

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



Rogballan Mosque, KIssy

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

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Martin Royston-Wright
Ext 7217

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BBC

Wednesday, 14 March 2012

Ten years, \$900m, one verdict: Does the ICC cost too much?

By Jon Silverman

Professor of Media and Criminal Justice, University of Bedfordshire



The International Criminal Court has delivered its first judgement, after a decade in existence and spending nearly \$1bn. Critics say it costs too much, but is this fair?

The International Criminal Court (ICC) currently has an **annual budget** of over \$140m (£90m) and 766 staff.

Since its inception, its estimated expenditure has been around \$900m (£600m).

With only one completed trial to show for a decade of effort and expenditure, the ICC has faced regular criticism that it sucks in investment with few results to show for it.

Indeed, this is a common refrain at the regular annual meeting in The Hague of the Assembly of States Parties which funds the court.

“Start Quote

You can't compare the cost of international justice with shopping at a supermarket”

End Quote Philippe Sands QC University College London

Some 120 states have ratified the Rome Statute, which established the ICC, and as its paymasters, many cite the slow pace of prosecutions as justification for shaving a few millions off the agreed budget.

But to point to one trial, that of the Congolese militia leader Thomas Lubanga, and argue that it has cost X millions, would be both unfair and misleading.

After all, the ICC budget has to pay for staff salaries, building rental, global travel, intensive investigations in often hostile terrain, translators, for the defence teams, for legal aid for defendants and victims and so on.

The court registry - the administrative heart of the tribunal - pays most of these bills, which explains why it takes up around half of the budget. So the impression, on paper, that the bureaucrats are getting a disproportionate slice of the cake, is misleading.

Are there useful comparisons to be made between the permanent ICC and the so-called ad hoc tribunals set up to investigate and prosecute those who bore the greatest responsibility for the crimes committed in the former Yugoslavia (ICTY) and Rwanda (ICTR)?

The annual budget for the ICTY has gone up 500-fold since it began life in 1993.

In custody



One conviction: Congolese militia leader Thomas Lubanga found guilty of recruiting child soldiers

There are four suspects in ICC custody:

Ivory Coast: Laurent Gbagbo

DRC: Germain Katanga, Matthieu Ngudjolo Chui

CAR: Jean-Pierre Bemba

ICC finds Congo warlord guilty

Then, it was a modest \$276,000 (£176,000). For the two-year period 2010-11, it had risen to over \$301m (£192m).

Over this period, more than 60 people have been convicted and proceedings against 40-plus defendants are still ongoing. It employs 869 staff.

The ICTR budget for 2010-2011 was \$257m (£165m) and it has 750 posts. It has completed almost 50 trials since it was established in 1994.

But costs for both the former Yugoslavia and Rwanda tribunals are on a clear downward trend now, as they begin the process of winding up their work.

On these figures alone, the ICC comes out poorly in a value for money contest.

But whereas the ad hoc tribunals are geographically focused, the ICC has a global remit and has to engage in often lengthy negotiations with national judicial systems to attempt to meet its goals.

It is also true that the early phases of the Lubanga trial, which began in January 2009, were stretched out by procedural litigation which might be expected in a virgin court.

However, the trial could and should have started many months earlier had not the prosecutor, Luis Moreno-Ocampo refused to disclose hundreds of documents which might have aided the defence case.

The stand-off over this issue almost led to Lubanga being freed and the whole trial collapsing.

This points to a failing common to many of the international tribunals, which is a tendency by the prosecution to have one eye on the bar of history by presenting an overblown case, rather than one which is more tightly focused and can be completed within a realistic timescale.

ICC in brief



Set up in 2002

Based in The Hague, the Netherlands

Deals with genocide, crimes against humanity, war crimes and the crime of aggression

Prosecutor is Luis Moreno-Ocampo (above) and it has 18 judges

Investigating cases in Uganda, the Democratic Republic of Congo, the Central African Republic, Darfur in Sudan, Kenya, Libya and Ivory Coast

15 cases brought before the court so far - three are at trial stage

Source: ICC factsheet

Even staunch defenders of international criminal justice, such as Professor Philippe Sands QC, of University College London, say this is a legitimate concern.

"Yes, there are questions about processes. Are the rules of procedure too cumbersome? Should the indictments be more narrowly drawn?"

However, questions about its budget need to be seen in context, Sands says.

"The costs of the Lubanga trial and the ICC as a whole are small compared to the global aid budget, and completely irrelevant as compared with defence spending."

