

## Situation in the Democratic Republic of the Congo The Prosecutor v. Thomas Lubanga Dyilo

The ICC Appeals Chamber confirms the verdict and the sentence against Thomas Lubanga Dyilo  
– 1 December 2014

### 1- What did the Appeals Chamber decide regarding the Lubanga Defence's appeals?

The two judgments issued today fully confirm the Trial Chamber's decisions on conviction and sentence issued for Mr Lubanga.

On 14 March 2012, the Trial Chamber convicted Mr Lubanga Dyilo of committing, as co-perpetrator, war crimes consisting of the enlisting and conscripting of children under the age of 15 years into the Force patriotique pour la libération du Congo [Patriotic Force for the Liberation of Congo] (FPLC) and using them to participate actively in hostilities in the context of an armed conflict not of an international character from 1 September 2002 to 13 August 2003.

On 10 July 2012, the Trial Chamber sentenced Thomas Lubanga Dyilo to a total period of 14 years of imprisonment. The time he spent in the ICC's custody will be deducted from this total sentence.

Today, the Appeals Chamber confirmed both the conviction and the sentence.

The Chamber explains that the standard of review for both the verdict and sentence is deferential with respect to the Trial Chamber's assessment of the facts and determination of the sentence. The Appeals Chamber only intervenes if the Trial Chamber's findings were unreasonable. Also of note is that with regard to age assessment and age determination of child soldiers, the Appeals Chamber deferred to the Trial Chamber's conclusions; in the view of the Appeals Chamber, the Trial Chamber's conclusions were not unreasonable.

In conclusion, the Appeals Chamber rejected every ground of appeal raised by the Defence, and confirmed the Trial Chamber's verdict and decision establishing the sentence of 14 years.

Judge Anita Ušacka adopted a dissenting opinion with regard to the appeals judgement's rejection of Mr Lubanga's appeal against the verdict. Judge Sang-Hyun Song adopted a partly dissenting opinion, agreeing with the majority's decisions to reject the appeals.

### 2- What is a dissenting opinion and how does it differ from a separate opinion?

In the absence of consensus, a Chamber may adopt its decision by majority. A judge who does not agree with the majority can attach a dissenting, or partially dissenting, opinion. A dissenting opinion lays out the position of the judge, but has no legal authority.

A separate opinion lays out the position of a judge who, while agreeing with the majority's conclusions, adopts a different and separate reasoning resulting in the same conclusion.

### 3- What happens next with regard to reparations?

On 7 August 2012, Trial Chamber I of the International Criminal Court decided, for the first time in proceedings at the ICC, on the principles that are to be applied to reparations for victims in the context of the case against Thomas Lubanga Dyilo.

This decision has been appealed, and the Appeals judgment on the principles of reparations is still pending, and will be issued in due course.

Depending on the outcome of the appeal on the principles of reparations, the reparations phase will be conducted under the authority of the ICC Judges and according to the calendar that they will establish. The reparations phase may still take some time.

### 4- How will the sentence be implemented?

Prison sentences are served in a State designated by the Court from a list of States that have indicated their willingness to accept convicted persons. The country in which Mr Lubanga will serve his sentence has not yet been determined, and it is up to the Presidency of the Court to manage this process. Until that point, Mr Lubanga will remain in the detention center in The Hague.

Mr Lubanga has been in detention since 17 March 2006. Under the Rome Statute, when the person has served two thirds of the sentence, the Court shall review the sentence to determine whether it should be reduced. In this case, Mr Lubanga will have served two thirds of his sentence in July 2015, so at that point the Chamber will review the sentence.

#### 5- Why do ICC trials last longer than national trials?

There are several reasons for the length of the proceedings in this case.

Firstly, cases before the ICC are complex because of the nature of the crimes falling within its jurisdiction.

Secondly, the Seat of the ICC is far removed from the scene of the crimes and the country of residence of the witnesses. This poses logistical challenges which lengthen the proceedings.

Also, translation and interpretation are a constant feature of the ICC's work. The working languages of the ICC are English and French. Documents must be translated into a language the Accused person understands. During the trial, simultaneous interpretation into several languages is sometimes required depending on the language used by the witnesses. In addition, the Trial Chamber decision, resulting in 593 pages, had to be translated into French which took several months, before the defence could appeal it.

Finally, the ICC must ensure that trials are fair and impartial, and the judges guarantee that the procedure doesn't suffer from any unjustified delay.