

Research Report

MUNISH '12



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Forum	International Criminal Court
Issue:	Thomas Lubanga Dyilo vs. Prosecutor
Student Officer:	Nickolas Rivard and Charlotte Bunemann
Position:	Dep.President and President of the ICC



Thomas Lubanga at the international criminal court.

Photograph: Ed Oudenaarden/AFP/Getty

Introduction

Thomas Lubanga

Thomas Lubanga Dyilo was born on the 29th of December 1960 (age 51) in the Democratic Republic of Congo (DRC). He was the President of the Union of Congolese Patriots (UPC) and, commander and chief of its former military wing referred to as the Forces patriotiques pour la libération du Congo (FPLC). Lubanga had the coordinating role of the activities of the UPC, able to shape the policies of the militia. He is accused and has been found guilty of the conscription of child soldiers from September 2002 to the 13th of August 2003. Having actively supported recruitment initiatives by for instance holding speeches to encourage participation to the local population. Lubanga personally used child soldiers below the age of 15 for his protection, as bodyguards. In his role, he regularly saw guards of other UPC/FPLC staff members who were under age 15, all in the aforementioned time frame.

The aims of the UPC

The UPC's goal was to establish dominance of the Hema ethnic group. The Hema or Hima ethnic group consists of 160,000 people who are primarily located in the eastern Democratic Republic of Congo, in the Ituri region and Orientale Province. The Hema people are pastoralists, a nomadic branch concerned with the caretaking of livestock such as: camels and goats. Moving in search of water and farmland. The UPC aimed to establish the dominance of the Hema ethnic group through violence against non-Hema groups, primarily against Lendu militias and civilians. This general preference, especially allegedly by Ugandan officials ignited the Ituri conflict.

Background Information

There are a few points that must be kept in mind with this trial that are vital to the Case. This is the first case tried by the ICC. The court had to resolve gaps of ambiguities in procedures, collection of evidence and points of laws. Lubanga is also the first person to be tried for the gravity of recruitment, enlistment and conscription of child soldier. The only other international criminal court, which has addressed child soldiers, was the Special Court for Sierra Leone. For future cases the Lubanga case will be used as reference by courts around the world, regarding child soldiers. Throughout the trial it was made clear that the judge was determined to have a fair trial. Due to many withheld documents by the Prosecutor the case was at risk at the beginning of the Pre-trial, this however was resolved. The fact that this case is the first in so many aspects means that an Appeal is very reasonable to be made.

DRC conflict

The Ituri region lies in northeastern DRC, along the border of Uganda, it is rich in gold mines and trade routes. Tension and fighting between the Hema and Lendu ethnic groups had occurred frequently in the past because of competition for land. This situation escalated in 1996 when conflict between neighbouring nations and Congo began. Armed conflict broke out between the groups in 1999. The aforementioned Ituri region was devastated most by the conflict. According to the Human Rights Watch more than 60,000 civilians, were slaughtered by the local militia. Militias like the UPC, which allegedly fought on behalf of the Hema ethnic group. Especially children have been affected by the conflict, thousands under the age of 15 even 7 recruited as child soldiers and many more are up to this day unable to receive education. Partially this is due to the trial, which has halted progress in education. Children are still in fear of seeking education, afraid of recruitment.

Victims' participation and Narrowness of Charges

One of the significant aspects of the trial has been the participation of victims. Initially 129 victims were to testify, however changes were made during the course of the trial, as difficulties were encountered. While this is of course a very positive side, it is still difficult to properly give the victims reparations. The Prosecutor was criticized for the narrowness of the charges. Especially by Gender Equality Organizations and those against sexual slavery. Allegedly the UPC committed grave crimes against young women forcing them into sexual slavery and rape. This however was difficult since the Prosecutor wanted to issue an arrest warrant as soon as possible since Lubanga was in danger of assassination in the DRC.

Key People

The following people listed below are the five militia leaders accused of War crimes in the Ituri (Cases and situations which can be used as reference). Further people listed are potential witnesses for the prosecution and defence.

