Cour Pénale Internationale

International Criminal Court

Original : **French**

No.: **ICC-01/04-01/06**
Date: **22 September 2006**

PRE-TRIAL CHAMBER I

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

Registrar: **Mr Bruno Cathala**

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

Public Document

Decision authorising the filing of observations on the applications for participation in the proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 and a/0071/06

The Office of the Prosecutor
Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Counsel for the Defence
Mr Jean Flamme
Ms Véronique Pandanzyla

Legal Representatives for the applicants
Mr Michel Shebele
Mr Emmanuel Daoud
Mr Patrick Baudoin

Ad hoc Defence Counsel
Mr Joseph Tshimanga

PRE-TRIAL CHAMBER I ("the Chamber") of the International Criminal Court (the "Court");

NOTING applications for participation in the proceedings a/0004/06[1], a/0005/06[2], a/0006/06[3], a/0007/06[4], a/0008/06[5], a/0009/06[6], a/0016/06[7], a/0017/06[8], a/0018/06[9], a/0019/06[10], a/0020/06[11], a/0021/06[12], a/0022/06[13], a/0023/06[14], a/0024/06[15], a/0025/06[16], a/0026/06[17], a/0027/06[18], a/0028/06[19], a/0029/06[20], a/0030/06[21], a/0031/06[22], a/0032/06[23], a/0033/06[24], a/0034/06[25], a/0035/06[26], a/0036/06[27], a/0037/06[28], a/0038/06[29], a/0039/06[30], a/0040/06[31], a/0041/06[32], a/0042/06[33], a/0043/06[34], a/0044/06[35], a/0045/06[36], a/0046/06[37], a/0047/06[38], a/0048/06[39], a/0049/06[40], a/0050/06[41], a/0051/06[42], a/0052/06[43], a/0053/06[44],

[1] ICC-01/04-01/06-144-Conf-Exp, ICC-01/04-152-Conf-Exp.
[2] ICC-01/04-01/06-269-Conf-Exp, ICC-01/04-153-Conf-Exp.
[3] ICC-01/04-01/06-154-Conf-Exp, ICC-01/04-157-Conf-Exp.
[4] ICC-01/04-01/06-155-Conf-Exp, ICC-01/04-158-Conf-Exp.
[5] ICC-01/04-01/06-156-Conf-Exp, ICC-01/04-159-Conf-Exp
[6] ICC-01/04-01/06-157-Conf-Exp, ICC-01/04-160-Conf-Exp.
[7] ICC-01/04-01/06-237-Conf-Exp, ICC-01/04-178-Conf-Exp.
[8] ICC-01/04-01/06-238-Conf-Exp, ICC-01/04-179-Conf-Exp.
[9] ICC-01/04-01/06-239-Conf-Exp, ICC-01/04-180-Conf-Exp.
[10] ICC-01/04-01/06-240-Conf-Exp, ICC-01/04-181-Conf-Exp.
[11] ICC-01/04-01/06-241-Conf-Exp, ICC-01/04-182-Conf-Exp.
[12] ICC-01/04-01/06-242-Conf-Exp, ICC-01/04-183-Conf-Exp.
[13] ICC-01/04-01/06-243-Conf-Exp, ICC-01/04-184-Conf-Exp.
[14] ICC-01/04-01/06-244-Conf-Exp, ICC-01/04-185-Conf-Exp.
[15] ICC-01/04-01/06-245-Conf-Exp, ICC-01/04-186-Conf-Exp.
[16] ICC-01/04-01/06-246-Conf-Exp, ICC-01/04-187-Conf-Exp.
[17] ICC-0 l/04-01/06-247-Conf-Exp, ICC-01/04-188-Conf-Exp.
[18] ICC-01/04-01/06-248-Conf-Exp, ICC-01/04-189-Conf-Exp.
[19] ICC-01/04-01/06-249-Conf-Exp, ICC-01/04-190-Conf-Exp.
[20] ICC-01/04-01/06-250-Conf-Exp, ICC-01/04-191-Conf-Exp.
[21] ICC-01/04-01/06-251-Conf-Exp, ICC-01/04-192-Conf-Exp.
[22] ICC-01/04-01/06-252-Conf-Exp, ICC-01/04-193-Conf-Exp.
[23] ICC-01/04-01/06-253-Conf-Exp, ICC-01/04-194-Conf-Exp.
[24] ICC-01/04-01/06-254-Conf-Exp, ICC-01/04-195-Conf-Exp
[25] ICC-01/04-01/06-255-Conf-Exp, ICC-01/04-196-Conf-Exp.
[26] ICC-01/04-01/06-256-Conf-Exp, ICC-01/04-197-Conf-Exp.
[27] ICC-01/04-01/06-257-Conf-Exp, ICC-01/04-198-Conf-Exp.
[28] ICC-01/04-01/06-258-Conf-Exp, ICC-01/04-199-Conf-Exp.
[29] ICC-01/04-01/06-259-Conf-Exp, ICC-01/04-200-Conf-Exp.
[30] ICC-01/04-01/06-260-Conf-Exp, ICC-01704-201-Conf-Exp.
[31] ICC-0 l/04-01/06-261-Conf-Exp, ICC-01/04-202-Conf-Exp.
[32] ICC-01/04-01/06-262-Conf-Exp, ICC-01/04-203-Conf-Exp.
[33] ICC-01/04-01/06-263-Conf-Exp, ICC-01/04-204-Conf-Exp.
[34] ICC-01/04-01/06-264-Conf-Exp, ICC-01/04-205-Conf-Exp.
[35] ICC-01/04-01/06-265-Conf-Exp, ICC-01/04-206-Conf-Exp.
[36] ICC-01/04-01/06-266-Conf-Exp, ICC-01/04-207-Conf-Exp.
[37] ICC-01/04-01/06-267-Conf-Exp, ICC-01/04-208-Conf-Exp.
[38] ICC-01/04-01/06-216-Conf-Exp, ICC-01/04-171-Conf-Exp.
[39] ICC-01/04-01/06-217-Conf-Exp, ICC-01/04-172-Conf-Exp.
[40] ICC-01/04-01/06-218-Conf-Exp, ICC-01/04-173-Conf-Exp.
[41] ICC-01/04-01/06-219-Conf-Exp, ICC-01/04-174-Conf-Exp.
[42] ICC-01/04-01/06-220-Conf-Exp, ICC-01/04-175-Conf-Exp.

