



## ***BACKGROUND PAPER: THE VERDICT IN THE CASE OF THE PROSECUTOR V. THOMAS LUBANGA DYILO***

*This paper provides background information on the Lubanga case and emphasizes issues relevant to AMICC's advocacy in the United States. A shorter Talking Points document is available at [amicc.org](http://amicc.org).*

On March 14, 2012, the International Criminal Court (ICC) delivered its first verdict, finding Thomas Lubanga Dyilo guilty of war crimes. Lubanga is the founder and president of the *Union des Patriotes Congolais* (UPC) militia in Ituri and former commander-in-chief of the *Forces patriotiques pour la libération du Congo* (FPLC).<sup>1</sup> The judges convicted him of three counts of the war crime of conscripting, enlisting or using child soldiers under the age of 15 in an armed conflict between July 2002 and December 2003 during the Ituri conflict in the Democratic Republic of Congo (DRC).

When armed conflict broke out between the Hema and Lendu ethnic groups in 1999, the northwest Ituri region – rich in gold mines and trade routes – was one of the areas most devastated by violence and casualties. According to Human Rights Watch, local militias slaughtered more than 60,000 civilians in Ituri. Militias such as Lubanga's UPC (which claimed to fight on behalf of the Hema) abducted thousands of children to join their ranks. Many of them were forced to target civilians in warfare.<sup>2</sup>

This is the first verdict for the Court since it started its investigations in 2004. The case, which began in 2007, encountered and had to resolve gaps and ambiguities in procedures, points of law, and collection of evidence. Among these issues were the due process rights of the defendant, which the judges stringently upheld, in order to ensure Mr. Lubanga a fair trial. Although the Trial Chamber has handed down a conviction, the Lubanga case is not yet over. An appeals process is likely to begin soon, as well as decisions on sentencing and victims reparations. Nevertheless, the Lubanga conviction is a major milestone not only for the young Court, but for international justice and the fight against impunity everywhere. The lessons learned will guide the Court in future proceedings, enabling equally fair trials that should proceed more quickly than the first.

### Child Soldiers

The case against Thomas Lubanga is the first by an international court to solely address the crime of deploying child soldiers in armed conflict. (The only other international trials involving child soldiers were by the Special Court for Sierra Leone).<sup>3</sup> The Lubanga proceedings have thus brought to light the

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<sup>1</sup> Trial Chamber I, Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo, Judgment Pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, March 14, 2012, available at <http://www.icc-cpi.int/iccdocs/doc/doc1379838.pdf>.

<sup>2</sup> Human Rights Watch, "First Verdict at the International Criminal Court: The case of the Prosecutor vs. Thomas Lubanga Dyilo, Questions and Answers", February 2012, available at [http://www.hrw.org/sites/default/files/related\\_material/2012\\_DRC\\_Lubanga.pdf](http://www.hrw.org/sites/default/files/related_material/2012_DRC_Lubanga.pdf).

<sup>3</sup> The Special Court of Sierra Leone has prosecuted child soldier crimes in the cases of *Taylor*; *Fofana and Kondewa*; *Brima, Kamara and Kanu*; and *Sesay, Kallon and Gbao*.

grim conditions under which child soldiers were recruited, trained, and forced to fight, as well as some of the sadistic methods that led to their conscription.

The forcible recruitment and inhumane abuses of child soldiers under the age of 15, some under the age of 7, in Lubanga's UPC has been widely documented.<sup>4</sup> Militia leadership deliberately alienated them from their families, communities, and civilian life. Upon joining the army, some were forced to murder their parents. UPC training camps, far from town, often lacked adequate nutrition and healthcare, to say nothing of educational resources. Both boys and girls were enlisted to fight on the front line as armed combatants, as well as serve off the battlefield as porters, cooks, sex slaves, and wives. Many former child soldier witnesses testified in Court about the killings they committed and seeing the killing of their peers.<sup>5</sup>

Militias took advantage of vulnerable children mentally as well as physically. Being a part of a militia alters the mentalities of impressionable young people by instilling in them a false sense of authority. When children join a militia like the UPC, they are given weapons including guns, bullets, and knives, as well as a uniform. In some cases they were allowed to drive automobiles. Lacking the maturity to fully comprehend such situations, some children drew a skewed sense of power and self-importance in their new roles as killing machines. As such, their emotional and psychological vulnerability made it easy for warlords to exploit them.

