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Court/Tribunal: International Criminal Court

Cases: *Prosecutor v. Thomas Lubanga Dyilo* (update) & *Prosecutor v. Germain Katanga*

(This is an update of the status of the case *Prosecutor v. Thomas Lubanga Dyilo* and an overview of *Prosecutor v. Germain Katanga*. The *Chicago-Kent Journal of International and Comparative Law* covered the initial pre-trial motions and hearings involving questions of proper jurisdiction and sufficiency of evidence through January 29, 2007 of *Prosecutor v. Thomas Lubanga Dyilo* in its Spring 2007 edition. [Read Here.](#))

The case *Prosecutor v. Thomas Lubanga Dyilo* is scheduled to commence on March 31, 2008 at the International Criminal Court (ICC) in the Hague after two years of pre-trial determinations. Mr. Lubango Dyilo allegedly founded the *Union des Patriotes Congolais* (UPC) and the *Forces Patriotiques pour la Liberation du Congo* (FPLC) in the Democratic Republic of Congo during the Second Congo War. The Second Congo War was the largest in modern African history and directly involved eight African nations and 25 different armed groups. By 2008 the war and its aftermath had killed 5.4 million people, many from disease and starvation. Millions more were displaced from their homes or sought asylum in neighboring countries.

Mr. Lubango Dyilo will be tried for alleged War Crimes, perpetrated in the bloody period between September 2002 and August 2003, in violation of Article 8(2)(e)(vii) of the Rome Statute, which prohibits conscripting and enlisting children under the age of 15 years of age into the armed forces or other groups that use children in hostilities. The arrest warrant alleges that the FPLC and the UPC, under Mr. Lubanga Dyilo's control, forcefully enlisted children and used them as child-soldiers in a conflict that directly resulted in over 8,000 civilian deaths and more than 600,000 displaced persons. Mr. Lubanga Dyilo will be the first individual tried for crimes arising out of the Second Congo War.

Following these initial pre-trial hearings, the court held a series of three hearings to determine a range of procedural issues. The first hearing on October 1, 2007 determined the following: the date of the trial, the languages to be used, the timing and manner of evidence disclosure, the use of e-Court protocol, the procedures for *ex parte* proceedings, and the implementation of the reporting system.

The second hearing on October 30 through November 2, 2007 determined the "modalities of participation" of the victims, procedures for instructing expert witnesses, and possible methods of familiarizing witnesses with the procedures of the ICC. The court was especially concerned with the role victims would play at trial. Specifically, the court determined that a "victim" was someone who suffered "personal and direct harm." The court also decided that victims could participate in the trial anonymously, and that victims will have access to the prosecutor's evidence. The Court granted Requests for Leave to Appeal these determinations.

Finally, the third hearing on November 20, 2007 determined the status of the evidence heard by the Pre-Trial Chamber, the status of the decisions of the Pre-Trial Chamber, and the manner in which evidence shall be submitted.

Prosecutor v. Germain Katanga is the second case in front of the ICC arising out of the Second Congo War. Also of the Democratic Republic of the Congo, Mr. Katanga was the former leader of the *Force de Resistane Patriotique en Ituri* (FRPI). Mr. Katanga is charged with three counts of Crimes against Humanity in violation of Article 7 of the Rome Statute, including murder, sexual slavery, and other inhumane acts; and six counts of War Crimes in violation of Article 8 of the Rome Statute, including willful killing, inhumane treatment, using children to participate actively in hostilities, sexual slavery, intentional direct attacks against civilian populations, and pillaging.

On February 24, 2003, members of Katanga's militia allegedly went on an "indiscriminate killing spree" in the village of Bogoro, killing at least 200 civilians, imprisoning survivors in a room filled with corpses, and sexually enslaving women and girls. Mr. Katanga also allegedly lead in the perpetration of other crimes, including the massacre of more than 1,200 civilians in an attack at Nyakunde Hospital in September 2002.

Mr. Katanga surrendered to the ICC on October 17, 2007, and his case was transferred to the Court on October 18, 2007. Many of the pre-trial and procedural judgments made during the Lubanga Dyilo trial will likely set the course of the Katanga trial.

For more information on the status of these cases visit the ICC's DRC situation website at: <http://www.icc-cpi.int/cases/RDC.html>

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