

**SPECIAL COURT FOR SIERRA LEONE
OUTREACH AND PUBLIC AFFAIRS OFFICE**



University officials prepare to depart for Congregation Saturday to confer degrees on Hassan Sherry of Defence and Nafisatu A. Thullah of OTP. Congratulations!

PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office

as at:

Monday, 19 March 2012

Press clips are produced Monday through Friday.
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The Calgary Herald

Monday, 19 March 2012

War criminal walking around in plain sight

The International Criminal Court has reached its first verdict, just shy of its 10th birth-day. The court has shown itself capable of trying war criminals. But it has a long way to go before it can be called a universal, swift and reliable method of bringing them to justice.

The most obvious short-coming of the ICC is that all its cases, so far, involve Africans. Its first verdict was the conviction of Thomas Lubanga Dyilo of the Democratic Republic of Congo for conscripting and using child soldiers.

The ICC is meant to complement, not replace, national courts and temporary tribunals, so we need not insist that it be everywhere, trying every criminal. Even so, the ICC's geographic double standard cannot be ignored. International law is, still, subservient to international politics. The court has stepped in where it has been asked, and so far has been reluctant to poke powerful countries by interfering on their turf. That's a problem that could ultimately under-mine the ICC's credibility.

The more immediate problem is enforcement. The ICC has issued 20 arrest warrants; 11 suspects are still at large.

One such suspect has been in the news a lot lately: Joseph Kony, whose Lord's Resistance Army has created havoc in Uganda, Democratic Republic of Congo and the Central African Republic since the 1980s. The ICC issued a war-rant for his arrest in 2005 on 33 counts, including murder, sexual enslavement and the enlisting of child soldiers.

The video campaign Kony 2012 aims to "make Kony famous," based on the dubious logic that if more people knew about Kony, his arrest would follow. Bringing Kony to face his charges is indeed an important goal, but it will almost certainly involve difficult military operations.

There are other suspects on the ICC's list, though, who are not even bothering to hide, who openly thumb their noses at the court.

One is the president of Sudan, Omar al-Bashir. He's wanted on 10 counts, including genocide. It's a serious thing for the court to charge a sit-ting president, but the crimes in question are extreme. The ICC issued a warrant for his arrest in 2009.

The African Union openly decided to ignore that warrant. Bashir has travelled outside Sudan several times since the warrant was issued, meeting with politicians in several countries, including Kenya, Chad, China and post-Gadhafi Libya.

It will take more than political will to capture Joseph Kony. But political will is the only thing lacking in the case of Omar al-Bashir.

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Huffington Post
Friday, 16 March 2012

Lessons From Lubanga

Submit this storydigg reddit stumble It is hard to look at the International Criminal Court's conviction of former Congolese warlord Thomas Lubanga for enlisting child soldiers into his militia more than a decade ago and not consider it a positive step on the road towards justice. Perhaps, too, it marks a point where it is time for a conversation about some fundamental international justice questions: What is justice and justice at what cost?

The Lubanga verdict, a first for the decade-old International Criminal Court, comes on the heels of the viral YouTube video Kony2012 that introduced nearly 80 million viewers (so far) to Ugandan thug and fellow exploiter of children Joseph Kony. It also comes amidst a backdrop of other potential international crimes cases making headlines: Former U.S. Vice President Dick Cheney cancelled a scheduled appearance in Canada out of fear it was too dangerous for him to face a likely mob of protestors calling for his indictment for war crimes; the announcement of a verdict next month by the Special Court for Sierra Leone in the trial of former Liberian president and blood diamonds purveyor Charles Taylor; and a guilty plea in the case of Guantanamo detainee and former CIA captive Majid Khan that secures his cooperation in the upcoming U.S. military commission trial of 9/11 mastermind Khalid Sheikh Mohammed, among others.

Justice, as the term is used by those who advocate the rule of law, implies a system that fairly assesses responsibility for alleged violations of moral and ethics based laws that are well-known and uniformly applied. The precept that you must do right to uphold right is reflected in the saying "justice is blind" and its depiction as a blindfolded woman holding a scale. A process considered illegitimate -- a kangaroo court -- undermines the principle that justice has to be fair in both fact and perception.

