

**Cour
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**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06

Date: 22 August 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr. Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
vs. THOMAS LUBANGA DYILO**

Public Redacted Document

**Prosecution's Observations on the Applications for Participation of Applicants
a/0004/06 to a/0009/06 and a/0016/06 to a/0046/06**

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor

Ms. Fatou Bensouda, Deputy Prosecutor

Mr. Ekkehard Withopf, Senior Trial Lawyer

Counsel for the Defence

Mr Jean Flamme

Background

1. On 10 February 2006, the Pre-Trial Chamber issued a warrant of arrest against Thomas LUBANGA DYILO in which he is alleged to have committed the crimes of enlisting, conscripting and using children to participate actively in hostilities under Article 8(2) of the Rome Statute ("Statute") between July 2002 and December 2003.¹
2. On 31 July 2006 and on 3 and 4 August 2006, forty-one applicants (Applicants) filed confidentially and *ex parte* forty-three applications² to participate in the proceedings in the case of *The Prosecutor v. Thomas LUBANGA*. The Single Judge,³ issued, on 4 August 2006, the "Décision autorisant le Procureur et la Défense à déposer des observations sur les demandes des requérants a/0004/06 à a/0009/06, a/0016/06 a/0046/06 et a/0047/06 à a/0052/06 dans le cadre de l'affaire le *Procureur c. Thomas Lubanga Dyilo*" (Decision), in which she invited the Parties to comment on the applications by 16:00 hours on 18 August 2006, at the latest.
3. On 16 August 2006, the Office of the Prosecutor (OTP) requested a one week extension to comment on applications a/0047/06 to a/0052/06⁴. The same day, the Single Judge⁵ granted a one-week extension to both parties to file their observations on all the applications.⁶

¹ Arrest Warrant, 10 February 2006 (Arrest Warrant), p. 4.

² Applications a/0004/06 to a/0009/06, a/0016/06 to a/0046/06 and a/0047/06 to a/0052/06.

³ See "Décision désignant un Juge unique dans l'affaire *Le Procureur c/ Thomas LUBANGA DYILO*", filed on 22 March 2006.

⁴ Prosecution's Request for an extension of a time limit, filed on 16 August 2006.

⁵ See "Decision on the Temporary Substitution of the Single Judge", filed on 11 August 2006.

⁶ Décision relative aux requêtes de la Défense et de l'Accusation concernant la prorogation de délai.

Scope of the present submission

4. The present brief will exclusively address applications a/0004/06 to a/0009/06, and a/0016/06 to a/0046/06 (Applications); the comments regarding applications a/0047/06 to a/0052/06 will be submitted at a later date in a separate filing. Moreover, the Applications' request to participate in the proceedings is limited to the case of *The Prosecutor v. Thomas LUBANGA DYILO*.⁷ Therefore, the present submission will solely address the Applications' right to participate in the case at hand.

Legal Qualification of "Victim"

5. Pursuant to Rule 89(2) of the Rules of Procedure and Evidence (Rules) to determine whether an applicant may participate in the proceedings, the Chamber must first decide if he/she qualifies as a "victim" as defined in Rule 85.

6. According to Rule 85 (a),

"Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;"

7. As the Pre-Trial Chamber determined, for the status of a victim to be recognized four criteria must be satisfied: (a) the victim must be a natural person; (b) he or she must have suffered harm; (c) the crime from which the

⁷ See Decision, p. 3.

harm resulted must fall within the jurisdiction of the Court; and (d) a causal link between the crime and the harm must exist.⁸