Even before the current global recession, the mounting costs of international justice and questions over legitimacy had begun to bother governments.

This is why the favoured course over the past decade has been to set up "hybrid" tribunals, which are a collaboration between the international community and individual states.

The prime examples are Cambodia, East Timor, and perhaps most successfully, the Special Court for Sierra Leone, which is dealing with the trial of the former Liberian president Charles Taylor.

But these tribunals are all time-limited. The only permanent criminal court is the ICC and, as such, will continue to attract criticism.

It is, however, a long-term project and arguably still in its early days, and as Sands points out, some things do not come with a clear price tag: "You can't compare the cost of international justice with shopping at a supermarket."

Correction: An earlier version of this report used figures based on an annual budget for the ICTY and ICTR, when in fact they both now operate with a biennial budget. The figures have been amended and an associated graph removed.

Congo-Kinshasa: Landmark Decision for International Justice

By Alison Cole

Analysis

The International Criminal Court (ICC) has issued its first judgment - a milestone on the path towards accountability. The Court found that Thomas Lubanga was the president of the militia group known as the UPC/FPLC that operated in the east of the Democratic Republic of Congo (DRC) and that he was responsible for using child soldiers.

The judgment made several landmark findings. The charges concerned conscripting, enlisting and using children in armed conflict. The fact that the first ICC judgment concerns child soldiers shines a further spotlight on the need to protect vulnerable groups at risk during war.

The ICC built upon the jurisprudence from prior UN courts such as the Special Court for Sierra Leone in finding that the crime of using child soldiers is committed as soon as the child joins the armed group - 'with or without compulsion'. This sets a high threshold prohibiting any use of children in fighting forces, even when families or children themselves may appear to support the child's involvement due to the coercive circumstances of armed conflict.

Similarly, the judgment established a high threshold for the protection of children who have an 'indirect' role, such as children who may be forced to conduct domestic duties or general support activities that may not include taking up arms.

The judges found that, in such circumstances, the question is whether the child has been exposed to 'real danger as a potential target'. As a result, the judges found that both the 'child's support and this level of consequential risk' meant that a child could be actively involved in hostilities even if she or he was absent from the immediate scene of the conflict.

The judges also paid particular attention to the experience of girl soldiers. The prosecutor had not specifically charged sexual violence and rape. During the trial, the appeals chamber rejected an attempt by the victims participating in the case to amend the charges to include gender crimes.

However, in the course of presenting evidence, witnesses raised the use of girls in domestic work and the abuse of girls and women as sex slaves. This underscores the ever-prevalent risk of sexual violence during conflict and the need for vigilance in investigating all potential crimes, particularly crimes against women. It is monumental that victims, including former child soldiers, were able to be involved directly in the trial. The ICC was the first such court to include victim participation in its Statute. During the course of the trial, 129 victims participated by making submissions to the judges, by seeking to introduce evidence, and by questioning witnesses. Three victims themselves testified as witnesses.

Concerns were raised in the judgment regarding the prosecution's 'lack of proper oversight' over its work with intermediaries - non-Court staff who may cooperate with the Court in implementing various aspects of the Courts work, and may potentially include people such as aid workers or local human rights monitors, who are familiar with the local environment. Intermediaries have assisted the ICC on a range of matters, including assisting victims to participate in proceedings, and judges in other cases at the ICC have been 'mindful of the importance of their role'.

It makes sense that an international court based outside the country under investigation - one covering all 120 countries that have accepted the Court's jurisdiction, and running 15 cases in seven countries - needs assistance from local people or organizations. Intermediaries facilitate activities such as locating or communicating with witnesses or victims particularly in settings without mobile phone coverage or transportation access.

However, the judges in the Lubanga case found that the prosecutor 'should not have delegated its investigative responsibilities to the intermediaries as analyzed in the judgment, notwithstanding the extensive security difficulties that it faced'. The judges indicated that three prosecution intermediaries may themselves have committed a crime under the ICC Statute by potentially facilitating witnesses in giving false evidence. The evidence derived from interaction with these intermediaries was therefore excluded from consideration.

The Court has learnt many lessons and last year compiled a draft set of guidelines on intermediaries. These draft guidelines are currently pending finalization by the Court and consideration by the countries that have accepted the ICC's jurisdiction, known as the State Parties. The Open Society Justice Initiative strongly urges the Court and the State Parties to act upon the lessons learnt following the Lubanga judgment by adopting the guidelines on Intermediaries at the Assembly of State Parties this November. From here, the Court now moves into the sentencing and reparations stages. The judges have also requested submissions from the prosecution, defense and victims regarding how consideration of potential reparations ought to be conducted. This will be the first time the issue of reparations is addressed at the ICC.

