



The Prosecutor vs. Thomas Lubanga Dyilo



PROSECUTION CASE

- Thomas Lubanga Dyilo was the first suspect charged in the Prosecution's investigation into the crimes committed in the Democratic Republic of the Congo since 1 July 2002.
- The Prosecution presented its evidence tendering 368 items of evidence. 67 witnesses gave testimony before the Court, 36 of whom were called by the Prosecution, 24 by the Defence, 4 by the Chamber itself and 3 victim witnesses by the legal representatives for victims.

THE VERDICT

- On 14 March 2012, Trial Chamber I decided unanimously that Thomas Lubanga Dyilo is guilty, as a co-perpetrator under Article 25(3)(a) of the Rome Statute, of the war crime of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities from 1 September 2002 to 13 August 2003. The Chamber was satisfied beyond reasonable doubt that Thomas Lubanga Dyilo acted with intent and knowledge necessary to establish the charges.
- The Chamber found that the war crime of enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities was committed in the context of a non-international armed conflict that took place in Ituri, DRC, and involved the *Force patriotique pour la libération du Congo* (FPLC), led by Thomas Lubanga Dyilo, against the *Armée Populaire Congolaise* and other militias, including the *Force de résistance patriotique en Ituri* (FRPI). A common plan was agreed by Mr. Lubanga Dyilo and his

co-perpetrators to build an effective army in order to ensure the UPC/FPLC's political and military control over Ituri. This plan resulted in the conscription, enlistment and use of children under the age of 15 to participate actively in hostilities, a consequence which occurred in the ordinary course of events.



- Mr. Lubanga Dyilo was the President of the *Union des patriotes congolais* (UPC), the Commander-in-Chief of its military wing, the FPLC, and its political leader. He exercised an overall coordinating role regarding the activities of the UPC/FPLC and he was able to shape the policies of the UPC/FPLC and to direct the activities of his co-perpetrators. He actively supported recruitment initiatives, for instance by giving speeches to the local population and the recruits. Furthermore, he personally used children below the age of 15 among his bodyguards and he regularly saw guards of other UPC/FPLC staff members who were under 15. The Chamber found that the evidence presented by the Prosecutor establishes beyond reasonable doubt that Mr. Lubanga Dyilo's contribution was essential to the common plan.
- The Chamber held that enlistment, conscription and use to participate actively in hostilities are three separate offences and that while the manner in which a child under 15 is recruited (whether voluntary or forcible) may be circumstances to consider in sentencing or reparations, consent does not provide a defence to the Accused.
- Conscription and enlistment are crimes committed from the moment a child under the age of 15 is enlisted or conscripted, and is a

continuous crime ending only once the child is demobilized or reaches the age of 15.

- As for “using children to participate actively in hostilities”, the Chamber held that a child can be directly involved in combat or indirectly involved. The relevant factor is whether the support provided by the child to the combatants exposed him or her to real danger as a potential target.
- The Chamber found that “using children to participate actively in hostilities” in this case included use in direct combat, use as military guards, use as bodyguards and escorts and use in domestic work.

SENTENCING AND REPARATIONS

- The Judges requested parties to present their general views on reparations by 18 April 2012.
- The Prosecution will also present its request for punishment by 18 April. The Prosecution will seek a sentence close to the maximum, as indicated in its Opening statement.

FORMER CHILD SOLDIER WITNESSES

- The Prosecution is planning to contact all its witnesses, in order to explain the details of the conviction.
- Like Thomas Lubanga Dyilo, most of the OTP witnesses are members of the Hema community, many considered as traitors.
- The Prosecution wishes to pay a special tribute to the former child soldier witnesses. They transformed their suffering into evidence.

GENDER AND SEXUAL VIOLENCE



- Training boys to rape, as well as using girls as sex slaves, were gendered aspects of the reality of child soldiers. The majority of Judges considered that the issue may be discussed during the sentencing and reparations phase.

• Judge Odio-Benito provided a separate opinion, agreeing with the Prosecution that gender crimes were embedded in the recruiting of children and in their use in hostilities: *“It becomes irrelevant, therefore, if the prosecution submitted the charges as separate crimes or rightfully included them as embedded in the crimes of which Mr Lubanga is accused. The harm suffered by victims is not only reserved for reparations proceedings but should be a fundamental aspect of the Chamber’s evaluation of the crimes committed”*.

- Judge Odio-Benito found that the invisibility of sexual violence in the legal concept leads to discrimination against the victims of recruitment.
- The OTP will continue to liaise with the Special Representative of the UN Secretary-General on children and armed conflict to contribute to ending the practice of abducting girls to be sexual slaves.

IMPACT AND EDUCATION

- Even before the verdict, the Lubanga trial has helped trigger debates on child recruitment in countries like Colombia or Sri Lanka, and child soldiers have been released in Nepal. The Special Representative of the UN Secretary-General on children and armed conflict factored in such potential and used it as a tool to campaign around the world, and secure additional releases. This is an example of how to use the law to prevent crimes.
- Beyond the judicial activities of the Court, the impact of the Lubanga case will depend on a wide range of actors. The Court cannot write the history of these cases, but it can provide information to those who can and will use it. Education is a key aspect in this sense.
- Sheikha Mozah of Qatar, UNESCO Special Envoy for Basic and Higher Education, clearly stated that the world cannot continue to ignore the impact that armed conflict and international crimes have on education.
- Staff at Qatar-based Education Above All, an organisation which she chairs, analysed the information collected by the Prosecutor in this case. Their findings show how Thomas Lubanga Dyilo’s crimes interrupted, delayed and denied the right to education to Ituri children. In addition to the children abducted to become

child soldiers, other children stopped going to school for fear of being abducted. Because of Mr. Lubanga Dyilo, these children lost out on their education. And Ituri is just one example of the devastating effect that international crimes have on education: according to the Education for All Report published by UNESCO in 2011, 28 million children of primary school age in conflict-affected poor countries are out of school. These children need to be included in the education system.

NEXT STEP: ARREST BOSCO NTAGANDA



- The Office will present additional charges of murder and rape against Bosco Ntaganda, the former number 3 in Mr. Lubanga Dyilo's militia.
- In 2006 an ICC arrest warrant was issued against Bosco Ntaganda, however he is still at large, showing the cost of impunity.
- Mr. Ntaganda has become the leader of a dangerous militia that allegedly carried out massive rapes in the Kivus during 2009 - 2010 and currently he is a general in the DRC army.
- It is time to arrest Bosco Ntaganda. The Office is planning a visit to Kinshasa to thank President Kabila for his support in the Lubanga case and to reiterate its request for the immediate arrest of Mr. Ntaganda.