolese of Ituri. We're not fighting in the name of one ethnic group; we're fighting for people's security.

[...]

Many people heard that I was dead. That's what was announced on the radio. I would like us to be able to meet and enjoy the time together, for at least a few minutes, and ensure that those who remained help each other. And in that way we will be able to resist our enemies. I came here to

congratulate you for the work you have carried out here in Lopa. Clap, says somebody in the audience. Brothers, today, if before the massacres in Bunia we weren't able to go to Mahagi, well, people hid. And if we managed to save lives, it was all owing to your courage. And I spoke to your leaders on the phone and he said you continue to recruit people. We can together planify together. Thanks to your courage and the resistance -- your resistance, we have won.²⁵

41. This video sequence demonstrates that the accused considered it appropriate to include children under the age of 15 when he spoke publicly about issues concerning the UPC, including recruitment.
42. These videos demonstrate that the UPC officials, and particularly Mr Lubanga, would address audiences of young children in which he would discuss the military purposes of the UPC. Such events demonstrate not only the existence of recruitment campaigns (which include also rallies such as the ones showed in these two videos), but also that the accused knew that recruitment of children under the age of 15 "will occur in the ordinary course of events" after such rallies took place since they targeted a very young audience.
43. It is relevant that the rallies shown in EVD-OTP-00571, EVD-OTP-00585 and EVD-OTP-00586 took place in the context of the wider recruitment campaigns, and it contributes to the evidence that the accused was involved, in activities that resulted, in the ordinary course of events, in the recruitment of children below the age of 15 in the ranks of the UPC/FPLC.

²⁵ T-130-Red2-ENG, page 73, line 11 to page 75, line 24.

Done in both English and French, the English version being authoritative.



Judge Elizabeth Odio Benito

Dated this 14 March 2012

At The Hague, The Netherlands