



## REVIEW ARTICLE

### JUSTICE AND MORAL RESPONSIBILITY IN THE CONGO

*Debbie Sharnak\**

#### I. INTRODUCTION

On April 19, 2004, just two years after the Rome Statute was ratified to create the International Criminal Court (ICC), the Democratic Republic of Congo (DRC) referred the first case to the newly established Court to investigate crimes that were committed anywhere within its country's borders. Now, three years later, the result of the investigation has led to a case against Thomas Lubanga Dyilo for recruiting and conscripting child soldiers. This case is being watched closely around the world, for with over 100 states as signatories to the Rome Statute, many view the Court as the greatest indicator of an emerging norm in the international community to put an end to impunity for the worst crimes against humanity. This is in step with an increasing amount of initiatives that seek to establish a commitment to justice over impunity such as the 1999 UN Guidelines for Mediators, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights.

While these treaties were a step in the right direction, a permanent international body to prosecute the worst offenders of the most heinous crimes was deemed an essential part of advancing this goal—but not because those establishing the Court believed that prosecutions would necessarily deter or prevent future occurrences. In fact, prosecutions should not be understood as a means to restore complete order, to ensure that no further violations will occur, or to make up for the losses that society has incurred. Rather, the importance of prosecutions lies within the fact that they recognize that all citizens are equal rights holders under the law and equally worthy of protection, regardless of gender, ethnicity, or socio-economic status. In a transitional justice framework, where the goal is to create a peaceful and stable post-conflict society, prosecutions become a complementary mechanism for countries to address their violent pasts, recognize that all citizens are valuable within this new system, and inculcate trust in emerging institutions to create a society that will not fall back into a pattern of violence. The ICC becomes a fundamental tool in advancing these goals because in societies that are unable or unwilling to prosecute the worst offenders, the Court can provide an alternative way to ensure that at a basic level, there is a vindication of human rights.

The case against Lubanga provides an important test case for the implementation of these ideas, as he is being accused by the Court of enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities, which is in direct violation of article 259(3)(a) of the Rome Statute.<sup>1</sup> The crime of recruiting and conscripting children, considering their particular vulnerability, is viewed by the international community as one of the worst crimes against humanity.

On January 29, 2007, The Hague Pre-Trial Chamber I confirmed the charges against Lubanga to send the case against him to trial in the first indictment of the ICC. It will be awhile before it is evident whether the Court can ultimately make any headway toward its goal of achieving justice in the international community; yet, the larger issues that this case

---

\* DEBBIE SHARNAK, BA (Vassar College) received degrees in history and political science in 2007. She is currently employed in the Research Unit at the International Center for Transitional Justice in New York City. The views expressed herein are the sole responsibility of the author and do not represent the position of the International Center for Transitional Justice.

<sup>1</sup> *Arrest Warrant for Thomas Lubanga*, International Criminal Court, [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2\\_tEnglish.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2_tEnglish.pdf) (accessed 5 Nov. 2006).