

Challenges of the International Criminal Court in Dealing with the Situation of Democratic Republic of the Congo: A Case Study of the Lubanga Case

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ABSTRACT

With the establishment of the International Criminal Court, the movement against impunity has become more serious. So, the hope of realizing this dream has become a reality. The Democratic Republic of the Congo was one of the situations addressed by the International Criminal Court (ICC) at the time of its establishment, and the effectiveness of its laws in the administration of justice was tested. During these proceedings, two issues were challenged. First, the effectiveness of court rules in prosecuting and punishing offenders, and second, the application of fair trial components in the trial of defendants. As the Court is an international body, its operation is of concern to the international community, and a fair trial, along with the punishment of perpetrators, is the least expected of an international tribunal. Meanwhile, considering the case of Mr. Thomas Lubanga, was more challenging and the Court's performance was frequently criticized during its proceedings. In particular, the performance of the prosecutor's office in the preliminary investigation and collection of documents, as well as the manner in which the trial branch handled the case, indicated that the court rules may not yet have the capacity for a fair trial. And some rules need to be reconsidered. So, the goal of this study is investigating the reasons for the Court's failure to condemn defendants in the Congo situation, especially Thomas Lubanga.

Keywords: International criminal court, Congo situation, International crimes, Preliminary investigation

INTRODUCTION

In addition to criticisms of the International Criminal Court's performance, it has been highly controversial to consider how the tribunal has conducted its proceedings since its inception because one of the important goals of the court is to be able to establish a fair trial along with the fight against impunity. Therefore, the basis of the Statute of the Court, as well as the procedure and evidence that deals with the conduct of judicial proceedings is based on this view and sends the message that wherever the criteria of a fair trial are violated, the sheet is in favor of the accused. This article is based on the Court's challenges to the Democratic Republic of the Congo, in particular the case of Thomas Lubanga, who were tried for war crimes and crimes against humanity during the civil war in the Democratic Republic of the Congo. It is obvious that the performance of the Court, as well as the Statute and the Rules of Procedure and the evidence of the Court in these hearings were tested and during the hearings, its strengths and weaknesses were tested. In addition, during these hearings, the performance of the prosecutor's office in the preliminary investigation as one of the most important pillars of the court was also challenged. Obviously, preliminary investigations are an important part of a fair trial because, in addition to gathering

evidence, they also play a role in determining the scope of the indictment [2].

METHODS

This Study has been done in terms of purpose is practical and in terms of collecting information is documentary method and studying the laws and opinions issued through the International Criminal Court as well as the opinion of judges of the Court. At last, the obtained information has been analyzed descriptively-analytically.

Non-disclosure of evidence proving the crime by the prosecutor's office

Pursuant to paragraph [3] of Article (61) of the Statute of the Court, the Prosecutor of the Court is obliged to disclose to

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the accused all the reasons that he intends to cite in the indictment hearing. Disclosure of the reasons provided by the prosecutor should be done before the start of the hearing so that the accused and his lawyers have the time and opportunity for an effective defense. In this regard, the International Criminal Court has challenged the judiciary in two respects. First, the court, in accordance with the confidential contracts provided for in Article (e) (3) (54) of the Statute, has taken the reasoning grounds in order to collect the positive evidence of the crime by resorting to them. The judiciary, on the other hand, has used direct evidence as positive evidence for the crime in the International Criminal Court and has not sought to gather new evidence. Second: Disclosure of the reasons for acquittal of the accused is one of the duties prescribed for the prosecutor in Article (2) (67) of the Articles of Association. However, in the face of the prosecutor's objection to the performance of court of the first instance, the Court of Appeal defended the performance of the judges of the first instance against the non-disclosure of the acquittal. In the first stage, the Court of Appeal praises the mere reaction of the first instance and the cessation of the trial in terms of non-observance of the requirements of a fair trial and in the second stage, it recognizes this suspension of the trial as relative and limited to the conditions, which, by disclosing the reasons, returns to its pre-suspended state. This means that at any time after the suspension of the trial, if the prosecutor discloses the acquittal to the accused, the trial court must resume the trial. Another point is that the lack of cooperation of the prosecutor of the court with the defendant and his lawyers in knowing the contents of the case causes a request from the defendant's lawyers to obtain new reasons and present them in the court, which also provides grounds for delay.