While the three-judge panel convicted Lubanga, it also harshly criticized the prosecution for using intermediaries to deal with witnesses, which in some instances led to witnesses being encouraged to give false testimony. The International Crimes Tribunal in Bangladesh, while commended for efforts to end 40 years of impunity for atrocities committed during the liberation war with Pakistan, is criticized for only having charged leaders of the opposition Jamaat-e-Islami party and creating the perception that the trials are politically motivated. President Barack Obama has pressed ahead with the prosecution of suspected al Qaeda terrorists and low-level U.S. military personnel accused of violating the laws of war and the military code of justice, but he said he will "look forward, not back" at allegations that former senior U.S. government officials authorized and facilitated torture and other potential major war crimes.

A system that purports to do justice that allows anyone to put a finger on the scales to tip them unfairly or that deliberately includes or excludes certain classes of individuals because of their status erodes the foundation of the universal concept of justice under the rule of law.

Different people may describe slightly different goals for justice and for punishment. In the context of serious offenses like war crimes and crimes against humanity, generally the aim is to promote fundamental rights and human decency, to punish wrongdoers and to deter those who may follow in their footsteps. Also, many argue it is an important step in the process of reconciliation among people in conflict zones.

Punishment of the wrongdoer -- retribution -- is plainly evident when a sentence is executed. Many doubt the legitimacy of the U.S. led invasion of Iraq, but few question whether Saddam Hussein got what he deserved. The ability of justice to deter is less evident. The prospect of facing justice apparently had no

deterrent effect on Libya's Muammar Gaddafi, Syria's Bashar al-Assad, or Yemen's Ali Abdullah Saleh in their brutal crackdowns on their own citizens (and the prospect of indictment may actually be a disincentive to stop the violence and step down), nor has it deterred the CIA, the Israeli Mossad, or the Iranian VEVAK from extrajudicial assassinations. The ability of justice to facilitate reconciliation is also questionable. In the Balkans, where the International Criminal Tribunal for the former Yugoslavia is regarded as perhaps the most successful international crimes tribunal, ethnic tensions are still strong nearly two decades after the fighting stopped and the tribunal formed.

Professor Stuart Ford from the John Marshall Law School in Chicago calculated that spending on the five major international criminal courts through 2015 would total about \$6.3 billion. The International Criminal Court, where Lubanga became the first person ever convicted, for example, has more than 750 people on staff, an annual budget of \$140 million, and has cost nearly a billion dollars since it was created in 2002. The U.S. is reported to spend about \$140 million a year on its facility at Guantanamo Bay, Cuba, where it holds 171 terrorism detainees.

Whether in theory you can put a price on justice is an interesting philosophical argument, but in reality where the costs are known and the results, or lack thereof, are available for analysis, it is possible to have a meaningful discussion about whether international crimes tribunals do justice, whether they achieve their underlying goals, and whether the results are worth the costs.

Congratulations to the International Criminal Court on its first conviction. When the dust of the Lubanga case settles maybe we can talk about whether we are doing justice right or whether we can do justice better.

Morris Davis is a retired U.S. Air Force colonel and the former chief prosecutor for the military commissions at Guantanamo Bay, Cuba. He is a faculty member at the Howard University School of Law in Washington, D.C.

Business Day

Monday, 19 March 2012

MIA SWART: Was the ICC's Lubanga judgment a fair one?

The procedural shenanigans of the office of the prosecutor tainted the Thomas Lubanga case from the beginning

LAST week, the International Criminal Court (ICC) delivered its first judgment, the long-awaited Thomas Lubanga judgment. The ICC Trial Chamber unanimously found the former Congolese rebel leader guilty of enlisting children into the armed forces and using them actively in hostilities. The judgment breaks new ground: it is the first to be delivered by a permanent international criminal court; and it is the first time an international court focuses exclusively on the crime of using child soldiers.

Lubanga is the founder and former leader of the Union of Congolese Patriots. Although organisations such as Human Rights Watch accused the rebels under Lubanga's command of "ethnic massacres, murder, torture, rape and mutilation, as well as the recruitment of child soldiers", the ICC charged Lubanga only with enlisting, conscripting and using child soldiers.