Bosco Ntaganda

Is the military chief of staff National Congress of the Defence of the People (CNDP) established by Laurent Nkunda in the Kivu region. Ntaganda is also the former number 3 in line of command in the UPC/FPLC, having been the Deputy Chief of the General Staff of the military wing. An arrest warrant was issued in 2006 by the ICC, for murder and rape charges. He is however still at large and continues to be pursued. He has not only committed similar crimes under Lubanga but also in the CNDP between 2009- 2010 carrying out massive rapes in the Kivu region. Ntaganda is also known as the Terminator.



General Floribert Kisembo Bahemuka

Kisembo was the Chief of Staff of the FPLC, until December 2003 when he left the UPC-L completely. Kisembo tried to oust Lubanga, however failed as most of the militia stayed loyal to Lubanga. Kisembo was appointed a general in the national army of DRC in 2006. He is one of the five militia leader accused of massacres and other serious crimes in the Ituri region.

General Jerome Kakwavu

Kakwavu, a Congo national and former traffic cop, was the leader of the militia UDC/FAPC. After which he integrated into the national military of Congo known as FARDC. He is wanted for multiple rape charges.

Germain Katanga

Katanga also known as Simba, is the former leader of the Patriotic Resistance Force in Ituri (FRPI). He was surrendered in October 2007 to the ICC by the Congolese authorities. Currently he is being charged on six counts of war crimes and three counts of crimes against humanity. Including charges of murder, sexual slavery, and using child soldiers.

Bede Djokaba Lambi Longa

Longa is a militia leader in the Ituri region, who insisted during the trial that Lubanga was neither a political nor military leader. He further testifies that the UPC had no link to the mutiny. He further states that Lubanga was not a soldier.

Pierre Zuto Munji

Mr. Baba is the former private Secretary to Mr. Ntaganda in the FPLC. He testifies during the trial, authenticating a letter from Mr. Ntaganda, and providing insight on the line of command within the FPLC, furthermore shedding insight on the presence of minors. Testifying to the presence of the minors.

Timeline of events

Arrests warrant and transfer

10 February 2006: Pre Trial Chamber issued a warrant of arrest under seal for Lubanga.

17 March 2006: the [arrest warrant for Lubanga](#) was publicly announced and unsealed by ICC Pre-Trial Chamber. Lubanga transferred to The Hague on the same day due to cooperation of DRC authorities. The ICC Prosecutor has charged Thomas Lubanga Dyilo with war crimes under Articles 8(2)(b)(xxvi) or 8(2)(e)(vii) of the Rome Statute of the ICC – these war crimes include enlisting children under the age of fifteen; conscripting children under the age of fifteen; and using children under the age of fifteen to participate actively in hostilities.

First appearance

20 March 2006: Thomas Lubanga Dyilo first appeared in Court before ICC Pre-Trial Chamber.

Pre-trial confirmation of charges

November 2006: A three-week [confirmation of charges hearing](#) was held. Four victims participated in the proceedings and were allowed to present their views and concerns.

29 January 2007: The ICC Pre-Trial Chamber found sufficient evidence to establish grounds that Lubanga was responsible as a co-perpetrator for the charges made against him during for the period between September 2002, when the Force Patriotiques pour la Liberation du Congo (FPLC) was founded, and 13 August 2003, thus sending the case against him to trial.

First stay of proceedings and revival of trial

13 June 2008: the Court announced a [stay of the proceedings in the Lubanga case](#) because the Prosecution was unable to make certain evidence available. The Prosecutor had confidentially obtained the evidence in question 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.

24 June 2008: During a [hearing](#), Trial Chamber I stated that it would be premature to consider the release of the accused at this stage.

2 July 2008: Trial Chamber I issued [an order granting unconditional release](#) to Thomas Lubanga Dyilo, which the Prosecution later appealed and was given suspense effect,

meaning that the accused shall not leave detention until the Appeals Chamber has resolved the issue.

11 July 2008: the Prosecution [requested Trial Chamber I to resume trial proceedings](#) and to revoke the order of release of Thomas Lubanga Dyilo because of new UN procedures that would allow the Chamber to review the previously confidential evidence.

3 September 2008: ICC Trial Chamber I decided to [maintain the stay of the proceedings](#) in the Lubanga case, stating that “The proposals outlined in the application demonstrably fail to meet the prerequisites set out hitherto by the Chamber to enable it to lift the stay of proceedings, and they infringe fundamental aspects of the accused's right to a fair trial,” although Lubanga will remain in custody until a final decision is taken by the ICC Appeals Chamber on the appeal of the order granting him unconditional release.

