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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 examples of applications for participation in the
case of persons who might be considered indirect victims**

Source: Office of the Prosecutor

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

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Background

1. At a hearing held on 25 November 2008, Trial Chamber I ordered¹ the Victims' Participation and Reparations Section ("VPRS") to serve on the parties and participants a selection of the approximately two-hundred applications for participation in the case that have been filed by applicants who allege to have suffered harm as a result of crimes committed by the UPC.² The Trial Chamber directed³ the parties and participants to file observations on the question whether such applicants might be considered indirect victims of crimes committed by persons under the age of 15 who have been conscripted or enlisted or used to participate actively in hostilities.⁴
2. On 28 November 2008 the VPRS communicated⁵ nineteen sample applications to the parties and participants.

Prosecution's General Observations

3. The Appeals Chamber has held that *"For 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"*.⁶ The Appeals Chamber has held, furthermore, that *"only victims of the crimes charged may participate in the trial"*,⁷ and that *"any determination of the Trial Chamber under article 68(3) of the Statute read with rule 85 and 89(1) of the Rules, in relation to a victim's status and/or participatory rights which is unrelated to the specific charges against the accused would fall outside"* the parameters set forth in the charges, which define the issues to be determined at trial.⁸

¹ ICC-01/04-01/06-T-99-ENG ET WT, page 12, lines 12-15.

² ICC-01/04-01/06-T-99-ENG ET WT, page 11, lines 7-10.

³ ICC-01/04-01/06-T-99-ENG ET WT, page 12, lines 15-18.

⁴ ICC-01/04-01/06-T-99-ENG ET WT, page 11, lines 11-15.

⁵ ICC-01/04-01/06-1519.

⁶ ICC-01/04-01/06-1432, paras. 2 and 65.

⁷ ICC-01/04-01/06-1432, para. 62.

⁸ ICC-01/04-01/06-1432, para. 63.

4. In light of these findings by the Appeals Chamber, the Prosecution submits that applicants who have suffered harm as a result of crimes committed by the UPC/FPLC other than the crimes confirmed against the Accused may not participate as victims during the trial. In the absence of the causal link required by the Court's jurisprudence⁹ between the crimes charged and the harm suffered, the requirements for participation cannot be met.
5. 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
6. For those persons who have suffered harm as a result of acts committed by persons under the age of 15 who were conscripted, enlisted or used by the UPC/FPLC to participate actively in hostilities, the Prosecution submits that their applications do meet the requirements for participation. The protection afforded by the provisions of the Rome Statute relating to the recruitment and use of children under the age of 15 years extends to third parties who suffered harm as a result of crimes committed by children within the ranks of the UPC/FPLC.

Prosecution's Observations on the Nineteen Applications

7. In the Prosecution's view, the nineteen sample applications served by the VPRS have to be analyzed under the criteria established.

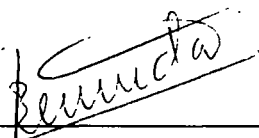
⁹ See ICC-01/04-01/06-228-tEN, page 7; ICC-01/04-01/06-172-tEN, pages 6-8; and ICC-01/04-01/06-601-tEN, page 9.

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

8. Three of the applicants refer to the enlistment, recruitment or use of child soldiers in their applications. Applicant a/0107/06 refers the participation of child soldiers in a military operation in the course of which he or others around him allegedly suffered harm. Applicant a/0109/06 asserts that her neighbours confirmed the fact that there were child soldiers in the group of UPC soldiers who killed her father. Their applications therefore meet the requirements for participation.
9. Finally, applicant a/0188/06 should be accepted. He refers to the abduction of students in the context of his application. In his application, the applicant complains of harm resulting from the alleged destruction of a school protected under Articles 8(2)(b)(ix) and (e)(iv) of the Statute, and refers to the abduction of children in passing, in the section related to "other victims" in his application form.¹¹ Supplementary information received by the VPRS concerning this application indicates that the occupation by the UPC of the school concerned was motivated by and led to the recruitment of numerous children who were present there.

Conclusion

10. For the reasons set out above, the Prosecution submits that applications which are similar to the nineteen sample applications do meet the criteria for participation as victims in the case.



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

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

¹¹ See ICC-01/04-01/06-1519-Conf-Anx11, page 10, section 3.