8. Moreover, the applicants must demonstrate that there is a sufficient causal link between the harm they suffered and the crimes for which there are reasonable grounds to believe that Thomas LUBANGA DYILO is criminally responsible and the commission of which is the subject of the Arrest Warrant issued by the Pre-Trial Chamber.⁹
9. Article 68(3) of the Rome Statute (Statute) provides that the Chamber shall permit participation of an individual (as defined by Rule 85) where the personal interests of the individual are affected. The Prosecution submits that Article 68(3) of the Statute and Rule 85, viewed together, establish a two-stage process for the Chamber to determine if an individual qualifies as a victim with standing to participate in proceedings: first, the applicant must fulfil the criteria set out in Rule 85, then the Chamber must be satisfied that the personal interests of the victim are directly affected by the proceedings in which he or she is applying to participate.¹⁰
10. For an application to be successful pursuant to Article 68(3) of the Statute, the applicant must have a "judicially recognisable personal interest"¹¹ in the case.

⁸ See Decision on the Applications on participation in the proceedings of a/0001/06, a/0002/06 and a/0003/06 in the case of the *Prosecutor v. Thomas Lubanga Dyilo* and of the investigation in the Democratic Republic of Congo, p.7

⁹ Ibid, p. 9.

¹⁰ See Pre-Trial Chamber's "Décision sur les Demandes de Participation à la Procédure de VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6", filed on 17 January 2006, para. 62.

¹¹ See E. Haslam, "Victim Participation at the ICC", in McGoldrick, Rowe and Donnelly (eds.): *The Permanent International Criminal Court* (2004), at page 326.

5/19

The personal interest of the applicant must be related to the *specific matters* at issue within the framework of the Court's proceedings.

Factual analysis

11. The charges against Thomas LUBANGA DYILO currently include (1) enlisting children under the age of fifteen years, (2) conscripting children under the age of fifteen years, and (3) using children under the age of fifteen years to participate actively in hostilities.¹²
12. In the present case, the following individuals have applied to qualify as victims in order to be permitted to participate in the case of *The Prosecutor vs. Thomas LUBANGA DYILO*:

Applications a/0004/06- a/0009/06

Application a/0004/06

13. Ms. REDACTED, of Lendu origin, states in her application that in REDACTED, she and her family were attacked by the UPC. During that attack UPC militiamen murdered her husband and four of her children. She and her daughter were abducted by the UPC and forced to serve as sexual slaves in REDACTED for six months, which was under the command of commander REDACTED. The FARDC released them. The Applicant argues that, as a consequence of the attack, she suffered both physically and mentally.

¹² Arrest Warrant, 10 February 2006.

Application a/0005/06

14. In her application, Ms. REDACTED of Bira origin, asserts that in REDACTED, the Lendu militia attacked the village of REDACTED and took its young population. They stole the REDACTED. Ms. REDACTED and her family were attacked by this militia which operated under the command of commander REDACTED. Ms. REDACTED and her daughter-in-law were repeatedly raped by these troops. As a result of the attack, her husband, son and daughter-in-law were murdered. As a consequence of the attack, Ms. REDACTED claims that she has suffered both physically and mentally.

Application a/0006/06

15. Mr. REDACTED asserts in his application submitted on behalf of his father that, on REDACTED, his father, Mr. REDACTED, a Lendu, REDACTED. Upon arrival at the meeting, they were kidnapped and transported to REDACTED, where they were murdered.

Application a/0007/06

16. Mr. REDACTED, acting on behalf of his son, Mr. REDACTED, declared in his application that on REDACTED his son of Lendu origin was killed during a massacre perpetrated by REDACTED soldiers in REDACTED. He, together with the other victims of the massacre, was buried in a mass grave. Mr. REDACTED was the second son that Mr. REDACTED lost during the armed conflict. As a consequence of the death of his son, Mr. REDACTED suffers from mental trauma.

Application a/0008/06

17. Mr. REDACTED, acting on behalf of another son, Mr. REDACTED, declared in his application that his son also of Lendu origin was killed by UPC elements in REDACTED. The killing occurred while Mr. REDACTED was burying the bodies of two Lendu villagers. After being murdered, his body was thrown into a mass grave in REDACTED. As a consequence of the loss, Mr. REDACTED suffers from mental trauma. His son was married and had children.

