

1 INTERNATIONAL CRIMINAL COURT

2 SITUATION DEMOCRATIC REPUBLIC OF CONGO

3 Case No: ICC-01/04-01/06

4 Transcription No:
ICC-01/04-01/06-T-48-EN

5 Monday, 29 January 2007 at 3.04 p.m.
6

7 OPEN SESSION

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9 Before: His Honour Judge Claude Jorda (Presiding Judge)
Her Honour Judge Sylvia Steiner
10 Her Honour Judge Akua Kuenyehia

11 PRE-TRIAL CHAMBER I

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1 OPEN SESSION

2 [3:04 p.m.]

15:04:28 3 THE USHER: All rise. The International Criminal Court is

15:04:41 4 now in session.

15:04:47 5 PRESIDING JUDGE JORDA (interpretation): I would like first

15:04:59 6 of all to welcome all the participants at this afternoon's

15:05:05 7 hearing and I would like to welcome in particular the general

15:05:08 8 public in the gallery. I would like to ask the court officer

15:05:15 9 to call the case.

15:05:15 10 [Mr Thomas Lubanga Dyilo entered the courtroom]

15:05:17 11 PRESIDING JUDGE JORDA (interpretation): I see that

15:05:18 12 Mr Lubanga has arrived into the courtroom, taking the

15:05:22 13 initiative there -- very good. Do take your seat. The court

15:05:27 14 officer, could you please call the case.

15:05:32 15 COURT OFFICER (interpretation): Thank you, your Honour.

15:05:32 16 Situation in the Democratic Republic of Congo, the case of the

15:05:46 17 Prosecutor versus Thomas Lubanga Dyilo, ICC-01/04-01/06.

15:05:46 18 PRESIDING JUDGE JORDA (interpretation): Thank you very much.

15:05:48 19 I would like to ask the participants to introduce themselves.

15:05:52 20 I turn first to the Prosecutor. Please take the floor.

15:05:56 21 Mr Withopf, are you following well?

15:05:56 22 MS BENSOUDA: Appearing today for the Prosecutor is

15:06:07 23 Mr Ekkehard Withopf, Senior Trial Lawyer; Mrs Florence Darques

15:06:14 24 Lane, Legal Adviser; Associate Trial Lawyers Julieta Solano,

15:06:21 25 Olivia Struyven and Nicole Samson; Associate Legal Adviser,

15:06:28 1 Sangkul Kim; Case Manager, Ramu Bittaye. I am Fatou Bensouda,
15:06:37 2 Deputy Prosecutor for Prosecutions.

15:06:37 3 PRESIDING JUDGE JORDA (interpretation): Before asking the
15:06:40 4 photographers to enter the room -- they have asked to visit
15:06:45 5 the room, but first we shall hear from the Defence team.

15:06:50 6 ME FLAMME (interpretation): Thank you, your Honours. My
15:06:52 7 name is Jean Flamme. I am a barrister at the Ghent Bar. I am
15:06:56 8 representing Mr Thomas Lubanga Dyilo. The Defence today is
15:07:00 9 made up of the following individuals: Mr Roberts, barrister
15:07:05 10 before the Bar of New York; Catherine Dobson. We are also
15:07:11 11 assisted by the Office of Public Counsel for the Defence.

15:07:15 12 I therefore have the honour of introducing to you the
15:07:17 13 Principal Counsel of the Office, Mr Keita, and Mr Jean-Jacques
15:07:28 14 Magenda, who is assisting Mr Keita.

15:07:32 15 PRESIDING JUDGE JORDA (interpretation): Thank you,
15:07:33 16 Mr Flamme. I would now like to ask the team representing the
15:07:37 17 victims to introduce themselves.

15:07:37 18 [3:07 p.m.]

15:07:39 19 MR WALLEYN (interpretation): Thank you, your Honours. I'm
15:07:42 20 Luc Walley, barrister at the Bar of Brussels, and I am
15:07:47 21 representing victims 001, 2 and 3. I would like to ask you to
15:07:55 22 accept the apologies of Mr Mulenda who cannot be here today.

15:07:55 23 PRESIDING JUDGE JORDA (interpretation): Thank you.

