

Annex III

SUMMARY TABLE OF VARIANTS DERIVED FROM INFORMATION COLLECTED FROM THE PUBLIC DOMAIN AND OTHER SOURCES

I. Summary table of calculations of the approximate number of victims

		Figure or coefficient								
Calculation method A	Baseline figure	Proportion of ethnic Hema	Proportion of child soldiers by age			Proportion of self-demobilized children	Mortality			Result — Number of potential victims
			Proportion of children under the age of 18 years	Reduced proportion of children under the age of 18 years	Proportion of children under the age of 15 years		Baseline	Revised	Reduced	
Baseline figure A1										
A11	15,000		0.4		0.71		1.23			5,240
A12	15,000		0.4		0.71			1.22		5,197
A13	15,000		0.4		0.71				1.15	4,899
A14	15,000			0.35	0.71		1.23			4,585
A15	15,000			0.35	0.71			1.22		4,548
A16	15,000			0.35	0.71				1.15	4,287
Baseline figure A2										
A21	10,500		0.4		0.71		1.23			3,668
A22	10,500		0.4		0.71			1.22		3,638
A23	10,500		0.4		0.71				1.15	3,429
A24	10,500			0.35	0.71		1.23			3,209
A25	10,500			0.35	0.71			1.22		3,183
A26	10,500			0.35	0.71				1.15	3,001

Calculation method B	Baseline figure	Proportion of ethnic Hema	Proportion of child soldiers by age			Proportion of self-demobilized children	Mortality			Result — Number of potential victims
			Proportion of children under the age of 18 years	Reduced proportion of children under the age of 18 years	Proportion of children under the age of 15 years		Baseline	Revised	Reduced	
Baseline figure B1										
B11	3,200				0.71		1.23			2,795
B12	3,200				0.71			1.22		2,772
B13	3,200				0.71				1.15	2,613
Baseline figure B2										
B21	4,000				0.71		1.23			3,493
B22	4,000				0.71			1.22		3,465
B23	4,000				0.71				1.15	3,266
Baseline figure B3										
B31	6,800				0.71		1.23			5,938
B32	6,800				0.71			1.22		5,890
B33	6,800				0.71				1.15	5,552

Calculation method C	Baseline figure	Proportion of ethnic Hema	Proportion of child soldiers by age			Proportion of self-demobilized children	Mortality			Result — Number of potential victims
			Proportion of children under the age of 18 years	Reduced proportion of children under the age of 18 years	Proportion of children under the age of 15 years		Baseline	Revised	Reduced	
Baseline figure C1										
C11	12,337	0.2			0.71	1.25	1.23			2,693
C12	12,337	0.2			0.71	1.25		1.22		2,671
C13	12,337	0.2			0.71	1.25			1.15	2,518
Baseline figure C2										
C21	12,008	0.2			0.71	1.25	1.23			2,621
C22	12,008	0.2			0.71	1.25		1.22		2,600
C23	12,008	0.2			0.71	1.25			1.15	2,451
Baseline figure C3										
C31	13,704	0.2			0.71	1.25	1.25			2,992
C32	13,704	0.2			0.71	1.25		1.22		2,968
C33	13,704	0.2			0.71	1.25			1.15	2,792

II. The three methods used in the table to calculate the approximate number of victims

Method A: (the starting point is a figure representing the total numerical strength of the UPC/FPLC under Mr Lubanga)

baseline figure A x proportion of child soldiers under the age of 18 years x proportion of child soldiers under the age of 15 years x child soldier mortality = number of child soldiers under Mr Lubanga's command

Method B: (the starting point is a figure representing the approximate total number of child soldiers, according to the United Nations standard, in the UPC/FPLC under Mr Lubanga)

baseline figure B x proportion of child soldiers under the age of 15 years x child soldier mortality = number of child soldiers under Mr Lubanga's command

Method C: (the starting point is a figure representing the total number of child soldiers demobilized in Ituri)

baseline figure C x proportion of ethnic Hema x proportion of child soldiers under the age of 15 years x proportion of "self-demobilized" child soldiers x child soldier mortality = number of child soldiers under Mr Lubanga's command

(NB As used above, the letter "x" means "multiplied by")

III. Sources of the figures and proportions used in the table

1. Baseline figure A1: 15,000

This figure comes from an interview that Mr Lubanga gave to the NGO Human Rights Watch in February 2003, i.e. within the time frame of the charges.¹

2. Baseline figure A2: 10,500

This figure factors in the fact that warlords have a tendency to “overestimate” their troop strength for the purpose of increasing their political clout. On this account the Chamber has studied with interest the analysis by Henning Tamm,² who sought to check and correct the figure of 15,000 by looking at the approximate number of soldiers in the groups that were formed after the UPC/FPLC splintered, and in particular the number of soldiers in the FAPC and PUSIC.³ Henning Tamm relied for his analysis on the same document that the Chamber appended as Annex 6 to its Order of 21 July 2017 – it refers to the estimates made by the Government of the DRC during decision-making on the opening and capacity of the various Transit and

¹ Annex 1 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx1, Human Rights Watch, “Ituri: ‘Couvert de sang’ / Violence ciblée sur certaines ethnies dans le Nord-Est de la RDC”, Vol. 15, No. 11 (A), July 2003, p. 51: “Human Rights Watch researchers observed a large number of child soldiers among UPC combatants. In an interview with Human Rights Watch researchers, UPC President Lubanga claimed to have 15,000 troops. Local experts and observers believe that nearly 40 per cent of these are children under the age of eighteen.” The footnote clarifies that this was a “Human Rights Watch interview with UPC President Thomas Lubanga, Bunia, February 14, 2003”.

