

ICC Judges uphold conviction of Lubanga *The Prosecutor v. Thomas Lubanga Dyilo*

1 December 2014

Today, the Appeals Chamber of the International Criminal Court (ICC) issued its first ever appeal judgment in the case against Thomas Lubanga Dyilo (Lubanga). The Appeals Chamber upheld, by majority, Lubanga's conviction and 14 year sentence for 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. The Court's first case lasted almost nine years, and the trial involved 204 days of hearings, two stays of proceedings, an adjournment, 67 witnesses, 1,373 items of evidence and the participation of 129 victims.

'Today's important judgment marks the historic conclusion of the ICC's first trial and is another significant milestone in the global efforts to end impunity for serious war crimes, which in this case involved the use of child soldiers by Lubanga's militia group in eastern DRC', said Brigid Inder, Executive Director of the Women's Initiatives for Gender Justice.

'The road to justice for the victims, survivors and communities in Ituri, eastern DRC has been long and painful and we hope that today's announcement will provide some satisfaction to those affected by these crimes and this militia group. We welcome the Chamber's decision which sends a message to militia leaders the world over that justice may be slow, but accountability is inevitable', said Brigid Inder.

'The judges' final decision today provides justice for children abducted, abused, and forced to fight by the UPC. We are optimistic that this case will inspire more rigorous efforts in the future by prosecutors and judges to address and integrate gender issues within the legal concepts of enlistment, conscription and use of children in armed conflict. We also hope that this case will add to our collective understanding of the terror and impact on children, boys and girls, who are forced to participate in armed conflicts', said Inder.

Sexual Violence

Despite evidence suggesting the commission of rape and other forms of sexual violence allegedly by Lubanga's troops, including against child soldiers, the Office of the Prosecutor did not bring charges for these crimes in its case. However, during the trial the Prosecution raised the alleged commission of these crimes specifically against child soldiers within the UPC and at least 15 prosecution witnesses spoke about sexual violence during the trial. These crimes were also referenced by the victims' legal representatives, especially those representing former girl soldiers. The majority of judges held that, given the Prosecution omission of factual allegations of sexual violence in the charges, the Trial Chamber was precluded from taking allegations of sexual violence into consideration in the judgment. Judge Odio Benito wrote a dissenting opinion in which she stated that:

Although the Majority of the Chamber recognises that sexual violence has been referred to in this case, it seems to confuse the factual allegations of this case with the legal concept of the

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crime, which are independent. By failing to deliberately include within the legal concept of “use to participate actively in the hostilities” the sexual violence and other ill-treatment suffered by girls and boys, the Majority of the Chamber is making this critical aspect of the crime invisible. Invisibility of sexual violence in the legal concept leads to discrimination against the victims of enlistment, conscription and use who systematically suffer from this crime as an intrinsic part of the involvement with the armed group.¹

The Office of the Prosecutor argued, in a limited manner, within its submission on sentencing and during its oral presentation at the sentencing hearing that sexual violence crimes should be recognised as an aggravating factor in Lubanga’s sentence. In rejecting this claim, the Chamber found that:

Although the former Prosecutor was entitled to introduce evidence on this issue during the sentencing hearing, he failed to take this step or to refer to any relevant evidence that had been given during the trial. As a result, in the view of the Majority, the link between Mr Lubanga and sexual violence, in the context of the charges, has not been established beyond reasonable doubt. Therefore, this factor cannot properly form part of the assessment of his culpability for the purposes of sentence.²

This issue was addressed more thoroughly by the OTP in December 2012 in its appeal of the sentencing decision.³

However in the 7 August 2012 reparations decision, the Trial Chamber emphasised that any reparations award must account for victims of sexual and gender-based violence. The Women’s Initiatives for Gender Justice was granted leave to participate in the Lubanga reparations proceedings, and on 10 May 2012 filed observations from a gender perspective on questions of reparations.⁴ The judges are still to decide on the final appeals of the 7 August 2012 reparations decision, representing the final stage of the Lubanga case at the ICC.⁵

“This case has involved eight years of work for the Women’s Initiatives and our partners, including a filing to the judges in 2006 regarding the exclusion of sexual violence charges, girl soldiers and the impact of the limited charges on victims participation issues; undertaking documentation missions in Ituri and interviewing victims/survivors of sexual and gender-based crimes allegedly committed by Lubanga’s UPC militia group; the submission of a dossier to the Office of the Prosecutor in August 2006

¹ *Lubanga Trial Judgment*, ICC-01/04-01/06-2842, 14 March 2012 (Judge Odio Benito, E., dissenting), para 16.

