

**Cour
Pénale
Internationale**
**International
Criminal
Court**



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

Date: 13 May 2008

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito, Judge
Judge René Blattmann, Judge

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

Confidential

**Prosecution's information to the Trial Chamber regarding the prior
notification of un-redacted applications for victim participation**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the*

Court to:

The Office of the Prosecutor

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I. Background

1. On 7 May 2008, the Trial Chamber rendered its "Decision inviting the parties' observations on applications for participation of a/0001/06 to a/0004/06, a/0047/06 to a/0052/06, a/0077/06, a/0078/06, a/0105/06, a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06, a/0001/07 to a/0162/07, a/0168/07 to a/0185/07, a/0187/07 to a/0191/07, a/0251/07 to a/0253/07, a/0255/07 to a/0257/07, a/0270/07 to a/0285/07, and a/0007/08", ("the Decision") whereby it ordered the Registry to serve the parties with confidential redacted versions of the applications for victim participation.¹
2. In the Decision, the Trial Chamber decided non-disclosure to be the most efficient protective measure for applicants, given the potential for high levels of insecurity in relevant parts of the DRC and given the fact that the Trial Chamber would need the assistance of VWU to assess the individual level of risk. Basing its reasoning on "fundamental considerations of fairness (namely, the need to preserve the equality of arms)", the Trial Chamber further decided that both parties would receive the applications in redacted form.²
3. The Prosecution, having been notified of the Decision, informed the Trial Chamber, the Defence and OPCV by e-mail on 9 May 2008 of the fact that it had received 39³ out of the 105 applications in un-redacted form by way of prior notifications.⁴

¹ ICC-01/04-01/06-1308, para 30 and 33 (ii).

² ICC-01/04-01/06-1308, paras 22 to 30.

³ This concerns applications a/0001/06 to a/0004/06, a/0047/06 to a/0052/06, a/0077/06, a/0078/06, a/0105/06, a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06.

⁴ E-mail sent by Senior Trial Lawyer Ekkehard Withopf to the Legal Advisor of the Trial Chamber, copied to the Defence and the OPCV on Friday, 9 May 2008 at 7:11 pm.

4. On 12 May 2008, the Trial Chamber requested the Prosecution to set out the matters raised in the email within the context of a formal filing.
5. The Prosecution hereby complies with the request of the Trial Chamber.⁵

II. The Prosecution's Information

6. The Prosecution notifies the Trial Chamber that it has received 39 of the 105 applications in un-redacted form following decisions of the Pre-Trial Chamber as set out below:
 - Applications a/0001/06 to a/0003/06 were notified following the "Decision establishing a deadline for the Prosecution and the Defence to submit Observations on the Applications of Applicants a0001/06 to a/0003/06", 18 May 2006, ICC-01/04-01/06-107;
 - Applications a/0004/06, a/0047/06 to a/0052/06 were notified following the "Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06 et a/0071/06, 22 September 2006, ICC-01/04-01/06-463;
 - Applications a/0077/06, a/0078/06 and a/105/06 were notified following the "Décision autorisant le dépôt d'observations sur

⁵ The Prosecution wishes to clarify that it does not consider the concept of "equality of arms" to apply on matters pertaining to the redaction of material for the protection of witnesses. In this respect, the Prosecution refers the Trial Chamber to Article 68(1) of the Rome Statute which assigns to the Office of the Prosecutor responsibilities for witness protection which are not correspondingly assigned to the Defence. The Prosecution's standpoint in this matter has been clarified on a number of occasions, *inter alia*, in a Prosecution filing entitled "Prosecution's Observations on the "Demande du représentant legal des victimes [Expurgé]", dated 27 July 2007, ICC-01/04-01/06-367-Conf and fn. 16 thereto.

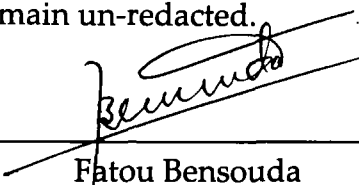
les demandes de participation à la procédure a/0072/06 à a/0080/06 et a/0105/06, 29 September 2006, ICC-01/04-01/06-494;

- Applications a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06 were notified following the "Décision autorisant le dépôt d'observations sur les demandes de participation a la procédure", 23 May 2007, ICC-01/04-329.

7. Furthermore, the Prosecution draws the Trial Chamber's attention to the scope of the redactions authorized by the Trial Chamber to the applications.⁶ These redactions concern the applicants' identifying information and, currently, also include their month of birth, thereby leaving only the year of birth to determine whether as a child they were under the age of 15 years at the time of enlistment, recruitment or active use in hostilities. As a result, while the Prosecution appreciates that such redactions may be deemed necessary as protective measures, it makes it extremely difficult to determine whether or not applicants meet the age requirement to qualify for victim participation.

III. Relief Requested

8. In light of the above, the Prosecution requests that the applicants' month of birth remain un-redacted.



Fatou Bensouda
Deputy Prosecutor (Prosecutions)
On behalf of Luis Moreno-Ocampo, Prosecutor

Dated this 12th day of May 2008
At The Hague, The Netherlands

⁶ ICC-01/04-01/06-1308, para 28(iv)