



Original: English

No.: ICC-01/04-01/06
Date: 5 December 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*

Public Redacted Document

Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08

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

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

Mr Joseph Keta Orwinyo

Mr Hervé Diakiese

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 18 November 2008, the Trial Chamber set a preliminary date for the parties to respond to supplementary information received for certain victim applications.¹
2. 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.²
3. On 26 and 27 November 2008, the Registry notified the parties of a first and second set of redacted supplementary information³ and clarified that the supplementary information relates to some of the 105 applications⁴ for which the Prosecution and the Defence had filed observations on 9 and 10 June 2008 respectively.⁵
4. The Prosecution hereby submits its observations on the supplementary information. A reply to the new applications for participation as victims will be filed separately.

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-98-ENG ET WT 18-11-2008 1-44 SZ T, at page 7 line 13 to page 7 line 2.

² 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.

³ ICC-01/04-01/06-1504-Conf-Anx1 to 8 ; ICC-01/04-01/06-1506-Conf with Conf.Anx1 to 22.

⁴ 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/0005/07, a/0054/07 to a/0062/07, a/0064/07, a/0065/07, a/0149/07, a/0155/07, a/0156/07, 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.

⁵ “Prosecution’s Observations on 105 Redacted Applications for Victim Participation to the Case”, 9 June 2008, ICC-01/04-01/06-1386; “Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 Mai 2008”, 10 June 2008, ICC-01/04-01/06-1388.

applicant is a victim of a crime under the jurisdiction of the Court, as provided for in Rule 85 of the Rules of Procedure and Evidence (“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.⁶

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”.⁷ Hence “only victims of the crimes charged may participate in the trial”.⁸ 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”.⁹

7. Pursuant 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”. 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) the crime from which the harm resulted must

⁶ ICC-01/04-01/06-1119, para 96 and ICC-01/04-01/06-1368, para 29.

⁷ ICC-01/04-01/06-1432 OA9 OA10, paras. 2 and 65.

⁸ ICC-01/04-01/06-1432 OA9 OA10, para. 62.

⁹ ICC-01/04-01/06-1432 OA9 OA10, para. 64.

fall within the jurisdiction of the Court; and (d) a causal link between the crime and the harm must exist.¹⁰

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”.¹¹
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 Thomas LUBANGA 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 2003.¹²

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.¹³ This requirement has been put in place by all Chambers as a minimum safeguard to guaranteeing the accuracy of the applications.¹⁴

¹⁰ See ICC-01/04-01/06-228-tEN, p. 7; ICC-01/04-101, para. 94; ICC-02/05-111, para. 2; ICC-02/04-01/05-252, para. 12; ICC-02/04-01/05-252, para. 14.

¹¹ 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.”

¹² ICC-01/04-01/06-803-tEN, pages 156 and 157.

¹³ 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).

¹⁴ 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.

11. Furthermore, a more extensive set of criteria for completeness has been established by Pre-Trial Chamber I:¹⁵

- (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;¹⁶
- (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. Supplementary Information

Applicants who prima facie meet the necessary requirements for victim participation

Victim applicant a/0002/06

12. The Prosecution makes reference to its prior observations concerning applicant a/0002/06¹⁷ (a father and his son, the latter having been enlisted, conscripted and used by the UPC while under the age of 15) and to the fact that this applicant has been granted victim participation status by the Pre-

¹⁵ ICC-01/04-374, para 12

¹⁶ 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.

¹⁷ ICC-01/04-01/06-1386 and ICC-01/04-01/06-140.

Trial Chamber for the confirmation hearing and the pre-trial phase of the case leading up to the trial until such a time at which the victim's application would be re-evaluated by the Trial Chamber.¹⁸

13. The supplementary information notified by VPRS indicates that application a/0002/06 was lacking proof of identification documents of the father and the son as well as proof of kinship.¹⁹ The additional information provided by the legal representative included the father's election card, but no identity document of the son. The legal representative indicated that he had given VPRS an old identity document of the father at the time of applying for legal aid. Although, VPRS in this regard included a note on the cover page of the supplementary information, it did not clarify this issue, but instead stated that the son's name did not appear on the father's (newly submitted) election card.

14. Additional information contained in the chart is redacted. The Prosecution has reason to believe that the redacted portion is a reference to the fact that victim a/0002/06, REDACTED. The Prosecution submits that REDACTED should be in a position to assist the legal representative in obtaining the necessary documentation.

Applicants a/0047/06, a/0048/06 and a/0051/06 to a/0052/06

15. The Prosecution makes reference to its prior observations, in which it was submitted that the applicants "meet all necessary criteria for victim participation".²⁰ It is worthy to note that Pre-Trial Chamber I had decided upon these applications prior to the confirmation hearing and found that although the applicants met all necessary criteria for victim participation,

¹⁸ ICC-01/04-01/06-205-Conf-Exp-tEN ; ICC-01/04-01/06-1368, at para 24, referring to ICC-01/04-01/06-1335 OA9 and O A 10, paragraph 38.