The UN Secretary General's Special Representative on children and armed conflict, Radhika Coomaraswamy, testified as an expert during the Lubanga trial. She argued that the use of child soldiers is particularly abusive since children under the age of 15 "have an underdeveloped notion of death. The lack of the concept of death makes them fearless in battle."<sup>6</sup> According to former child soldiers in the DRC who testified in the trial, many were given or were forced to smoke marijuana before battles, since taking drugs made them more aggressive, even fearless, on the front lines.

By altering their behaviors, mentality, and sense of self-worth, militias like the UPC have done lasting damage to children. Child soldiers who eventually manage to leave the militia have an extraordinarily difficult time processing the crimes they have committed in order to reintegrate into their communities. Their self-confidence, dignity, and vitality are permanently altered by the experience of having been soldiers. The social stigma against children who were once soldiers leads to ostracization in schools and limited job opportunities later in life.

Before the world had a permanent institution to prosecute those, such as UPC leaders, responsible for recruiting child soldiers, there were few channels by which children could seek redressive justice. One of the successes of the Lubanga trial was that it condemned, at an international level, the use of child soldiers while drawing attention to the human consequences of their exploitation. On the day the judgment was issued, the White House Office of the Press Secretary released a brief statement praising

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<sup>4</sup> Human Rights Watch, "UPC Crimes in Ituri (2002-2003)", November 8, 2006, available at <http://www.hrw.org/reports/2006/11/08/upc-crimes-ituri-2002-2003>.

<sup>5</sup> Wairagala Wakabi, "Lubanga Trial Highlights Plight of Child Soldiers", The Lubanga Trial at the International Criminal Court, October 5, 2010, available at <http://www.lubangatrial.org/2010/10/05/lubanga-trial-highlights-plight-of-child-soldiers/>.

<sup>6</sup> Testimony of Radhika Coomaraswamy before Trial Chamber I of the ICC, January 7, 2010, available at <http://www.icc-cpi.int/iccdocs/doc/doc802628.pdf>.

Lubanga's conviction. National Security Council Spokesperson Tommy Vietor said the decision demonstrated that the "international community is united in its determination to end the repugnant practice of using child soldiers."<sup>7</sup> Additionally, the US Department of State stated that the use of child soldiers is one of "paramount international concern." A spokesperson for the US Department of State continued to hail the ICC's first decision as "an historic and important step in providing justice and accountability for the Congolese people," especially because of the deterring effects of the conviction.<sup>8</sup>

According to a Human Rights Watch research mission in 2007, several militia leaders were aware of Lubanga's ongoing case in The Hague, and of their own vulnerability to prosecution.<sup>9</sup> The success of the Lubanga case is thus two-fold: it presented to the world in intimate detail the brutal conditions faced by child soldiers, as well as established accountability for the crime of deploying them on the front lines. By making it a punishable atrocity crime, the Court hopes to deter this practice in the future.

### Victims' Participation

One major innovation of the ICC is the right of victims to participate in proceedings in their own right, without having to be called as witnesses by the prosecution or defense. Participation is one way in which victims of atrocity crimes can tell their stories to an international court and potentially obtain redressive justice for the wrongdoings committed against them. Recognized victims, by submitting an application through legal representatives, are also entitled to give evidence in a case before the ICC. Reparations may be paid to victims according to the Court's discretion (Article 75 of the Rome Statute). These may be in monetary form, or more symbolic forms of "restitution, compensation and rehabilitation." The ICC also created a Victim Trust Fund (Article 79) from which victims could potentially receive reparations.