² Henning Tamm, “UPC in Ituri: the external militarization of local politics in north-eastern Congo”, Rift Valley Institute, Usalama Project, ISBN, published in 2013, <http://riftvalley.net/publication/upc-ituri#.WZ7Xsk1IJ9A> (“Henning Tamm, ‘UPC in Ituri: the external militarization of local politics in north-eastern Congo’”).

³ Henning Tamm, “UPC in Ituri: the external militarization of local politics in north-eastern Congo”, p. 31: “Due to the complex relations with Hema self-defence groups, it is difficult to ascertain the FPLC’s exact numerical strength. Kisembo’s former assistant suggested that the troops that seized Bunia in August 2002 already numbered 18,000. In an interview from February 2003, Lubanga claimed to preside over 15,000 soldiers. Finally, the former intelligence officer estimated that the FPLC had around 20–23,000 fighters before it began to splinter in March 2003.(65) In contrast, estimates from the UN-assisted disarmament programme suggest that the three groups into which the UPC fragmented had together only around 10,500 troops, which appears to be a much more realistic figure.(66) [Footnotes omitted].” Footnote 66 refers to Annex 6 to the Order of 21 July 2017, ICC-01/04-01/06-3344-Anx6.

Orientation Centres (“CTOs”).⁴ It follows that the figure of 10,500⁵ is also a possible baseline figure from which to calculate the approximate number of victims.

3. Baseline figure B1: 3,200

A report by the United Nations Mission in the DRC (“MONUC”), prepared in February 2004,⁶ put the number of child soldiers at 3,200 on the basis of information gathered in the field between May and September 2003 and an estimate that child soldiers under the age of 18 years accounted for 40%, in general, of each militia.⁷

4. Baseline figure B2: 4,000

The above-mentioned analysis by Henning Tamm can be taken further by adding the number of child soldiers under Mr Lubanga’s command in the UPC to the figures cited for the FAPC and PUSIC,⁸ as estimated by the Government of the DRC

⁴ Table from Annex 6 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx6, T. Bouta, “Assessment of the Ituri Disarmament and Community Reinsertion Program”, Netherlands Institute of International Relations, Clingendael, Conflicts Research Unit, The Hague, Netherlands, May 2005, p. 7.

Militias	No. of Adults (estimated)	No. of Children (estimated)	Total (estimated)	Transit Site
UPC(4)	3,000	2,000	5,000	Nizi
FAPC	2,000	1,000	3,000	Mahagi
FNI/FPRI	2,000	2,000	4,000	Npandroma (FNI) Aveba (FPRI)
PUSIC	1,500	1,000	2,500	Kasenyi
FPDC	300	200	500	Mahagi
Total	8,800	6,200	15,000	

(The (4) next to “UPC” is a reference to footnote 4: “Separate estimates for UPC-L and UPC-K were not available.” The conclusions and estimates in Annex 6 of 21 July 2017 were based on the following documents and sources: *Plan National de Désarmement, Démobilisation et Réinsertion* of the Government of the DRC; *Comité Technique de Planification et de Coordination DDR/RDC* (2004); *Plan Opérationnel pour le Désarmement et la Réinsertion Communautaire en Ituri* (February 2004). See footnote 3, p. 13.

⁵ The figure of 10,500 (baseline figure A2) from Hemming Tamm’s analysis is arrived at by summing the estimated figures for the UPC, FAPC and PUSIC militias in the table in footnote 4, i.e.: 5,000 in the UPC-L and the UPC-K together, 3,000 in the FAPC and 2,500 in PUSIC.

⁶ Annex 25 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx25, United Nations Mission in the Democratic Republic of the Congo, Child Protection Section, “Report on Children associated with armed groups in Ituri – Draft”, February 2004.

⁷ Annex 25 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx25, p. 2.

⁸ See table above: 2,000 in the UPC-L and UPC-K, 1,000 in the FAPC and 1,000 in PUSIC.

and provided in Annex 6 to the Order of 21 July 2017. The resulting figure is 4,000 child soldiers.

5. Baseline figure B3: 6,800

Applying Henning Tamm's approach to the figures as estimated by MONUC⁹ – which are higher¹⁰ than the estimates by the Government of the DRC – and adding together the data for the three militias (UPC, FAPC and PUSIC) gives 6,800 child soldiers¹¹ as another plausible baseline figure.

6. Baseline figure C1: 12,337

In December 2007, the DRC Government compiled an overall, province-by-province report on the demobilization process. Some parts of that report were reproduced in different international documents, among them the national report submitted to the United Nations Committee on the Rights of the Child, which gives an account of the country's fulfilment of its commitments arising from the Convention on the Rights of the Child.¹² In that document, the Government of the DRC puts the total number of CAAFGs ("Children Associated with Armed Forces and Groups") demobilized through CTOs in the DRC at 30,594 individuals. Of those individuals, 9,448 were demobilized in Orientale Province.¹³ As stated above, that table reflects the status of

⁹ Annex 25 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx25, pp. 1-2.