15:08:02 24 MS MASSIDDA (interpretation): Good afternoon, your Honours.
15:08:04 25 Paolina Massidda, Principal Counsel, Office of Public Counsel

15:08:08 1 for Victims. I am representing Ms Bapita for victim 0 --
15:08:16 2 sorry, victim a/105. I am assisted by Sarah Pellet, Legal
15:08:24 3 Officer of the Office of Public Counsel for Victims.
15:08:24 4 PRESIDING JUDGE JORDA (interpretation): Mr Lubanga Dyilo,
15:08:26 5 I turn my attention to you now. Would you like to rise,
15:08:31 6 please, and introduce yourself anew?
15:08:35 7 MR LUBANGA DYILO (interpretation): Thank you, your Honour.
15:08:37 8 PRESIDING JUDGE JORDA (interpretation): You are Thomas
15:08:42 9 Lubanga Dyilo?
15:08:42 10 MR LUBANGA DYILO (interpretation): Yes, I am Thomas Lubanga
15:08:47 11 Dyilo, the former President of the Union of Congolese
15:08:51 12 Patriots.
15:08:52 13 PRESIDING JUDGE JORDA (interpretation): As you are standing,
15:08:54 14 I would like to ask you whether your detention conditions are
15:08:57 15 satisfactory.
15:09:00 16 [3:08 p.m.]
15:09:00 17 MR LUBANGA DYILO (interpretation): I have some complaints.
15:09:06 18 PRESIDING JUDGE JORDA (interpretation): Could you please
15:09:07 19 speak up and directly into the microphone? I know you are
15:09:12 20 tall, but please try and speak into the microphone.
15:09:16 21 MR LUBANGA DYILO (interpretation): We have some complaints
15:09:17 22 regarding our conditions of detention. I believe that our
15:09:21 23 counsel is aware of it, but I do believe that it is a matter
15:09:28 24 of urgency that there be a candid discussion between us and
15:09:33 25 the Registry, because since we have been in detention the

15:09:43 1 Registry -- or the Registrar has not been to the Detention
15:09:47 2 Centre to see us and I think that it would be useful if we
15:09:50 3 could have a discussion with him at one point or another on
15:09:53 4 certain matters.
15:09:54 5 [3:09 p.m.]
15:09:54 6 PRESIDING JUDGE JORDA (interpretation): Yes, the Chamber is
15:09:56 7 aware of a certain number of problems, which I won't refer to
15:10:01 8 here. If you would like to discuss those issues, you could
15:10:05 9 write in a note addressed to the Registrar and to the Chamber.
15:10:12 10 You may take your seat, Mr Lubanga Dyilo.
15:10:21 11 I believe that there are photographers. Well, we're not going
15:10:25 12 to wait any longer for them; rather, I'm going to go ahead --
15:10:28 13 sorry, yes, court officer.
15:10:35 14 [3:10 p.m.]
15:10:38 15 Apparently they are ready, so we will ask them to enter for
15:10:41 16 one minute -- one and a half minutes, no longer.
15:10:53 17 [Photographer entered the courtroom]
15:11:41 18 PRESIDING JUDGE JORDA (interpretation): On behalf of my
15:11:59 19 colleagues I am now going to read a summary of the decision
15:12:02 20 which we have issued this day. First of all, I would like to
15:12:06 21 refer to the main -- the major milestones in the proceedings
15:12:10 22 and then I shall give a summary.
15:12:16 23 [3:12 p.m.]
15:12:17 24 I refer to the major milestones, because these proceedings
15:12:21 25 have lasted nine months. On 10 February 2006 Pre-Trial

15:12:27 1 Chamber I issued a warrant of arrest against Thomas Lubanga
15:12:31 2 Dyilo. On 16 and 17 March Thomas Lubanga Dyilo was arrested
15:12:39 3 in the Democratic Republic of the Congo, surrendered to the
15:12:44 4 Court, and transferred to the Court's Detention Centre in
15:12:47 5 The Hague.
15:12:48 6 [3:12 p.m.]
15:12:49 7 On 20 March Thomas Lubanga Dyilo made his first appearance
15:12:53 8 before Pre-Trial Chamber I at a hearing during which the
15:12:56 9 Chamber satisfied itself that he had been informed of the
15:13:00 10 crimes which he is alleged to have committed and of his
15:13:04 11 rights. Thomas Lubanga Dyilo was then being defended by duty
15:13:08 12 counsel in the person of Mr Jean Flamme, who has since become
15:13:13 13 his lead counsel and is present here today.
15:13:15 14 [3:13 p.m.]
15:13:16 15 Pursuant to Article 61 paragraph 3 of the Statute, Thomas
15:13:19 16 Lubanga Dyilo had to be informed, within a reasonable time
15:13:22 17 before the confirmation hearing, of the charges on which the
15:13:28 18 Prosecutor intended to bring him to trial and of the evidence
15:13:34 19 on which the latter intended to rely at the confirmation
15:13:41 20 hearing.
15:13:41 21 [3:13 p.m.]
15:13:41 22 It is therefore as of 20 March that the Chamber, and
15:13:47 23 specifically Judge Sylvia Steiner, issued the requisite
15:13:52 24 decisions directing mutual disclosure of evidence between the
15:13:59 25 Prosecutor and the Defence pursuant to Article 61 paragraph 3