² ICC-01/04-01/06-2901, para 75.

³ ICC-01/04-01/06-2950, paras 67-93.

⁴ The Women’s Initiatives submitted observations on principles and procedure to be applied to reparations, in particular the following issues: (i) whether reparations should be awarded on a collective or an individual basis; (ii) to whom reparations are to be directed, how harm is to be assessed and the criteria to be applied to the awards; (iii) whether it is possible or appropriate to make a reparations order against the convicted person pursuant to Article 75(2); and (iv) whether it would be appropriate to make an order for an award for reparations through the Trust Fund for Victims pursuant to Article 75(2). Read the filing [here](#).

⁵ On 14 December 2012, the Appeals Chamber invited those organisations that had been granted leave to submit their observations before Trial Chamber I to request leave to submit observations on the appeals. The Women’s Initiatives for Gender Justice submitted its request on 8 March 2013, which is still pending.

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including interviews with 31 victims/survivors of sexual and gender-based crimes allegedly committed by the UPC; the relocation of several women’s human rights defenders in Ituri due to threats to their safety as a result of their local advocacy for victims and accountability; support for victim participants and their legal representatives to ensure the gender dimensions and experiences of former girl soldiers were recognised in the public record of the case; and finally, our filings on gender and reparations issues specifically as they apply to this case,” Brigid Inder said.

Lubanga has already served almost nine years of his 14 year sentence in ICC detention since he was first transferred to The Hague from the DRC in March 2006. He must serve just over five more years unless the Court decides to reduce his sentence under Article 110 of the Rome Statute after two-thirds has been served, which may be as early as July 2015.⁶

For further comments, please contact the Women’s Initiatives for Gender Justice:

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For more information about this case please see:

- Read the [press statement](#) by the Women’s Initiatives on the reparations decision
- Read the [press statement](#) by the Women’s Initiatives on the sentencing judgment
- Read the [press statement](#) by the Women’s Initiatives on the 14 March trial judgment
- For a detailed analysis of the 14 March trial Judgment, see the Special Issues of *Legal Eye on the ICC*, available [here](#)
- Read the Women’s Initiatives for Gender Justice’s observations on reparations submitted to Trial Chamber I on 10 May 2012, available [here](#)
- *Gender Report Card 2013, Gender Report Card 2012, Gender Report Card 2011, Gender Report Card 2010, Gender Report Card 2009, Gender Report Card 2008*, available [here](#)
- For an analysis of the gender aspects of this case, see ‘The ICC, child soldiers and gender justice’, *Brigid Inder*, 21 November 2011, available [here](#)
- In May and July 2006, the Women’s Initiatives conducted two documentation missions in Ituri, eastern DRC, and interviewed victims/survivors of gender-based violence, committed by a range of militias, including the UPC. We produced a dossier, which we subsequently shared with the Office of the Prosecutor, detailing 51 individual interviews with predominantly women victims/survivors of rape and other forms of sexual violence. Of these, 31 interviewees were victims/survivors specifically of acts of rape and sexual slavery allegedly committed by the UPC. On 16 August 2006, the Women's Initiatives submitted the confidential report and a letter to the Office of the

⁶ According to Article 110(3) of the Rome Statute, once a “person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.”

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Prosecutor describing our grave concerns that gender-based crimes have not been adequately investigated in the case against Thomas Lubanga and providing information about the commission of these crimes by the UPC. A redacted version of this confidential letter submitted to the Office of the Prosecutor is available [here](#)

- For a detailed description of the Prosecution’s closing arguments, see Women’s Initiatives for Gender Justice, ‘Summary of the closing statements in *The Prosecutor v. Thomas Lubanga Dyilo*’, *Legal Eye on the ICC e-letter*, October 2011, available [here](#). See also *Gender Report Card 2011*, p 203-218, available [here](#).

