Cour Pénale Internationale
International Criminal Court

Case Information Sheet

Situation in the Democratic Republic of the Congo

The Prosecutor v. Thomas Lubanga Dyilo

ICC-01/04-01/06

ICC-PIDS-CIS-DRC-01-014/16_Eng
Updated: 10 February 2016

Thomas Lubanga Dyilo

Found guilty, on 14 March 2012, of the war crimes of enlisting and conscripting of children under the age of 15 years and using them to participate actively in hostilities. Sentenced, on 10 July 2012, to a total of 14 years of imprisonment. Verdict and sentence confirmed by Appeals Chamber on 1 December 2014. On 19 December 2015, Thomas Lubanga Dyilo was transferred to a prison facility in the DRC to serve his sentence of imprisonment. On 7 August 2012, Trial Chamber I issued a decision on the principles for reparations to victims in the case. On 3 March 2015, the Appeals Chamber amended the Trial Chamber's order for reparations.

Date of birth: 29 December 1960

Place of birth: Jiba, Utcha Sector, Djugu Territory, Ituri district, Orientale province, of the Democratic Republic of the Congo (DRC)

Nationality: Congolese

Ethnicity: Hema

Warrant of arrest: Issued under seal on 10 February 2006 | Unsealed on 17 March 2006

Transferred to The Hague: 16 March 2006

Confirmation of charges hearing: 9 – 28 November 2006

Decision on the confirmation of charges: 29 January 2007

Opening of the trial: 26 January 2009

Verdict: 14 March 2012

Sentence: 10 July 2012

On 14 March 2012, Mr Lubanga Dyilo was convicted of committing, as co-perpetrator, war crimes consisting of:

- 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 (punishable under article 8(2)(e)(vii) of the Rome Statute).

The verdict was rendered by Trial Chamber I, composed of Judge Adrian Fulford (United Kingdom), as Presiding Judge, Judge Elizabeth Odio Benito (Costa Rica) and Judge René Blattmann (Bolivia). Although the first two judges have written separate and dissenting opinions on some issues, the verdict was unanimous.

On 10 July 2012, Trial Chamber I 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.

The verdict and the sentence were confirmed by the Appeals Chamber on 1 December 2014.

Crimes (non-exhaustive list)

Trial Chamber I concluded that:

- The *Union des Patriotes Congolais* ("UPC") was created on 15 September 2000; Thomas Lubanga was one of the UPC's founding members and its President from the outset. The UPC and its military wing, the *Force Patriotique pour la Libération du Congo* ("FPLC"), took power in Ituri in September 2002. The UPC/FPLC, as an organised armed group, was involved in an internal armed conflict against the *Armée Populaire Congolaise* ("APC") and other Lendu militias, including the *Force de Résistance Patriotique en Ituri* ("FRPI"), between September 2002 and 13 August 2003.

- Between 1 September 2002 and 13 August 2003, the armed wing of the UPC/FPLC was responsible for the widespread recruitment of young people, including children under the age of 15, on an enforced as well as a "voluntary" basis. Multiple witnesses testified credibly and reliably that children under 15 were "voluntarily" or forcibly recruited into the UPC/FPLC and sent to either the headquarters of the UPC/FPLC in Bunia or its military training camps, including at Rwampara, Mandro, and Mongbwalu. Video evidence clearly shows recruits under the age of 15 in the Rwampara camp. The evidence

demonstrates that children in the military camps endured harsh training regimes and were subjected to a variety of severe punishments.

- Children were deployed as soldiers in Bunia, Tchomia, Kasenyi, Bogoro and elsewhere, and they took part in fighting, including at Kobu, Songolo and Mongbwalu. It has been established that the UPC/FPLC used children under the age of 15 as military guards. The evidence reveals that a special "Kadogo Unit" was formed, which was comprised principally of children under the age of 15.

The Chamber is satisfied beyond reasonable doubt that:

- the accused and his co-perpetrators agreed to, and participated in, a common plan to build an army for the purpose of establishing and maintaining political and military control over Ituri. As a result of the implementation of this common plan, boys and girls under the age of 15 were conscripted and enlisted into the UPC/FPLC between 1 September 2002 and 13 August 2003.