15:14:02 1 of the Statute and Rule 121 of the Rules. And the requisite
15:14:11 2 decisions were issued to ensure respect for the rights of the
15:14:16 3 Defence as well as those necessary for the protection of
15:14:19 4 witnesses and victims.
15:14:20 5 Also, since 20 March the Chamber has received applications
15:14:23 6 from victims seeking to participate in the proceedings. To
15:14:27 7 date it has granted the status of victim authorised to
15:14:31 8 participate in the proceedings in this case to four
15:14:34 9 individuals. I would remind you that the confirmation hearing
15:14:37 10 took place in this courtroom from 9 November to 28 November
15:14:42 11 2006.
15:14:43 12 [3:14 p.m.]
15:14:44 13 Under Regulation 53 of the Regulations of the Court the
15:14:48 14 Pre-Trial Chamber is required to deliver its decision in
15:14:51 15 writing setting out its findings on each of the charges within
15:14:56 16 60 days from the date on which the confirmation hearing ends.
15:15:01 17 The decision was filed today with the Registry, and the
15:15:05 18 Chamber has chosen to inform you orally of its decision during
15:15:09 19 this hearing. [3:15 p.m.]
15:15:11 20 For the purposes of this summary I shall use the abbreviations
15:15:16 21 "UPC" to refer to the Union des Patriotes Congolais; and
15:15:21 22 "FPLC" to refer to the Force Patriotiques pour la Liberation
15:15:31 23 du Congo; "FNI" for the Front des nationalistes intégrationnistes.
15:15:37 24 *and PUSIC for the Parti pour l'unité et la sauvegarde de
15:15 25 l'intégrité du Congo and now the summary of our decision.

15:15:40 1 [3:15 p.m.]

15:15:40 2 In the document containing the charges filed on 28 August 2006
15:15:45 3 the Prosecution charged Thomas Lubanga Dyilo under Article 8
15:15:52 4 paragraph 2 subparagraph (e)(vii) and Article 25 paragraph 3
15:16:02 5 subparagraph (a) of the Statute with war crimes of
15:16:05 6 conscription and enlisting children under the age of 15 years
15:16:08 7 into an armed group -- the FPLC in this case, the military
15:16:13 8 wing of the UPC since September 2002 and using them to
15:16:18 9 participate actively in hostilities. The Prosecution submits
15:16:21 10 that the crimes were committed between 1 July 2002, which is
15:16:26 11 the date at which the temporal jurisdiction of the Court
15:16:29 12 begins, and 31 December 2003 in the context of an armed
15:16:34 13 conflict not of an international character.

15:16:36 14 [3:16 p.m.]

15:16:38 15 Article 61 paragraph 7 of the Statute provides that after the
15:16:42 16 confirmation hearing the Chamber shall determine whether there
15:16:45 17 is sufficient evidence to establish substantial grounds to
15:16:49 18 believe that the person committed each of the crimes charged.

15:16:52 19 [3:16 p.m.]

15:16:55 20 After setting out the background of the case in its decision
15:16:59 21 the Chamber defined the terms used in Article 61 paragraph 7,
15:17:06 22 that is, "substantial grounds to believe". The purpose of a
15:17:11 23 confirmation hearing is limited to committing for trial only
15:17:15 24 those persons against whom sufficiently compelling charges
15:17:22 25 have been presented -- charges going beyond mere theory or

15:17:29 1 suspicion. It is designed to protect the rights of the
15:17:32 2 Defence against wrongful or wholly unfounded allegations. The
15:17:38 3 Chamber therefore held that it had to determine whether there
15:17:42 4 were serious and substantiated grounds to believe that the
15:17:47 5 suspect had committed the crimes charged. To this end it
15:17:51 6 assessed the evidence admitted for the purposes of the
15:17:54 7 confirmation hearing as a whole.