In the Lubanga trial, 129 victims were initially granted the right to participate in the proceedings. They were represented by two teams of legal representatives as well as the Court's Office of Public Counsel for Victims. Aside from the witnesses called on by the prosecution and the defense, three victims (without being called as witnesses) gave evidence directly in the Court.

ICC detractors and supporters alike were concerned that victims' participation could potentially violate defendants' due process rights by undermining the presumption of Lubanga's innocence.<sup>10</sup> Victims could essentially act as a second prosecutor by presenting their own evidence of atrocity crimes. In order to ensure a fair trial, the Court first set strict regulations on victims' participation in the trials. Pre-trial judges decided that in order for victims to participate in the Lubanga case, applicants could not just have

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<sup>7</sup> The White House Office of the Press Secretary, "Statement by National Security Council Spokesman Tommy Vietor on the International Criminal Court Conviction of Congolese Warlord Thomas Lubanga Dyilo in Child Soldiers Case," March 14, 2012, available at <http://www.whitehouse.gov/the-press-office/2012/03/14/statement-national-security-council-spokesman-tommy-vietor-international>.

<sup>8</sup> "This conviction puts perpetrators and would-be perpetrators of unlawful child soldier recruitment and other atrocities on notice that they cannot expect their crimes to go unpunished." US Department of State, "ICC Conviction of Thomas Lubanga Dyilo," Press Release, March 16, 2012, available at <http://www.state.gov/r/pa/prs/ps/2012/03/185964.htm>.

<sup>9</sup> Human Rights Watch, "First Verdict at the International Criminal Court: The case of the Prosecutor vs. Thomas Lubanga Dyilo, Questions and Answers".

<sup>10</sup> M. Jouet, "Reconciling the Conflicting Rights of Victims and Defendants at the International Criminal Court", 26 St. Louis U. Pub. L. Rev. 249 (2007).

been affected by Lubanga's alleged crimes. Instead, they would have to demonstrate that a "sufficient causal link exists between the harm they suffered and the crimes ... for which the Chamber has issued an arrest warrant."<sup>11</sup>

Additionally, the judgment underscored the importance of considering evidence only from credible victims. The Chamber ultimately withdrew the testimonies of the three victims who gave the Court evidence, deciding that the evidence they presented was inconsistent and flawed. The judges were convinced by the testimony of two defense witnesses that two of the three aforementioned victims had stolen the identities of the defense witnesses and pretended they had been child soldiers in the hopes of obtaining material and monetary reparations. The Chamber ultimately found the evidence of the three victims unreliable and withdrew the "victim" status of each in the case.<sup>12</sup> The judges' strict guidelines regarding evidence are a clear example of their enforcement of due process and commitment to ensure a fair trial. As this was the first trial by the ICC, the strict enforcement of this fundamental requirement by the judges is likely to set precedents and influence the actions of the Office of the Prosecutor (OTP) in the future.

As the Court is still a relatively new institution, it is still trying to determine the most effective way of hearing victims' stories.<sup>13</sup> In fact, the Court's limited resources prevented a number of applications for victim witnesses from being processed in time for closing arguments in the Lubanga. Still, victims' participation is one way in which the ICC achieves redressive justice in the hopes of eventually helping victims rebuild their lives.

### Due Process

Throughout the proceedings, the judges of Trial Chamber I were scrupulously concerned with due process and upholding the rights of the accused. Due process issues arose most dramatically in two instances that caused delays in the proceedings. These delays were due to the practical problem of balancing the rights of the accused with the rights and responsibilities of victims, witnesses, and those known as "intermediaries," or Congolese locals who agreed to help the Prosecutor collect evidence and testimonies. The role of intermediaries, in particular, proved highly controversial in the Lubanga case.

