

Lubanga Case Signals Hope for Child Soldiers

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Arraignment of Congolese militia leader welcomed by many campaigners as milestone in protection of children's rights.

The conscription of children under the age of 15 in war is internationally recognised as a war crime, yet child-soldiers have been used in almost all of the wars fought in Africa over the past three decades. Children from Liberia to Zimbabwe have been brutalised and turned into killing machines in conflicts whose motivations and origins they scarcely understand, and the warlords who press-gang them have generally done so with impunity.

This picture changed drastically with the appearance at the International Criminal Court, ICC, based in The Hague, the capital of the Netherlands, of Congolese militia leader Thomas Lubanga Dyilo on March 20. He made history as the first suspect to face charges at the world court, which began its investigation into atrocities in the Democratic Republic of Congo, DRC, during 2004. Among the allegations against Lubanga, the court enumerates "enlisting and conscripting children under the age of fifteen and using them to participate actively in hostilities".

UNICEF says that about 300,000 children are involved in wars around the globe, and ten per cent of these are associated with militias in the DRC alone.

ICC Chief Prosecutor Luis Moreno-Ocampo noted, "The alleged crimes are extremely serious. Throughout the world, children are being trained to become machines of war. Turning children into killers jeopardises the future of mankind."

Children's organisations and human rights activists have welcomed the arraignment of Lubanga as a milestone in the protection of children's rights and a first step towards ending impunity.

Lubanga was arrested and imprisoned in the DRC in March last year, following the killing of nine Bangladeshi peacekeepers in the gold-rich Ituri region during the previous month. The military arm of Lubanga's Union of Congolese Patriots, UPC, was implicated in the killings of the Bangladeshis.

The UPC, established in 2000 by Lubanga, is one of several warring factions in Africa's Great Lakes region, and is largely composed of the Hema ethnic group, who are historically the avowed enemies of the Lendu people, who live in the same far northeast region of the DRC up against the borders of Sudan and Uganda.

Several other militia leaders were also imprisoned and charged with genocide, war crimes and crimes against humanity alongside Lubanga, including Floribert Ndjabu Ngabu, who leads the Lendu-dominated Nationalist and Integrationist Front, FNI.

The Congolese authorities have not yet brought any of them to trial, claiming that they have been awaiting completion of the ICC investigation. Upon unsealing the Lubanga warrant, the ICC spokesman emphasised that "this warrant is but the first in a series" of actions resulting from the ongoing investigation in the DRC.

Lubanga's initial court appearance in The Hague, three days after arriving in the Netherlands in a French military aircraft, was brief, serving mainly to confirm his identity and that he has been treated well.

His defence counsel has requested that all documentation related to the charges against his client be made available, together with sufficient time to study these. It is expected that, at his next court appearance, scheduled for June 27, the final indictments against Lubanga will be discussed.

ICC procedures dictate that, before the full trial of a suspect begins, the prosecution must detail all charges before the pre-trial chamber and provide prima facie evidence in support of the charges. The pre-trial chamber holds a hearing at which the defence is allowed to present counter-evidence, and only after this are the final charges formulated.

Since various reports have implicated Lubanga's organisations in torture, mutilation and rape incidents, he may well face further charges. Media organisation Reporters without Borders has already asked the ICC to investigate Lubanga's role in the disappearance of Agence France Presse local correspondent Acquitte Kisémbé. Kisémbé went missing immediately after reporting on the UN-backed evacuation of Lubanga's militia from Bunia, the main town in Ituri, during June 2003.

In common with other warlords, Lubanga had tried to clean up his image in a bid to enter formal politics. At the ICC hearing he stated his occupation as "professional politician". During 2003, he moved to the DRC capital, Kinshasa, with the aim of converting his UPC into a political party in order to contest the country's first democratic elections, originally scheduled to occur last year. But prior to this, in 2002, he formed the UPC's military wing, the Forces Patriotiques pour la libération du Congo, FPLC. Both the ICC and human rights reports identify the FPLC among the militias that have committed the worst atrocities in Ituri. As its commander-in-chief, Lubanga has continued to direct its activities. According to the ICC, by virtue of this "de facto authority, he had ultimate control of ...policies and practices", including the forced conscription and training of child soldiers.

The past 15 years have seen an estimated 60,000 fatalities in the DRC, with hundreds of thousands of others maimed, displaced and traumatised. While it is widely hoped that Lubanga's appearance at The Hague court heralds the beginning of justice for these victims, there are several related issues that merit consideration.

The culpability of governments in the conflict cannot be dismissed. Both Uganda and Rwanda have backed the UPC and other factions at various times. Practically every state in the region has, at some point, been implicated in plundering the DRC's rich gold, diamond and other mineral reserves, notably by providing militias and conduits for smuggling. UN Secretary-General Kofi Annan, on a visit to the area, welcomed Lubanga's arrest, as a "strong message that people won't accept impunity", but he also touched on perceptions that state actors are destabilising the region.

Following threats by the Kampala government to send Ugandan troops into the country in search of rebel forces, Annan declared that the DRC's "neighbours should respect its sovereignty and refrain from certain activities".

Richard Dicker of Human Rights Watch said, "Chief Prosecutor Ocampo should also investigate those who armed and supported militia groups operating in Ituri, including key players in power in Kinshasa, Kampala and Kigali [Rwanda's capital]." At home, the DRC government has been criticised for its support of specific militias and for biased military courts, and, more recently, for failing to suppress ethnic undertones in the run-up to elections, now planned for June.

Kinshasa has also come under fire for its commissioning of alleged human rights abusers as army generals, which has led to calls for a comprehensive and publicly transparent vetting programme for senior

appointments.

Finally, since the ICC will only prosecute those bearing the greatest responsibility for crimes against humanity and war crimes, human rights organisations argue that it behoves the DRC authorities, particularly the democratically elected government that may be installed later this year, to undertake sincere efforts to bring “lesser” perpetrators to justice.

The nature and duration of the Congo’s bloody wars may warrant the formation of a reconciliation body based on the South African or Rwandese models to complement the criminal justice system. To supplement the ICC’s work at a domestic level, both retributive and restorative justice will be necessary. Only then will the hundreds of thousands of Congolese citizens who were displaced and wounded be able to build a peaceful and productive future.

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