



THOMAS LUBANGA TRIAL

TIMELINE OF VICTIMS' ENGAGEMENT IN THE CASE

[25 August 2011] Today the International Criminal Court in The Hague begins hearing closing arguments in the case against Congolese warlord Thomas Lubanga Dyilo, the first case to reach this stage at the ICC.

The trial marks a turning point for the Rome Statute, the ICC's founding treaty, which entered into force nine years ago. The Lubanga trial will be the first test of formal victim participation in an international criminal trial. It is also the first case at the ICC to focus on allegations of the recruitment of child soldiers in a conflict.

As the alleged leader of the Union of Congolese Patriots (UPC) and the commander-in-chief of its military wing, the Forces Patriotiques Pour la Libération du Congo (FPLC), Lubanga is accused of enlisting and conscripting children under the age of 15 and using them to participate in hostilities during several months in 2002 and 2003.

REDRESS is one of the leading organisations advocating for victims at the ICC including their ability to take part in proceedings, and their right to protection and reparation. It is also the informal coordinator of the Victims' Rights Working Group, a network of 400 national and international organisations and experts that share information on Court decisions and advocate on victims' issues (www.vrwg.org).

We have been monitoring the Lubanga case since 2006, when an ICC arrest warrant was issued for Lubanga, after two years of investigations by the Court's Prosecutor into the conflict in the Ituri region of the Democratic Republic of Congo.

The timeline below traces the history of key events and victims' engagement in the case since 2006.

10 February 2006: An ICC arrest warrant is issued for Thomas Lubanga. He is handed over to the ICC on 17 March 2006.

28 July 2006: First three victims are allowed to participate in the Lubanga case, including in the confirmation of charges hearing. A fourth victim is allowed to participate on 31 July 2006.

9-28 November 2006: A three-week confirmation of charges hearing is held in November. Four victims participate in the proceedings and are allowed to present their views and concerns via their lawyers. On the ground in Eastern DRC is a feeling of relief but also of concern about the lack of charges other than child recruitment in hostilities.

29 January 2007: ICC Pre-Trial Chamber I confirms the charges against Lubanga, sending the case against him to trial.

18 January 2008: Trial Chamber I issues landmark decision on victims' participation, in which it notes the importance of ensuring adequate protection for victims and applicants, "conscious of the particular vulnerable position of many of these victims, who live in an area of ongoing conflict where it is difficult to ensure their safety." The Court recognises that those who apply to participate in the Court's proceedings may require protection, even before they are formally recognised as participants in the legal proceedings.

24 January 2008: The Trust Fund for Victims notifies for the first time the Court of its intention to carry out projects for the physical and psychosocial rehabilitation and/or material support of victims in Eastern DRC. In accordance with the Regulations of the Trust Fund, this support is meant to provide broad assistance and is much wider than the reparations that may ultimately be awarded to victims at the end of a criminal case.

13 June 2008: The judges halt the proceedings 10 days before the trial is due to start before the ICC's Trial Chamber I. The Court rules it is impossible for Lubanga to receive a fair trial after it learns the Prosecutor refused to disclose potentially exculpatory evidence to the defence.

2 July 2008: The Court orders Lubanga's unconditional release from detention. However, Lubanga stays in detention pending the result of an appeal by the Prosecution on this order and the stay of the proceedings. Victims' lawyers stress security concerns. They argue that such a release would send the wrong message to both perpetrators and victims.

11 July 2008: The Appeals Chamber defines the criteria for victims' participation in the trial, including recognising their right to lead and to challenge evidence relating to the guilt or innocence of the accused. Only victims who are linked to the charges may apply, however not only victims who were directly affected by a crime, but also victims who were indirectly affected – like the parents of child soldiers – are entitled to apply to participate. Trial Chamber I had previously set the criteria for victims' participation, but both the defence and the prosecution had appealed.

21 October 2008: The ICC Appeals Chamber reverses Lubanga's release order, but maintains the stay of proceedings. It returns the case to the Trial Chamber to review whether the necessary information had been handed over. The Trial Chamber lifts the stay in November 2008 and sets a trial date.

