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INTERNATIONAL CRIMINAL COURT BEGINS ITS FIRST PROSECUTION PUTTING ITS CREDIBILITY ON THE LINE IN CHILD SOLDIER CASE

By NIGEL GRAHAM

“I did everything they told me. I killed children, burnt families, threw a baby in the river. Everything.”¹ This was the disturbing narrative from a sixteen year-old male in the Democratic Republic of the Congo (DRC) to the chief prosecutor of the International Criminal Court (ICC) recounting that he was nine years old when he was kidnapped. When his older brother asked that the

kidnappers leave his younger brother behind, they killed the older brother on the spot.²

In response to this and other similar acts, in June, 2004, the ICC began an investigation into the child soldiers of the DRC.³ On January 12, 2006, the ICC issued an arrest warrant for Thomas Lubanga Dyilo, a 46 year-old militia leader in the DRC, for “the commission of war crimes, namely, enlisting and conscripting children under the age of fifteen and using them to participate actively in hostilities.”⁴ On January 29, 2007, the ICC issued a finding after a year-long investigation “that there is sufficient evidence to establish substantial grounds” to confirm the charges set out in the warrant and to commit the case to trial.⁵ Lubanga was the first person ever to be prosecuted by the fledgling court.⁶

Several human rights groups who actively support the ICC are critical of the court’s first prosecution.⁷ In a joint letter to ICC Chief Prosecutor Luis Moreno Ocampo, Human Rights Watch chided the court for the narrow scope of charges against Lubanga.

“We are disappointed that two years of investigation by your office in the DRC has not yielded a broader range of charges against Mr. Lubanga,”⁸ said Human Rights Watch, who also complained that “the UPC which Mr. Lubanga led, has committed numerous other serious crimes in Ituri including murder, torture and sexual violence.”⁹

Fatou Bensouda, a deputy prosecutor with the ICC acknowledged the importance of the criticisms.

“The problem of child soldiers is very, very serious. Some are turned into killers; others are used as sex slaves,” she said. “It is affecting a whole generation of children. It’s a problem in many places, and we want to highlight this here.”¹⁰

LUBANGA WASN’T ALONE

Lubanga’s militia group, known as the Union of Congolese Patriots (UPC) was involved in violent land disputes in the Ituri region of the DRC.¹¹ In a region rich in natural resources, the UPC engaged in bloody conflicts with various

militias divided along ethnic lines.¹² Between 2002 and 2004 the UPC, with aid from the Ugandan Army, escalated their efforts to control Ituri, committing brutal attacks against civilians of different ethnic groups.¹³ One of the strategies of the UPC was to procure and use a large number child soldiers.¹⁴

In November, 2002, the UPC entered a school and forced the entire fifth-grade class, 40 students in all, to enlist.¹⁵ Similar abductions were a frequent occurrence.¹⁶

Once abducted, the children were taken to training camps, and then used to actively participate in hostilities.¹⁷ Many who saw the UPC described it as an "army of children."¹⁸ The ethnic war in which they were forced to participate has led to the deaths of at least 60,000 civilians.¹⁹

As the ICC's first prosecution, this case has garnered much international attention. The ICC was established by the United Nations through the adoption of the Rome Statute on July 17, 1998.²⁰ The Rome Statute, an international treaty which only applies to those nations who chose to sign and become members,²¹ has been adopted by 104 nations.²² The ICC's jurisdiction covers "genocide, crimes against humanity and war crimes."²³ The preamble to the Rome Statute states that the member nations are "[d]etermined to put an end to impunity for perpetrators of these crimes and thus to contribute to the prevention of such crimes."²⁴

The ICC's goal of prevention is heralded by Ocampo, the court's chief prosecutor.²⁵ The hope is that the existence of the court will eliminate the feeling of invincibility held by leaders like Lubanga.²⁶ Ocampo states that there has been a decline in the use child soldiers since Lubanga's arrest and indictment.²⁷ He points to northern Uganda where children were once forced to walk three hours away from their villages every night to hide from would-be abductors from local militias.²⁸ Now that the militia leaders know that they may face arrest and prosecution, they have left the region, and the local children can again sleep at home.²⁹

Many feel that the credibility of the ICC is on trial along with Lubanga.³⁰ Ocampo stands behind his court.