- The UPC/FPLC used children under the age of 15 to participate actively in hostilities including during battles. They were used, during the relevant period, as soldiers and as bodyguards for senior officials including the accused.

- Thomas Lubanga was the President of the UPC/FPLC, and the evidence demonstrates that he was simultaneously the Commander-in-Chief of the army and its political leader. He exercised an overall coordinating role as regards the activities of the UPC/FPLC. He was informed, on a substantive and continuous basis, of the operations of the FPLC. He was involved in the planning of military operations, and he played a critical role in providing logistical support, including providing weapons, ammunition, food, uniforms, military rations and other general supplies to the FPLC troops. He was closely involved in making decisions on recruitment policy and he actively supported recruitment initiatives, for instance by giving speeches to the local population and the recruits. In his speech at the Rwampara military camp, he encouraged children including those under the age of 15 years, to join the army and to provide security for the populace once deployed in the field after their military training. Furthermore, he personally used children below the age of 15 amongst his bodyguards and he regularly saw guards of other UPC/FPLC staff members who were below the age of 15.

The Chamber has concluded that these contributions by Thomas Lubanga, taken together, were essential to a common plan that resulted in the conscription and enlistment of girls and boys below the age of 15 into the UPC/FPLC and their use to actively participate in hostilities.

Key judicial developments

Referral

The DRC ratified the Rome Statute, the founding instrument of the International Criminal Court (the Court), on 11 April 2002. On 3 March 2004, the Government of the DRC referred to the Court the situation (the events falling under the Court's jurisdiction) in its territory since the entry into force of the Rome Statute on 1 July 2002.

After a preliminary analysis, the Prosecutor initiated an investigation on 21 June 2004.

Warrants of arrest and surrender to the Court

Following his initial investigation into crimes allegedly committed in the Ituri District since 1 July 2002, the Prosecution filed an application for the issuance of a warrant of arrest for Thomas Lubanga Dyilo on 13 January 2006.

On 10 February 2006, Pre-Trial Chamber I issued a warrant of arrest under seal for Mr Lubanga Dyilo.

On 17 March 2006, the Congolese authorities surrendered Mr Lubanga Dyilo, who was then detained at the *Centre pénitentiaire et de rééducation de Kinshasa* [Kinshasa Penitentiary and Re-education Centre], to the Court. He was then transferred to the Court's Detention Centre in The Hague. The warrant was unsealed on 17 March 2006.

On 20 March 2006, Mr Lubanga Dyilo made his first appearance before the Court. At this hearing, the Chamber verified Thomas Lubanga Dyilo's identity and ensured that he had been informed of the crimes which he was alleged to have committed and of his rights before the Court.

Legal assistance and legal representation

On 31 March 2006, the Registrar provisionally found Thomas Lubanga Dyilo indigent, pending verification by the Court of the information contained in his application. The cost of his defence is therefore borne by the Court under the legal assistance scheme.

On 20 February 2007, Counsel for the Defence, Jean Flamme, filed a confidential application with Pre-Trial Chamber I for leave to withdraw from the case for personal reasons.

Following an application filed by Thomas Lubanga Dyilo on 3 May 2007, on 14 June 2007, the Registrar issued a decision granting additional resources to the Defence for the trial phase.

On 20 June 2007, Thomas Lubanga Dyilo appointed Catherine Mabille as his counsel.

Confirmation of charges and committal for trial

The confirmation hearing was held at the seat of the Court in The Hague from 9 to 28 November 2006.

On 29 January 2007, the judges of the Pre-Trial Chamber confirmed the charges against Thomas Lubanga Dyilo.

Following the confirmation of the charges, on 6 March 2007, the Presidency constituted Trial Chamber I and referred the case of *The Prosecutor v. Thomas Lubanga Dyilo* to it for the conduct of the subsequent phase of the proceedings: the trial.

