

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 13 June 2008

TRIAL CHAMBER I

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

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

Public Document

**OPCV's request to submit observations on
the Defense's Request dated 11 June 2008**

Source: Office of Public Counsel for Victims

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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Mr Ekkehard Withopf

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu

Legal Representatives of Applicants

Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Background

1. On 17 August 2007, Pre-Trial Chamber I issued the “Decision on the Requests of the Legal Representative of Applicants on application process for victims’ participation and legal representation.”¹ The said decision directed the Registrar to automatically appoint the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as legal representative for unrepresented applicants in the situation in the Democratic Republic of the Congo.²

2. Pursuant to this decision, on 13 September 2007, the Registrar appointed the Principal Counsel of the OPCV as legal representative for the applicants/witnesses DRC-OTP-WWWW-0007, DRC-OTP-WWWW-0008, DRC-OTP-WWWW-0010 and DRC-OTP-WWWW-0011.³ The letter was subsequently filed in the situation record on 27 September 2007.⁴

3. On 6 March 2008, Trial Chamber I issued its “Decision on the role of the Office of Public Counsel for Victims and its request to access documents” in which the Chamber decided that the Office “*shall continue to represent the victim applicants it currently represents.*”⁵

4. On 11 June 2008, the Defence filed its “Requête [...] aux fins de divulgation des demandes de participation ou de réparation présentées en qualité de victimes,

¹ See the “Decision on the Requests of the Legal Representative of Applicants on application process for victims’ participation and legal representation” (Pre-Trial Chamber I), No. ICC-01/04-374, 17 August 2007.

² *Ibid.*, p. 24.

³ See the letter of the Registrar, VPRS/A/044/fm-ig, 13 September 2007.

⁴ See the “Registration of appointment of the OPCV and amendment to appointment”, No. ICC-01/04-401-Conf, 27 September 2007.

⁵ See the “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents”, No. ICC-01/04-01/06-1211, 6 February 2008, par. 41, p. 17.

par les témoins du Procureur et toutes autres déclarations faites par lesdits témoins et non divulguées à ce jour” (the “Defence’s Request”).⁶

5. As legal representative for the applicants directly concerned by the Defence’s Request, the Office submits the following.

II. The personal interests of the victims are affected by the Defence’s Request

6. The Rome Statute grants victims of crimes falling under the jurisdiction of the Court explicit rights to submit observations and to have their views and concerns presented and considered “*where [their] personal interests are affected*” in accordance with article 68(3) of the Rome Statute.

7. The review of the numerous articles and rules which govern victims’ participation in the proceedings before the Court reveals that victims’ participation is not restricted in time.

8. In particular, article 68(3) of the Rome Statute does not make any difference between the different stages of the proceedings before the Court, nor does it differentiate amongst applicants and victims allowed to participate in the proceedings before the Court, covering therefore both categories of individuals, provided “*their personal interests [...] are affected*”.

9. This reasoning lead the Single Judge of Pre-Trial Chamber II, in its decision dated 10 August 2007, to establish “*that the ‘personal interests’ of victims may be affected*

⁶ See the “Requête de la Défense aux fins de divulgation des demandes de participation ou de réparation présentées en qualité de victimes, par les témoins du Procureur et toutes autres déclarations faites par lesdits témoins et non divulguées à ce jour”, No. ICC-01/04-01/06-1393, 11 June 2008.

*by the adoption of, or the failure to adopt, measures bearing upon their security and privacy appears hardly debatable. Accordingly, it would be consistent with article 68, paragraph 3, and therefore appropriate for victims (specifically those victims who may be affected by the measures in question) to be authorised to present their 'views and concerns' for these purposes even prior to and irrespective of their being granted victim status in a given case. In particular, participation within this context may take the form of authorisation to provide their point of view whenever the Pre-Trial Chamber considers the adoption of protective measures on its own and considers it appropriate that victims potentially affected by such measures should submit their views. Moreover, since failure to adopt protective measures may affect the victims' fundamental interest in the protection of their security, it is the view of the Single Judge that victims in the context of a situation should be allowed to submit requests aimed at obtaining the adoption of such measures by the Pre-Trial Chamber."*⁷

10. This position also finds support in the broad definition of victims contained in rule 85 of the Rules of Procedure and Evidence which does not specify any limitation for participation, but merely links the term "victim" to the commission of a crime falling under the jurisdiction of the Court.

11. The Defence is requesting the Trial Chamber to disclose to it the unredacted version of the applications for participation and/or for reparations of certain witnesses of the Prosecution who will be called to testify at trial, included DRC-OTP-WWWW-0007, DRC-OTP-WWWW-0008, DRC-OTP-WWWW-0010 and DRC-OTP-WWWW-0011.

12. The Defence's Request have an impact on the security and privacy of the persons concerned although some information related to them could already have

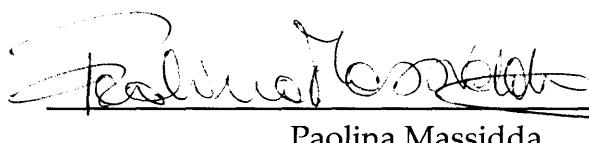
⁷ See the "Decision on victims' application for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/127/06" (Pre-Trial Chamber II), No. ICC-02/04-101, 10 August 2007, par. 98, pp. 37-38 (footnote omitted). We underline.

been disclosed to the Defence. Therefore, since the interests of these individuals are directly affected by the content of the Defence's Request, the Office submits that it is appropriate to allow their legal representative to submit observations on the said request.

13. Moreover, the interests of the individuals concerned been clearly at stake as far as the Defence's Request is concerned, the Office is of the view that allowing their legal representative to submit observations will not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

FOR THESE REASONS,

14. The Office respectfully requests Trial Chamber I to allow the Principal Counsel to submit written observations in relation to the Defence's Request as far as the interests of DRC-OTP-WWWW-0007, DRC-OTP-WWWW-0008, DRC-OTP-WWWW-0010 and DRC-OTP-WWWW-0011 are concerned within a deadline deemed appropriate by the Chamber.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', is written over a horizontal line.

Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Dated this 13th day of June 2008

At The Hague, The Netherlands