15:17:56 8 [3:17 p.m.]

15:17:59 9 The Chamber then addressed the many evidentiary and other
15:18:05 10 procedural matters raised before turning its mind to the
15:18:10 11 characterisation of the material elements of the crimes and
15:18:14 12 the appropriate mode of criminal responsibility.

15:18:19 13 [3:18 p.m.]

15:18:21 14 In this regard the Chamber had to assess the effect of the
15:18:25 15 Appeals Chamber judgments of 14 December 2006 concerning
15:18:31 16 redactions of evidentiary material that had been authorised by
15:18:35 17 Pre-Trial Chamber I.

15:18:36 18 [3:18 p.m.]

15:18:37 19 The Appeals Chamber had indeed ruled that the impugned
15:18:42 20 decisions lacked sufficient reasoning. The Appeals Chamber
15:18:46 21 found that this error affected the impugned decisions, and
15:18:52 22 this materially, in that it could not be established, on the
15:18:55 23 basis of the reasoning that was provided, how the Pre-Trial
15:19:00 24 Chamber had reached those decisions.

15:19:03 25 [3:19 p.m.]

15:19:04 1 Accordingly, the Appeals Chamber reversed the decisions and
15:19:07 2 directed Pre-Trial Chamber I to decide anew the applications
15:19:13 3 that gave rise to the impugned decisions.
15:19:17 4 [3:19 p.m.]
15:19:19 5 The Chamber proceeded as follows: after identifying the
15:19:23 6 documents that were affected by the Appeals Chamber judgments,
15:19:28 7 Pre-Trial Chamber I held that the requirement that proceedings
15:19:32 8 be conducted in an expeditious manner -- which, as the
15:19:36 9 Appeals Chamber stated, is part of the right to a fair
15:19:41 10 trial -- calls for prior determination whether the "sufficient
15:19:45 11 evidence to establish substantial grounds to believe" test had
15:19:51 12 been met with respect to evidence which had been admitted for
15:19:57 13 the purposes of the confirmation hearing, but which was not
15:20:01 14 affected by the Appeals Chamber's judgments.
15:20:04 15 [3:20 p.m.]
15:20:06 16 As requested by the Appeals Chamber, the Pre-Trial Chamber
15:20:09 17 reviewed the applications anew, but only with respect to four
15:20:13 18 witness statements. The review is appended to today's
15:20:17 19 decision.
15:20:17 20 [3:20 p.m.]
15:20:18 21 The Chamber then turned its attention to the issues
15:20:21 22 surrounding the material elements of the crime and criminal
15:20:27 23 responsibility of the suspect.
15:20:32 24 [3:20 p.m.]
15:20:33 25 With respect to the material elements of the crime, the

15:20:35 1 Chamber found, after an exacting scrutiny of the record, that
15:20:40 2 the armed conflict was of an international character from July
15:20:46 3 2002 to 2 June 2003, and that from 2 June to the end
15:20:55 4 of December 2003 it was not of an international character.
15:20:57 5 [3:20 p.m.]
15:20:57 6 Contrary to the submission of the Prosecutor the Chamber found
15:21:01 7 in this regard that the presence of Uganda as an occupying
15:21:06 8 power in Ituri internationalised the conflict. The record of
15:21:10 9 the case also contains some evidence regarding the role of
15:21:15 10 Rwanda in the conflict in Ituri after 1 July 2002.
15:21:21 11 [3:21 p.m.]
15:21:22 12 That country supported the UPC and its involvement in the UPC
15:21:28 13 itself. It would seem that Rwanda was supplying not only
15:21:35 14 munitions and weapons to the UPC, but also soldiers. The
15:21:39 15 record also contains allegations that Rwanda was advising the
15:21:45 16 UPC. However, in light of the paucity of evidence before it,
15:21:52 17 the Chamber is not in a position to find that there is
15:21:56 18 sufficient evidence to establish substantial grounds to
15:22:00 19 believe that Rwanda played a role that can be described as
15:22:06 20 direct or indirect intervention in the armed conflict in
15:22:10 21 Ituri.
15:22:11 22 [3:22 p.m.]
15:22:12 23 The Chamber also finds that there are substantial grounds to
15:22:16 24 believe that between 2 June 2003 and the end of December 2003
15:22:24 25 the armed conflict in Ituri was of a non-international

15:22:28 1 character and involved inter alia the UPC, the PUSIC and the
15:22:37 2 FNI.