¹⁰ The calculations in Annex 25 use figures of 8,000 persons for the UPC/FPLC, 6,000 for the FAPC and 3,000 for PUSIC. These figures include adults and children.

¹¹ Annex 25 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx25, pp. 1-2. Specifically: 3,200 militia members in the UPC/RP, 2,400 in the FAPC and 1,200 in the PUSIC (see the figures on p. 2 of the document). Summing the strength of these three militias yields a figure of 6,800 child soldiers.

¹² Annex 13 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx13. "*Comité des droits de l'enfant, Examen des rapports présentés par les États parties en application du paragraphe 1 de l'article 8 du Protocole facultatif à la Convention relative aux droits de l'enfant, concernant l'implication d'enfants dans les conflits armés, Rapports initiaux des États parties attendus en 2004, République démocratique du Congo*" (CRC/C/OPAC/COD/1, GE.11-42264 (F)).

¹³ Annex 13 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx13, Table 4, p. 27. It should be pointed out that the only CTOs in Orientale Province at the time were set up in Ituri: first in Nizi, Mahagi, Kpandromo, Aveba, Kasenyi and Mahagi, and in Aru and Bunia.

demobilization in December 2007 according to the Ministry for Social Affairs.¹⁴ That document is representative of the assessment, by the Government of the DRC, of the number of child soldiers. NB The same table also appears in another DRC national report.¹⁵

Demobilization was continued, at rates and with results that differed according to the militia concerned. The Chamber has before it figures representing assessments from various official sources, including the Office of the President of the DRC,¹⁶ United Nations¹⁷ agencies and several experts who were privy to official statistics. UNICEF, for instance, worked very closely with the DRC authorities in charge of disarmament and reinsertion,¹⁸ and its findings were bolstered by the fact that the

¹⁴ Ministry for Social Affairs, report on follow-up and assessment of activities of PN-DDR/children, December 2007.

¹⁵ Annex 11 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx11, “Comité des droits de l’enfant, Examen des rapports soumis par les États parties en application de l’article 44 de la Convention, Troisièmes et cinquièmes rapports périodiques des États parties attendus en 2012, République démocratique du Congo”, p. 31, para. 144: <http://reliefweb.int/sites/reliefweb.int/files/resources/G1612922.pdf>

¹⁶ Annex 24 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx24-tENG, Democratic Republic of the Congo, Office of the President of the Republic, Office of the Personal Representative of the Head of State responsible for combating sexual violence and the recruitment of child soldiers in the DRC. By way of comparison with the total for the DRC as a whole at the end of 2007, i.e. the figure of 30,594 cited above, this document (<http://www.stopdrcsexualviolence.com/>) refers to the official DRC statistics for 2013 and gives a figure of 46,087 CAAFGs demobilized. (See “II. Progress achieved by the DRC”, “2.1. Combating child recruitment”, p. 4. The document refers to the “implementation report on the FADRC’s action plan to end child recruitment and use and other grave violations of the rights of the child by the armed forces and security services”).

¹⁷ Annex 11 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx11; Annex 13 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx13.

¹⁸ Annex 16 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx16, Security Council of the United Nations, “Rapport du Secrétaire général sur les enfants et les conflits armés en République démocratique du Congo”, S/2008/693, 08, 08-59543 (F), p. 11, para. 62: “On 16 June 2008, the Executive Committee of UEPNDDR [the Executive Unit of the National Disarmament, Demobilization and Reintegration Programme], in collaboration with UNICEF and MONUC, launched a nationwide advocacy campaign to call for the release of all children still associated with armed forces and groups. The campaign, called ‘Zero children associated with armed forces and groups’, targets leaders of armed groups, civil society, political actors and affected populations.”

DRC authorities delegated to it the task of establishing a unified system for managing data on the demobilization process.¹⁹

The figures supplied by UNICEF²⁰ – cited in Annex 23 to the Order of 21 July 2017 – meet the standards of reliability and relevance. That document includes a year-by-year presentation of demobilization outcomes, with specific figures for each province, including Orientale Province.²¹

With regard to the years after 2007, in Orientale Province, according to a source that apparently had access to the official documentation²² and is referred to in Annex 26 to the Chamber's Order of 21 July 2017, 1,090 boys and 806 girls were demobilized in 2009. In 2010, 642 boys and 187 girls were demobilized and, in 2011, 133 boys and

¹⁹ Annex 23 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx23-t-ENG, Sylvie Bodineau, "Evaluation Report: 2007-2011 Programme for the Reintegration of Children Associated with Armed Forces and Armed Groups in the DRC", p. 43:

"The NDDRP [National Disarmament, Demobilization and Reintegration Programme] provides for a system of data collection and management, based on data sheets and a database.