a/0054/06[45], a/0055/06[46], a/0056/06[47], a/0057/06[48], a/0058/06[49], a/0059/06[50], a/0060/06[51], a/0061/06[52], a/0062/06[53], a/0063/06[54] and a/0071/06[55] ("the applications for participation") filed as confidential and ex-parte on 7 June 2006, 31 July 2006, 3 and 4 August 2006 and 6 September 2006 in the case files of the case *The Prosecutor v. Thomas Lubanga Dyilo*, and of the investigation into the situation in the Democratic Republic of the Congo ("DRC") in which the applicants request recognition of the right to participate as victims in the proceedings in the case *The Prosecutor v. Thomas Lubanga Dyilo* and in the investigation into the situation in the DRC,

NOTING the Prosecutor's observations regarding applications for participation a/0004/06 to a/0009/06 and a/0016/06 to a/0046/06 registered in the case file of the case of *The Prosecutor v. Thomas Lubanga Dyilo* on 22 August 2006[56] as well as his observations on applications for participation a/0047/06 to a/0052/06 registered in the case file on 25 August 2006[57],

NOTING "*les conclusions de la Défense quant aux demandes de participation à la procédure a/0004/06 à a/0052/06*"[58] registered in the case file in the case *The Prosecutor v. Thomas Lubanga Dyilo* on 5 September 2006,

PURSUANT TO articles 57 (3) (c) and 68 (1) of the Statute, rules 86 and 89 of the Rules of Procedure and Evidence ("the Rules") and regulation 86 of the Regulations of the Court,

CONSIDERING that under rule 89 (1) of the Rules, the Prosecutor and the Defence have the right to respond to any application for participation within a time limit set by the Pre-Trial Chamber and that in order to allow them to exercise this right effectively, the Registrar must provide them with a copy of any such request,

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[43] ICC-01/04-01/06-221-Conf-Exp, ICC-01/04-176-Conf-Exp.
[44] ICC-01/04-01/06-412-Conf-Exp, ICC-01/04-215-Conf-Exp.
[45] ICC-01/04-01/06-413-Conf-Exp, ICC-01/04-216-Conf-Exp.
[46] ICC-01/04-01/06-414-Conf-Exp, ICC-01/04-217-Conf-Exp.
[47] ICC-01/04-01/06-415-Conf-Exp, ICC-01/04-218-Conf-Exp.
[48] ICC-01/04-01/06-416-Conf-Exp, ICC-01/04-219-Conf-Exp.
[49] ICC-01/04-01/06-417-Conf-Exp, ICC-01/04-220-Conf-Exp.
[50] ICC-01/04-01/06-418-Conf-Exp, ICC-01/04-221-Conf-Exp.
[51] ICC-01/04-01/06-419-Conf-Exp, ICC-01/04-222-Conf-Exp.
[52] ICC-01/04-01/06-420-Conf-Exp, ICC-01/04-223-Conf-Exp.
[53] ICC-01/04-01/06-421-Conf-Exp, ICC-01/04-224-Conf-Exp.
[54] ICC-01/04-01/06-422-Conf-Exp, ICC-01/04-225-Conf-Exp.
[55] ICC-01/04-01/06-423-Conf-Exp, ICC-01/04-227-Conf-Exp.
[56] ICC-01/04-01/06-342-Conf-Exp.
[57] ICC-01/04-01/06-354-Conf-Exp.
[58] ICC-01/04-01/06-386.