The first delay took place in 2008, before the trial even began. The Court ordered a stay of the trial because the Prosecutor failed to release roughly 200 documents of information to either the judges or the defense.<sup>14</sup> The Prosecutor appealed the decision, saying that the information was confidential in

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<sup>11</sup> Pre-Trial Chamber I, Decision on the Application for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6 in the Case the Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-172-tEN, June 29, 2006, available at <http://www.icc-cpi.int/iccdocs/doc/doc287364.PDF>.

<sup>12</sup> Trial Chamber I, Judgment in the Case of the Prosecutor v. Thomas Lubanga Dyilo, p. 221-228

<sup>13</sup> See C.H. Chung, "Victims' Participation at the International Criminal Court: Are Concessions of the Court Clouding the Promise?", 6 Nw. U.J. Int'l Hum. Rts. 459 (2007).

<sup>14</sup> According to Article 67(2) of the Rome Statute, the Prosecutor has an obligation to disclose potentially exculpatory evidence to the defense. In 2008, the OTP argued the documents ordered to be disclosed were protected under confidentiality agreements (Article 54(3)(e), Rule 77 of the ICC Rules of Procedure and Evidence). Trial Chamber I determined that these agreements should be used only to generate or lead to new evidence. Additionally, the Appeals Chamber held that the rule covered a broader scope of evidence: the Prosecutor needs to disclose any information that could potentially help the defense's case, regardless whether that information is incriminating or exonerating evidence.

order to protect the safety of sources – including UN ones – that had aided the investigation. The first stay was eventually lifted after the judges deemed that the Prosecutor had addressed the issue “satisfactorily,” ensuring that the defense received the relevant documents, and thus the reasons for upholding the first stay had “fallen away.”<sup>15</sup>

The proceedings were again stayed in 2010 because the OTP refused to disclose the identity of one specific intermediary. The Rome Statute, which establishes the nature of ICC trials, does not describe how evidence should be collected, nor does it anticipate the work of intermediaries. The OTP relied heavily on local intermediaries to collect evidence and build up the case against Lubanga. Lack of experience working with intermediaries, the absence of domestic investigators with police power, as well as general safety concerns made collecting evidence without the help of locals very difficult. To justify the use of intermediaries, the Prosecutor claimed their only role in the proceedings was to direct the OTP to specific people and places to seek evidence. They had no idea about the specifics of the case, the Prosecutor argued, nor any role in analyzing the evidence. In the verdict, however, the judges highlighted the implausibility that intermediaries had such a neutral or detached role in collecting evidence. To the contrary, many of the intermediaries used by the Prosecutor were activists who knew all about the specifics of the Lubanga case.<sup>16</sup> Many may also have had their own agendas.

Some critics point to the numerous outside factors that may affect the evidence intermediaries provided the OTP. Intermediaries are sometimes paid in cash or school fees, which could be an incentive to present or fabricate information of value to the Prosecutor, as opposed to producing neutral information. The possibility of payment and future employment, as well as a personal desire to see warlords successfully prosecuted, are strong reasons why locals could want to steer the OTP’s investigation in one direction. The judges were highly concerned with these factors. Particularly in high profile cases involving child soldiers, it may be difficult for members of the communities to maintain neutrality.

Indeed, Lubanga’s defense team questioned the reliability of evidence gathered through intermediaries, as well as the Prosecutor’s respect for the standards of a fair trial. The defense argued that several of the child soldiers presented as prosecution witnesses were over the age of 15 at the time of the alleged recruitment. Others, under the guidance of intermediaries, told inconsistent stories during the trial. Thus, in July 2010, Trial Chamber I ordered a second stay in the trial after the prosecution failed to disclose the identity of intermediary 143 who helped to identify potential witnesses. Five months later, the defense filed an application for a permanent stay of the proceedings, arguing that intermediaries corrupted the testimonies of witnesses to the extent that it was impossible for the defendant to have a fair trial. On February 23, 2011, just six months before the end of the Lubanga trial, the Trial Chamber rejected a permanent stay, noting that such a stay would be a disproportionate reprimand to the prosecution, even if it were at fault.