¹⁹ ICC-01/04-01/06-1504-Conf-Anx1

²⁰ ICC-01/04-01/06-1386, at para 24; Further observations on these applicants include ICC-01/04-01/06-390.

particularly since the applicants allegedly were enlisted, conscripted or used by the UPC/FPLC while under the age of 15, their participation at the confirmation hearing was nevertheless not appropriate, for reasons of security concerns.²¹

16. The supplementary information provided for applicants a/0047/06, a/0048/06 and a/0052/06 reveals that for these applications the consent of the legal guardian or next-of-kin was missing, since these applicants were minors at the time of application. OPCV in its role as legal representative of the applicants submitted supplementary information in form of signed consent forms by the legal guardians.²²

17. In addition, applicant a/0051/06, born in April 1989, was no longer a minor in October 2007 when the application was resubmitted together with a first set of supplementary information. Therefore no additional consent by a legal guardian is necessary for this applicant. Furthermore, the supplementary information clarifies that she was conscripted in 2003 and not in 2005 as indicated in her application form.

18. The Prosecution submits that a/0047/06, a/0048/06, a/0051/06 and a/0052/06 are complete and should be granted status to participate as victims.

Applicants a/0221/06, a/0225/06, a/0229/06, a/0230/06, a/0237/06, a/0238/06, a/0239/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07 and a/0187/07

19. These applications were discussed by the Prosecution in its previous observations,²³ where it was found that “the application forms and the further information received by the Registry under Regulation 84 (2) attached suggest that the following applicants were under the age of 15 at the time of

²¹ ICC-01/04-01/06-601.

²² ICC-01/04-01/06-1506-Conf-Anx9, 10 and 11.

²³ ICC-01/04-01/06-1386, at para 27.

their enlistment, conscription or use by the armed forces of the UPC during the time-frame relevant to the charges against Thomas LUBANGA set out above: a/0221/06, a/0225/06, ... a/0229/06, a/0230/06, ... a/0237/06, a/0238/06, a/0239/06, ... a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, ... a/0155/07, a/0156/07, ... a/0172/07 ... a/0187/07.” The Prosecution maintains this view and submits that the supplementary information analysed below did not provide any significant change in facts that would suggest that any of the applicants listed above did not in fact suffer harm as a result of the commission of a crime relevant to the charges.

20. Application a/0221/06 has been supplemented by a birth certificate as proof of identity.²⁴ As presented in its previous submission, the Prosecution reiterates that the application should be considered complete.²⁵
21. The additional information provided for applicants a/0225/06²⁶, a/0055/07²⁷, a/0057/07,²⁸ confirms that the applicants were minors at the time of application. Therefore additional documents have been provided, proving identity, legal guardianship and the consent of the legal guardian.
22. The additional information provided for applicant a/0058/07 confirms the applicant’s date of birth to be 1988 and not 1986. An additional piece of identification is attached in form of a student card, stating the year of birth to be 1988.²⁹
23. Applicants a/0172/07 and a/0187/07 provide additional facts in their complementary declarations³⁰ and state that since the applicants meanwhile attained majority, they no longer require consent of a legal guardian and wish to act in their own names.

²⁴ ICC-01/04-01/06-1504-Conf-Anx2

²⁵ ICC-01/04-01/06-1386, at para27.

²⁶ ICC-01/04-01/06-1504-Conf-Anx4.

²⁷ ICC-01/04-01/06-1504-Conf-Anx6.

²⁸ ICC-01/04-01/06-1504-Conf-Anx7.

²⁹ ICC-01/04-01/06-1506-Conf-Anx6.

³⁰ ICC-01/04-01/06-1506-Conf-Anx7 and 8.

24. Applicants a/0229/06³¹ and a/0238/06³² submitted a student card, proof of the appointment of a legal representative and further details refining the facts provided in the applications. In addition, the supplementary information for applicant a/0238/06, who is a minor, mentions that a document proving kinship should be included, which is not the case. However, the Prosecution notes, that such documents were contained in a previous notification.³³
25. The additional information provided for applicants a/0230/06³⁴, a/0237/06³⁵, a/0239/06³⁶, a/0056/07³⁷ and a/0060/07³⁸ contains forms confirming the appointment of their legal representative.
26. Applicants a/0155/07³⁹ and a/0156/07⁴⁰ both provided supplementary information including the appointment of a new legal representative. Both applicants had first been represented by OPCV who submitted supplementary information regarding the identity of the applicants (the signed statement of two witnesses affirming the identity, consent of the legal guardian as well as further clarifying facts).
27. The Prosecution submits that the supplementary information notified for applicants a/0221/06, a/0225/06, a/0229/06, a/0230/06, a/0237/06, a/0238/06, a/0239/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07 and a/0187/07 in all cases support the facts indicating that the applicants were under the age of 15 at the time of their enlistment, conscription or use by the armed forces of the UPC during the time-frame

³¹ ICC-01/04-01/06-1506-Conf-Anx14.