Application a/009/06

18. Mr. REDACTED filed an application on behalf of his son, Mr. REDACTED, of Bira origin who worked as a REDACTED. On REDACTED, a UPC militiaman asked Mr. REDACTED to drive him REDACTED. Once in REDACTED, the militiaman took his motorbike and killed him.

19. The Prosecution submits that in relation to the above-mentioned alleged crimes the applicants do not meet the criteria for participation as "victims" in the case of *The Prosecutor v. Thomas LUBANGA DYILO*. The information provided in the applications relating to the alleged crimes does not allow the establishment of a causal link between the crimes and the charges against *Thomas LUBANGA DYILO* as identified in the Arrest Warrant issued by the Chamber. Indeed, the facts depicted in Application a/0004/06 relate to crimes committed after the time frame specified in the Arrest Warrant¹³, Application a/0005/06 relates to crimes

¹³ Arrest Warrant, 10 February 2006, p. 4.

committed by "Lendu militia" and not the UPC, Applications a/0006/06-
a/0009/06 describe crimes that are not covered by the Arrest Warrant.¹⁴

Applications a/0016/06- a/0046/06

Application a/0016/06

20. Ms. REDACTED, of Alur origin, asserts in her application that, REDACTED, in REDACTED, she was physically attacked and raped together with other REDACTED women by UPC militia men. As a consequence of the sexual assault, Ms. REDACTED has contracted a venereal disease that obliges her to undergo periodical medical treatment.

Application a/0017/06

21. In this application, Mr. REDACTED describes how his nephew, Mr. REDACTED, REDACTED of REDACTED years of age, was forcefully arrested by UPC militiamen together with other young men in REDACTED, while he was at the market in REDACTED. The militiamen wanted to enroll them in the UPC. As Mr. REDACTED resisted, the militiamen asked him for money. When he replied that he had nothing and that his family was extremely poor, the militia men executed Mr. REDACTED.

Application a/0018/06

22. Ms. REDACTED, of Alur origin, describes in her application how she and REDACTED were brutally raped by REDACTED UPC militia men. Her sons

¹⁴ *Ibid.*

9/19

were beaten. Then, the UPC militia men burned down her house. She is presently living in the house of someone who REDACTED.

Application a/0019/06

23. Mr. REDACTED, of REDACTED origin, alleges in his application that, on REDACTED, while he was working on his farm in REDACTED, he was attacked by UPC militia men, who shot him. He was grazed by bullets and suffered wounds in REDACTED, as a result of which he has REDACTED significant scars. The UPC militia men took all of his REDACTED cows.

Application a/0020/06

24. Ms. REDACTED, an Alur, describes in her application how on REDACTED, she and her family were in their family home in REDACTED when the UPC militiamen attacked them. The militiamen ordered them to open the door and once it was opened, they ordered them to lie on the ground. The militia men hit her husband's head and hand with an axe. As a result of the injuries sustained, her husband, Mr. REDACTED, died. Then, the militiamen proceeded to plunder the house.

Application a/0021/06

25. In his application, Mr. REDACTED, an Alur, details how on REDACTED his house was set on fire by UPC militiamen while he and other villagers were fleeing the village of REDACTED. In his application Mr. REDACTED mentions that he suffers from trauma. Moreover, he claims the loss of all his household items.

10/19

Application a/0022/06

26. According to his application, Mr. REDACTED, an Alur living in REDACTED, REDACTED which was plundered repeatedly from REDACTED by UPC, FNI and APC troops. The applicant's loss amounts to REDACTED.

Application a/0023/06

27. Ms. REDACTED asserts that, on REDACTED, she and her husband, Mr. REDACTED, were attacked in their home by UPC soldiers who accused them of colonizing REDACTED on the grounds that they belonged to the Nande tribe. As a consequence of the gunshot wounds suffered, her husband died.

