



**First Verdict at the International Criminal Court:  
The case of the  
Prosecutor vs. Thomas Lubanga Dyilo**

**Questions and Answers  
February 2012**

- I. THE LUBANGA CASE.....1**
  - 1. Who is Thomas Lubanga and what are the charges against him? ..... 1
  - 2. What happened in Ituri? ..... 1
  - 3. Isn't Lubanga too small a fish for the ICC? ..... 1
  - 4. Why was Lubanga only charged with recruiting and using child soldiers? ..... 2
  - 5. What happened to Lubanga's co-accused, Bosco Ntaganda? ..... 3
- II. UPCOMING VERDICT IN THE LUBANGA CASE AND NEXT STEPS.....4**
  - 6. What should be expected from the Lubanga verdict? ..... 4
  - 7. Why are the Lubanga trial and the upcoming verdict significant?..... 4
  - 8. What happens after the verdict? ..... 5
  - 9. How many years in prison could Lubanga be sentenced to? ..... 5
  - 10. How will people in the DRC's Ituri province learn about the Lubanga verdict? ..... 6
  - 11. Does the ICC provide reparations for victims?..... 7
- III. IMPORTANT FEATURES OF THE LUBANGA TRIAL:.....7**
  - 12. Why did the Lubanga trial take so long? ..... 7
  - 13. What role did victims play in the Lubanga trial? ..... 8
  - 14. What are some significant lessons from the Lubanga trial? ..... 9
  - 15. Has the Lubanga trial helped deter international crimes in the DRC? ..... 10
- IV. THE WORK OF THE ICC IN CONGO AND MORE GLOBALLY .....11**
  - 16. What other ICC cases relate to crimes committed in the DRC?..... 11
  - 17. What more could the ICC do? Can the ICC handle more cases? ..... 11

- 18. Have others been charged with the crime of using child soldiers? ..... 12
- 19. What about claims that the ICC is unjustly targeting Africans? ..... 12

## **I. The Lubanga case**

### **1. Who is Thomas Lubanga and what are the charges against him?**

Thomas Lubanga Dyilo was the first person arrested and transferred to The Hague to be tried by the International Criminal Court (ICC). He is a Congolese national and was the president of the Union of Congolese Patriots (Union des Patriotes Congolais, UPC), a brutal armed group claiming to act on behalf of the ethnic Hema population in the Ituri region of northeastern Democratic Republic of the Congo (DRC). The UPC has been implicated in many serious human rights abuses, including massacres of other ethnic groups, summary executions, torture, rape, abduction and use of children as soldiers, and pillage.

The ICC has charged Lubanga with the war crimes of enlisting and conscripting children under age 15 as soldiers and using them as active participants in hostilities in 2002-2003. The charges against Lubanga were confirmed in January 2007, and his trial began before Trial Chamber I of the ICC in January 2009. A detailed [chronology](#) of the case is available.

### **2. What happened in Ituri?**

Ituri was one of the areas worst affected by Congo’s devastating wars. A local armed conflict between Hema and Lendu ethnic groups that began in 1999 was exacerbated by Ugandan military forces who occupied the area from 1999 until 2003 and by the broader Congolese war. Backed by foreign armies, local militias multiplied and the conflict among them resulted in the slaughter of at least 60,000 civilians across Ituri. Most of the victims were killed during ethnically targeted violence. Competition for the region’s lucrative gold mines and trade routes—and the resulting money, guns, and power—was a major contributing factor to the fighting.

In their ruthless battles for gold, armed groups such as Lubanga’s UPC often targeted civilians. These groups were implicated in widespread killings, torture, and rape. Thousands of children, some as young as seven, were recruited by all sides and used as fighters. Human Rights Watch extensively documented [crimes committed by the UPC](#) and other armed groups during the conflict in Ituri.

### **3. Isn’t Lubanga too small a fish for the ICC?**

Some observers, particularly in the DRC, have complained that Lubanga is only a “small fish” and not high-level enough for the ICC. However, Lubanga was the leader of a prominent ethnic armed group in Ituri associated with multiple serious abuses. As such, he is an appropriate ICC target.

