



Case Information Sheet

Situation in Democratic Republic of the Congo

The Prosecutor

v.

Thomas Lubanga Dyilo

Case n° ICC-01/04-01/06



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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
Current situation	Held at the Detention Centre in The Hague
Warrant of arrest	Issued under seal on 10 February 2006 Unsealed on 17 March 2006
Transfer to The Hague	16 March 2006
Confirmation of charges hearing	9 - 28 November 2006
Decision on the confirmation of charges	29 January 2007
Status of Proceedings	The trial commenced on 26 January 2009. The closing oral statements took place on 25 and 26 August 2011. The decision on the guilt or innocence of the accused will be issued in due course after deliberations.
Charges	Mr Lubanga is allegedly responsible, as co-perpetrator, of war crimes consisting of: <ul style="list-style-type: none">• Enlisting and conscripting of children under the age of 15 years into the <i>Forces patriotiques pour la libération du Congo</i> [Patriotic Forces for the Liberation of Congo] (FPLC) and using them to participate actively in hostilities in the context of an international armed conflict from early September 2002 to 2 June 2003 (punishable under article 8(2)(b)(xxvi) of the Rome Statute);• Enlisting and conscripting children under the age of 15 years into the FPLC and using them to participate actively in hostilities in the context of an armed conflict not of an international character from 2 June 2003 to 13 August 2003 (punishable under article 8(2)(e)(vii) of the Rome Statute).

Alleged crimes (non-exhaustive list)

Pre-Trial Chamber I found that there are substantial grounds to believe that:

- In the summer of 1999, tensions developed as a result of disputes over the allocation of land in Ituri (in the DRC) and the appropriation of natural resources. During the second half of 2002, there was renewed violence in various parts of the district. An armed conflict took place from July 2002 to December 2003, with the involvement of different armed groups and neighbouring States.

- Mr Lubanga is the alleged founder of the *Union des patriotes congolais* [Union of Congolese Patriots] (UPC) and president of the group since it was founded in September 2000, and was the alleged former Commander-in-Chief of its military wing, the *Forces patriotiques pour la libération du Congo* (FPLC) from September 2002 until at least late 2003.
- In 2002, the FPLC reportedly took control of the town of Bunia and certain parts of Ituri.
- From July 2002 to December 2003, the FPLC allegedly forcibly recruited groups of children in several localities in Ituri. These forcible recruitments were allegedly carried out by FPLC commanders and, on at least one occasion, Thomas Lubanga Dyilo himself allegedly took part in the conscription of a group of children, some of whom were under the age of 15 years.
- Other children under the age of 15 years “voluntarily” joined the FPLC or were made available to it by their parents, particularly after calls for mobilisation directed at the Hema population or, for some of them, out of a desire for revenge after the loss of a close relative allegedly killed by the militias which were fighting the FPLC. The FPLC allegedly accepted them, thus implementing an enlistment policy.
- Following their recruitment, the children were allegedly taken to FPLC training camps (in Bule, Centrale, Mandro, Rwampara, Bogoro, Sota and Irumu), where they allegedly received military training which began the day after their arrival in the camp and could last up to two months, during which they were subjected to rigorous and strict discipline, including lengthy and exhausting physical exercise which lasted all day, as well as being forced to sing aggressive military songs. They also underwent firearms training, and at the end of their training, the children were often given a military uniform, a firearm and ammunitions. The FPLC commanders then made them fight on the front line.
- Children under the age of 15 years participated actively in hostilities, specifically in Libi and Mbau in October 2002, in Largu in early 2003, in Lipri and Bogoro in February/March 2003 and in Bunia in May 2003. During the fighting, these children reportedly used their weapons; some of them reportedly had to kill, and many recruits, including minors under the age of 15 years, lost their lives in combat.
- Children under the age of 15 years were also used as bodyguards by the FPLC commanders and Thomas Lubanga Dyilo personally used them.
- Through the positions he allegedly held as UPC President and Commander-in-Chief of the FPLC, Mr Thomas Lubanga Dyilo is believed to have had *de facto* ultimate control over the adoption and implementation of UPC and FPLC policies and practices, including enlisting and conscripting of children under the age of 15 years into the FPLC and using them to participate actively in hostilities.

Key judicial developments

Referral

The Democratic Republic of the Congo (DRC) ratified the Rome Statute, the founding instrument of the International Criminal 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) on 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 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.

On 17 March 2006, the Congolese authorities surrendered Mr Lubanga, who was then detained at the *Centre pénitentiaire et de rééducation de Kinshasa* [Kinshasa Penitentiary and Re-education Centre], to the International Criminal 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 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 appointed Catherine Mabilile 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.

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.

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 the case *The Prosecutor v. Thomas Lubanga Dyilo*, considering that the fair trial of the accused is 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.

Over the course of 220 hearings, the Chamber heard 36 witnesses called by the Office of the Prosecutor, including 3 experts, 19 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 other experts to testify. The Judges ensured the respect of the rights guaranteed by the Rome Statute to each of the parties, including the right to cross-examine the witnesses.

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. Within a reasonable time after the presentation, the Trial Chamber will render its decision on the guilt or innocence of the accused.

Participation of victims

The judges have granted 129 persons the status of victim authorised to participate in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.



Composition of Trial Chamber I

Judge Adrian Fulford, Presiding Judge

Judge Elizabeth Odio Benito

Judge René Blattmann

Representation of the Office of the Prosecutor

Luis Moreno-Ocampo, Prosecutor

Fatou Bensouda, Deputy Prosecutor, Lead Counsel

Defence Counsel for Thomas Lubanga Dyilo

Catherine Mabille

Jean-Marie Biju-Duval

Marc Desalliers

Legal Representatives of the Victims

Franck Mulenda, Luc Walley, Jean Chrysostome Mulamba, Hervé Diakiese

Carine Bapita Buyangandu, Joseph Keta Orwinyo, Paul Kabongo Tshibangu

Office of Public Counsel for Victims: Paolina Massidda, Principal Counsel