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The ICC: one verdict vs. three faults

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The International Criminal Court (ICC) issued its first ever verdict last week (14 March 2012). Thomas Lubanga was found guilty of training and using child soldiers in the Democratic Republic of Congo (DRC). Details on the sentence will be known at a later date: it will be important to see if the ICC sets a meaningful precedent and sends Lubanga to jail for life (30 years). In the early 2000s, Lubanga was a commander, though not the head, of one of the militias in the East of the DRC. He defended the Hema ethnic group in a complex conflict involving domestic and regional actors, called the 'African World War'. The ICC finally brings some justice –and condemnation—to this long and bloody war. The verdict reinforces the ICC, as it institutionalizes the prosecution and penalization for crimes against humanity. However, the ICC has difficulty to stand up against three faults: the lengthy process, the politicization of cases, and the exclusive focus on Africa.

Luis Moreno Ocampo has been the ICC chief prosecutor for nine years and his term is in fact almost over now. With only this one process seen to the end, critics accuse the ICC of useless and even counterproductive justice. So much time and money, so many professionals mobilized ...and only one person has been judged thus far. The scope of the case is also extremely reduced: in time (2002-2003), in place (the province of Ituri), limited only to the topic of child soldiers. But this 'African World War' had an estimated four million victims from the mid 1990s to the early 2000s, and conflict remains latent in the Great Lakes. It is fed by the illegal and murderous exploitation of natural resources (where the militias participate), the incursions by Rwanda and Uganda, and the local problems related to land property and to old and new differences between ethnic groups. The Lubanga case hardly does any justice to the massacres, displacement, ransacking and generalized abuse the Congolese population have suffered en masse.

The second critique regards the national instrumentalization of the Lubanga case. The DRC's Kabila government voluntarily referred the case to the ICC because of 'shortcomings in the domestic justice system'; it also helped find witnesses (some dubious testimonies were actually dismissed in the process). However, this was rather a way to show goodwill and cooperation, and prevent the ICC from engaging in prosecutions that could affect Kabila's side. Indeed, Lubanga may have become a sort of scapegoat. He was not the ultimate authority in the war, and many others that seemingly acted in similar ways are now running free or even have jobs in government. The ICC has had to keep its manners with the Kabila regime, bringing bias and partiality to international justice.

Finally, the ICC works in a long list of African countries: DRC, Uganda, Central African Republic, Sudan, Kenya, Ivory Coast, Libya, Nigeria and Rwanda. Potential cases may go forward in Afghanistan, Georgia, Colombia, Honduras and the Republic of Korea, but thus far the ICC is suspiciously African-only. One might simply think that 'there are many conflicts in Africa', but this is also due to the fact that most African states have accepted the ICC's jurisdiction. The continent has thus shown cooperation to empower the international institution, but doubts are increasingly on the table because many in Asia and some powerful states have not followed suit. In cases like Sudan or Libya, where prosecution has originated not by referral but with Ocampo's or Security Council demands, African countries have accused the ICC of double standards and of obsession with the continent. Africa is supposed to accept that the United States has not ratified the Treaty of Rome nor has it recognized the ICC, yet it supports ICC action for selected cases in the UN Security Council. It is hard to argue that the ICC is a neo-colonial tool, but the West must listen to the criticisms voiced within the African Union, asking for international facilitation and not just prosecution. Leaders from different countries have also defied the ICC by allowing Sudan's Al Bashir to travel in Africa despite his indictment.

The criticism of a slow and limited justice is countered well by the guarantees that an ICC process provides in exchange. As a result, there is no doubt that Lubanga is guilty of the crimes he's been found to have committed, and that he had the right to a fair trial (it was even suspended and restarted, at one point). However, the shortcomings about potential domestic politicization and the selected focus on Africa seriously affect the ICC's credibility. The ICC has been anxious to pass the test and to prove that it is a useful and valuable tool for international justice. But in exchange it has indirectly accepted some instrumentalization and bias. With the Lubanga verdict the ICC has passed, but not with flying colors –in the near future, justice will keep being delivered together with controversy.

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