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Landmark ICC verdict over use of child soldiers

The conviction of Thomas Lubanga Dyilo, the leader of a Congolese armed group, for using children in armed conflict shows the International Criminal Court (ICC) can bring the world's worst offenders to justice for genocide, crimes against humanity and war crimes, Amnesty International said.

A Trial Chamber made up of three judges delivered the ICC's first-ever verdict on Wednesday against Thomas Lubanga Dyilo for the war crime of enlisting and conscripting children under 15 into the Forces patriotiques pour la libération du Congo (FPLC) amid armed conflict in the Ituri region of Democratic Republic of Congo between 2002 and 2003.

In the coming weeks, the ICC will sentence Lubanga and hold a hearing on reparation for his victims. The judgment can be appealed within 30 days.

On 17 March 2006, Thomas Lubanga Dyilo was the first person to be arrested on an ICC arrest warrant. His trial began on 26 January 2009.

He was the alleged founder and president of the Union of the Congolese Patriots (UPC) and commander in chief of its armed wing, the FPLC. The FPLC was involved in numerous human rights violations, including the abduction and use of children as soldiers.

"Today's verdict will give pause to those around the world who commit the horrific crime of using and abusing children both on and off the battlefield," said Michael Bochenek, Director of Amnesty International's Law and Policy Programme.

"It will help to strip away the impunity they have enjoyed for crimes under international law because national authorities have consistently failed to investigate these crimes. This guilty verdict demonstrates that the ICC can step in to bring them to justice."

The recruitment and use of children in armed conflict by foreign and Congolese armed groups continue to this day in the north-east and east of the DRC. The Congolese national army has also used child soldiers.

Amnesty International remains disappointed that the ICC's Prosecutor did not pursue allegations of other crimes committed by the FPLC under Lubanga Dyilo – including crimes of sexual violence against abducted girls, including girl soldiers, and other civilians – potentially denying justice and reparation to many more victims.

"The Prosecutor's office must review its limited investigation strategy adopted in the Lubanga case, especially in light of such decisions precluding victims from participating in trials and obtaining reparation. Lessons need to be learned for future cases," said Michael Bochenek.

The organization also said that the length of proceedings should be reviewed. More than two years passed

between the ICC's decision to confirm the charges against Thomas Lubanga Dyilo on 29 January 2007 and his trial's opening on 26 January 2009. The case was twice delayed due to stays imposed by the judges in response to the Office of the Prosecutor's failure to disclose information to the defence.

Other fugitives from the ICC

Regrettably, the ICC is also being prevented from delivering justice in a number of other cases because governments are failing to arrest and surrender suspects. These include:

- Bosco Ntaganda (Democratic Republic of Congo), whom the ICC has also charged with enlisting and conscripting children while he was allegedly Thomas Lubanga Dyilo's deputy. The Congolese government is shielding him following his integration into the national army.
- Joseph Kony (Uganda) and other senior leaders of the Lord's Resistance Army continue to evade trial after being charged with crimes against humanity and war crimes. They are currently moving between the Central African Republic, north-eastern Democratic Republic of Congo and South Sudan.
- President Omar al-Bashir (Sudan) has been charged with genocide, crimes against humanity and war crimes in the Darfur region of Sudan. He has yet to be arrested despite regularly conducting state visits abroad.

The ICC is also being blocked from investigating crimes in situations such as Syria – which has signed but not ratified the Court's statute – because the United Nations Security Council has not yet referred the situations to the ICC Prosecutor.

In 2010, Amnesty International launched a Campaign for International Justice to ensure access to justice, truth and reparation for victims of all of these crimes.

The organization's members and supporters have been campaigning for governments to cooperate fully with the ICC to arrest suspects and surrender them for trial. It is also calling for the United Nations Security Council to refer the human rights situation in Syria and other countries to the ICC.

“As we have seen in the last week with the spotlight on ICC fugitive Joseph Kony, there is massive public support to ensure justice for victims of war crimes and crimes against humanity,” said Michael Bochenek.

“Global public support for the ICC's work is needed to help overcome the major challenges the Court still faces in its other cases.”

Amnesty International is calling on people around the world to tell UN Secretary General Ban Ki-moon that they support the UN's vital role in bringing about the arrest of the 11 ICC fugitives still at large and protecting civilians in the affected areas.

The organization strongly supported the establishment of the International Criminal Court in 2002 to investigate and prosecute genocide, crimes against humanity and war crimes in cases where national authorities are unable or unwilling to do so.

See also:

Democratic Republic of Congo: Children at war, creating hope for the future, 10 October 2006.
<http://www.amnesty.org/en/library/info/AFR62/017/2006>