15:22:37 3 [3:22 p.m.]

15:22:38 4 With respect to the other elements of the crimes charged under
15:22:41 5 the first and second counts, the Chamber finds that there is
15:22:45 6 sufficient evidence to establish substantial grounds to
15:22:49 7 believe that children under the age of 15 years were enlisted
15:22:53 8 and conscripted into the armed forces of the UPC/FPLC

15:23:00 9 from July to 2 June 2003. In fact, the Chamber notes that
15:23:07 10 some evidence admitted for the purposes of the confirmation
15:23:12 11 hearing suggests that even prior to the creation of the FPLC
15:23:18 12 the UPC allegedly enlisted and conscripted children under the
15:23:24 13 age of 15 years. The Chamber notes that there are substantial
15:23:29 14 grounds to believe that after its creation in September 2002
15:23:33 15 the FPLC allegedly continued to recruit children under the age
15:23:38 16 of 15 years and that this was a systematic practice known to
15:23:43 17 the Hema population and involved a large number of children.

15:23:48 18 [3:23 p.m.]

15:23:50 19 The Chamber also finds that there are substantial grounds to
15:23:54 20 believe that children under the age of 15 years were still in
15:23:59 21 the armed forces of the UPC/FPLC from 2 June 2003 to December
15:24:08 22 2003 -- sorry, from 2 June 2003 to the end of December 2003.

15:24:15 23 [3:24 p.m.]

15:24:15 24 Let us now turn to the third count. The Chamber considered,
15:24:22 25 firstly, that active participation means not only direct

15:24:27 1 participation in hostilities, that is to say, combat, but also
15:24:32 2 includes active participation in combat-related activities
15:24:36 3 such as reconnaissance, spying, sabotage, and the use of
15:24:43 4 children as decoys, couriers, or indeed their use at military
15:24:51 5 checkpoints.

15:24:53 6 In this respect, the Chamber considers that Article 8
15:24:57 7 paragraph 2 subparagraph (b) (xxvi) and Article 8 paragraph 2
15:25:05 8 subparagraph (e) (vii) are not applicable where the activity in
15:25:09 9 question is unrelated to hostilities. The Chamber held that
15:25:13 10 these Articles are applicable when children are used to guard
15:25:16 11 military targets such as the military compounds of the various
15:25:23 12 units of the parties to the conflict, or to safeguard the
15:25:28 13 physical safety of military commanders, in particular, where
15:25:33 14 children are used as bodyguards.

15:25:37 15 [3:25 p.m.]

15:25:38 16 The Chamber finds in this connection that there is sufficient
15:25:43 17 evidence to establish substantial grounds to believe that
15:25:46 18 after military training the children were deemed fit for
15:25:50 19 combat and that FPLC commanders then put them on the frontline
15:25:57 20 to fight. The record of the case does show that children
15:26:01 21 under the age of 15 years participated actively in hostilities
15:26:07 22 specifically in Libi and Mbau in October 2002, in Largu in
15:26:14 23 early 2003, in Lipri and Bogoro in February and March 2003, in
15:26:19 24 Bunia in May 2003, and in Djugu and Mongbwalu in June 2003,
15:26:27 25 and that during the fighting children under the age of

15:26:29 1 15 years used their weapons and some of them were led to kill
15:26:36 2 and that many recruits, including minors under the age of 15,
15:26:41 3 lost their lives in battle.

15:26:42 4 [3:26 p.m.]

15:26:43 5 The Chamber then particularly paid attention to the
15:26:50 6 interpretation of the term "national armed forces", as it
15:26:55 7 figures in Article 8 paragraph 2, subparagraph (b) (xxvi), and
15:27:01 8 determined that the UPC could be considered as such.

15:27:04 9 Finally, the Chamber turned its attention to the issue of
15:27:08 10 Thomas Lubanga Dyilo's criminal responsibility under
15:27:10 11 Article 25 paragraph 3 subparagraph (a).

15:27:13 12 [3:27 p.m.]

15:27:14 13 To this end, the Chamber used the notion of control over the
15:27:18 14 crime as a standard to determine the constituent elements of
15:27:24 15 the notion of co-perpetration under Article 25 paragraph 3
15:27:32 16 subparagraph (a) of the Statute.

15:27:34 17 [3:27 p.m.]