At the same time, Lubanga—and other commanders from rival militias in Ituri—did not act alone in terrorizing civilians and committing atrocities. [Human Rights Watch research](#) in Congo, covering the period from 1998 to present, suggests that key political and military officials in the capitals of Congo, Rwanda, and Uganda played a prominent role in creating, supporting, and directing the armed groups in Ituri. These top commanders should be investigated for possible criminal liability.

For meaningful justice to be done in the DRC, and to sustain the credibility and perception of independence of the ICC in that country, Human Rights Watch believes that it is imperative for the Office of the Prosecutor of the ICC to move beyond rebel leaders and investigate government officials and commanders, in Congo and other countries in the region, for their role in ICC crimes in eastern Congo.

#### **4. Why was Lubanga only charged with recruiting and using child soldiers?**

Investigations by the United Nations, local human rights groups, and Human Rights Watch implicate Lubanga’s UPC in many other serious crimes in Ituri. For example, from December 2002 through early 2003, UPC forces attacked several towns near Ituri’s gold mines. In Kilo, UPC combatants abducted Lendu men, women, and children whom they considered the enemy. They forced the victims to dig their own graves and then executed them with hammer blows to the head. An estimated 100 people were killed in this town alone. These and other crimes are not reflected in the charges against Lubanga and his co-accused, Bosco Ntaganda (see question five below).

Human Rights Watch and other observers, including victims and human rights activists in the DRC, deeply regret the narrow scope of the charges against Lubanga since they do not reflect the scale of the UPC crimes. Only the victims of the charges in the case can become participants in the trial under ICC procedures. Since children in the UPC’s ranks were usually Hema—Lubanga’s ethnic group, the narrow scope of the charges means that no Lendu victims were able to participate in these ICC proceedings.

The Office of the Prosecutor says the decision to focus on a limited set of charges for Lubanga was triggered by his possible imminent release from Congolese custody after approximately a year in detention stemming from other charges. Following the arrest and

surrender of Lubanga to the court, the prosecutor indicated on several occasions that he would seek to include additional charges against Lubanga, but he has failed to do so.

While the prosecutor can only put forward charges for which he has sufficient evidence, it is disappointing that after nearly two years of investigations—from the opening of the investigation in DRC in July 2004 to Lubanga’s arrest in March 2006—it was not possible to collect sufficient evidence for other charges. The Office of the Prosecutor could mitigate this problem by continuing its investigations and bringing additional charges against Lubanga’s co-accused, Bosco Ntaganda, who remains at large and who has not yet been tried.

Aware of the problems related to the limited set of charges against Lubanga, the Office of the Prosecutor has made a commitment to bring cases with focused charges but that nonetheless provide “a sample that is reflective of the gravest incidents and main types of victimization.”

#### **5. What happened to Lubanga’s co-accused, Bosco Ntaganda?**

[Ntaganda](#) is currently a general in the Congolese army and lives openly in Goma, in eastern Congo, with little fear of arrest. As the trial of Lubanga nears completion, the absence of Ntaganda in the dock becomes all the more disturbing and highlights the central importance of government cooperation in the arrest of ICC suspects to ensure that the court can deliver justice.

Ntaganda, who collaborated with Lubanga as chief of military operations of the UPC’s military branch, the Patriotic Forces for the Liberation of Congo (Forces Patriotiques de Libération du Congo, FPLC), was charged by the ICC at the same time as Lubanga with war crimes relating to the recruitment and use of child soldiers in Ituri.

Ntaganda has been involved in many rebel groups. From Ituri, Ntaganda moved to North Kivu province, where he joined the armed group National Congress for the Defense of the People (Congrès National pour la Défense du Peuple, CNDP) as its military chief of staff. In January 2009, with support from Rwandan army officers, Ntaganda ousted the CNDP’s leader, Laurent Nkunda, and integrated the rebel group into the Congolese army following a secret deal between Congolese and Rwandan officials. In exchange for ending the rebellion, Ntaganda was made a general in the Congolese army and deputy commander of military operations in eastern Congo. In this role, Ntaganda was implicated in ordering and otherwise being involved in [serious crimes](#).

Ntaganda moves about freely from his residence in Goma. The DRC has an obligation as a state party to the the ICC statute to execute the ICC arrest warrant against Ntaganda.