Between 2004 and 2009, information from the programmes for children released from armed forces and armed groups was centralized in two databases:

- A database shared by several international NGOs (IFESH, CARE, IRC and Save the Children) designed to facilitate family tracing procedures, then to gather information with a view to improving the programmes;

- A database managed by NCDDR [National Commission on Disarmament, Demobilization and Reintegration], then by the IU-NDDRP [Executive Unit of the National Disarmament, Demobilization and Reintegration Programme], which contains information from monthly data sheets on the children certified and supported by the child protection agencies.

In 2009, the IU-NDDRP put UNICEF in charge of centralizing the data on children. The data come from the NGO database, which remained under SCUUK's [Save the Children UK] responsibility, and from the IU-NDDRP database, operated by UNICEF but for which the IU-NDDRP is responsible at national level."

([https://www.unicef.org/evaldatabase/files/2012_Evaluation_DDR_\(EAFGA\)_en_RDC_2011_Final.pdf](https://www.unicef.org/evaldatabase/files/2012_Evaluation_DDR_(EAFGA)_en_RDC_2011_Final.pdf))

²⁰ Annex 23 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx23-t-ENG, p. 21.

²¹ Annex 23 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx23-t-ENG, p. 21. Year-by-year presentation of demobilization outcomes with specific figures for each province, including Province Orientale: 2003: 81; 2004: 790; 2005: 355; 2006: 1,989; 2007: 1,331; 2008: 1,541; 2009: 1,896; 2010: 829; 2011: 16. The sum-total, arrived at by summing the data for the period 2003-2011, is 12,008. (See footnote 8 in the document, referring to "Statistics supplied for the evaluation by Bosco Simbi Kenda, in charge of the UNICEF database").

²² Annex 26 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx26, Yvan Conoir: "Ending War, Building Peace: Contribution of the National DDR Program in DRC to Peace in the African Great Lakes Region", IBRD, 2012, Washington. See tables 1 (p. 10), 2 (p. 12), 3 (p. 13), 5 (p. 14), 10 (p. 25).

<https://openknowledge.worldbank.org/handle/10986/27214>

31 girls were demobilized.²³ Accordingly, an estimated total of 2,889 child soldiers were demobilized over that period, an increase of 30% from the 2007 figures. The scope of this phase of demobilization in Orientale Province squares with the figures used for the entire territory of the DRC in the document cited earlier from the Personal Representative of the President of the DRC.

The sum of 9,448 (the number of child soldiers demobilized in Orientale Province by 2007) and 2,889 (the number of child soldiers demobilized in Orientale Province between 2008 and 2011) is 12,337.

7. Baseline figure C2: 12,008

The aforementioned UNICEF document contains the figure of 12,008 child soldiers demobilized (between 2003 and June 2011),²⁴ which is very close to the figure given in the previous paragraph for the number of child soldiers demobilized. These two figures, therefore, corroborate one another. It also bears emphasizing that both figures are relevant and drawn from reliable sources.

8. Baseline figure C3: 13,704

The International Bank for Reconstruction and Development has published an official document²⁵ containing an in-depth analysis of demobilization in the DRC and the use made of the various types of aid mobilized for that purpose by the

²³ Yvan Conoir: *“Programme national de désarmement, démobilisation et réintégration, Evaluation finale indépendante, Septembre 2011 ; République Démocratique du Congo, Unité d’exécution du programme national de désarmement, démobilisation et réinsertion, UEPN-DDR”*, p. 71.

²⁴ Annex 23 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx23-tENG, p. 21.

²⁵ World Bank Document. Report No: ICR2168, “Implementation completion and results report (IDA-H0890 IDA-H3620 TF-54242) on an IDA grant in the amount of SDR 68.1 million (US\$ 100 million equivalent) and an IDA grant in the amount of SDR 31.3 million (US\$ 50 million equivalent) and a trust fund in the amount of SDR 68.1 million (US\$ 100 million equivalent) to the Democratic Republic of Congo for an emergency demobilization and reintegration project”, 30 March 2012, Fragile States, Conflict and Social Development Unit, Sustainable Development Department, Africa Region.
<http://documents.worldbank.org/curated/en/143681468026636389/pdf/ICR21680P078650IC0disclosed04050120.pdf>

This document is not among the 26 annexes to the Order of 21 July 2017, the Chamber having had access to it only recently. However, in view of the role the World Bank played in the demobilization of child soldiers, the Chamber considers that it can refer to the data in this document insofar as they are relevant to the case before it.

World Bank and its subsidiary organization, the International Development Association. In that document the figure of 13,704 is given as the number of child soldiers officially demobilized in Orientale Province²⁶ during the period from 2003 to the end of 2012.

9. Proportion of ethnic Hema: 0.2

The Chamber makes allowance for the fact that baseline figures C1, C2 and C3 do not give a detailed breakdown by militia. The tragedy of the DRC in general, and that of Ituri in particular, was linked to the escalation of confrontations between ethnic groups. It is common knowledge – and the Judgment in the case²⁷ also refers to this – that the UPC/FPLC was the armed force of the Hema (Hema/Gegere) ethnic group. As reported by the Secretary-General of the United Nations, no reliable data exist, for want of a national census, on population by ethnicity in the DRC.²⁸ Nor did Trial Chamber I rely on any percentages in this regard.

