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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***

Public Document

**Prosecution's Observations on 12 Redacted Applications for Victim
Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08,
a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08,
a/0406/08 and a/0409/08**

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

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I. Background

1. On 25 November 2008, the Trial Chamber ordered the Registry to notify the parties with redacted versions of 15 new applications for victim participation as well as with redacted supplementary information received for earlier applications by 26 November 2008 and gave the parties until 5 December 2008 to file their responses.¹
2. On 27 November 2008, the Registry notified the parties with 15 new applications for participation in the proceedings of applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0403/08, a/0404/08, a/0405/08, a/0406/08, a/0407/08, a/0408/08 and a/0409/08.²
3. On 4 December 2008, the Trial Chamber issued an "Order for transmission of additional documents on applications for participation of a/0403/08, a/0407/08 and a/0408/08"³ by which it instructed the Registry to transmit additional information on applications a/0403/08, a/0407/08 and a/0408/08 to the parties in redacted form by 5 December 2008. The parties were then ordered to file responses to these three applications as supplemented by 10 December 2008.
4. The Prosecution hereby replies to the 12 new applications. The Prosecution's observations on the supplementary information of previous applications as well as on the 3 new supplemented applications will be submitted in separate filings.

II. Criteria for determining victim participation in the Case

5. In its 18 January 2008 Decision, the Trial Chamber held that "[i]n order to determine which applicant victims will have the right to participate in this trial, the Trial Chamber must consider the following issues: first whether the

¹ ICC-01/04-01/06-T-99-ENG ET WT 25-11-2008 1-44 NB T, at page 8 line 13 to page 9 line 12.

² ICC-01/04-01/06-1507-Conf with Conf.Anx. 1 to 15.

³ ICC-01/04-01/06-1533.

applicant is a victim of a crime under the jurisdiction of the Court, as provided for in Rule 85 of the Rules, and second whether the interests of the victim are affected in the proceedings in accordance with Article 68(3) of the Statute.” The Trial Chamber held that it will analyze whether the personal interests of a victim are affected at a later stage in the proceedings after it has made an “initial determination that the victim shall be allowed to participate in the proceedings” and only after the victim has filed a “discrete written application” setting out “the reasons why his or her interests are affected” in a particular stage of the proceedings.⁴

6. The Appeals Chamber recently clarified that “[f]or the purposes of participation in the trial proceedings, the harm alleged by a victim and the concept of personal interests under article 68(3) of the Statute must be linked with the charges confirmed against the accused”.⁵ Hence “only victims of the crimes charged may participate in the trial”.⁶ The Appeals Chamber further held that “[i]f the applicant is unable to demonstrate a link between the harm suffered and the particular crimes charged, then even if his or her personal interests are affected by an issue in the trial, it would not be appropriate under article 68(3) of the Statute read with rule 85 and 89(1) of the Rules for his or her views and concerns to be presented”.⁷
7. Pursuant to Rule 85(a) of the Rules of Procedure and Evidence, “victims” means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”. For an individual to be granted victim status under Rule 85(a) four criteria must be satisfied: (a) the victim must be a natural person; (b) he or she must have suffered harm; (c)

⁴ ICC-01/04-01/06-1119, para 96 and ICC-01/04-01/06-1368, para 29.

⁵ ICC-01/04-01/06-1432 OA9 OA10, paras. 2 and 65.

⁶ ICC-01/04-01/06-1432 OA9 OA10, para. 62.

⁷ ICC-01/04-01/06-1432 OA9 OA10, para. 64.

the crime from which the 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. The Appeals Chamber clarified that the harm suffered “can attach to both direct and indirect victims” so long as it is “personal to the individual”.⁹
9. As established under paragraph 6, the harm must be the result of a crime for which the accused is charged. The charges confirmed against the accused are those of enlisting and conscripting children under the age of 15 years into the UPC/FPLC and using them to participate actively in hostilities, within the meaning of Articles 8(2)(b)(xxvi) and (e)(vii) of the Rome Statute from early September 2002 to 13 August 2003.¹⁰

III. Completeness of the applications

10. In the 18 January 2008 Decision on victim participation, the Trial Chamber established that applicants must provide adequate proof of identity to prove their status as a natural person.¹¹ This requirement has been put in place by

⁸ See ICC-01/04-01/06-228-tEN, p. 7; ICC-01/04-101, para. 94; ICC-02/05-111, para. 2.

PTC II interpreted the criteria to be met under Rule 85 as: “(i) whether the identity of the applicant as a natural person appears duly established; (ii) whether the events described by each applicant constitute a crime within the jurisdiction of the Court; (iii) whether the applicant claims to have suffered harm; and (iv) most crucially, whether such harm appears to have arisen ‘as a result’ of the event constituting a crime within the jurisdiction of the Court.”, ICC-02/04-01/05-252, para. 12. PTCII further determined that harm would be held to have occurred “as a result of” the alleged incident when “the spatial and temporal circumstances surrounding the appearance of the harm and the occurrence of the incident seem to overlap, or at least to be compatible and not clearly inconsistent.”, ICC-02/04-01/05-252, para. 14.