14 October 2008: the Prosecution decided to [discontinue the first and second grounds of his Appeal](#) against the Trial Chamber’s decision to stay the proceedings. According to the Prosecution, information providers now agree to allow complete access to all the Article 54(3) (e) documents by both the Trial Chamber and the Appeals Chamber, if necessary. However, this still doesn’t affect the third ground in that appeal (on the imposition of the stay of trial,) nor does it affect the appeals to release the accused.

21 October 2008: the Appeals Chamber of the International Criminal Court (ICC) [rejected the appeal by the ICC Prosecutor Luis Moreno-Ocampo to revive the trial of the ICC’s first accused](#), however the judges [ruled in favor of the Prosecutor’s appeal to reject the release of the accused](#) because the trial was on hold. The Appeals Chamber said the Trial Chamber erred by stating that a conditional stay of the trial proceedings resulted in the unconditional and immediate release of the accused. Judges remanded a new determination regarding the release of [Lubanga](#) to the Trial Chamber, in light of their judgment and by taking into account all relevant factors, such as the need for Lubanga to remain in detention under Articles 60 and 58 (1) of the Rome Statute.

22 October 2008: Trial Chamber I reacted to the Appeal’s Chamber’s decision, [requesting the Prosecution, Defence and Legal Representatives of victims to make submissions](#) on Lubanga’s pre-trial detention before 31 October 2008.

18 November 2008: Trial Chamber I of the International Criminal Court announced its decision to [lift the stay of the proceedings in the Lubanga case](#) stating the reasons for imposing the stay "have fallen away," whilst Judges decided [not to grant the release or provisional release of Lubanga](#) and announced the trial would start on 26 January 2009.



Trial

26 January 2009: the ICC opened its first trial in the case against Congolese warlord Thomas Lubanga Dyilo. Lubanga was the Court's first detainee. The Prosecution, the Defence, the Registry, and 8 Legal Representatives of Victims representing 93 victims are participating in [trial hearings](#).

January to Mid-July 2009: The Prosecution presented 368 items of evidence. 67 witnesses gave testimony before the Court, 36 of who were called by the Prosecution, 24 by the Defence, 4 by the Chamber itself and 3 victim witnesses by the legal representatives for victims.

Mid-July 2009: The Prosecution finished the presentation of its case.

22 May 2009: Victims participating in the trial filed an application claiming existing evidence warranted the additional charges of sexual slavery and cruel and inhumane treatment.

14 July 2009: The Trial Chamber judges rule in favour of the victims' application to add new charges based on both fresh and existing evidence. The prosecution closes its case.

October 2009: The presentation of the Defence's case had been adjourned pending a ruling by the Appeals Chamber on the additional charges added by participating victims to the existing charges.

8 December 2009: Appeals Chamber of the ICC reversed the Trial Chamber decision on the reclassification of the facts in [the Lubanga case](#).

7 January 2010: Lubanga trial resumed with the testimonies of two experts and three victims. The Defence started the presentation of its evidence.

Second stay of proceedings

8 July 2010: ICC Trial Chamber I ordered to [stay the proceedings](#) in the case The Prosecutor v. Thomas Lubanga Dyilo, considering that the fair trial of the accused was no longer possible due to failure by the Prosecution to implement the Chamber's orders to confidentially disclose to the Defence the identity of intermediary 143.

15 July 2010: ICC Trial Chamber I ordered the [release](#) of Thomas Lubanga. Albeit not with an immediate effect. ICC judges argued that an accused couldn't be held in preventative custody on a speculative basis, namely that at some stage in the future the proceedings may

be resurrected. The Prosecution appealed the decision and the request was granted suspended effect meaning Thomas Lubanga remained in detention until the Appeals Chamber made a final decision.

8 October 2010: the ICC Appeals Chamber reversed Trial Chamber I's decision to stay proceedings and to release the accused. Appeals judges stated that although the prosecutor did not comply with the Trial Chamber's orders relating to protection issues, judges should first have applied sanctions before imposing a stay of proceedings. The trial resumed but was again put on hold for 6 weeks in early 2011 due to various challenges brought by the defence, in particular regarding the disclosure of the identity of witnesses and participating victims.