15:27:34 18 This notion is based on the idea that the principal
15:27:38 19 perpetrators of the crime are to be found exclusively among
15:27:43 20 those who have control over the commission of the crime and
15:27:47 21 who are aware of having such control. The concept of
15:27:53 22 co-perpetration, based on joint control of the crime, is
15:28:00 23 rooted in the principle of division of the essential tasks for
15:28:05 24 the commission of a crime between two or more persons who act
15:28:13 25 in a concerted manner. Hence, although none of them has

15:28:19 1 overall control over the offence because they all depend on
15:28:24 2 one another for its commission, all of them share control
15:28:30 3 because any of them could disrupt the commission of the crime
15:28:35 4 by not carrying out his task.
15:28:40 5 [3:28 p.m.]
15:28:41 6 And so, following a thorough review, the Chamber found that
15:28:46 7 there was sufficient evidence to establish substantial grounds
15:28:51 8 to believe that from early September 2002 to the end of 2003
15:28:56 9 Thomas Lubanga Dyilo served as de jure President of the Union
15:29:10 10 des Patriotes Congolais pour la Reconciliation et la Paix,
15:29:10 11 UPC/RP; appointed, dismissed and expelled UPC/RP national
15:29:16 12 secretaries; and de facto had ultimate control over the
15:29:19 13 adoption and implementation of UPC/RP policies and only
15:29:27 14 received technical advice from UPC/RP national secretaries.
15:29:31 15 [3:29 p.m.]
15:29:31 16 The Chamber held that in the light of the evidence admitted
15:29:34 17 for the purposes of the confirmation hearing that there was
15:29:38 18 sufficient evidence to establish substantial grounds to
15:29:42 19 believe that Thomas Lubanga Dyilo was generally, but not
15:29:45 20 always, the person who had ultimate control over the adoption
15:29:50 21 of FPLC policies and the implementation by the FPLC of
15:29:56 22 policies adopted by the UPC/RP and FPLC.
15:30:01 23 [3:30 p.m.]
15:30:03 24 The Chamber finds that there is sufficient evidence to
15:30:08 25 establish substantial grounds to believe that when the FPLC

15:30:13 1 was created in early September 2002 there was an agreement or
15:30:20 2 common plan between Thomas Lubanga Dyilo and other
15:30:25 3 high-ranking FPLC commanders. The purpose of the plan was
15:30:29 4 allegedly to further the war effort by the UPC/RP and FPLC by
15:30:37 5 voluntarily or forcibly recruiting minors into the ranks of
15:30:42 6 the FPLC, then subjecting them to military training, and by
15:30:49 7 causing them to participate actively in military operations
15:30:52 8 and using them as bodyguards.

15:30:55 9 [3:30 p.m.]

15:30:56 10 Although the agreement or common plan did not specifically
15:30:59 11 target children under the age of 15, it did target young
15:31:04 12 recruits in general, in that in the normal course of events
15:31:11 13 its implementation entailed the objective risk that it would
15:31:15 14 involve children under the age of 15. The implementation of
15:31:18 15 the agreement or common plan allegedly started, so at the
15:31:24 16 latest in early September 2002 at the time the FPLC was
15:31:30 17 created, and lasted at least until the end of 2003.

15:31:33 18 [3:31 p.m.]

15:31:34 19 The Chamber found that there was sufficient evidence to
15:31:37 20 establish substantial grounds to believe that Thomas Lubanga
15:31:41 21 Dyilo assumed an essential general coordinating role in the
15:31:47 22 implementation of the common plan and that he personally
15:31:50 23 exercised other functions in the implementation of the common
15:31:55 24 plan.

