



Coalition for the International Criminal Court

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MEDIA ADVISORY
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ICC RESUMES LUBANGA TRIAL PROCEEDINGS

COURT'S FIRST TRIAL TO BEGIN 26 JANUARY 2009; LUBANGA WILL STAY IN CUSTODY

WHAT: On 18 November 2008, Trial Chamber I of the International Criminal Court (ICC) announced its decision to lift the stay of the proceedings in the case against Congolese warlord Thomas Lubanga Dyilo because the reasons for imposing the stay "have fallen away." The Chamber also decided to keep the accused in detention. The full reasoning for reviving the trial will be explained in a written decision. As a result of the decision to revive the trial, Presiding Judge Fulford announced a provisional calendar for outstanding matters that had been stopped by the halt in the proceedings. The first of these deadlines is Thursday 19 November 2008 at 4 pm by which time the prosecution must have made complete disclosure of documents to the defense in a "user friendly way." Other deadlines include those for issues relating to the participation of victims in the trial and the scheduling of a status conference on Tuesday 25 November to handle a number of outstanding issues necessary to prepare for the trial. The Judges announced a tentative trial date of 26 January 2009.

BACKGROUND:

On 2 July 2008, Lubanga was granted unconditional release by ICC Trial Chamber I in consequence of a 13 June 2008 decision putting the trial on hold because of complications relating to the disclosure of exculpatory evidence. Exculpatory materials show or tend to show the innocence of the accused, mitigate the guilt of the accused or may affect the credibility of the prosecution's evidence. Both the stay of proceedings and the release were appealed by the prosecution and such appeals were given "suspensive effect," meaning that the accused would not leave detention until a final decision by the Appeals Chamber.

On 11 July 2008, the prosecution requested Trial Chamber I to resume trial proceedings and to revoke the order of release of Thomas Lubanga Dyilo but on 3 September 2008 the Trial chamber decided to maintain the stay of the proceedings.

On 21 October 2008, ICC Appeals Chamber ordered the Trial Chamber to reconsider its decision to release Thomas Lubanga Dyilo. The Appeals Chamber disagreed that the unconditional and immediate release of Lubanga was an inevitable consequence of a conditional stay of the trial proceedings, and asked the Trial Chamber to reconsider the need to detain Lubanga taking into account all relevant factors. The Appeals Chamber

did agree with the Trial Chamber's June decision to stay the trial because of the inability, at that time, of the prosecutor to disclose certain information due to confidentiality agreements with the UN and other information providers. The Appeals Chamber confirmed that it is up to the Trial Chamber to resume the trial whenever it considers that a fair trial is possible.

Subsequently, on 22 October 2008 Trial Chamber I requested the prosecution, defence and legal representatives of victims to make submissions on Lubanga's pre-trial detention before 31 October 2008.

WHO: The case against Thomas Lubanga Dyilo was the first to proceed toward trial before the ICC. Lubanga was the first person charged in the situation in the DRC as well as the first ICC detainee. As the alleged leader of the Union of Congolese Patriots (UPC) and the commander-in-chief of its military wing, the Forces patriotiques pour la libération du Congo (FPLC), Lubanga is accused of enlisting and conscripting children under the age of fifteen and using them to participate actively in hostilities, from September 2002 to 13 August 2003.

COMMENT:

“Today’s decision offers great hope to the people of the DRC,” said Bukeni W. Beck of WITNESS. “This is a huge step forward for justice, but there is still a long way to go until we have peace in the country.”

“When the Lubanga trial stay was announced, we surveyed the Congolese population, which was utterly disappointed. Today, we welcome the decision of Trial Chamber I to lift the stay that had been imposed because with the resumption of the trial, victims can feel some relief,” said Descarte Mponge, focal point for South Kivu for the DRC national coalition for the ICC. “They can hope for reparations—in every meaning of the term—to come at last. This decision sends the strong signal to both future criminals and those armed groups in the Kivus that impunity will no longer be tolerated.

Experts from DRC human rights organizations and international NGOs are listed on the following pages for comment and background on this arrest.

***Important notice:** The Coalition for the International Criminal Court (CICC), an independent NGO movement, is dedicated to the establishment of the International Criminal Court as a fair, effective, and independent international organization. The Coalition as a whole, and its secretariat, does not endorse or promote specific investigations or prosecutions or take a position on situations before the ICC. However, individual CICC members may endorse referrals, provide legal and other support on investigations, or develop partnerships with local and other organizations in the course of their efforts.*

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