23 February 2011: Trial Chamber I rejected another defence application for a stay of proceedings and the trial resumed on 21 March 2011.

15 April 2011: Final defence witness concludes his testimony.

20 May 2011: Trial Chamber I ordered the closing of the presentation phase of evidence. 129 victims participated in the trial through their legal representatives.

End of trial phase

25 and 26 August 2011: The closing statements took place before Trial Chamber I and the Prosecution and the Defence presented their final arguments. The legal representatives of victims also made statements at the final hearings. A total of 123 victims were authorized to participate during the trial.

15 December 2011: Trial Chamber I decided it will first issue the authoritative version of the judgment in English, with the French translation to follow.

Verdict

14 March 2012: In a public hearing, Trial Chamber I [delivered](#) unanimously that Thomas Lubanga Dyilo is guilty as a co-perpetrator under Article 25(3)(a) of the Rome Statute. He was found guilty beyond reasonable doubt to have acted with intent and **knowledge** necessary to establish the charges of having committed the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities in the DRC between September 2002 and August 2003. Lubanga's defense has the right to appeal the decision.

Sentencing

13 June: Trial Chamber I heard aggravating and mitigating factors to determine the sentence to be imposed. The prosecutor has requested a maximum 30-year sentence, or 20 years should Lubanga submit a genuine apology and commit to working to prevent future crimes and promote peace.

10 July 2012: Trial Chamber I [sentenced](#) Lubanga to 14 years imprisonment having taken into account the six years Lubanga has already served in detention in The Hague since March 2006.

Detention

Present: Lubanga is currently detained in one of the 12 ICC cells of the 'Haaglanden Prison', in Scheveningen in The Hague since 17 March 2006. The International Committee of the Red Cross visits the Detention Centre regularly. It has not yet been decided where Lubanga will serve out his sentence.

Countries Involved

Democratic Republic of Congo (DRC) – conflicts took place in the Democratic Republic of Congo, where the accused was born.

Zaire – the former Congo previously ruled under a 25 dictatorship by Mobutu Sete Seko before Laurent Kabila gained rule

The Netherlands – ICC court, where trial took place, is based here in The Hague.

Sri Lanka and Nepal – As a result of the Lubanga trial, child soldiers are starting to be released in these countries.

Austria, Belgium, Denmark, Finland, United Kingdom and Serbia – Countries that are willing to accept people sentenced by the ICC.

Judicial Proceedings

Arrest warrant

10 February 2006: Pre Trial Chamber issues, under seal, a warrant for the arrest of Thomas Lubanga Dyilo.

17 March 2006: Arrest warrant for Thomas Lubanga Dyilo publicly announced.

Detainment

17 March 2006: Lubanga transferred to The Hague and detained by the ICC pending a confirmation of the charges.

Charges Thomas Lubanga Dyilo is charged with committing war crimes under **Articles 8(2)(b)(xxvi)** or **8(2)(e)(vii)** of the Rome Statute of the ICC which involves “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.”

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 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.
- “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.

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Appendix

(Please find additional Sources of Information attached on mail send)

- The Office of the Prosecution has compiled all important facts on this document regarding the case such as a detailed verdict by the Chamber and a section dedicated to the impact on education:

<http://www.icc-cpi.int/NR/rdonlyres/374A34E6-96EB-4A40-8EC3-A3F95F9AC5DF/284353/OTPFactsheetontheThomasLubangaDyilojudgment.pdf>

- Important Background information concerning the Case can be found her compiled by the American Non- Governmental Organizations for the International Criminal Court http://www.coalitionfortheicc.org/documents/AMICC_Lubanga_Verdict_Background_Paper.pdf

- Informal Summary of the Case by the Coalition for the ICC http://www.coalitionfortheicc.org/documents/Lubanga_Judgment_Summary_14_March_2012.pdf

- Closing Arguments by the OTP and Defence http://www.coalitionfortheicc.org/documents/Lubanga_Summary_of_Closing_Statements_-_25-26_August2011.pdf

- The following is a Question and Answer sheet by the Lubanga trial page, addressing important aspect of the trial

<http://www.lubangatrial.org/qa/#two>

Charges