International Bar Association

Wednesday, 14 March 2012

NEWS RELEASE

INTERNATIONAL BAR ASSOCIATION

The global voice of the legal profession

IBA welcomes conclusion of ICC's first trial; despite procedural hurdles, the Lubanga case is a symbolic achievement for the Court

The **International Bar Association** (IBA) today welcomed the verdict in the case of the first suspect to be tried before the International Criminal Court (ICC), Thomas Lubanga Dyilo. Calling the judgment a symbolic achievement for the ICC, the IBA says that though hampered by several procedural challenges, the *Lubanga case* attests to the integrity of ICC proceedings and has made a significant contribution to international justice.

On 14 March 2012, judges of ICC Trial Chamber I concluded that Mr Lubanga was guilty of conscripting, enlisting and using child soldiers younger than 15 years of age in hostilities in the Democratic Republic of Congo (DRC) during 2002 and 2003. The verdict marks the end of a lengthy process which began in 2005 with Mr Lubanga's arrest in the DRC, subsequent surrender in 2006 to the ICC and a protracted trial which was twice halted for prosecutorial breaches. In total, Thomas Lubanga has spent six years in ICC custody despite provisions in the Rome Statute, the Court's founding legal instrument, stipulating his right to be tried without delay.

As the ICC's first trial, the *Lubanga case* has major significance. The trial is noteworthy for:

- Bringing timely global attention to the misuse of children in combat;

- Allowing victims to participate for the first time in international proceedings;

- A significant number of witnesses protected by the Court's protection scheme;

- Radical steps taken by judges – including staying proceedings when necessary – to ensure that the trial was fair; and

- Judicial rulings of key provisions of the Rome Statute on procedural and substantive law providing important guiding principles for other cases before the Court.

Reminiscent of the *Tadic case*, the first before the International Criminal Tribunal for the former Yugoslavia, the *Lubanga case* dealt with complex and novel legal issues, some of which threatened to derail proceedings.

Richard Goldstone, Honorary President of the International Bar Association's Human Rights Institute and former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda commented: *'The Lubanga case is a major achievement for the International Criminal Court. Like all first trials, it was no stranger to procedural challenges and uncertainties as the prosecutor and judges grappled with novel issues, such as victims' participation. Many of them had no precedent at the ad hoc tribunals. It is a tribute to their efforts, and the fortitude of the defence, that despite major setbacks, every effort was made to ensure that the trial was fair and justice done. Undoubtedly, future international trials will benefit from the jurisprudential foundations and the lessons learnt from the Lubanga case.'*

Despite its achievements, the *Lubanga case* persisted amid a plethora of problems. Disappointed by the limited charges, victims' representatives in the case, unsuccessfully petitioned judges to recharacterise the charges to reflect the sexual violence experienced by girl soldiers in particular. The defence complained

that the case was manifestly unfair as the prosecution struggled with their obligation to disclose evidentiary material without jeopardizing the security of its witnesses and confidential information. Arguing that prosecutorial misconduct had resulted in an abuse of process, the defence ultimately requested that judges halt the trial permanently on the basis of non-disclosure and prosecutorial over-reliance on intermediaries who allegedly coerced witnesses to falsify testimony.

In their verdict, the judges took note of the challenging procedural history of the case but emphasised that they were satisfied of Mr Lubanga's guilt based on the evidence.

Dr Mark Ellis, IBA Executive Director says *'It is highly symbolic that the verdict in the International Criminal Court's first case has been delivered during a year when the international community reflects on the Court's 10 years of operation. The Lubanga case reflects the complexity of international criminal trials that must meet the high expectations of victims and the international community, while also ensuring fairness to the accused. Despite procedural challenges during the trial, the Lubanga verdict underscores the significant contribution the ICC has made to international justice.'*

The ICC judgement and a summary of the decision are available to download via the IBA website, [click here www.ibanet.org/Human Rights Institute/ICC Outreach Monitoring/Case_watch.aspx](http://www.ibanet.org/Human_Rights_Institute/ICC_Outreach_Monitoring/Case_watch.aspx) or paste the below link into a browser,

ENDS

**For additional information please contact:
Lorraine Smith van Lin
Programme Manager (ICC)
International Bar Association**