Stay and resumption of the proceedings

On 13 June 2008, Trial Chamber I decided to stay proceedings against Mr Lubanga Dyilo. According to Trial Chamber I, it was impossible for the trial to be fair since the Prosecutor had not disclosed to the Defence, or made available to the judges, important potentially exculpatory evidence. The Prosecutor had obtained the evidence in question on a confidential basis from several sources, including the UN, and these sources had refused to disclose it to the Defence and, in most cases, to the Trial Chamber. Accordingly, Trial Chamber I ordered Mr Lubanga Dyilo's unconditional release on 2 July 2008. That decision was not executed, as a result of the suspensive effect of the appeal filed by the Prosecutor.

On 21 October 2008, the Appeals Chamber decided to uphold the decision to stay the proceedings, but reversed the decision to release Mr Lubanga Dyilo, and remanded the case to the Trial Chamber for a new determination, taking into account the new position of the sources of the documents in question, who had agreed that the documents be submitted to the judges.

On 18 November 2008, Trial Chamber I lifted the stay of proceedings against Mr Lubanga Dyilo, considering that the reasons for the suspension had "fallen away".

The trial before Trial Chamber I commenced on 26 January 2009.

On 8 July 2010, Trial Chamber I ordered to stay the proceedings in this case, considering that the fair trial of the accused was no longer possible due to non-implementation of the Chamber's orders by the Prosecution. The judges had ordered the Office of the Prosecutor to confidentially disclose to the Defence the names and other necessary identifying information, of intermediary 143. On 8 October 2010, the Appeals Chamber reversed Trial Chamber I's decision considering that the Trial Chamber erred by resorting immediately to a stay of proceedings without first imposing sanctions to bring about the Prosecutor's compliance with its orders.

The presentation phase of evidence ended on 20 May 2011. Pursuant to the decision of Trial Chamber I, the parties and participants in the trial presented their closing statements at a public hearing on 25 and 26 August 2011.

Trial

Over the course of 204 days of hearings, the Trial Chamber delivered 275 written decisions and orders and 347 oral decisions. The Chamber heard 36 witnesses, including 3 experts, called by the Office of the Prosecutor, 24 witnesses called by the defence and 3 witnesses called by the legal representatives of the victims participating in the proceedings. The Chamber also called 4 experts. A total of 129 victims, represented by two teams of legal representatives and the Office of Public Counsel for Victims, were granted the right to participate in the trial. They have been authorised to present submissions and to examine witnesses on specific issues. The Prosecution submitted 368 items of evidence, the Defence 992, and the legal representatives of victims 13.

Participation of victims

The judges granted 129 persons the status of victim authorised to participate in this case.

Verdict and Sentence

On 14 March 2012, Trial Chamber I decided unanimously that Thomas Lubanga Dyilo is guilty, as a co-perpetrator, of the war crimes 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. It is the first verdict issued by an ICC Trial Chamber.

On 10 July 2012, Trial Chamber I sentenced Thomas Lubanga Dyilo to a total period of 14 years of imprisonment, of which the period that he spent in the ICC custody shall be deducted.

On 1 December 2014, the Appeals Chamber confirmed, by majority, the verdict declaring Mr Lubanga guilty and the decision sentencing him to 14 years of imprisonment.

Reparations

On 7 August 2012, Trial Chamber I issued a decision on the principles and process to be applied for reparations to victims in the case.

On 3 March 2015, the Appeals Chamber amended the Trial Chamber's order for reparations and instructed the Trust Fund for Victims to present a draft implementation plan for collective reparations to Trial Chamber II no later than six months from the 3 March 2015 judgment. The TFV presented the plan on 3 November 2015. On 9 February 2016, Trial Chamber II ordered the TFV to add information to the plan by 31 December 2016.

Trial Chamber II
Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccia
Judge Peter Kovacs

Representation of the Office of the Prosecutor
Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Defence Counsel for Thomas Lubanga Dyilo
Catherine Mabille
Jean-Marie Biju-Duval
Marc Desalliers

Legal Representatives of the Victims
Franck Mulenda, Luc Walleyn,
Carine Bapita Buyangandu, Joseph Keta Orwinyo, and Paul Kabongo Tshibangu

Office of Public Counsel for Victims
Paolina Massidda, Principal Counsel