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Tribunal to Debut with Congo Case

Prosecution of Rebel Leader Could Quiet Criticism of International Criminal Court

By Nora Boustany

The International Criminal Court is set to begin its first case this week in The Hague, where a three-judge panel is to hear charges and evidence against Congolese rebel leader Thomas Lubanga Dyilo, who has been indicted as one of Africa's most notorious recruiters of child soldiers.

The hearing, set for Nov. 9, is a necessary procedural step before Lubanga can be brought to trial. The case is unusual because Lubanga is being prosecuted solely for the forcible enlistment of children younger than 15, a war crime that can be prosecuted under the international court's jurisdiction.

The court was established in 2002, despite strong objections from the United States and a global U.S. lobbying campaign aimed at stopping other countries from participating. Supporters of the court say that how the upcoming proceedings unfold may lay to rest some skepticism on the part of its critics about the court's effectiveness and establish precedents for other cases—such as those concerning northern Uganda and the Darfur region of Sudan—that the ICC is investigating with tacit U.S. support.

While the United States is not a party to the International Criminal Court, 102 countries have ratified the treaty, called the Rome Statute, which brought it into being. After years of official U.S. hostility, court supporters say, the debate in some military and political circles here seems to be shifting to how U.S. policy and the court's goals intersect.

"Before, the ICC's critics were afraid it would be abused to scrutinize Americans in the military. But that is not why it is here," said Raj Purohit, a senior fellow with Citizens for Global Solutions, a nongovernmental organization that supports the tribunal. "The court exists to bring to justice horrendous war criminals who have done terrible things, such as Lubanga."

The United States has helped set up separate, U.N.-backed tribunals of limited duration to try war crimes suspects from conflicts in Rwanda, Sierra Leone and the former Yugoslavia. Deposed Iraqi president Saddam Hussein was tried in an Iraqi court set up with U.S. assistance.

While it has a relationship with the United Nations, the International Criminal Court is independent, with its own budget, using funds supplied by participating member governments. In addition to ICC member states, the U.N. Security Council can refer cases to the court. Proceedings can be suspended for a year at a time in the interest of peace negotiations or other specific circumstances.

On Aug. 28, the office of Fatou Bensouda, the ICC's deputy prosecutor, filed its evidence and charges alleging that Lubanga deliberately rounded up child soldiers and funded military training camps and the arms the children would carry. The evidence includes testimony from six child soldiers.

Lubanga was arrested in March 2005, and a year later was transferred to a Dutch prison unit in The Hague reserved for the ICC. He has denied the charges and faces a possible maximum life sentence if convicted.

Hearings in the case have been postponed twice—once to give Lubanga's lawyers the required 60 days to prepare a defense, and a second time to ensure that "protective measures for victims and witnesses were in place," Bensouda said.

Four million people perished during the 1998-2003 Congo conflict, known as Africa's first world war. Two million people have been displaced—left impoverished and at the mercy of disease and epidemics. Six countries became involved in the Congo crisis, arming militias and fueling killing sprees. Congolese went to the polls last Sunday in a presidential runoff with the hope of putting that violent legacy behind them.

Officials and specialists interviewed said the court's push to get to the trial stage in the Lubanga case has major implications for democracy in Congo. "The timing of this . . . in the context of Congo's elections means spoilers and snakes in the grass will lose power," said John Prendergast, senior adviser to the International Crisis Group, a Brussels-based organization.

"This would be the first time we have a real attempt to stem the cycle of atrocities and impunity that has fueled the continuation of the conflict," said Prendergast, an Africa expert who served as senior director of African affairs at the National Security Council under President Bill Clinton.

Only three years ago, Lubanga, commander of an ethnic Hema rebel group in control of the eastern town of Bunia, gave an interview to The Washington Post as he lounged on an outdoor sofa at one of his three villas. Child recruits who doubled as bodyguards brought him trays of tea and trimmed the hedges framing his garden. He said that he had taken in the children because they had nowhere to go and promised to remove them from armed service. A year later, they were still there with him.

At the height of the fighting, Lubanga had 3,000 child soldiers ranging between the ages of 8 and 15, according to human rights organizations.

At the same time, according to the United Nations, there were nearly 300,000 child soldiers fighting in 30 countries, 75 percent of them in sub-Saharan Africa.

Amnesty International has interviewed children who described being given drugs to prompt them to fight—making it difficult for these young recruits to return home or survive otherwise.

Radhika Coomaraswamy, the U.N. special representative on children and armed conflict, reported recently on African child soldiers she met who had turned into killers with the sustained use of drugs. Such children were recycled into conflicts across borders as mercenaries, she said.

Amnesty reported that recruitment of child soldiers in Congo has continued despite internationally funded programs to disarm, demobilize and reintegrate underage fighters into society. Bensouda, the deputy prosecutor, said about 30,000 children were attached to armed groups in Congo during the peak of the conflict there, making up 40 percent of forces carrying arms. Amnesty International cited comparable figures.

By June of this year, a government commission had demobilized 19,054 children, Amnesty said. At least 11,000 children are still with armed groups and unaccounted for, remaining a reservoir of firepower for armed forces primed to resume hostilities, Amnesty and Bensouda said.

"Regardless of the outcome of the proceedings" against Lubanga, "this case represents a huge step in the struggle against these serious crimes against children," chief prosecutor Luis-Moreno Ocampo declared in August.

"Since the Nuremberg trials, this grand experiment is the next evolution in international law. It is the first such stand against this torrent of history," Prendergast said of the Congo case. He cautioned that imperfections remain and that the court would have to find ways to go after "arms linkages and arms deliverers so culpable of intensifying the conflict," even though evidence will be hard to produce.

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