

Thomas Lubanga and the ICC

In 2004 the Democratic Republic of Congo (DRC) invited the International Criminal Court to investigate and prosecute war crimes that had occurred in the DRC since July 1, 2002. In 2006 the ICC issued an arrest warrant accusing Thomas Lubanga Dyilo of war crimes for conscripting children as soldiers. The court cancelled the beginning of his trial in June 2008 because of complex procedural issues.

BACKGROUND

A decade of war began in the DRC with Laurent-Désiré Kabila's 1996–1997 campaign to overthrow the repressive rule of Mobutu Sese Seko in the country then known as Zaire. In resource-rich Ituri province in the country's northeast, Thomas Lubanga led the Union des Patriotes Congolais (UPC) and its militia, the Forces Patriotiques pour la Libération du Congo.

DRC authorities arrested Lubanga in March 2005 and charged him with genocide and crimes against humanity, based on provisions of the DRC's military criminal code. The charges concerned the UPC's alleged participation in the killing of civilians in several villages. Also in March 2005 authorities issued a second warrant charging Lubanga with illegal detention and murder.

After the ICC issued its arrest warrant, DRC authorities transferred Lubanga from prison in Kinshasa to ICC custody in March 2006. He has remained in custody in The Hague.

AT THE ICC

Shortly before Lubanga's trial was scheduled to begin in 2008, the Trial Chamber of the ICC found fault with the prosecutor's proposed use of evidence collected by the UN and NGOs. The evidence was in some 200 documents that could contain exculpatory material that might help the defense prove Lubanga's innocence. These were documents the prosecutor had obtained on a confidential basis. The court ruled that the prosecutor should share the evidence with the Trial Chamber and the defense. Since the prosecutor did not immediately have permission to share the documents, the Trial Chamber cancelled the trial and halted the proceedings.

continued on back

THE ICC

Office of the Prosecutor: An independent organ of the court, it decides whether there is a reasonable basis to investigate possible crimes. Some situations are referred to the court by a member state, as occurred with the DRC, or by the UN Security Council.

The Pre-Trial Chamber: Has authority to issue an arrest warrant after considering submissions by the prosecutor. When a wanted person appears before the court,

the Pre-Trial Chamber holds a hearing to confirm the charges that will be the basis of the trial.

The Trial Chamber: If the charges are confirmed the court assigns the case to a three-judge Trial Chamber responsible for conducting fair and expeditious proceedings. After the conclusion of testimony the Trial Chamber issues its decision, acquitting or convicting the

accused. If the person is convicted the Trial Chamber issues a sentence of imprisonment and may also order reparations to victims.

Appeals Chamber: Throughout the proceedings the parties can appeal decisions to an Appeal Chamber of five judges. The Trial Chamber's verdict or sentence may be appealed by the prosecutor or the accused.

The prosecutor appealed the ruling to the ICC's Appeals Chamber. As of late September 2008 its decision was still pending. This dispute between the prosecutor's office and the Trial Chamber is about the meaning and scope of parts of the court's statute and rules that allow the prosecutor to gather evidence while promising confidentiality. Still untested, this standard will be defined by this case.

In the meantime the prosecutor obtained permission from the UN to share some—but not all—of the documents with the judges and defense counsel. On that basis the prosecutor asked the Trial Chamber to resume the proceedings. The Trial Chamber rejected the prosecutor's request. The chamber believes too many restrictions remain on the use of the potentially exculpatory documents to ensure a fair trial. The prosecutor has sought permission to appeal this decision as well.

If the court rules in Lubanga's favor and releases him from custody in The Hague, it is not yet clear if he would be allowed to leave the Netherlands; he is currently banned from travel. Nor is it clear if the DRC would seek to re-arrest him and bring him to trial.

LOOKING AHEAD

The ICC's role is to guarantee fair trials for persons charged with serious crimes. The judges' vigilance in Lubanga's case is welcome. Indeed, the integrity of international justice rests on meeting the highest standards for fair trials.

Keeping the public well informed is a vital task for any court, but it is an especially difficult challenge for an international court whose proceedings take place far from where the alleged crimes occurred, witnesses and victims live, and the public has the most at stake in the outcome. It is important that the ICC keep the Congolese people informed of the court's work, its decisions, and the reasons behind them.

In future cases the court will again rely on evidence gathered by the UN and other bodies. This is inevitable because the court has no armed force of its own but must investigate serious, complex crimes in the midst of ongoing conflict. The ICC should ensure that its procedures strike a balance between the need to use such evidence and the rights of the accused to a fair, speedy trial.

2008

ICC PROSECUTIONS IN THE DRC

While ICTJ promotes national efforts to prosecute war crimes in Congolese courts, international justice through the International Criminal Court (ICC) is a welcome complement to break the cycle of impunity.

In 2004, the Congolese government invited the ICC to investigate and prosecute war crimes that have occurred in the DRC since July 1, 2002.

The ICC has issued four arrest warrants concerning the conflict in the Ituri district of the DRC, for Thomas Lubanga Dyilo and the following suspects:

Germain Katanga, alleged commander of the Force de Résistance Patriotique en Ituri (FRPI). The ICC charged Katanga with multiple counts of war crimes and crimes against humanity. Katanga has been in ICC custody since 2007.

Mathieu Ngudjolo Chui, alleged former leader of the Front National Intégrationniste (FNI) and a colonel in the National Army of the DRC (FARDC). The ICC charged Ngudjolo with multiple counts of war crimes and crimes against humanity in Ituri. Ngudjolo was transferred to ICC custody in February 2008.

The ICC has joined Ngudjolo's case with that of Germain Katanga. In September 2008, a Pre-Trial Chamber confirmed the charges against Ngudjolo and Katanga.

Bosco Ntaganda, alleged former deputy chief of the general staff of the FPLC and alleged current chief of staff of the Congrès National pour la Défense du Peuple (CNDP). The ICC unsealed an arrest warrant for Ntaganda on charges focusing on recruitment of child soldiers. Ntaganda remains at large.

In addition to the four ICC cases concerning the Ituri conflict in the DRC, the ICC has arrested another Congolese suspected war criminal:

Jean-Pierre Bemba Gombo, leading Congolese opposition figure, president of the Mouvement de Libération du Congo (MLC), senator and former vice-president. Bemba was arrested in Belgium in May 2008 on an ICC arrest warrant charging him with war crimes committed in the Central African Republic in 2002-2003. Bemba was transferred to ICC custody in The Hague in July 2008.