In the March 2012 verdict, the Chamber noted that intermediaries had potentially influenced the testimonies of numerous witnesses. Due to a lack of prosecutorial diligence in verifying information, many child soldiers had been vulnerable to manipulation. The Trial Chamber ultimately concluded in the judgment that three intermediaries “persuaded, encouraged, or assisted” witnesses to provide false

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<sup>15</sup> On November 18, 2008, Trial Chamber I found there was a sufficient basis for a fair trial. Trial Chamber I, Status conference transcript, November 18, 2008, p. 3, available at <http://www.icc-cpi.int/iccdocs/doc/doc586028.pdf>.

<sup>16</sup> Trial Chamber I, Judgment in the Case of the Prosecutor v. Thomas Lubanga Dyilo, p. 92.

testimonies.<sup>17</sup> Testimonies from certain witnesses were thus discredited since they resulted from the efforts of the three aforementioned intermediaries. Furthermore, the judgment indicated that these intermediaries might have committed offenses against the administration of justice, a crime under Article 70 of the Rome Statute. The judges indicated that the onus to investigate is on the Prosecutor, although it is unclear whether the OTP will do so.

The lengthiness of the Lubanga trial is due, in part, to the pauses that sought to resolve procedural and legal issues. When the Prosecutor presented information of questionable reliability or refused to disclose information to the defense, the Chamber showed its commitment to upholding stringent rules on evidence collecting: it insisted on disciplining the OTP when it failed to live up to these rules. Additionally, the ability with which the defense monitored the credibility of the OTP's evidence was essential to ensuring Mr. Lubanga a fair trial.

### Narrowness of the Charges

Even though Thomas Lubanga has been successfully convicted of using child soldiers, the broad scope of alleged human rights abuses in the Democratic Republic of the Congo led some activists to campaign for additional charges in the case. It was known that young girls in the UPC were used in combat, scouting, portering, and as sex slaves, and many UN and NGO documents demonstrate that several such crimes had been committed by the UPC). As such, several NGOs challenged the relative narrowness of the charges in light of numerous testimonies that sexual slavery and gender-based crimes were widespread in the UPC.

Human Rights Watch, the International Center for Transitional Justice, and Avocats Sans Frontières, among others, argued for a broader range of charges (including charges of sexual crimes) against Lubanga. The Women's Initiatives for Gender Justice was the first NGO to submit a legal filing before the Court, asking the Pre-Trial Chamber I to examine whether further charges against the accused could be considered. According to the filing, at least 15 prosecution witnesses testified explicitly about gender-based violence – particularly the rape and sexual slavery of girl soldiers in the UPC.<sup>18</sup>

Two months after the trial began, legal representatives for 27 participating victims filed a brief to broaden the charges against Lubanga beyond those presented by the Prosecutor; Trial Chamber I agreed by majority that it would consider adding new charges. However, the Appeals Chamber overruled the Trial Chamber, saying that only the Prosecutor may add new charges, which the OTP had not sought to do.<sup>19</sup> Although NGOs and victims were unsuccessful in broadening the scope of charges against Lubanga,

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<sup>17</sup> *Id.*, p. 219.

<sup>18</sup> Brigid Inder, "Reflection: Gender Issues and Child Soldiers – The Case of Prosecutor v Thomas Lubanga Dyilo", *The Lubanga Trial at the International Criminal Court*, August 31, 2011, available at <http://www.lubangatrial.org/2011/08/31/reflection-gender-issues-and-child-soldiers-the-case-of-prosecutor-v-thomas-lubanga-dyilo-2/>.