However, the Congolese government has repeatedly stated publicly that it will not yet arrest Ntaganda, whom it regards as an important “partner for the peace process” in the Kivu region. The impunity for Ntaganda reinforces the perception in Congo that those who commit atrocities against civilians will be rewarded rather than punished.

Ntaganda’s continued involvement in serious human rights abuses undermines attempts to protect civilians and promote the rule of law in eastern Congo and underscores the reasons why Congolese authorities should make his arrest an urgent priority. Human Rights Watch has called on the ICC prosecutor to amend the charges against Ntaganda to include other crimes committed by the UPC in Ituri, as well as crimes he allegedly committed while occupying positions in the CNDP and the Congolese army.

## **II. Upcoming verdict in the Lubanga case and next steps**

### **6. What should be expected from the Lubanga verdict?**

Trial Chamber I has been deliberating the verdict in the Lubanga case since late August 2011. The judges also decided that they would issue the decision as soon as it is ready in English instead of waiting until the French translation is available, which will probably take several months. Decisions of international tribunals have typically been well over 100 pages long.

In accordance with the ICC statute, the three-judge chamber will decide if possible unanimously, and if not, on a majority basis, whether it has been established “beyond reasonable doubt” that Lubanga is guilty of the crimes alleged against him. This decision will be made separately for each charge and can be based only on the evidence presented to the court during the trial. The decision, or a summary, will be delivered in open court.

### **7. Why are the Lubanga trial and the upcoming verdict significant?**

The verdict against Thomas Lubanga will be the first ever issued by the ICC. Coming almost nine years after the Court’s first prosecutor and judges were elected, this first judgment is eagerly awaited. With this upcoming verdict, as well as with a number of other cases under way at the court, the ICC has moved into a more fully operational phase.

Should Lubanga be found guilty, the decision will be a powerful signal to all those who recruit and use child soldiers around the world. Regardless of the verdict, the proceedings have raised awareness about the use of child soldiers and the fact that recruiting and using children under age 15 as soldiers is a war crime.

Finally, the Lubanga trial has been an important first effort to bring justice to at least some victims in Ituri, particularly child soldiers. As the first trial before the ICC, it broke new ground and contributed to shaping practices before the ICC. It is influencing the way the court handles other and future trials (for more information on lessons learned, see question 14 below).

### **8. What happens after the verdict?**

After the judgment is issued, the Office of the Prosecutor and the defense have 30 days to appeal on the basis of a procedural error, an error of fact or law, or any other grounds that affect the fairness or reliability of the proceedings or decision. If Lubanga is convicted, the time limit for appeal will only start running when the decision is available in French. This is to protect the fairness of the proceedings, by ensuring that the accused has access to the decision in a language he understands and speaks and thus can appropriately prepare his appeal. Appeals proceedings are likely to last several months, depending on the grounds for appeal.

If Lubanga is found guilty of some or all the charges against him, he will remain in detention and the trial chamber will hold hearings to determine the sentence against him and reparations for victims (for more information on reparations before the ICC, see question 11.) Trial Chamber I has decided that it will not wait to hold the hearings until a final appeals decision is issued.

If Lubanga is acquitted of all charges, the statute of the ICC provides for the immediate release of the detainee. In exceptional circumstances, the trial chamber may decide to keep the person in custody during an appeal if justified by the risk of flight of the accused, the seriousness of the offense, and the probability of success on appeal.

Proceedings in the Lubanga case are thus likely to last many more months before an appeal judgment is issued, and, if Lubanga is found guilty, his sentence and reparations for victims are determined.

### **9. How many years in prison could Lubanga be sentenced to?**

Trial Chamber I has indicated that it will deal with the verdict and the sentencing separately. In the event Lubanga is found guilty, the sentence against him will be decided later, after sentencing hearings. Under the ICC statute, the trial chamber, in determining an appropriate sentence, will consider the gravity of the crimes, the circumstances of the convicted person, and any aggravating or mitigating circumstances.

Given that this is the first case before the ICC, and other factors—such as the prosecutor’s decision to focus charges only on the recruitment and use of child soldiers, and complications encountered during the trial—it is very difficult to anticipate what the judges will consider an appropriate sentence.

