

# TOWARDS A GENDER-INCLUSIVE DEFINITION OF CHILD SOLDIERS:

The Prosecutor v. Thomas Lubanga

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*This article addresses the importance of the first case before the International Criminal Court through the lens of gender analysis. While the charges against the defendant in The Prosecutor v. Thomas Lubanga Dyilo are limited to conscripting and enlisting child soldiers and using them actively in hostilities, the case has huge precedential value because it will be the first decided before the International Criminal Court. This article argues for a broad interpretation of the law so that female child soldiers receive protection and recognition under the law.*

## I. INTRODUCTION

The trial of Thomas Lubanga Dyilo (“Thomas Lubanga”) will set international precedent for crimes related to child soldiers.<sup>1</sup> As the first trial before the International Criminal Court (ICC or the Court), this trial will be setting a standard for interpreting what it means to conscript, enlist, or use child soldiers actively in combat.<sup>2</sup> While the use of child soldiers has garnered international attention recently due to the charges against Mr. Lubanga,<sup>3</sup> the practice is hardly a new phenomenon. Children have been used as warriors throughout history, for example as drummer boys in the American Revolution<sup>4</sup> and powder monkeys in the War of 1812, the Mexican War, and the Civil War.<sup>5</sup> The Nazis established training camps along with other forms of indoctrination to prepare Hitler Youth for battle,<sup>6</sup> a process that often began when a child was ten years of age.<sup>7</sup> During the Iran-Iraq War, Iranian President Ali-Akbar Rafsanjani declared that “all Iranians from 12 to 72 should volunteer for the Holy

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<sup>1</sup> See *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06 (commenced Jan. 26, 2009) [hereinafter the *Lubanga* case].

<sup>2</sup> See, *infra*, Section III.A for a more detailed account of the charges against Mr. Lubanga.

<sup>3</sup> See, *i.e.*, Marlise Simmons, *International Court Begins first Trial*, N.Y. TIMES, 26 Jan. 2009, available at [http://www.nytimes.com/2009/01/27/world/europe/27hague.html?\\_r=1](http://www.nytimes.com/2009/01/27/world/europe/27hague.html?_r=1) (last visited 11 Nov. 2010).

<sup>4</sup> Jonathan R. Dull, *A DIPLOMATIC HISTORY OF THE AMERICAN REVOLUTION* (1985).

<sup>5</sup> Powder monkey is the name given to those who carried the gunpowder from the magazine to the guns, often done by children because of their speed and agility. Eleanor C. Bishop, *PONIES, PATRIOTS AND POWDER MONKEYS: A HISTORY OF CHILDREN IN AMERICA'S ARMED FORCES, 1776-1916* (1st ed. 1984).

<sup>6</sup> Gerhard Rempel, *HITLER'S CHILDREN THE HITLER YOUTH AND THE SS*, 185 (1989).

<sup>7</sup> Alfons Heck, *A CHILD OF HITLER: GERMANY IN THE DAYS WHEN GOD WORE A SWASTIKA*, 1 (1985).