Application a/0024/06

28. Ms. REDACTED declared in her application that, on REDACTED, her son, Mr. REDACTED, an Alur, REDACTED years of age, was arrested in his home by UPC militia men who, after confiscating his REDACTED, led him to a militia camp in REDACTED where he was executed.

Application a/0025/06

29. Mr. REDACTED, an Alur, describes in his application how on REDACTED his house was set on fire by UPC militia men while he and other villagers were fleeing the village of REDACTED. He claims the loss of all his furniture and household items.

11/19

Application a/0026/06

30. In her application, Ms. REDACTED, an Alur, alleges that she was raped by REDACTED UPC militiamen in her home in REDACTED; the rape was witnessed by her husband who was unable to intervene. Since the incident, the applicant has been unable to conceive with her husband and fears that she has become sterile. Furthermore, before departing, the soldiers stole household items, money in the amount of REDACTED and REDACTED goats.

Application a/0027/06

31. Ms. REDACTED application describes how UPC soldiers, following the killing of a woman by unknown individuals, launched a punitive attack burning down homes belonging to, and shooting at, members of the Alur ethnic group, suspecting them of supporting the UPCs' enemy. The applicant fled and remained in the bush with her children for a period of three months. She is presently living in REDACTED and states that her house was burned down and that she lost all her possessions. She further alleges that she suffered a knee injury as a result of the attack.

Application a/0028/06

32. Ms. REDACTED, an Alur, asserts in her application that, in or about REDACTED, she and her daughter were raped by UPC soldiers. The applicant was REDACTED. The two women suffer from physical and psychological trauma.

12/19

Application a/0029/06

33. Mr. REDACTED, uncle and tutor of the victim, Mr. REDACTED, his nephew, asserts in his application that in REDACTED, UPC commanders REDACTED were in the market in REDACTED chasing the Lendu. Mr. REDACTED, who was REDACTED years of age at the time of the event and under his care, was killed by UPC soldiers who mistakenly assumed that he was a Lendu despite his Alur origins. His REDACTED were mutilated by the UPC soldiers.

Application a/0030/06

34. Mr. REDACTED declared in his application that, on REDACTED, his niece, REDACTED, an Alur, was killed while on her way to REDACTED by FNI militia men who mistook her for a Hema from "Thomas Lubanga's tribe". She was REDACTED years of age.

Application a/0031/06

35. Ms. REDACTED, an Alur, declared in her application that on REDACTED in REDACTED, REDACTED UPC militiamen entered her property. REDACTED of the soldiers sexually assaulted her. During the rape, the assailants REDACTED of the applicant's husband and severely beat him. The soldiers also stole some valuable items from the house. Ms. REDACTED claims that REDACTED months after the rape she had an abortion. Ms. REDACTED suffers from psychological trauma.

13/19

Application a/0032/06

36. Ms. REDACTED, of Alur origin, alleges in her application that, on REDACTED, as she was walking on the road leading to REDACTED with another woman, when a UPC soldier took her and her companion and raped them. She was REDACTED at the time and had to undergo medical treatment due to severe pain caused by the sexual assault. She also claims to have been hit by a rifle-butt during the incident. She suffers from psychological trauma.

Application a/0033/06

37. Mr. REDACTED, acting on behalf of his cousin, Mr. REDACTED, an Alur, declares in his application that a massacre was perpetrated by FNI soldiers on REDACTED, in REDACTED. Near the REDACTED, the soldiers confiscated REDACTED after ordering the eighty persons REDACTED. The militiamen tied the villagers up and proceeded to slit their throats. Realizing the fate awaiting them, the remaining villagers began to flee. The soldiers opened fire. The applicant also asserts that some of the women were first raped before being executed. Because of his cousin's death in the massacre, the applicant suffers from psychological trauma.