**10. How will people in the DRC’s Ituri province learn about the Lubanga verdict?**

The ICC should ensure that the proceedings are meaningful for the communities most affected by the crimes. The ICC should therefore continue to make strenuous efforts to communicate publicly to the people in Congo about important legal proceedings in The Hague. For the ICC to be an effective international court, justice must not only be done but it must be seen to have been done.

The ICC has commendably developed a comprehensive outreach program in the DRC, notwithstanding limited resources. The court’s outreach team has engaged with affected communities, human rights activists, local authorities, local lawyers and judicial personnel, schools and colleges, and the media. This engagement aims at fostering a better general understanding of the ICC—which can help to improve conditions on the ground for investigations and protection of witnesses and victims—as well as informing concerned audiences about specific developments in the cases before the ICC and, for victims, their rights of participation.

Over time, the ICC has gradually improved its outreach activities to ensure they are better tailored to the information needs of affected communities and the ways these communities get information. For example, the outreach unit prepared audio and video summaries of the Lubanga trial. These were distributed through the media, and used in public screenings where the public could ask questions of ICC staff. These materials proved a good tool to explain complex legal developments and were translated into Lingala and Swahili and broadcast over local radio, reaching people in remote areas. The court’s outreach unit also developed creative approaches, such as “listening clubs,” where groups of people listened together to a radio program on the court and could send questions to ICC officials to be answered in the next program.

The verdict in the Lubanga case will no doubt be of enormous interest to many people in the DRC. It is important for the court to prepare a comprehensive outreach and public communications strategy to enable it to explain the verdict both to international and Congolese media, as well as affected DRC communities. The judges’ decision not to wait for the French translation of the judgment will make communication with people in the DRC more difficult. It is essential for the outreach unit to be given the time to prepare a summary

of the decision in French and other local languages, as well as other essential outreach materials, in advance of the hearing.

### **11. Does the ICC provide reparations for victims?**

In the event that Lubanga is found guilty, the victims can seek reparations from the court. Including reparations for victims within the ICC's mandate, and creating the Trust Fund for Victims were important advances in international criminal justice. They are an unprecedented effort to make international justice more attentive to the concerns of victims of serious crimes and their right to redress.

Under the ICC Statute, reparations include, but are not limited to, restitution, compensation, and rehabilitation. To this end, the court may order a defendant to pay reparations, or if the defendant has few resources, as is the case with Lubanga, use the funds raised by the Trust Fund for Victims. Reparations can only be ordered by the court against a defendant who has been found guilty.

The ICC's legal framework provides only limited information about how the reparations scheme will work. Should Lubanga be found guilty, a number of issues will need to be resolved, as was the case with victim participation during the trial. These include: which "victims" will be eligible (victims of crimes committed by the UPC more broadly or victims only of the specific charges for which Lubanga is found guilty)? Can collective requests for reparations be made? What rights will victims have during the reparations hearings? Will the court develop principles to calculate compensation? What will happen if there are not enough funds to carry out the court's reparations orders?

In light of this uncertainty, and high expectations among affected communities, it is essential for the court to communicate clearly with these communities to ensure the proper participation of concerned victims and to minimize confusion and frustrated expectations.

## **III. Important features of the Lubanga trial:**

### **12. Why did the Lubanga trial take so long?**

Although Lubanga was transferred to the ICC in March 2006, his trial did not begin until January 2009, due to a number of factors. Pre-trial proceedings lasted longer than expected. At some point during that phase, the judges ordered proceedings to halt because of the prosecution's inability to disclose some exculpatory evidence. Once the trial began again, the prosecution presented all of its evidence by the court's recess in mid-2009 and the defense case started in January 2010 and was completed in April 2011.

Trials of international crimes meeting international fair trial standards invariably take time, with the prosecution and the defense entitled to present and defend their positions vigorously. The Lubanga trial experienced [problems](#), but that is hardly surprising for the first trial at the ICC. Many legal and practical questions about the implementation of the court's statute, the rights of the accused and of victim participants, and the operations of the Office of the Prosecutor had to be litigated and decided.

The ICC has come under increasing pressure from member countries to improve its efficiency and effectiveness, and lessons learned from the Lubanga trial—while taking into account its unique character as the court's first trial—should be carefully considered by court officials.