Failure of the prosecutor to use the testimony of witnesses

Eye witness, according to international humanitarian law, is an essential element of crime investigation and detection. The use of witness testimony was another piece of evidence used by the prosecution to substantiate its claim. Of course, the issue of active participation of witnesses in the proceedings is something that is still considered in the form of restorative justice today. However, the International Criminal Court, and in particular the prosecutor's office, failed to use this, and they also faced many problems in using the testimony of witnesses. In fact, this did not happen as effectively as witness testimony was expected to be used. Of course, in the Ntaganda case, the court used the testimony of witnesses extensively, and several experts testified in the court, from psychologists who testified about the impact of trauma on witness memory to forensic experts who collected bone and tooth fragments from graves in the area and had analyzed them. These actions eventually led to a sentence of 30 years in prison for him.

The challenge of fine-tuning the indictment

One of the criticisms of the court prosecutor was the inaccuracy of the indictment and also the incorrect information. In Mr. Lubanga's case, his lawyers objected that the charges were based on erroneous data and that Mr. Lubanga had not committed the charges. According to Article (61) of the Articles of Association, the confirmation of the charges before the trial is with the first instance, which of course is accompanied by a special process. From the very beginning of Lubanga's transfer to The Hague, victims of sexual crimes have expressed concern about the failure to mention in Lubanga's arrest warrant the allegations of sexual slavery, rape and other sexual offenses. However, about a year later, the same charges were upheld and sent to court of the first instance for trial. By sending confirmed charges without adding new charges, the issue was raised by the victims and their lawyers that, according to Article 55 of the Rules of Procedure, court of the first instance could add sexual charges to the indictment. The prosecutor only had mentioned the registration, recruitment, and use of child soldiers in armed conflict as Mr. Lubanga's charges in the indictment. Therefore, court of the first instance issued an order to "change the legal title of the events" in the Lubanga case on July 14, 2009. The parties therefore appealed. The appealing branch of the International Criminal Court (ICC), on December 8, 2009, voided this provision by arguing that the interpretation of the primitive branch of Article 55 of the By-Laws was in conflict with paragraph (9) of Article 61 of the Articles of Association. The annulment of the provision in the appeals branch provoked reactions from human rights activists and advocates for the victims of Lubanga crimes, moreover, this was the first case before court of the first instance that had put the theoretical provisions of the statute and other provisions of the criminal court to a practical test. The challenge in the case of Thomas Lubanga was to add charges by the trial branch after the charges were upheld by the Preliminary Branch, which was based on Article 55 of the Rules of Court. Looking at Article 55, it can be seen that the court of the first instance can only change the "legal description of crimes" without adding a "new event". Accordingly, the prosecutor appealed the verdict, arguing that the court's interpretation violated his authority to amend the indictment. Of course, the judges of the Court, including Judge Fulford, had different views on the matter.

Wrong Translation

According to paragraph (1) of Article (67) of the Rome Statute, if the trial takes place in another language, the accused can benefit from having an interpreter, and supervising the proper performance of this matter is one of the duties of court of the first instance. This is so significant that a mistake in it led to the suspension of Mr. Lubanga's trial in 2010. In this regard, court of the first instance stated that the reason for the suspension of the trial was that the trial had been marred by repeated translation errors. This can

also be seen in the testimony of witnesses, as some of them claimed that their words had been mistranslated to the point that the International Criminal Court had experienced a vocabulary crisis.

CONCLUSION

Although efforts to struggle impunity are more stated today in the presence of the International Criminal Court, a fair trial is also needed today for an international tribunal. The International Criminal Court (ICC) has faced with many challenges in dealing with the Democratic Republic of Congo. From the performance of the prosecutor's office in collecting documents to the performance of court of the first instance, especially in the case of Mr. Thomas Lubanga, in increasing the charges after it was approved by the preliminary branch, the court received many criticisms. To the extent that during the trials we see the trial is stopped several times and even an attempt is made to release the accused because of the no components of a fair trial. In addition, the outcome of the trials was that some of the defendants were acquitted and the punishments of those convicted of crimes were not convincing with regard to the crimes that they had committed. It can also be observed that the components of a fair trial (the Ntaganda case) have been a desirable process of trial and punishment. Although the trial of criminal defendants in the Democratic Republic of the Congo situation was an important achievement for the international justice system, due to the complete failure of the Court, the following can be considered as the reasons for the failure of the Court: 1- The main problem for gathering evidence in the preliminary investigations: according to the review of the cases, it seems that the people who were intended for this purpose did not have sufficient expertise and skills. 2- Insufficient protection of witnesses, which made the use of testimony tools ineffective during the trial. 3- Writing an indictment regardless of all the committed crimes. 4- non-observance of the rights of the accused, including the possibility of accessing the documents of the case, using temporary release or having an expert translator.

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