Application a/0034/06

38. Mr. REDACTED describes in his application how, on REDACTED, his nephew, Mr. REDACTED, an Alur, REDACTED years of age was killed by UPC troops as he attempted to flee REDACTED. The troops pursued him, caught him and executed him after bringing him back to REDACTED. Since then, the applicant explains, his family which includes three children is emotionally distraught.

14/19

Application a/0035/06

39. Mr. REDACTED declares in his application that, during an evening in REDACTED, UPC militiamen attacked his father, Mr. REDACTED, an Alur, REDACTED years of age, while the victim was in his home in REDACTED. The UPC tortured him and took all of his possessions. As a result of the torture suffered in the hands of the UPC troops, he became paralyzed.

Application a/0036/06

40. Ms. REDACTED asserts in her application that on REDACTED, on the road near REDACTED, she was stopped by UPC soldiers as she was returning from a holiday spent at her uncle's residence. The UPC soldiers raped her. She suffers from psychological trauma and feels anguished.

Application a/0037/06

41. Mr. REDACTED declares in his application that his son, Mr. REDACTED, was killed some time in REDACTED, following an attempted robbery. According to the application a UPC commander named REDACTED and his troops attempted to ransack and rob a REDACTED. The inhabitants of REDACTED, once alerted to the attempted robbery, pursued the robbers and caught one of them whom they shot. Another of the UPC soldiers, who was hiding in the bush, shot his son who was leaving his house to go to the market. The applicant and his wife are psychologically traumatized.

Application a/0038/06

42. Mr. REDACTED, an Alur REDACTED living in REDACTED describes in his application how UPC soldiers burst into his home with the intent, according to the applicant, to eliminate him. The applicant fled the scene. The militiamen plundered his goods.

Application a/0039/06

43. Ms. REDACTED, an Alur, claims in her application on behalf of her husband, Mr. REDACTED, that, on REDACTED, UPC soldiers questioned her and her husband on their ethnicity and inquired REDACTED. When her husband responded that they were not REDACTED, the UPC militiamen opened fire. As a result of the incident, her husband died.

Application a/0040/06

44. Ms. REDACTED, an Alur residing in REDACTED recounts in her application how on REDACTED, she and her family were attacked by UPC militia men. After inquiring with the applicant and her family whether REDACTED, the militia men opened fire on them. Ms. REDACTED husband died as a result of the gunfire. She suffered grievous bodily harm as a result of a gunshot wound in her REDACTED, which resulted in REDACTED. The applicant also mentions that her infant was grazed in the head by a bullet. The incident occurred in REDACTED.

Application a/0041/06

45. Mr. REDACTED filed an application on behalf of his younger brother, Mr. REDACTED, of Alur origin, REDACTED years of age, who was abducted REDACTED by UPC elements while he was in his workshop. They took him to REDACTED camp on suspicion that he was a Lendu, where he was allegedly killed. Mr. REDACTED tools, REDACTED and household items were also allegedly taken by the UPC soldiers.

Application a/0042/06

46. In her application, Ms. REDACTED describes how on REDACTED UPC soldiers stormed in her family home with the intent to rob it. One of the militiamen asked the applicant's brother Mr. REDACTED for money. As he responded that he did not have any money, another soldier intervened and asked the first soldier why he was discussing anything with Lendu rebels and shot REDACTED bullets in the foot of Mr. REDACTED, who later died due to the injury sustained. In the application, there is an unclear indication that Ms. REDACTED mother may have been summarily executed by the militiamen.

Application a/0043/06

47. In his application Mr. REDACTED declares that on REDACTED, Thomas LUBANGA's UPC troops attacked REDACTED. Mr. REDACTED, an Alur was at home with his family when the militia men ordered them to open the door. Once the family opened the door, the soldiers ordered them to lie on the ground. One of the militia men hit the head of the applicant's father – Mr.

17/19

REDACTED- with an axe, as well as two other men. Finally, the militiamen executed Mr. REDACTED and proceeded to plunder the house.