### **13. What role did victims play in the Lubanga trial?**

The judges and parties in the Lubanga trial navigated uncharted territory to carry out the ICC Statute's innovative right of victims to participate in ICC proceedings on their own behalf and not only as witnesses for the prosecution. The Lubanga case established some initial practice and case law for the involvement and role of victim participants in proceedings, and, as such, can provide important lessons for victim participation at the ICC.

Unlike the prosecutor and the accused, victim participants are not parties to the proceedings. Nonetheless, both the trial chamber and the appeals chamber have interpreted the ICC statute to provide victims with rights that make their participation meaningful. In the Lubanga case, 4 victims were accepted to participate in the confirmation of charges hearing. This figure rose to 93 by the time the trial opened. By the closing statements in August 2011, 123 victims were participating.

Victims made a significant contribution. For example, victims' representatives raised concerns about the limited nature of the charges against Lubanga. They brought a motion asking the judges to change the legal characterization of some of the facts presented during the trial to better reflect sexual violence against female child soldiers. In January 2010 the trial chamber also heard from three victims who were allowed to appear before the court and tell the judges in person what happened to them. This testimony—initiated not by the prosecution but solely on behalf of the victims as part of their recognized right to tender evidence against the accused—was a significant development.

A number of victims were not able to participate in the closing arguments hearing, however, because their applications could not be processed on time for lack of sufficient resources. This resources issue, which also exists in other cases before the court, threatens victims' ability to participate meaningfully. Additional resources and review of the current system are

necessary to capture lessons learned from this first trial and improve the system's feasibility and efficiency.

#### **14. What are some significant lessons from the Lubanga trial?**

Although the verdict, any appeals, and any reparations proceedings are likely to elicit further clarity on a number of issues, there are already a number of elements that Human Rights Watch believes are worthy of note from the Lubanga case. As the first trial before the ICC, the Lubanga trial has generated important jurisprudence and has shed light on various aspects of ICC practice.

First, as explained in more detail in the previous question, the court had to work out the specifics for **victim participation**. Victim participants have made a positive contribution in the Lubanga trial. At the same time, lessons can be learned to make participation even more meaningful for victims in future cases.

In this trial, the judges also demonstrated that they pay careful attention to making sure that the **rights of a defendant to a fair trial** are scrupulously upheld at the ICC. For example, the judges affirmed the almost unconditional right of a defendant to have evidence in the possession of the Office of the Prosecutor disclosed to him or her, particularly when it is exculpatory. Trial Chamber I has also spent a significant amount of time hearing extensive defense arguments that the Office of the Prosecutor had engaged in an "abuse of the process" by conducting its investigations through third parties and by failing to verify its evidence properly. Trial Chamber I judges halted the trial twice over [serious disagreements](#) with the Office of the Prosecutor.

The Lubanga trial spurred discussion about **the prosecutor's use of third parties, so-called intermediaries**, to facilitate contacts with victims and witnesses. Allegations during the Lubanga trial about inappropriate behavior of some intermediaries and concerns about their security if their identity was to be revealed to the accused underscored the importance of regulating the relationships between the court and such intermediaries.

Arguments during the Lubanga proceedings about how best to reflect the sexual violence endured in particular by female child soldiers further underscored the fact that the office of the prosecutor should **bring charges that are representative of victimization**.

The fact that most witnesses in the Lubanga trial have benefited from some form of protection and that significant portions of the trial have taken place in closed hearings because of security concerns underscores the risks for victims and witnesses who engage

with the court and the importance of the ICC having an **effective victim and witness protection scheme**.

Court officials have indicated that various efforts are under way at the court to draw lessons from the Lubanga trial that could be applied in future proceedings. This is very important. Any reports of lessons learned should be made public.

Finally, it should be noted that other trials under way at the ICC are already running more smoothly. For example, the trial of two other rebel commanders from Ituri, Mathieu Ngudjolo and German Katanga, is completed and moving to closing arguments, even though it started in November 2009 and involved two defendants and multiple charges. Similarly, the trial of the former DRC vice-president and rebel leader Jean-Pierre Bemba, which started in November 2010, is progressing well, with the prosecution expected to rest its case in the first quarter of 2012.