⁹ See ICC-01/04-01/06-1432 OA9 OA10, at para 32, “Harm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims. This is evident for instance, when there is a close personal relationship between the victims such as the relationship between a child soldier and the parents of that child. The recruitment of a child soldier may result in personal suffering of both the child concerned and the parents of that child. It is in this sense that the Appeals Chamber understands the Trial Chamber’s statement that “people can be the direct or indirect victims of a crime within the jurisdiction of the Court”. The issue for determination is whether the harm suffered is personal to the individual. If it is, it can attach to both direct and indirect victims..”

¹⁰ ICC-01/04-01/06-803-tEN, pages 156 and 157.

¹¹ ICC-01/04-01/06-1119, para 87; Applications a/0270/07 to a/0285/07 included a copy of the demobilization certificate (“Attestation de sortie d’un enfant d’un groupe armé”), which according to the Trial Chamber’s Decision of 18 January 2008 is sufficient proof of identity, see ICC-01/04-01/06-1119, para 87 lit (iii); application a/0007/08 contains a copy of a student card, see ICC-01/04-01/06-1119, para 87 lit (ii).

all Chambers as a minimum safeguard to guaranteeing the accuracy of the applications.¹²

11. Furthermore, Pre-Trial Chamber I developed criteria to establish completeness of the applications¹³:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court;
- (v) proof of identity;¹⁴
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship;
- (viii) a signature or thumb-print of the applicant on the document, at the very least, on the last page of the application.

IV. Factual analysis of the applications

Applicants who prima facie meet the necessary requirements for victim participation

12. The information contained in the applications for victim participation of applicants a/0063/07, a/0122/08, a/0123/08, a/0125/08, a/0130/08 and a/0409/08 suggests that the applicants were under the age of 15 at the time of their

¹² PTC I, ICC-01/04-374; PTC II, ICC-02/04-01/05-252, paras 16 to 21 and TC I, ICC-01/04-01/06-1119, para 87.

¹³ ICC-01/04-374, para 12

¹⁴ ICC-01/04-374, para 15; In order to prove identity, kinship, guardianship or legal guardianship, Pre-Trial Chamber I listed the following documents as examples of valid proof of identity for applicants:

- (i) national identity card, passport, birth certificate, death certificate, marriage certificate, family registration booklet, will, driving licence, card from a humanitarian agency;
- (ii) voting card, student identity card, pupil identity card, letter from local authority, camp registration card, documents pertaining to medical treatment, employee identity card, baptism card;
- (iii) certificate/attestation of loss of documents (loss of official documents), school documents, church membership card, association and political party membership card, documents issued in rehabilitation centres for children associated with armed groups, certificates of nationality, pension booklet; or
- (iv) a statement signed by two witnesses attesting to the identity of the applicant or the relationship between the victim and the person acting on his or her behalf, providing that there is consistency between the statement and the application. The statement should be accompanied by proof of identity of the two witnesses.

enlistment, conscription or use by the armed forces of the UPC/FPLC during the time-frame relevant to the charges against Thomas LUBANGA set out above.

13. The applications contain sufficient proof of identity in the form of copies of demobilization certificates or student cards. All applicants other than applicant a/0063/07 were over the age of eighteen at the time of submission of their application. The application of applicant a/0063/07 who was a minor at the time of application is, however, accompanied by a letter establishing legal guardianship.
14. Applications a/0124/08 and a/0126/08 were both filed by a next of kin on behalf of minors, who claim to have been enlisted, conscripted or used by the armed forces of the UPC during the time-frame relevant to the charges while they were under the age of 15. The applications appear to be complete, although an explicit proof of kinship is not contained in the application.
15. Application a/0406/08 is filed by a mother on behalf of her seven children, whom she claims to have been conscripted by the UPC in December of 2002. The applicant claims that her children had all been between the age of 13 and 14 at the time and that two died during the clashes. The others returned during the first half of 2003. As established above, a parent can be recognized as a victim of indirect harm due to the enlistment, conscription or use of a child.
16. Therefore the Prosecution submits that the applications are complete and that applicants a/0063/07, a/0122/08, a/0123/08, a/0125/08, a/0130/08 and a/0409/08 a/0406/08, 0/124/08, 0/126/08 meet the necessary requirements under Rule 85(a) for participation as victims.

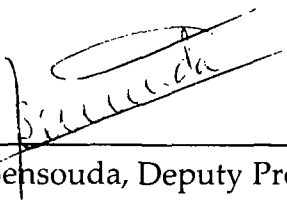
Applicants whose applications require further clarification

17. Applications a/0149/08, a/0404/08 and a/0405/08 are all submitted by minors on their own behalf. Although the applications contain proof of identity in the form of a school record and the children claim to have directly suffered from crimes falling within the charges, the Prosecution submits that these applications should not be considered by the Chamber until consent by a legal guardian or parent is provided.

V. Conclusion

18. For the reasons outlined above, the Prosecution requests the Chamber to grant participation status of victims in the case against Thomas LUBANGA to applicants a/0063/07, a/0122/08, a/0123/08, a/0125/08, a/0130/08, a/0124/08, a/0126/08, a/0406/08 and a/0409/08.

19. The Prosecution contends that applicants a/0149/08, a/0404/08, and a/0405/08 should be requested to provide further information for their applications to be considered complete in order to allow full evaluation of their applications before participation status as a victim is granted.



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

Dated this 5th day of December 2008
 At The Hague, The Netherlands