15:31:55 25 The Chamber also found that there is sufficient evidence to

15:31:59 1 establish substantial grounds to believe that while Thomas
15:32:04 2 Lubanga Dyilo was under house arrest in Kinshasa from
15:32:12 3 13 August 2003 until the end of 2003 he continued to exercise
15:32:15 4 de facto the same powers within the UPC/RP.
15:32:19 5 However, the Chamber finds that there is insufficient evidence
15:32:23 6 to establish substantial grounds to believe that during his
15:32:28 7 detention in Kinshasa from 13 August to the end of 2003 that
15:32:34 8 he continued to exercise a coordinating role in the
15:32:39 9 implementation of the common plan.
15:32:41 10 [3:32 p.m.]
15:32:41 11 The Chamber found that there was sufficient evidence to
15:32:46 12 establish substantial grounds to believe that from
15:32:49 13 early September 2002, date of the creation of the FPLC, until
15:32:54 14 13 August 2003 Thomas Lubanga Dyilo was, at the very least,
15:33:01 15 aware that in the ordinary course of events the implementation
15:33:04 16 of the common plan would result in the enlistment,
15:33:07 17 conscription and use of children under the age of 15 years in
15:33:10 18 hostilities; that he accepted this; that he was aware of the
15:33:16 19 factual circumstances that established the existence of an
15:33:20 20 armed conflict from September 2002 to 13 August 2003 and the
15:33:24 21 existence of a nexus between the enlistment, conscription and
15:33:30 22 active participation of children under the age of 15 years on
15:33:35 23 the one hand, and the armed conflict in Ituri on the other.
15:33:41 24 [3:33 p.m.]
15:33:42 25 The Chamber found that there was sufficient evidence to

15:33:47 1 establish substantial grounds to believe that from
15:33:50 2 early September 2002 to 13 August 2003 Thomas Lubanga Dyilo
15:33:55 3 and other high-ranking FPLC commanders were aware of and
15:34:00 4 accepted the idea that, in the normal course of events,
15:34:05 5 children under the age of 15 years would be voluntarily or
15:34:10 6 forcibly recruited into the ranks of the FPLC and used
15:34:15 7 actively to participate in military operations and as
15:34:21 8 bodyguards to protect military targets as a result of
15:34:27 9 implementing their common plan in furtherance of the UPC and
15:34:33 10 FPLC war effort. The Chamber found that there was sufficient
15:34:39 11 evidence to establish substantial grounds to believe that
15:34:42 12 Thomas Lubanga Dyilo and other high-ranking FPLC commanders
15:34:47 13 shared knowledge of this and that all of them accepted the
15:34:53 14 result.
15:34:53 15 [3:34 p.m.]
15:34:54 16 The Chamber finds that there is sufficient evidence to
15:34:57 17 establish substantial grounds to believe that from
15:35:00 18 early September 2002, when the FPLC was created, to 13 August
15:35:05 19 2003 Thomas Lubanga Dyilo was aware of the specific role that
15:35:10 20 he played within the UPC/RP *and FPLC; was aware of the fact that
15:35:19 21 he was the de jure commander-in-chief of the FPLC; was aware of the
15:35:24 22 coordinating role he played in the implementation of the
15:35:29 23 common plan in furtherance of the UPC/RP and FPLC war effort;
15:35:35 24 and was aware of the essential nature of his coordinating role
15:35:40 25 in the implementation of the common plan and of his power to

15:35:46 1 disrupt such implementation by refusing to play his
15:35:50 2 coordinating role.
15:35:52 3 [3:35 p.m.]
15:35:53 4 For these reasons the Chamber decides that there is sufficient
15:35:58 5 evidence to establish substantial grounds to believe that from
15:36:05 6 the beginning of September 2002, the date of the creation of
15:36:08 7 the FPLC, to 13 August 2003 Thomas Lubanga Dyilo is criminally
15:36:15 8 responsible as a co-perpetrator, within the meaning of
15:36:18 9 Article 25 paragraph 3 subparagraph (a) of the Statute, for
15:36:25 10 war crimes consisting of enlisting and conscripting children
15:36:28 11 under the age of 15 years and causing them to participate
15:36:32 12 actively in hostilities.
15:36:35 13 Accordingly, the Chamber confirms the charges brought by the
15:36:38 14 Prosecutor for the period from September 2002 to 13 August
15:36:44 15 2003. The Chamber decides that Thomas Lubanga Dyilo should be
15:36:49 16 committed for trial before a Trial Chamber.
15:36:52 17 [3:36 p.m.]
15:36:52 18 A confidential version of the decision exclusively reserved
15:36:58 19 for the Prosecution and the Defence was filed with the
15:37:04 20 Registry. A public redacted version will be filed later this
15:37:09 21 week. This is how I will now announce that the Court is
15:37:15 22 adjourned.
15:37:15 23 [3:37 p.m.]
15:37:23 24 [The Court adjourned accordingly]

1 CORRECTIONS REPORT

2 After verification, the following modifications have been brought
3 in the transcript by the Court Interpretation and translation

4 Section:

5 *p7 lines24-25 "and PUSIC for the Parti pour l'unité et la
6 sauvegarde de l'intégrité du Congo" is inserted

7 *p18 line 20 "and FPLC" is inserted