#### **15. Has the Lubanga trial helped deter international crimes in the DRC?**

The Lubanga case has undeniably contributed to raising awareness about the plight of child soldiers in the DRC. Human Rights Watch research suggests that the Lubanga case, at least initially, had an impact on changing the behavior of rebel forces with regard to the recruitment of child soldiers. During a Human Rights Watch research mission to eastern Congo in 2007, it was clear that militia leaders knew that Lubanga was being tried on charges relating to child soldiers and were aware of their own vulnerability to prosecution. The charges also helped raise awareness among those who previously thought that crimes relating to child soldiers were not “serious”—including parents in Ituri who had their children join militia groups.

Unfortunately, the practice of recruiting, including forcible recruitment, and using children in hostilities continues in the DRC—in particular in the Kivu provinces. For international criminal justice to make an effective contribution to improving respect for the rule of law and deterring crimes, there must be a real threat of arrest and prosecution, as well as fair and efficient trial proceedings. The ICC is still a young institution and will need time to establish its credibility. The Lubanga verdict will be an important opportunity to discuss issues related to the recruitment and use of child soldiers and to drive home the ICC’s jurisdiction over this crime.

To increase the court’s impact, the Congolese authorities, with the assistance of the international community, urgently need to arrest and transfer Ntaganda to the ICC to face the charges against him. It is equally important for the Congolese government, also with

international assistance, to encourage proceedings before national courts against those who engage in recruiting child soldiers and other grave international crimes.

#### **IV. The work of the ICC in Congo and more globally**

##### **16. What other ICC cases relate to crimes committed in the DRC?**

There is currently one other trial at the ICC related to crimes committed in the DRC. Ngudjolo and Katanga, respectively the leader and military commander of a Lendu armed group that is an opponent of Lubanga's UPC, are being tried jointly for seven counts of war crimes and three counts of crimes against humanity allegedly committed during an attack on Bogoro village, Ituri, in 2003. The evidence phase of their trial is completed and judges recently decided that the closing arguments hearing will be in May.

Another case related to crimes in the DRC, against Callixte Mbarushimana, the executive secretary of the Rwandan rebel group Rwandan Liberation Front (Front de Libération du Rwanda, FDLR), was recently thrown out by the ICC. On December 16, 2011, judges of Pre-trial Chamber I declined to confirm the charges brought against Mbarushimana. Mbarushimana, who had been in detention since his arrest in Paris, France in October 2010, was released on December 23, 2011. The Office of the Prosecutor has sought leave to appeal this decision.

Jean-Pierre Bemba, former vice-president of the DRC, is also currently on trial at the ICC. However, the charges against him relate to crimes committed by his troops in the Central African Republic, not Congo.

Overall, however, the number and stature of DRC-related cases currently before the ICC do not, by far, address the extent of the horrific crimes endured by civilians there since 2002 and the enormous impunity gap that continues to exist for these offenses.

##### **17. What more could the ICC do? Can the ICC handle more cases?**

Human Rights Watch has repeatedly [called](#) on the ICC prosecutor to explore the regional dimension of the conflict in Congo, notably by investigating high-level political and military officials in the DRC, Rwanda, and Uganda who supported, armed, and financed armed groups in Ituri. Human Rights Watch has also called on the prosecutor to investigate relevant allegations against all parties to the conflict in the Kivu provinces, including the FDLR, CNDP, and Mai Mai combatants as well as the Congolese army, and, evidence permitting, prosecute those most responsible for atrocities committed by each of these groups. These steps are crucial for the ICC to make a meaningful contribution to justice and ending impunity in the DRC.

With ICC investigations ongoing in six other country situations, these recommendations raise the question of whether the ICC has the necessary resources to handle additional DRC cases. In December 2011 the Assembly of States Parties of the ICC, the intergovernmental body that oversees the court, declined to adopt the budget proposed by the court for 2012 and imposed cuts beyond those suggested by the assembly's expert financial body. It is clear that in the coming year it will be challenging for the ICC to implement its mandate within the resources approved by its member countries. Additional investigations in the DRC may be highly unlikely in this context. In the DRC, there is an existing perception that "promises have been broken" and confidence in the ICC is waning. The absence of additional ICC investigations in the DRC would risk undermining the impact, credibility, and contribution of the ICC to providing meaningful justice and deterring future crimes.

