



87 Vauxhall Walk, London SE11 5HJ | + 44 (0) 20 7793 1777 | www.redress.org

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ICC should ensure that Lubanga's sentence is meaningful for victims in the DRC

10 July 2010 - Today, the International Criminal Court handed down its first ever sentence in the case against Congolese warlord Thomas Lubanga Dylo, who was found guilty in March of the war crimes of recruiting and using children under 15 in the armed conflict in the Ituri region of Eastern Democratic Republic of Congo in 2002-3.

Trial Chamber I of the ICC sentenced Mr Lubanga to 14 years of imprisonment and ordered that the six years since his surrender to the ICC on 16 March 2006 should be deducted from this sentence.

Presiding Judge, Adrian Fulford, explained that the Chamber considered the gravity of the crimes in the circumstances of this case. The Chamber noted in particular "the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person."

While Mr Lubanga's sentence is another important step towards justice for victims of these horrendous crimes, who have awaited justice for almost ten years, it's important to highlight the concerns expressed by Judge Elizabeth Odito Benito in her dissenting opinion. Judge Benito disagreed with the Majority's decision to the extent that, in her view, it disregards the damage caused to the victims and their families, particularly as a result of the harsh punishment and sexual violence suffered by the victims of these crimes.

For this reason, it's imperative that the ICC ensures now that victims and communities most affected by these grave crimes understand the sentence so that justice is meaningful to them.

"The sentence delivered today is likely to be received with mixed reactions on the ground and could lead to increased tension in the Ituri region," said Carla Ferstman, director of REDRESS. "It is essential that the ICC undertakes adequate and swift outreach to victims and affected communities to explain the sentence and what the next steps are, including reparation proceedings. It is important that justice is done, but also that victims see and understand that justice is done," Ferstman added.

"Victims, their families and communities still suffer from the consequences of these crimes. These children were often brutalised, and themselves were asked to commit crimes: They were asked or encouraged to rape; they were asked to pillage villages, sometimes their own; they were asked to kill people," said Ferstman. "And it's not only the children; it's also their families and their communities. A lot of families still don't know what happened to their

children. Communities had to reintegrate children that were psychologically and physically hurt and tensions are still evident. Many children were rejected by their communities which perceived them as perpetrators."

Another important issue is that the majority was unable to link Mr. Lubanga to the sexual violence suffered by girl child soldiers beyond reasonable doubt, even though girls recruited into rebel forces were subjected to regular acts of rape and sexual violence. As a result, the Judges ruled that this could not form part of the assessment on his culpability for the purposes of sentence. This is an unfortunate consequence of the overly narrow charging policy of the prosecution; an issue of major concern noted by the judges in their guilty verdict handed down in March.

The ICC has an important role to guard against reprisal attacks on victims and witnesses in Ituri, where Lubanga's henchmen still wield influence. Protection measures need to remain in place for those who had the courage to come forward and participate in the trial.

"Victims had a significant contribution during the trial. Their testimonies, in which they recounted how they were conscripted, the gruelling training they received and the terrible abuses inflicted upon them but also inflicted by them, also painted a vivid picture of the horrors of using child soldiers in combat, helping bring international attention to the plight of child soldiers," Ferstman added.

The Chamber in the Lubanga case is yet to indicate the approach, principles and criteria it will apply in relation to the reparation of Lubanga's victims. A first decision on reparations was postponed.

"We hope that whatever approach is taken to determine reparation for Lubanga's victims is participatory: involving victims in the process leading to reparations is the first step in helping to re-establish their dignity and agency, both of which are crucial to helping them to move beyond their victimisation," said Ferstman.

See REDRESS' report on ICC reparations here:

http://www.redress.org/downloads/publications/REDRESS_ICC_Reparations_May2011.pdf

For further information: Eva Sanchis, Communications Officer, at eva@redress.org or +44 (0) 20 7793 1777. You can also visit our web: www.redress.org

Note: REDRESS was founded by a British torture survivor in 1992. Since then, it has consistently fought for the rights of torture survivors and their families in the UK and abroad. REDRESS, along with others, played a role in ensuring that key provisions for victims were incorporated into the Rome Statute which established the ICC. We are also currently the informal coordinator of the Victims' Rights Working Group, a network of 400 national and international organisations and experts that advocates on victim's issues before the ICC (www.vrwg.org).