



Original: English

No.: ICC-01/04-01/06
Date: 10 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 Document
**Prosecution's Observations on 3 Redacted Applications for Victim
Participation to the Case of Applicants a/0403/08, a/0407/08, a/0408/08**

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**

Ms Fiona McKay

Other

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
4. The Prosecution hereby replies to the three new applications (a/0403/08, a/0407/08 and a/0408/08).

II. Factual analysis of the applications

Incomplete applications

5. The applicants claim to have been conscripted into the UPC during the time-frame relevant to the charges against the accused and therefore on their face

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.

⁴ ICC-01/04-01/06-1533.

establish the necessary link to the case by falling within the scope of charges confirmed against the accused.⁵ Nevertheless, the applications are lacking an adequate proof of identification and in the case of applicants a/0403/08 and a/0407/08 also lack consent of their legal guardian.

Applications a/0403/08 and a/0407/08

6. The Prosecution submits that the applications do not meet the criteria for completeness established by the Trial Chamber and Pre-Trial Chamber I for two reasons. First, the applications are lacking adequate proof of identification. Pre Trial Chamber I has foreseen alternative means of establishing the applicant's identity, in cases where identifying documentation is not available, for instance by providing a written statement by two witnesses "attesting to the identity of the applicant"(see footnote 14 above). Although both applications contain a declaration, it was signed and submitted by only one witness and therefore does not meet the criteria established by the Pre-Trial Chamber I. Second, since the applicant is a minor, the consent of a parent or legal guardian is required, notwithstanding the fact that the application was submitted by the minor in his/her own name and not by a legal guardian in the child's name.
7. The Prosecution submits that for these reasons the applications are incomplete and should only be considered for participation once they have been completed.

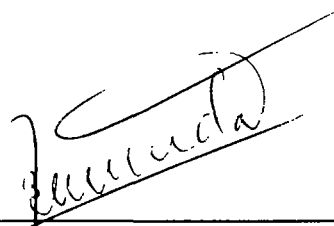
⁵ Applicant a/0403/08, born in November 1992, claims to have been conscripted by the UPC in February 2003 and states to have been demobilized in May or June 2003; Applicant a/0403/08, born in April 1992, alleges to have been conscripted into the ranks of the UPC in October 2002; Applicant a/0408/08, born in 1990, alleges to have been conscripted by the UPC in November 2002 with whom he stayed until June 2003.

Applicant a/0408/08

8. Applicant a/0408/08 states to have been born in 1990. It is therefore assumed that the applicant was not a minor at the time of applying and therefore does not require consent of a legal guardian to submit an application to participate as a victim. Similar to the applications discussed above, the application of applicant a/0408/08 does not contain a copy of an identity document, but instead contains a written declaration of only one witness.
9. The Prosecution therefore submits that the application is incomplete and should only be considered by the Trial Chamber once it has been completed.

III. Conclusion

10. The Prosecution submits that applicants a/0403/08, a/0407/08 and a/0408/08 should be requested to provide further information before their applications can be considered complete and status for participation as victims be granted.



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

Dated this 10th day of December 2008
At The Hague, The Netherlands