It can be observed, however, despite the lack of census data, that the proportion of ethnic Hema is generally reckoned at about 20% of the population of Ituri. In colonial times, the proportion of Hema was about 25%, and the proportion of Lendu was about 24%.²⁹ Currently, according to Human Rights Watch, the Hema

²⁶ World Bank Document. Report No: ICR2168, Table A5.1: “Distribution of the total of the demobilized and the children reintegrated by the PN-DDR”, p. 49. The source of the data is “EUPN-DDR (Terms of references)”.

²⁷ “Judgment pursuant to Article 74 of the Statute”, 19 March 2012, ICC-01/04-01/06-2842. See part IV of the Judgment (“Factual overview”), A (“The background to the conflict in Ituri”, pp. 41-43), B (“The Hema-Lendu conflict”, pp. 43-46) and C (“The UPC”, pp. 46-49).

²⁸ Secretary-General’s special report on the events in Ituri, January 2002-December 2003, S/2004/573, pp. 6-7, para. 12, “The region of Ituri is a district of the Orientale Province, bordering Uganda with a population of 3.5 million to 5.5 million – no census has been carried out for years. The population is made up of 18 ethnic groups, including the Lendu and its southern sub-clan, the Ngiti; the Hema and its northern sub-clan, the Hema/Gegere; the Bira, the Alur, the Ndo Okebo, the Lugbara, the Mambissa and the Nyali. Population figures vary greatly, but the Alur consider themselves the largest ethnic group, which would represent up to 25 per cent of the Ituri population, followed by the Lendu. No reliable population census by ethnic grouping is available at this time.”

²⁹ O.G. Libotte, *Union Royale Belge pour les Pays d’Outre-Mer*, <http://www.urome.be/fr2/ituri.htm>, p. 2: “[TRANSLATION] Another difference with the Rwandan situation was that the Tutsi graziers were heavily outnumbered by the Hutu, 15 to 85, whereas in Ituri the numbers on opposing sides were

and Lendu make up approximately 40% of the Ituri population;³⁰ Pax Christi puts the Lendu at 24% and the Hema at 18% of the population.³¹ In view of the essentially Hema-Lendu character of the conflict in Ituri, and having regard to the circumstances of the case, the Chamber can presume that both of these ethnic groups were, in all likelihood, more heavily represented in the militias than in the population at large, given that certain ethnic groups endeavoured to remain outside the conflict.³² This consideration is borne out by an analysis of the tables in Annexes 6 and 25, which give the strength of each militia; both tables show the UPC as mustering more than 20% of the total number of soldiers in Ituri. The Chamber is therefore able to conclude that a baseline proportion of 20% for the UPC/FPLC under the leadership of Mr Lubanga is assuredly no higher than the actual proportion of Hema in all the armed groups and militias in Ituri during the time frame of the charges and, as such, cannot be prejudicial to Mr Lubanga.

balanced. Across the population as a whole, the Hema/Bira amounted in the colonial period to a segment of 25%, in which the Hema were a majority, and the Lendu allied with the Bendi made up somewhat more than 24 per cent."

³⁰ Annex 1 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx1, Human Rights Watch, *"Ituri: 'Couvert de sang' / Violence ciblée sur certaines ethnies dans le Nord-Est de la RDC"*, Vol. 15, No. 11 (A), July 2003, p. 14: "Ituri is home to eighteen different ethnic groups, with the Hema/Gegere and Lendu/Ngiti communities together representing about 40 per cent of the inhabitants. The other major groups are the Bira, the Alur, the Lugbara, the Nyali, the Ndo-Okebo, and the Lese. With ethnic identity of growing importance, a new group has emerged, the 'non-originaires', that is, 'outsiders' who were not born in Ituri. The Nande of north Kivu represent the most prominent of the 'non-originaires', due to their importance in the business sector. The emergence of Mbusa Nyamwisi, a Nande, as the leader of the RCD-ML raised the profile of the Nande in Ituri. Hema elites seeking to assert or protect their control of the political and economic spheres in Ituri tend to consider the Nande as direct competitors."

³¹ IV Pax Christi, *"Conflits fonciers en Ituri : Poids du passé et défis pour l'avenir de la paix"* December 2009, p. 8: "[TRANSLATION] The population of Ituri is composed of 10 ethnic groups, the largest of which is the Alur (27 per cent), who live predominantly in Mahagi, then the Lendu (24 per cent) and the Hema (18 per cent) in the territories of Irumu and Djugu."

³² Thierry Virculon, *op. cit.*, p. 133: "[TRANSLATION] Clashes between Lendu and Hema were a daily occurrence in both central territories of the district, sweeping along in their violent wake other ethnic groups such as the Bira and Alur. In fact, Ituri has 18 ethnic populations, and most of them are not involved in the Hema-Lendu conflict, save as victims."

Accordingly, to arrive at an assessment of the number of child soldiers demobilized that is reasonably within the range of the size of the UPC/FPLC, the figure of 20% of child soldiers demobilized, i.e. a coefficient of 0.2, seems appropriate.

10. Proportion of children under the age of 18 years: 0.4

The Prosecution has collected many oral and written observations concerning the manifest presence of child soldiers in the UPC/FPLC under Mr Lubanga's command during the time frame of the charges. Unless otherwise noted, it can be considered – given likewise what transpired in the penal phase of the case of *The Prosecutor v. Thomas Lubanga Dyilo* – that these observations are about child soldiers as defined by the United Nations standard, that is, under the age of 18 years, rather than by the standard of the International Criminal Court, i.e. under the age of 15 years.