CONSIDERING that the manner in which the copy of any application for participation is transmitted to the Prosecutor and the Defence is regulated by the provisions of the Statute and in particular of Article 68 (1), which states that the Pre-Trial Chamber and the other organs of the Court must take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims without being prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial,

CONSIDERING also that under article 57 (3) (c) of the Statute, one of the functions of the Pre-Trial Chamber is, where necessary, to provide for the protection and privacy of victims and witnesses and that rule 86 of the rules sets up as a general principle the Pre-Trial Chamber's responsibility, in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, is to take into account the needs of all victims and witnesses in accordance with article 68 of the Statute,

CONSIDERING therefore that when the safety situation of an applicant so requires the Pre-Trial Chamber may order the Registrar to transmit to the Prosecutor and the Defence a redacted version of the applicant's application for participation once any information which might lead to that person being identified has been deleted,

CONSIDERING, however, that the redaction measures must be limited to what is strictly necessary in the light of the safety situation of an applicant, and that they must allow the Prosecutor and the Defence truly to exercise their right to respond to the application for participation,

CONSIDERING that the Pre-Trial Chamber is convinced that the current situation of the applicants requires the Defence Counsel to receive a redacted copy of the applications in which any information which might lead to their being identified has been deleted,

CONSIDERING that so that they are not exposed to other dangers the applicants must not be contacted directly by any of the organs of the Court, but only via their Legal Representatives or via the Victims Participation and Reparations Section if they have no legal representation and, if need be, through the Victims and Witnesses Unit.

FOR THESE REASONS

ORDERS the Registry to provide as soon as possible:

i. To the Prosecutor, a non-redacted version of applications for participation a/0053/06 to a/0063/06 and a/0071/06 registered in the case files of the case *The Prosecutor v. Thomas Lubanga Dyilo* and in the investigation of the situation in the DRC,

ii. To the Defence Counsel, a redacted version of applications for participation a/0053/06 to a/0063/06 and a/0071/06 registered in the case file of the case *The Prosecutor v. Thomas Lubanga Dyilo* in which any information which might lead to the applicants being identified has been deleted,

iii. To the ad hoc Defence Counsel, a redacted version of applications for participation a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 and a/0071/06 registered in the case file of the investigation into the situation in the DRC in which any information which might lead to the applicants being identified has been deleted,

ORDERS all the organs of the Court not to contact the applicants directly and to do so if necessary, only via their Legal Representatives, Mr Michel Shebele, Legal Representative for applicants a/0053/06, a/0054/06, a/0055/06, a/0062/06 and a/0063/06, Mr Emmanuel Daoud, Legal Representative for applicants a/0057/06, a/0058/06, a/0059/06, a/0060/06 and a/0061/06 as well as Mr Emmanuel Daoud and Mr Patrick Baudoin, Legal Representatives for applicant a/0071/06, via the Victims Participation and Reparations Section for those applicants who have no legal representation and if need be via the Victims and Witnesses Unit,

DECIDES to grant:

i. The Office of the Prosecutor and the Defence Counsel the opportunity to present, by 9 October 2006 at the latest, observations regarding applications for participation a/0053/06 to a/0063/06 and a/0071/06 and on the possible granting to those applicants the status of victims authorised to participate in the proceedings before the Chamber in the case *The Prosecutor v. Thomas Lubanga Dyilo*,

ii. To the Office of the Prosecutor and the ad hoc Defence Counsel, the opportunity to present by 1 December 2006 at the latest, observations regarding applications for participation a/0004/06 to a/0009/06, a/0016/06 to a/0063/06 and a/0071/06 and on the possible granting to those applicants the status of victims authorised to participate in the investigations phase in the situation in the DRC.

Done in English and French, the French version being authoritative.

Judge Claude Jorda
Presiding Judge

Judge Akua Kuenyehia **Judge Sylvia Steiner**

Dated this Friday 22 September 2006

At The Hague

The Netherlands