"[The ICC is m]ore than a court that punishes, it's an element of a new global legal system. It's a legal revolution."³¹

As the citizens of the world watch this case there are high hopes that this action will offer some kind of relief to the estimated 300,000 child soldiers worldwide.³²

NOTES

³² *In the Long Term, This Court Will be Universal*, EL PAIS, Feb. 26, 2007, available at 2007 WLNR 3674882.

³² *Id.*

³² Press Release, International Criminal Court, *The Office of the Prosecutor of the International Criminal Court Opens its First Investigation* (June 23, 2004) http://www.icc-cpi.int/press_release_details&cid=26&l=en.html.

³² Press Release, International Criminal Court, *Issuance of a Warrant of Arrest against Thomas Lubanga Dyilo* (Mar. 17, 2006) <http://www.icc-cpi.int/press/pressreleases/133.html>.

³² Press Release, International Criminal Court, *Pre-Trial Chamber I Commits Thomas Lubanga Dyilo for Trial* (Jan. 29, 2007) <http://www.icc-cpi.int/press/pressreleases/220.html>.

³² Jane Smith, *War Crimes Court Battles to Achieve Peace and Justice*, THE IRISH TIMES, Mar. 3, 2007 at 12, available at 2007 WLNR 4076478.

³² Marlise Simons, *Hague Prosecutor Focuses on her African Homeland*, INT'L HERALD TRIB., Feb. 27, 2007 at 1R, available at WLNR 3789403.

³² D.R. Congo: ICC Charges Raise Concern (Human Rights Watch, 31-7-06), <http://hrw.org/english/docs/2006/08/01/congo13891.htm> (last visited Mar. 15, 2007).

³² *Id.*

³² Simons, *supra* note 7.

³² *UPC Crimes in Ituri (2002 - 2003)*(Human Rights Watch 8-11-2006), <http://hrw.org/english/docs/2006/11/08/congo14517.htm> (last visited Mar. 15, 2007).

³² *Id.*

³² *Id.*

³² Press Release, *supra* note 5.

³² UPC Crimes in Ituri, *supra* note 11.

³² *Id.*

³² Prosecutor v. Thomas Lubanga Dyilo, Warrant of Arrest (Feb. 10, 2006), http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2_tEnglish.pdf.

³² UPC Crimes in Ituri, *supra* note 11.

³² *DRC: UN Agencies Assist Thousands Displaced*, <http://www.irinnews.org/report.aspx?reportid=59632> (last visited Mar. 15, 2007).

³² International Criminal Court: Establishment of the Court, <http://www.icc-cpi.int/about/ataglance/establishment.html> (last visited Mar. 13, 2007).

³² *Id.*

³² *Id.*

³² International Criminal Court: Jurisdiction and Admissibility, http://www.icc-cpi.int/about/ataglance/jurisdiction_admissibility.html (last visited Mar. 11, 2007).

³² Rome Statute of the International Criminal Court, July 17, 1998, A/CONF.183/9.

³² *Creating a Tribunal for the World*, EL PAIS, Feb. 26, 2007, available at 2007 WLNR 3674918.

³² *Id.*

³² In the Long Term, This Court Will be Universal, *supra* note 1.

³² *Id.*

³² *Id.*

³² *Historic Trial Puts African Warlord in Dock over Child Soldiers*, CANBERRA TIMES Jan. 31, 2007, available at WLNR 1796244.

³² Creating a Tribunal for the World, *supra* note 25.

³² Unicef, *Fact sheet: Child Soldiers*, www.unicef.org/protection/childsoldiers.pdf.