During the proceedings, a witness who the Trial Chamber determined was credible gave a figure of 40%.³³ Human Rights Watch gives the same figure in the report cited above³⁴ (Annex 1 to the Chamber's Order of 21 July 2017). The figure of 40% is also referred to in other sources.³⁵ This figure can therefore be used; it corresponds to a coefficient of 0.4.

³³ "Judgment pursuant to Article 74 of the Statute", 19 March 2012, ICC-01/04-01/06-2842, p. 20: "To give an idea of the scale of these crimes, P-0046 spoke of reports by the United Nations that up to 40% of the UPC/FPLC forces were children, including under the age of 15."

https://www.icc-cpi.int/CourtRecords/CR2012_09937.PDF

³⁴ Annex 1 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx1, Human Rights Watch, "Ituri: 'Couvert de sang' / Violence ciblée sur certaines ethnies dans le Nord-Est de la RDC", Vol. 15, No. 11 (A), July 2003, pp. 51-52: "In an interview with Human Rights Watch researchers, UPC President Lubanga claimed to have 15,000 troops. Local experts and observers believe that nearly 40 per cent of these are children under the age of eighteen."

³⁵ Annex 2 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx2, Child Soldiers International, Global Report 2004 on child soldiers. On page 51 of the document 40% is given as a figure applicable in general to militias in the eastern DRC. See also Annex 2 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx2 in Annex 10 to the Order of 21 July 2017, C. Ralcsits, "Child Soldiers in the East of the Democratic Republic of the Congo", Refugee Survey Quarterly (2008), Vol. 27, No. 4, at 108-112, p. 1.

11. Reduced proportion of child soldiers under the age of 18 years: 0.35

United Nations sources refer³⁶ to a slightly lower figure of 35%. The Chamber has relied on this figure, as to do so is not prejudicial to Mr Lubanga. This figure corresponds to a coefficient of 0.35.

12. Proportion of child soldiers under the age of 15 years: 0.71

To arrive at an estimate of how many child soldiers were under the age of 15 years (the Rome Statute meaning), regard may be had to the two lists containing the names and certain particulars of CAAFGs demobilized from the UPC, which the DRC authorities³⁷ imparted to the Court in two different versions, both including largely the same names. The difference between the list of 282 names conveyed to the Registry in 2015 and to the Chamber in January 2017 and the list of 202 names conveyed to the Chamber in February 2017 is that the first list also contains the names of those child soldiers who were 15-18 years old at the time of recruitment. The second list contains only child soldiers who were then under the age of 15 years. Conversely, neither list contains the names of any child soldiers recruited before September 2002. It should also be pointed out that both of the lists provided by the Government of the DRC seem to be limited to separations that occurred up to 2006 (the separation dates fall within the range 2004 to 2006).

³⁶ Annex 15 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx15, United Nations Security Council, *"Treizième rapport du Secrétaire général sur la Mission de l'Organisation des Nations Unies en République démocratique du Congo"*, S/2003/211, 21 February 2003, p. 11. The document cites a figure of up to 35% for Congolese militias. See also Annex 8 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx8, Watchlist on Children and Armed Conflict, *"Impact des conflits armés sur les enfants en République démocratique du Congo"*, New York, United States, June 2003, p. 26. This document also uses the figure of 35%, citing as its source the statistics in the Secretary-General's 13th report on the United Nations mission in the DRC.

³⁷ "Transmission of the Observations of the Government of the Democratic Republic of the Congo in Response to Order ICC-01/04-01/06-3260", 20 February 2017, ICC-01/04-01/06-3274-tENG and ICC-01/04-01/06-3274-Conf-AnxI.

Of the 282 individuals on the first list, 52 had reached the age of 15 years by the time they were recruited, and 28 were aged 16 years or more. This means that 202 of them fall into the category of child soldiers under the age of 15 years.

As regards the Defence's remarks on the need to follow the principle laid down by the Trial Chamber,³⁸ it must be noted that the said principle does not appertain to demobilization records in general; it was set out with reference to a particular "logbook" which the Prosecution tendered in evidence.³⁹ The lists containing, respectively, 282 and 202 names are not "logbooks" but documents of a different nature, purpose and origin.

Given that these lists cover a significant subset of the persons concerned (15% of the 3,000 victims estimated by the TFCV), and that the names, dates of birth and sites of recruitment and demobilization are precisely recorded on lists extracted from databases, they can be considered to have representative value. It can be inferred from them that the proportion of child soldiers within the meaning of the Rome Statute is 71% of those who could have been considered child soldiers within the meaning of the United Nations convention.⁴⁰ This equates to a coefficient of 0.71.

13. Proportion of self-demobilized child soldiers: 1.25

The Chamber must factor in that a significant subset of the child soldiers did not undergo the official demobilization process but left the militia either on the occasion of a leave of absence (most often granted because of wounds or illness rendering a

³⁸ "Defence Submissions on the Evidence Admitted for the Determination of Thomas Lubanga Dyilo's Liability for Reparations", 29 September 2017, ICC-01/04-01/06-3374-t-ENG, para. 62: "Furthermore, Trial Chamber I ruled that it could not rely on the contents of the logbooks used to compile the lists of child participants in DDR programmes 'because of the potential unreliability of the information when it was originally provided and the apparent lack of sufficient (or any) verification'."