Application a/0044/06

48. In her application Ms. REDACTED recounts the events which occurred on REDACTED in REDACTED and led to the death of her husband, Mr. REDACTED. On that day, she was at home with her husband and her two brothers-in-law when an FNI militiaman arrived on her property driven by the son of the town's mayor. The soldier ordered them to exit the house and demanded that REDACTED. He also demanded money from the applicant. A neighbor, a REDACTEDD, who apparently REDACTED the soldier attempted to intervene. The FNI militiaman began to shoot in the REDACTED direction who then fled the scene. Ms. REDACTED gave a sum of money to the assailant in the amount of REDACTED. She took her husband to the hospital where he perished later in the evening. In her application she mentions the trauma that she and her four year old daughter suffered as a result of the attack and the killing of her husband. She also claims damages for the loss of money incurred.

Application a/0045/06

49. Mr. REDACTED, an Alur, describes, in his application, how on REDACTED a REDACTED accompanied REDACTED UPC militiamen to the REDACTED. There, the UPC soldiers were surprised by Lendu fighters who were returning from combat in REDACTED. The UPC soldiers believed that REDACTED, therefore, some time after REDACTED, when the UPC troops arrived in REDACTED, they targeted the REDACTED, ransacked it and began a "manhunt" against him and his sister. The UPC soldiers arrested him on a

number of occasions, each time he was able to escape. The applicant mentions that, following these events, he suffers from a psychological disorder; he also provides a list of household items, tools, REDACTED that were stolen. He further alleges that a sum of REDACTED and REDACTED goats were stolen.

Application a/0046/06

50. Mr. REDACTED, an Alur, claims in his application that, on REDACTED, because of the FNI's advance the UPC soldiers began to retreat and depart from REDACTED. As they were leaving the area, they set fire to his house because they suspected him of REDACTED. The applicant claims that the UPC militiamen wanted to kill him. He asserts in his application that, apart from the psychological trauma suffered, he also lost all his household furniture, items and clothing and a REDACTED.

51. The Prosecution submits that, in relation to the above-mentioned alleged crimes the applicants do not meet the criteria for participation as "victims" in the case of *The Prosecutor v. Thomas LUBANGA DYILO*. The information provided in the Applications relating to the alleged crimes does not allow the establishment of a causal link between the crimes and the charges against Thomas LUBANGA DYILO as identified in the Arrest Warrant issued by the Chamber. Indeed, Application a/0016/06 and Applications a/0018/06-a/0046/06 describe crimes that are not covered by the Arrest Warrant. Furthermore, Application a/0030/06 relates to crimes that occurred after the time frame specified in the Arrest Warrant, while Applications a/0018/06, a/0026/06, a/0027/06 and a/0038/06 do not refer to any time period during which the crimes described allegedly occurred. Applications a/0030/06, a/0033/06 and a/0044/06 describe crimes

19/19

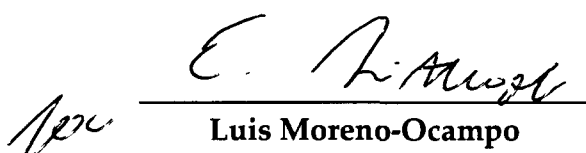
committed by FNI militiamen and not by the UPC. Finally, if Application a/0017/06 depicts the attempted forced enrollment of the victim into the UPC, he was REDACTED years of age at the time of the events and was therefore not a child soldier as defined by Article 8(2) of the Statute.

Classification of the present filing

52. Because of security and safety concerns of the Applicants, the Prosecution has filed the present submission as a "Public Redacted Document".

Request

53. For the foregoing reasons, the Prosecution requests that the Pre-Trial Chamber reject the Applications to participate as victims in the case of *The Prosecutor vs. Thomas LUBANGA DYILO* on the basis that the harm suffered by the Applicants has no causal link to the charges in the case at hand.



Luis Moreno-Ocampo
Prosecutor

Dated this 22nd day of August 2006
At The Hague, The Netherlands