26 January 2009: The trial begins. Eight lawyers, representing a total of 93 victims, make opening statements on their behalf. The first witness called by the prosecution is a former child soldier. Soon after his testimony began, he froze and recanted what he had previously said. One of the possible reasons for this is the inadequacy of protection measures: the witness was shielded from the public, with voice and face distortion, but was testifying in plain view of Lubanga, his former superior commander. After a lengthy break, the witness resumes his testimony with added protection measures which thereafter have become standard for child testimony before the Court: the number of people in the courtroom are reduced to a bare minimum, the witness is not forced to see the accused directly, questioning is non-confrontational and non-pressurising.

26 January 2009 – 25 July 2011: A total of 123 victims are allowed to participate in the trial, among them at least 15 young girls who were allegedly raped by UPC members.

22 May 2009: Victims participating in the trial file an application to Trial Chamber I arguing that the evidence that came out in the course of the trial warranted the additional charges of sexual slavery and cruel and inhuman treatment.

14 July 2009: The prosecution closes its case. The Trial Chamber judges rule in favour of the victims' application and say that they are considering adding the new charges of sexual slavery and cruel and inhuman treatment, based on evidence that came out during the trial.

8 December 2009: After months of delay, the Appeals Chamber reverses the Trial Chamber decision to allow additional charges. Victims express deep disappointment.

7 January 2010: An expert witness on names and other social conventions in the DRC testifies following a request by victims' legal representatives, after the identity of witnesses becomes the subject of repeated questioning by the defence.

12-26 January 2010: Three victims applied (independent of the Prosecutor) and are granted the opportunity to testify in person and present evidence in the trial for the first time before the Court.

27 January 2010: The defence alleges that some of the Prosecutor's 'intermediaries' (local organisations or individuals providing assistance of some kind), fabricated evidence and encouraged witnesses to lie to the Chamber. This led to Trial Chamber I's 31 May 2010 ruling that, in some cases, the identity of intermediaries should be disclosed to the defence.

12 May 2010: The prosecution was ordered to disclose the identity of intermediary 143, which was not complied with, citing protection concerns.

8 July 2010: The Court stays the case a second time, after the prosecution refuses to obey three separate orders to disclose the identity of intermediary 143.

15 July 2010: The Court orders Lubanga's release and the prosecution appeals. Lubanga remains in custody until the determination of the appeal. Victims' lawyers filed submissions in the appeal opposing the release, raising concerns that the decision to release Lubanga does not specify whether he would be returned to Congolese authorities or retained at the Court's disposal, leaving open the possibility that he may escape or return to Ituri to commit more crimes. Protection of victims and witnesses, whose identity is known to the defence, is also expressed as a major concern.

8 October 2010: The stay of proceedings is reversed by the Appeals Chamber, which holds that the Trial Chamber erred when it stayed the proceedings without first considering less drastic measures, such as sanctioning the prosecution. The decision to release Lubanga is also reversed.

10 December 2010: The Defence request the Chamber to stay the proceedings for a third time, arguing an abuse of process. It alleges that four intermediaries who acted for the Prosecutor prepared false evidence, that the Prosecutor knew that certain evidence was untruthful, failed to investigate its reliability, and deliberately omitted to disclose exculpatory evidence to the Defence. The role of the three victims who came to testify was also questioned. On 23 February 2011, this request was dismissed as it would be disproportionate and the allegations made by the defence could be addressed in the context of assessing the weight to be given to the evidence heard.

15 April 2011: Final defence witness concludes his testimony.

20 May 2011: The official close of the evidence phase of the trial. Victims submit their final written observations. In its submission, the Office of the Public Counsel for Victims (OPCV) argues that the notion of “active participation of children under the age of 15 in hostilities” not only covers direct participation in hostilities, but also in activities related to the fighting such as espionage, sabotage, and using children as messengers. It also argues that it should be sufficient to prove that girls under 15 were recruited in order to establish that they actively participated in the hostilities, given that the primary objective of their enlistment was to use them for sexual purposes.

25 and 26 August 2011: The closing statements by the defence, prosecution, and participating victims will be delivered.

Note: REDRESS was founded by a British torture survivor in 1992. Since then, it has consistently fought for the rights of torture survivors and their families in the UK and abroad. It takes legal challenges on behalf of survivors, works to ensure that torturers are punished and that survivors and their families obtain remedies for their suffering. REDRESS cooperates with civil society groups around the world to eradicate the practice of torture once and for all and to ensure that survivors can move forward with their lives in dignity. It has intervened in a range of leading torture cases. More information on our work is available on our website: www.redress.org

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