<sup>19</sup> Legal representatives supported additional charges pursuant to Regulation 55 of the Regulations of the Court. On December 8, 2009, the Appeals Chamber held: "Regulation 55(2) and (3) of the Regulations of the Court may not be used to exceed the facts and circumstances described in the charges or any amendment thereto." Additionally, the Appeals Chamber declared that under Article 61(9), only the Prosecutor may request to add new facts and circumstances not already in the charges. Appeals Chamber, Appeals hearing transcript, December 8, 2009, p. 8, available at <http://www.icc-cpi.int/iccdocs/doc/doc790248.pdf>.

the ruling by the Appeals Chamber clarified important aspects of the Rome Statute. First, it demonstrated that it is the Prosecutor's role to shape the charges. Second, it showed that there are boundaries to what participating victims can request in a case.

The OTP did not initially charge Lubanga with other crimes since it was imperative to seek an arrest warrant for Lubanga before he could be presumably harmed or assassinated in the DRC. Lubanga had been imprisoned in the DRC on other charges a year before the ICC's arrest warrant and was facing imminent release. Based on compelling information, both the DRC and the OTP had strong reason to believe that Lubanga would have been harmed or assassinated in the DRC. Both parties wanted to see the warlord tried and brought to justice. In order to do ensure his prosecution, the OTP had to issue charges based upon the compelling evidence already collected, which made a case only for child soldier crimes.<sup>20</sup>

Furthermore, the policy of the OTP is to present only cases it believes in which the crimes can be proven "beyond reasonable doubt," as the Rome Statute requires. Deputy Prosecutor Fatou Bensouda explained in an interview that investigations were extensive and "took place under very difficult circumstances." Due to issues of security and safety for both victims and intermediaries, the OTP had to make a decision about Lubanga's charges. "We decided," said Deputy Prosecutor Bensouda, "that our child soldier case was very strong ... and this was evidence that we could present comfortably before the court."<sup>21</sup> In other words, the OTP decided to prosecute only the crimes for which it had adequate evidence, choosing not to add more charges that could have delayed the process even longer. In the end, the OTP decided to keep the Lubanga case focused on the initial charges rather than add charges of gender crimes. Rather than separately charge Lubanga with gender crimes, the Prosecutor classified these crimes within the umbrella of child soldier crimes and the highlighted the gender aspects of these crimes.

During the closing statements of August 25, 2011, Prosecutor Luis Moreno-Ocampo explained how gender-based violence fit into the overall category of crimes being prosecuted: "Gender crimes were committed as part of the conscription of girls in the militias. And it is important to have the charge as confined to the inscription, because if no ... the girls are considered wife [sic] and ignored as people to be protected and demobilised and cared." To have categorized the plight of girl soldiers as merely sex crimes would be, argued the Prosecutor, to minimize the totality of their experiences. Prosecutor Moreno-Ocampo continued, "to present the suffering and the sexual abuse and the gender crime suffered by the girls in the camps just as conscription, showing this gender aspect of the crime."<sup>22</sup> Although some wanted Lubanga to be charged with a full list of crimes committed, prosecutorial discretion and judicial restraint were crucial at a time of a new Court's birth in order to define the charges of a case and the range of criminality in order to establish clean grounds for a trial.

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<sup>20</sup> Human Rights Watch, "First Verdict at the International Criminal Court: The case of the Prosecutor vs. Thomas Lubanga Dyilo, Questions and Answers".

<sup>21</sup> Rachel Irwin, "Interview with Fatou Bensouda, ICC Deputy Prosecutor", The Lubanga Trial at the International Criminal Court, July 31, 2009, available at <http://www.lubangatrial.org/2009/07/31/interview-with-fatou-bensouda-icc-deputy-prosecutor/>.

<sup>22</sup> Benjamin Ferencz, Office of the Prosecutor's Closing Statements, August 25, 2011, available at <http://www.icc-cpi.int/iccdocs/doc/doc1210316.pdf>.