Nongovernmental organisations and human rights groups are celebrating the conviction. But is the judgment fair? The trial was shrouded in controversy from early on. The procedural shenanigans of the office of the prosecutor tainted the Lubanga case from the beginning. In June 2008, the ICC ruled that the prosecutor's refusal to disclose potentially exculpatory evidence breached Lubanga's right to a fair trial. The judges ruled that the prosecutor had incorrectly applied the Rome Statute and that "the trial process has been ruptured to such a degree that it is now impossible to piece together the constituent elements of a fair trial".

Then, in July 2008, the ICC ordered Lubanga's release, on the grounds that "a fair trial of the accused is impossible, and the entire justification for his detention has been removed". The prosecutor appealed this decision and the Appeals Chamber agreed to keep Lubanga in custody. And during closing arguments, his defence counsel, Catherine Mabilille, argued that intermediaries employed by the prosecution "prepared witnesses to come and give false accounts before the court". According to Mabilille, all the witnesses called by the prosecution and presented as former child soldiers lied during their testimony.

The historical and political value of the judgment cannot be overestimated. It is precisely the sense of history and the symbolic value of the case that might have led to a conviction when an acquittal might have been more appropriate.

Some claim that international courts have an inherent bias against defendants, that there is political pressure at international criminal courts and tribunals to deliver guilty verdicts. They claim that defendants are "prejudged" for political reasons and because of the gravity of the crimes. The preamble of the ICC statute states that it is the task of the ICC to "prosecute unimaginable atrocities that shock the conscience of mankind". The serious nature of international crimes was described in the Adolf Eichmann judgment: "Not only do all the crimes ... bear an international character, but their harmful and murderous effects were so ... widespread as to shake the international community to its foundations".

In the context of the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda, it has even been argued that the tribunals have an inherent institutional bias against defendants because their continued existence depends on "producing convictions". The International Criminal Tribunal for the

former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda have, however, both acquitted accused on the basis of lack of evidence. Former ICTY judge Patricia Wald has emphasised the importance of acquittals in strengthening the fairness, credibility and legitimacy of international criminal trials.

Another argument in favour of restraint by the judges of the ICC is the fact that it is a criminal court. The court attempts to merge the consensual body of international law with the coercive nature of domestic criminal law. Fairness in criminal trials is of crucial importance in preserving the integrity of the legal system. It is also critical in preserving civilisation. The Nuremberg trials have often been criticised as "victor's justice" or as high politics masquerading as justice. The ICC will escape similar accusations only if the judges pay the most stringent attention to fair trial standards.

As the current social media campaign against Joseph Kony shows, there are few causes capable of attracting as much popular appeal as hating an alleged war criminal. The ICC should be above this.

- *Swart is a research fellow at the Bingham Centre for the Rule of Law.*

The East African
Saturday, 17 March 2012

Uganda, Rwanda escape by a whisker as ICC convicts Lubanga

By GAAKI KIGAMBO

For now at least, Uganda and Rwanda are safe from any fallout from the ICC's conviction last week of Congolese rebel leader Thomas Lubanga even though sections of the judgment against him allude to the two countries involvement in funding and training armed groups, including child soldiers, in the DRC.

The technicalities of how cases are brought to the court aside, the alleged involvement of Uganda and Rwanda falls outside the period during which the crimes for which Lubanga was convicted were committed. Moreover, the court was not yet in existence when the two countries invaded the Democratic Republic of Congo.

According to Stephen Tumwesigye, the co-ordinator of the Uganda Coalition on the ICC, an NGO that provides information and raises awareness about the UN Court in Uganda and East Africa, Ugandan and Rwandan elements responsible for crimes in Congo can only be brought to account either by the Congolese courts or if the UN set up a tribunal in the DRC and initiates an investigation into crimes committed there, which is highly unlikely. The Coalition has hailed the conviction as a milestone in international criminal justice.

“There haven't been any investigations about Uganda or Rwanda and whether they bear responsibility. Investigations were restricted to the DR Congo, Lubanga and his party,” noted Dismas Nkunda, a co-director at the International Refugee Rights Initiative (IRRI).

Lubanga formerly headed both the political faction Union des Patriotes Congolais and Force Patriotique pour la Libération du Congo, its military wing, after breaking away from the Rassemblement Congolais pour la Democratie — Kisangani/Mouvement de Liberation.

The ICC last Tuesday found him responsible for enlisting and conscripting children aged less than 15 years and using them to participate actively in hostilities in the Ituri region in the east of the DRC between September 2002 and August 2003.