Even if the ICC should do more than it has so far, the court was never intended, and does not have the ability, to investigate and prosecute all those responsible for grave international crimes in the DRC. Under the "complementarity" principle in the ICC statute, national authorities retain the primary responsibility to bring perpetrators of war crimes, crimes against humanity, and genocide to account. To strengthen the capacity of [Congolese national courts](#) to hear these cases, the Congolese government has drafted legislation to establish a "specialized mixed court," which would be entrusted exclusively with dealing with war crimes, crimes against humanity, and genocide and would include national and international staff.

#### **18. Have others been charged with the crime of using child soldiers?**

Of the 27 people against whom the ICC has issued arrest warrants in total, 6 in addition to Lubanga have been charged with the crime of recruiting and using child soldiers. These include Ntaganda, Katanga, and Ngudjolo, all of the DRC, as well as three commanders of the Ugandan rebel Lord's Resistance Army: Joseph Kony, Vincent Otti, and Okot Odhiambo. Of the six, only Katanga and Ngudjolo are in custody; Ntaganda, Kony, and Odhiambo are at large, while Otti is presumed dead.

Besides the ICC, the Special Court for Sierra Leone included the recruitment and use of child soldiers in all the indictments it has issued, including against former Liberian president Charles Taylor, among other charges. Eight people have been convicted of this crime, together with other charges, and sentenced to prison terms ranging from 15 to 52 years. The Taylor verdict is expected soon.

#### **19. What about claims that the ICC is unjustly targeting Africans?**

The ICC currently has situations in seven countries under active investigation—Uganda, DRC, Central African Republic, the Darfur region of Sudan, Kenya, Libya, and Côte d’Ivoire. Based on these investigations, there are currently 12 pending cases against 21 people. Five are detained in The Hague: Lubanga, Katanga and Ngudjolo, Bemba, and the former president of Côte d’Ivoire, Laurent Gbagbo. Eight others—two rebel leaders in Darfur and six Kenyan officials—have appeared voluntarily at the ICC during pre-trial proceedings.

While the prosecutor’s office is on its own initiative conducting preliminary analysis in Colombia, Afghanistan, Georgia, Gaza, and the Republic of Korea, no new investigations have been opened yet outside of the African continent. Unfortunately, the court’s exclusive focus on Africa at present has led to criticism among some that the court is “targeting” Africans. However, a number of objective factors undermine accusations that the ICC is biased, including:

22 African countries were among the founding ratifiers of the Rome Statute of the ICC, and of the 120 states parties to the ICC, 33 are in Africa. The ICC is working to bring justice to the countless African victims who have suffered unspeakable crimes.

Four of the countries where the ICC is conducting investigations invited the prosecutor to do so: Uganda, DRC, Central African Republic, and Côte d’Ivoire (the latter through the filing of a declaration under article 12 of the ICC Statute, as it is not a member of the ICC treaty.) Darfur and Libya were referred to the ICC by the United Nations Security Council. The prosecutor opened an investigation on his own initiative in Kenya after extensively engaging with the Kenyan authorities to encourage them to open national investigations into the crimes committed during the 2009 post-electoral violence.

The ICC can only investigate crimes committed after July 1, 2002, where it has jurisdiction, which means that many situations are excluded from the court’s jurisdiction. A number of countries, including the United States, Sri Lanka, and Israel, do not automatically come under the ICC’s jurisdiction because they are not parties to the Rome Statute. The Security Council can refer non-states parties to the ICC—as demonstrated with the referrals of Darfur and Libya. However, the Security Council is a highly politicized body and has not demonstrated consistency and even-handedness in its referrals. For example, the Security Council has not referred the situation in Syria to the ICC. As a practical matter, countries protected or supported by permanent Security Council members, which have a right to veto Security Council resolutions, are not likely to be referred to the ICC.

The reach of international justice and of the ICC has been uneven and limited, and countries with political power or powerful allies have been shielded from the court. However, it is not the ICC but international politics and misguided states’ interests that are to blame.

Important efforts are being made to expand ratification of the ICC statute, and other efforts should continue to expose this unevenness and work toward enlarging the reach of international justice and limiting impunity.