³⁹ "Judgment pursuant to Article 74 of the Statute", 14 March 2012, ICC-01/04-01/06-2842, p. 329, para. 740: "740. Similarly, the Chamber is unable to rely on the contents of logbook EVD-OTP-00476, notwithstanding the fact that it contains information about the armed groups with which the children were associated, along with their dates of birth, 2055 because of the potential unreliability of the information when it was originally provided and the apparent lack of sufficient (or any) verification."

⁴⁰ The proportion of children under the age of 15 years in the militia is equal to the number of child soldiers on the second list divided by the number of child soldiers on the first list, i.e. $202 : 282 = 0.71$.

child unfit for further service) or, in most cases, by escape, mostly unarmed. Surrender of personal weapons was a precondition to official demobilization and processing at a CTO, so that demobilization and disarmament could take place at the same time and to curtail “abuses” by persons who, despite never having been in a militia, wished nonetheless to receive the demobilization kit or other benefits (real or imagined) that demobilization afforded, such as a sum of money. This requirement to surrender a weapon or other objects most characteristic of membership of an armed group adversely affected child soldiers who left the militia wounded, sick or as escapees with no leave of absence, and hence unarmed; they were therefore unable to gain access to the demobilization, disarmament and reintegration process and are thus not included in the official statistics.

It is therefore acceptable to rely, for these calculations, on the estimates of UNICEF,⁴¹ which states that 25% of the children concerned did not undergo the official demobilization process.⁴² As UNICEF reports, a proactive approach to registering “self-demobilizers” was discouraged, and organizations endeavoured principally to help those who came forward on their own and were open about their past as

⁴¹ “Filing on Reparations and Draft Implementation Plan”, 3 November 2015, ICC-01/04-01/06-3177-Conf, para. 246. “With respect to the DDR process, UNICEF works in cooperation with the Government of the DRC, local NGOs and MONUC. The TFV maintains that the confidential databases in the possession of UNICEF and the national authorities of the DRC are probably the most accurate source of information.” UNICEF seems to be something of a reference point; many of the annexed documents rely on its reports (see Annexes 4, 7, 8, 9, 13, 17, 19).”

⁴² Annex 4 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx4, Coalition to Stop the Use of Child Soldiers, “*République démocratique du Congo : Priorités relatives aux enfants associés aux forces et groupes armés / Document présenté au Groupe de travail du Conseil de sécurité sur les enfants et les conflits armés*”, July 2007. As regards the figure of 25 per cent self-demobilizers, Annex 4 states that, in July 2007, 31,000 children were officially demobilized and 11,000 self-demobilized (i.e. 26 per cent). That document relies on a UNICEF source: “UNICEF, Report of the national workshop on the children’s demobilization, disarmament and reintegration (DDR) program, Goma, 12-14 April 2007” (p. 4).

See also Annex 5 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx5, [L]t. Col. D. Nduwimana, “Reintegration of Child Soldiers in Eastern Democratic Republic of Congo: Challenges and Prospects”, The International Peace Support Training Centre, Occasional Paper Series 4, No. 2, Nairobi, Kenya, 2013, p. 11: “However, from 2007, about 30,000 child soldiers have been demobilized officially although thousands others including many girls did not go through official demobilization. UNICEF and Save the Children estimated that approximately 11,000 child soldiers have self-demobilized.”

child soldiers and their self-demobilization. So as not to conflate them with the officially demobilized CAAFGs, on account of budget considerations in particular, they were processed and budgeted for within the quota of “vulnerable children”. This means that in UNICEF’s statistics the set of “vulnerable children reached” comprises a good number of the self-demobilized child soldiers who came forward.⁴³ In the UNICEF document cited above, the proportion of vulnerable children reached is 17% of the number of CAAFGs,⁴⁴ but this, therefore, includes only some of the “self-demobilizers”, namely only those who had already made themselves known to UNICEF or its NGO partners.

These considerations show that the data from the demobilization process can be adjusted by a coefficient of 1.25.

14. Baseline mortality: 1.23

It has to be factored in that a significant number of child soldiers died while or after serving in the UPC/FPLC, as a result of wounds sustained in combat. Disease, often beyond cure in the midst of civil war, also claimed the lives of a considerable number of victims. As the sample reveals, a substantial number of child soldiers went missing in service; their relatives generally have no specific information about when or where they probably died. Likewise, according to the sample, the Chamber must consider cases in which children returning after “official” or “self-” demobilization suffered physical or mental illnesses that claimed their lives shortly afterwards. Lastly, some former child soldiers went missing after returning to their families, often on account of mental illnesses developed during their service in the

⁴³ Annex 23 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx23-tENG, Sylvie Bodineau, “Evaluation Report: 2007-2011 Programme for the Reintegration of Children Associated with Armed Forces and Armed Groups in the DRC”, p. 40. This solution was applied, for instance, in North Kivu, whereas in Equateur Province the authorities conducted evaluations of personal vulnerability for their inclusion in the reintegration programmes.

