

Summary of the Lubanga Hearing 2006 November 9-17

Background to the Hearing

On 28 August 2006, the Office of the Prosecutor of the International Criminal Court (ICC) filed the document containing the charges against Thomas Lubanga Dyilo. These charges included three counts of war crimes under the Rome Statute, namely: i) conscripting children under the age of 15 into armed groups; ii) enlisting children under the age of 15 into armed groups and; iii) using them to participate actively in hostilities, all committed in the context of an armed conflict not of an international character. If the charges are confirmed, the Presidency of the Court will establish a Trial Chamber responsible for subsequent hearings. The Pre-Trial Chamber, which is obliged to hold a hearing to confirm the charges on which the Prosecutor intends to seek trial within a reasonable amount of time after a suspect's appearance before the Court, began this process on 9 November 2006.

Summary of the Hearing 9 – 17 November

The Prosecution - At the opening of the Confirmation of Charges Hearing, the Prosecution announced its intention to prove that Mr. Lubanga has acted with great duplicity as, on the one hand, a politician purporting to act in the interests of peace and, on the other, the brutal Commander in Chief of the FPLC (Forces patriotiques pour la libération du Congo) who conscripted and enlisted many children under the age of 15, trained them as combatants, and sent them to kill and be killed in battle. The Prosecution stated that the Hearing would give the world an idea of the brutality of the lives of child soldiers as well as the brutality of those responsible for their recruitment and/or conscription. The Prosecution then announced that it would rely on various evidence in support of its charges, including: statements of victims and witnesses; official Union des Patriotes Congolais (UPC) and FPLC documents, some of which were signed by Mr. Lubanga Dyilo; and an assortment of video footage.

On the morning of 15 November, the Prosecution began to examine its witness, Ms. Christine Peduto, a UN expert on child protection. Among other things, she stated that she had seen and interviewed child soldiers in UPC camps in March 2003, many of whom were under the age of 15.

The Defence - Led by Mr. Jean Flamme, the Defence began to present its case in the late afternoon of 10 November. Mr. Flamme underscored the fact that Mr. Lubanga's trial, the first to be heard by the ICC, is likely to be regarded as a symbol of a justice to come, and may suffer as a consequence. Mr. Flamme presented Mr. Lubanga as a peaceful man, a shepherd who wanted to lead his flock to peace, and a man whose principal goals were to secure ethnic reconciliation, peace, and the equitable distribution of natural resources within the DRC. He went on to state that the trial represented the advent of a new kind of justice, NGO justice. He asserted that much of the Prosecution's case is reliant on NGO studies and questioned the soundness of such a reliance.

The Defence will be given the opportunity to cross-examine the Prosecution's witness on Monday 20 November 2006.

Participating victims - As the ICC is the first international tribunal whose Statute and Rules of Procedure and Evidence provide victims with the possibility of presenting their views and observations before the Court, the first case involves the participation of legal representatives for the four victims who have been authorised to participate in the proceedings. In his opening statement, Mr. Luc Walley, one of the legal representatives for the victims, painted a picture of the victims' lives, and those of their families and then emphasised the symbolic importance of his clients' appearance before the Chamber, suggesting that their plight is representative of that of many, many more. Mr. George Gebbie, another legal representative of victims, while appreciative of the symbolic value of the victims' official participation, urged that it be balanced against the need to recognise them as individuals.