### Lessons Learned

The Lubanga trial was the first time the Prosecutor, judges, and defense were practically interpreting the Rome Statute of the ICC. Issues regarding collecting and sharing evidence, relying on intermediaries, and victims' participation were particularly challenging. Throughout the Lubanga trial, the judges showed a determination to uphold the due process rights of the defendant. They refused to allow the Prosecutor to cut corners regarding the evidence the OTP collected and presented to the Chamber. In the verdict, the judges harshly criticized the Prosecutor for his "negligence in failing to verify and scrutinize material sufficiently before it was introduced." This inattentiveness "led to significant expenditure on the part of the Court."<sup>23</sup>

The efforts of the judges to interpret and apply important provisions of the Rome Statute were partially responsible for the slowness of the proceedings. Future trials will likely learn from the Court's first case and 624-page decision to ensure justice is delivered in a more timely manner. Additionally, Court documents regarding the use of intermediaries, rights of victims, collecting and sharing of evidence, and addition of charges will be very important going forward.

### Next Steps

For Thomas Lubanga, the appeals process will likely be underway shortly. Upon release of the verdict in French, the defense has 30 days to appeal the decision on the basis of any grounds that compromised the fairness or reliability of the proceedings or the decision.<sup>24</sup> The Rome Statute does not explicitly state how long a convicted criminal should be imprisoned for a particular crime. However, the Court takes into account the time the defendant has already spent in detention. That is to say, in the unlikely event that the Court's sentence is less than six years – the amount of time Lubanga has already been in custody – he would be released.

Additionally, since Lubanga was convicted, victims who participated in the case have the possibility of obtaining reparations. Reparations may include, but are not limited to, restitution, compensation, and rehabilitation.

Aside from Thomas Lubanga Dyilo, the Prosecutor has cases in progress against two more Congolese suspects: Germain Katanga and Mathieu Ngudjolo Chui. The suspects are jointly accused of war crimes including using child soldiers under the age of 15 in active hostilities, willful killings, sex slavery, and rape, as well as crimes against humanity including murder, rape, and sex slavery. Lubanga's co-accused, Bosco Ntaganda, who is also charged with three counts of war crimes of conscripting, enlisting, and using child soldiers, remains at large as a general in the Congolese army.

### Conclusion

The ICC's first case was indeed lengthy and, at times, challenging. The 204 days of hearings as well as the process of evidence collecting beforehand saw the Court address numerous procedural issues. The 2008

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<sup>23</sup> Trial Chamber I, Judgment in the Case of the Prosecutor v. Thomas Lubanga Dyilo, p. 219.

<sup>24</sup> The English verdict was released on March 14, 2012, and a French version will be available at a later date. Pursuant to Article 81(1)(b), the defense can appeal the judgment.



and 2010 ordered stays were due to the Court addressing issues of victims' participation, due process, and the use of intermediaries in collecting evidence.

Nevertheless, both the rewards and the missteps of the first case show that the Court's focus on accountability, fight against impunity, and mission to deliver justice for victims of the most heinous atrocity crimes is successfully underway.

During the closing prosecution statements to the Lubanga case on August 25, 2011, Benjamin Ferencz, former Prosecutor in the Nuremberg Trials and Special Counsel to the Office of the Prosecutor, noted the significance of the Court's landmark first case. "What makes this court so distinctive," said Mr. Ferencz, "is its primary goal to deter crimes before they take place by letting wrongdoers know in advance that they will be called to account by an impartial international criminal court. The law can no longer be silent but must instead be heard and enforced to protect the fundamental rights of people everywhere."<sup>25</sup> The first verdict is likely to set precedents for future Court cases, in the hopes of improving the Court's processes and delivering justice that works to end impunity for atrocity crimes.

*Researched and drafted by Anjie Zheng  
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<sup>25</sup> Benjamin Ferencz, Office of the Prosecutor's Closing Statements, pp. 50-51