⁴⁴ Annex 23 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx23-tENG, Sylvie Bodineau, “Evaluation Report: 2007-2011 Programme for the Reintegration of Children Associated with Armed Forces and Armed Groups in the DRC”, p. 19. The figures are for 2007-2010. As the introductory text makes clear, these data do not contain the specific numbers for Ituri.

UPC/FPLC. These facts are dealt with, to keep the calculation simple, under the head of “mortality” in the broad sense.

On the basis that military commanders tend to consolidate the fighting capacity of their forces, it may be presumed that Mr Lubanga resorted to regular recruitment campaigns and taking in “volunteers” to replace the troops he lost. The resulting calculation is based on a presumption that all child soldiers who died, went missing or became unable to serve were replaced by new child soldiers.

Therefore, if the Chamber uses the ratio of indirect to direct victims (as evinced by the sample) to factor in this consideration, a single figure for mortality can be applied. The mortality on that basis is 0.23, in other words an addition of 23%, which can be reflected by a coefficient of 1.23.⁴⁵

MONUC can be seen to have adopted a fairly similar mortality of 25%, basing itself on the proportion observed in one attack and using estimates and additional information.⁴⁶

⁴⁵ To compute mortality, the total number of dossiers (476) has to be divided by the number of direct victims (387). Thus $476 : 387 = 1.23$. This gives a coefficient of 1.23 to be factored into the calculation.

⁴⁶ Annex 25 to Order of 21 July 2017, ICC-01/04-01/06-3344-Anx25, United Nations Mission in the Democratic Republic of the Congo, Child Protection Section, “Report on Children associated with armed groups in Ituri – Draft”, February 2004, p. 10: “One child combatant serving with the UPC under Commander TCHIGALONZA recounted his experience during an attack on the Hema village of Bogoro by Lendu and Ngiti militia in late 2002. According to the boy, the Lendu were accompanied by UPDF elements and had both sub-machine guns and rocket-propelled grenades. The boy fled the battle but returned later to find that the UPC had suffered 40 dead, including 10 children; or 25% child mortality. As children were often tasked with scouting and front line duties on the battlefield, 25% is probably a conservative estimate. This is drawn out in other child soldier testimonies in battles under UPC Commander BAGUMA at Kasenyi where children died at a rate greater than twice that of the adults. According to the witness, in Kasenyi, 25 children and 12 adults were killed and, in the following battle at Largu town, 15 children and 2 adults were killed. Finally, an officer with the UPC testified that, on 5 May 2003 in the area of Watsa, Colonel KISEMBO, accompanied by Rwandan military elements, was found to have approximately 700 ill-trained child soldiers with him. When the UPC encountered resistance from the UPDF and the FAPC under Commander JEROME alongside the Lendu militia, many of the children ran away. In the final Lendu onslaught on Watsa, the 200 remaining child soldiers ran away and, according to the testimony, were later found and killed by the Lendu militiamen.”

15. Revised mortality: 1.22

In view of the results⁴⁷ of the screening performed by the Chamber, the mortality becomes 0.22⁴⁸ and can be factored in by a coefficient of 1.22.

16. Reduced mortality: 1.15

It may also be taken into account that: (a) there is no evidence that all child soldiers were replaced; (b) the exact date on which a child soldier died is often impossible to determine; (c) a child soldier previously under Mr Lubanga's command may have died or been fatally wounded, etc., while still serving in a UPC/FPLC unit, but post-Lubanga and under a different commander-in-chief; and (d) a child soldier who had previously served in the UPC/FPLC may have died or been fatally wounded, etc., while belonging to another militia and therefore no longer under Mr Lubanga's command. Accordingly – and with due regard for the information in the sample – it seems fair and sound to adjust baseline mortality downward by one-third, whereby the addition would amount to 15%, i.e. a coefficient of 1.15.

17. Use of multiplication and inclusion of different factors

It bears underscoring that the purpose of these calculations is to arrive at the most precise possible estimate of the number of victims of Mr Lubanga's crimes, the point of departure being several possible baseline figures derived from the documents made available to the Chambers which oversaw the prior phases of the case (i.e. the Pre-Trial Chamber and the Trial Chamber) or from the public domain. Many of these are documents from the DRC authorities, or analyses of such documents. Those figures are then adjusted with the coefficients described above. It stands to reason that a particular coefficient may or may not be used depending on

⁴⁷ The screening by review of the dossiers arrived at 76 indirect victims and 351 direct victims. The review found 85% reliability for indirect victims ($76 : 89 = 0.85$) and 90% reliability for direct victims ($351 : 387 = 0.9$).

⁴⁸ The same reasoning expounded in footnote 45 gives $351 + 76 = 427$; $427 \div 351 = 1.22$. This translates to a coefficient of 1.22.

the baseline figure selected (for example, where the baseline figure is connected to the total strength of the UPC/FPLC, there is no reason to factor in ethnicity).

18. Results obtained

The results for the number of child soldiers conscripted and used by Mr Lubanga, so calculated, according to the three methods and their variants, prove fairly close to the figure of 3,000 victims advanced by the Trust Fund for Victims.