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

Date: 14 July 2009

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 Two New Applications for Victim Participation
by applicants a/0292/09 and a/0398/09**

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. On 3 July 2009, the Chamber ordered two new applications for victim participation to be notified to the parties and participants in redacted form and set 14 July 2009 as a deadline for observations to be submitted.¹ The applications a/0292/09 and a/0398/09 were notified to the parties in redacted form on 6 July 2009.² The Defence filed their observations on the two new victim applications on 10 July 2009.³

The Prosecution's Observations

2. The Prosecution notes that the new applications were submitted after the trial began, and they are being considered at a time when the Prosecution's case is almost completed. Neither the Statute nor the Rules of Procedure and Evidence prescribe a time for filing victim applications. However, Regulation 86(3) of the Regulations of the Court states that "[v]ictims applying for participation in the trial and/or appeal proceedings shall, to the extent possible, make their application to the Registrar before the start of the stage of proceedings in which they want to participate". This provision thus notes a preference that applications be filed in advance of the proceedings. Consistent with that regulation, the Pre-Trial Chamber in *Lubanga* set deadlines after which it refused to consider applications for the purpose of participating at the confirmation hearing.⁴
3. The Prosecution does not oppose the requests on timeliness grounds, so long as the victims' participation does not impede the efficiency and organization of the proceedings. The Chamber has the authority to accept them as participants but can also require that they be represented by a Legal

¹ ICC-01/04-01/06-T-203-CONF-ENG ET, page 33 line 19 to 25.

² ICC-01/04-01/06-2027 with confidential Annex 1 and 2.

³ ICC-01/04-01/06-2034.

⁴ See ICC-01/04-01/06-601-tEN, last paragraph and ICC-01/04-01/07-474, last paragraph.

Representative who is already engaged in the case and who has been present throughout.

4. On the merits of the applications, the Prosecution recalls that the Appeals Chamber has set the criteria for participation of victims at trial as follows: "Participation of victims at trial will first and foremost, take place through the procedure of rule 89 (1) of the Rules. By way of written applications, applicants will have to demonstrate, firstly, that they are victims within the meaning of rule 85 of the Rules. Secondly, pursuant to article 68 (3) of the Statute, victims will first have to demonstrate that their personal interests are affected by the trial in order to be permitted to present their views and concerns at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."⁵
5. The Chamber also 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
6. Each of the two applications suggests that the applicant was an enlisted or conscripted soldier and that each was under the age of 15 at the time of enlistment, conscription or use by the UPC/FPLC during the relevant time frame. The applications further contain proof of identity in the form of student cards. The Prosecution therefore submits that the criteria for participation *prima facie* appear to have been met for these applicants.⁷

⁵ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para. 62.

⁶ *Ibid.*, para. 3.

⁷ Applicant a/0292/09 alleges to have been abducted by the UPC in September 2002 when he or she was about 11 years old and thereafter trained and used to participate in hostilities until he/she demobilized around February 2003. An explanatory note attached to the application shows that the application contains a name and date of birth that differed from the name and date of birth contained in the attached identity

Conclusion

7. For the reasons and subject to the conditions outlined above, the Prosecution does not oppose applications by a/0292/09 and a/0398/09 to participate as victims in the case of *The Prosecutor vs. Thomas Lubanga Dyilo*.



Luis Moreno-Ocampo
Prosecutor

Dated this 14th day of July 2009
At The Hague, The Netherlands

document, a student card. Absent any further information, the Prosecution accepts that the identity document pertains to the person who filed the application. Accepting the date of birth indicated on that card (August 1991), the applicant was under the age of 18 at the time of application (February 2009). The Prosecution accepts, however, that the applicant may file an application on his or her own behalf despite being slightly underage. See ICC-01/04-01/06-1556 (paras. 91-98). Applicant a/0398/08, born in April 1990, alleges to have been conscripted by force into the UPC in November 2002 and thereafter trained and participated in combat.