³² ICC-01/04-01/06-1506-Conf-Anx17.

³³ ICC-01/04-01/06-1339-ConfAnx71.

³⁴ ICC-01/04-01/06-1506-Conf-Anx15

³⁵ ICC-01/04-01/06-1506-Conf-Anx16.

³⁶ ICC-01/04-01/06-1506-Conf-Anx18.

³⁷ ICC-01/04-01/06-1506-Conf-Anx19.

³⁸ ICC-01/04-01/06-1506-Conf-Anx20.

³⁹ ICC-01/04-01/06-1506-Conf-Anx21.

⁴⁰ ICC-01/04-01/06-1506-Conf-Anx22.

relevant to the charges and that they should therefore be granted the status to participate as victims.

Applications a/0224/06, a/0227/06, a/0236/06 and a/0240/06

28. The Prosecution makes reference to its previous submissions on these applications, where it was stated that the applications did not meet the criteria for victim participation, “because the applicants were either over the age of 15 at the time of their recruitment by the UPC or turned 15 by September 2002”.⁴¹ The additional information provided by the applicant’s legal representative corrects the date of birth from either 1986 or 1987 to 1988 or 1989 respectively. For each applicant this information is complemented by supplementary documents provided in form of a student card and a birth certificate, all containing the corrected date of birth.⁴²

29. In light of the supplementary information provided, the Prosecution submits that the new facts suggest that applicants a/0224/06, a/0227/06, a/0236/06 and a/0240/06 in fact were under the age of 15 at the time of enlistment, conscription or use and thus suffered harm as a result of the commission of a crime relevant to the charges.

Applicant a/0007/08

30. According to the facts presented in application a/0007/08, the applicant was conscripted into the UPC and forcefully “married” to UPC soldiers while she was still under the age of 15 years. The additional information⁴³ clarifies the date of the events, which occurred from February 2003 onwards. The Prosecution reiterates the position taken in its previous observations⁴⁴ and requests the Chamber to grant participation status to this applicant.

⁴¹ ICC-01/04-01/06-1386, at para 36.

⁴² ICC-01/04-01/06-1504-Conf-Anx3; ICC-01/04-01/06-1506-Conf-Anx3 to 5.

⁴³ ICC-01/04-01/06-1504-Conf-Anx8.

⁴⁴ ICC-01/04-01/06-1386, at para 26.

Applicants who do not meet the necessary requirements for victim participation

Application a/0077/06

31. The Prosecution makes reference to its previous submissions regarding applicant a/0077/06⁴⁵, where it contested that the date of birth of the applicant was missing in the application form and that no proof of identity was included. The application has now been supplemented by an identification document of the applicant, indicating that the applicant was born in 1986 and by further supplementary information.⁴⁶ It was clarified that in August 2003, she was taken from her home by UPC soldiers and raped. Through the supplementary information the applicant also clarified that she never joined the UPC.

32. Since participation is limited to persons, who suffered harm as a result of the commission of crimes for which the accused is charged, namely for the enlistment, conscription and use of children under the age of 15, the Prosecution submits that the application does not prove a sufficient link to the charges against Thomas LUBANGA.⁴⁷

Application a/0243/06

33. In its previous observations, the Prosecution stated that, although applicant a/0243/06 was under the age of 15 when he/she suffered harm from the commission of crimes, the further information received by the Registrar under Regulation 86 (4) of the Regulations of the Court, confirms the crimes to have taken place in December 2003, which lies outside the time-frame of the charges. The Prosecution submits that the most recent supplementary

⁴⁵ ICC-01/04-01/06-1386, at para 35; see also the decision of the Pre-Trial Chamber denying participation status ICC-01/04-01/06-601, page 15.

⁴⁶ ICC-01/04-01/06-1506-Conf-Anx2.

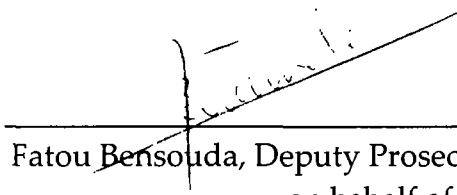
⁴⁷ See also the Prosecution's Submissions in ICC-01/04-01/06-589.

information⁴⁸ only relates to clarifying the applicants surname and provides no further indication that the harm suffered results from crimes that were committed within the time-frame of the charges.

V. Conclusion

34. For the reasons outlined above, the Prosecution requests the Chamber to grant status to participate as victims in the case against Thomas LUBANGA to applicants a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07 and a/0007/08.

35. The Prosecution requests that the Trial Chamber dismiss the applications of applicants a/0077/06 and a/0243/06 to participate as victims within the proceedings in the case against Thomas LUBANGA, since the applications do not fulfil the criteria set out by Rule 85 as interpreted by the Pre-Trial Chamber.



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

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

⁴⁸ ICC-01/04-01/06-1504-Conf-Anx5.