

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01-04/01-06
Date: 23 December 2009

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

**SITUATION
IN THE DEMOCRATIC REPUBLIC OF THE CONGO
*IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO***

Confidential

**Discrete written application by the legal representative of victims a/0047/06,
a/0048/06, a/0050/06 and a/0052/06 for participation in relation to the Special
Representative of the Secretary General for the United Nations for Children and
Armed Conflict**

Source: Office of Public Counsel for Victims

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

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Mr Franck Mulenda
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Ms Silvana Arbia & Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural Background

1. On 18 January 2008, Trial Chamber I delivered its “Decision on victims’ participation” establishing general guidelines on all matters related to the participation of victims in the proceedings¹ and requesting that *“a victim who wishes to participate in relation to any identified stage of the proceedings should set out in a discrete written application the nature and the detail of the proposed intervention”*². The Chamber further specified that *“[a]t this stage, the victim must describe the way in which his or her personal interest is affected, for example by identifying how the harm he or she suffered relates to the evidence or the issues the Chamber is considering in its determination of the charges”*³.

2. During the hearing held on 22 January 2009, the Presiding Judge clarified that for the Chamber to issue a decision, it will be sufficient for the legal representative to identify the areas affecting the interests of his or her clients, without producing a list question by question⁴.

3. During the hearing held on 28 January 2009, the Chamber provided that applications to participate during the evidence of witnesses shall be submitted until eight days before the relevant testimony⁵. At the hearing held on 5 February 2009, the Chamber specified that the applications shall be submitted seven days before the relevant testimony instead of eight days as decided previously⁶.

¹ See the “Decision on victim’s participation” (Trial Chamber I), 18 January 2008, No. ICC-01/04-01/06-1119.

² *Idem*, par. 103.

³ *Ibid.*

⁴ See the Transcription of the hearing held on 22 January 2009, No. ICC-01/04-01/06-T-105-ENG ET WT, pp. 20-21.

⁵ See the Transcription of the hearing held on 28 January 2009, No. ICC-01/04-01/06-T-110-CONF-ENG CT (rev.dec. 1974), pp. 15-17.

⁶ See the Transcription of the hearing held on 5 February 2009, No. ICC-01/04-01/06-T-119-CONF-ENG CT (rev.dec. 1974), p. 1.

4. On 18 February 2008, the Chamber invited observations from Ms Radhika Coomaraswamy, Special Representative of the Secretary General of the United Nations for Children and Armed Conflict (the “Special Representative”)⁷.

5. On 18 March 2008, the Registrar submitted⁸ the Special Representative’s observations (the “Observations”)⁹.

6. During the hearing held on 9 December 2009, the Chamber provided that the Special Representative’s testimony is scheduled for 7-11 January 2010¹⁰.

7. The Legal Representative of Victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06 (the “Legal Representative”) therefore submits the following application for participation during the evidence of the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict.

8. The application is being filed on a confidential basis in accordance with the Trial Chamber I’s current practice on the relevant matters.

⁷ See the “Decision Inviting Observations from the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict” (Trial Chamber I), 18 February 2008, No ICC-01/04-01/06-1175, para. 11.

⁸ See the “Submission of the Observations of the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict pursuant to Rule 103 of the Rules of Procedure and Evidence”, 18 March 2008, No ICC-01/04-01/06-1229.

⁹ See the “Written Submissions of the Observations of the Special Representative of the Secretary-General on Children and Armed Conflict”, 17 March 2008, No ICC-01/04-01/06-1229-AnxA (the “Observations”).

¹⁰ See the Transcription of the hearing held on 9 December 2009, No. ICC-01/04-01/06-T-222-ENG ET WT, pp. 1-2.

II. Preliminary Remarks

9. The Legal Representative notes that this exercise is rendered more difficult by the fact that the Legal Representative cannot foresee the extent of the Prosecution's questioning or the issues relevant to the interests of the victims she is representing, which might arise during the Prosecution or Defence questioning. Therefore, the Legal Representative respectfully requests the Chamber to not consider this request as exhaustive for the purposes of participation by the victims she represents.

III. Discrete written application

10. Within her Observations the Special Representative addressed two following large groups of issues: (i) the definition of "conscripting" and "enlisting" children, and, bearing in mind a child's potential vulnerability, the manner in which any distinction between the two formulations should be approached; and (ii) the interpretation, focusing specifically on the role of girls in armed forces, of the term "using them to participate actively in hostilities"¹¹.

11. Victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06 were called by the Prosecution to testify at trial, respectively as witness OTP-0007, OTP-0008, OTP-0010 and OTP-0011. All of them are former child-soldiers. In particular, they were recruited into the UPC/FPLC armed forces and were used to participate actively in hostilities in Ituri¹².

¹¹ See the Special Representative's Observations, *supra* note 9.

¹² As regards the testimony of witness OTP-0007: see the Transcription of the hearing held on 13 March 2009, No. ICC-01/04-01/06-T-148-CONF-ENG CT (rev.dec. 1974); and the Transcription of the hearing held on 17 March 2009, No. ICC-01/04-01/06-T-149-CONF-ENG CT (rev.dec. 1974). As regards the testimony of witness OTP-0008: see the Transcription of the hearing held on 25 February 2009, No. ICC-01/04-01/06-T-135-CONF-ENG CT (rev.dec. 1974). As regards the testimony of witness OTP-0010: see the Transcription of the hearing held on 5 March 2009, No. ICC-01/04-01/06-T-144-CONF-ENG CT

12. Therefore, the Legal Representative submits that the personal interests of victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06 are clearly affected by the testimony of the Special Representative.

13. Furthermore, as a result of her recruitment into the UPC/FPLC victim a/0050/06 was systematically used for sexual purposes by the said armed group's commanders¹³.

7. Although the Legal Representative submits that as such, the entire testimony of the Special Representative concerns the interests of the victims she represents, she is seeking authorisation from the Chamber to question the Special Representative, immediately after the conclusion of the Prosecution's examination, on the following areas:

- the factors contributing to conscripting or enlisting children under the age of 15 years into armed groups, in particular in the Democratic Republic of the Congo and in Ituri;
- whether, and to what extent, the utilisation of girls for sexual purposes can be considered as an objective and/or a consequence of their recruitment into armed forces; and
- the difficulties encountered by former child-soldiers in re-integrating in their communities, in particular by girls used for sexual purposes and in particular in the Democratic Republic of the Congo.

(rev.dec. 1974); and the Transcription of the hearing held on 6 March 2009, No. ICC-01/04-01/06-T-145-CONF-ENG CT (rev.dec. 1974). As regards the testimony of witness OTP-0011: see the Transcription of the hearing held on 27 February 2009, No. ICC-01/04-01/06-T-138-CONF-ENG CT (rev.dec. 1974); and the Transcription of the hearing held on 3 March 2009, No. ICC-01/04-01/06-T-139-CONF-ENG CT (rev.dec. 1974); and the Transcription of the hearing held on 4 March 2009, No. ICC-01/04-01/06-T-140-CONF-ENG CT (rev.dec. 1974).

¹³ See the Transcription of the hearing held on 5 March 2009, No. ICC-01/04-01/06-T-144-CONF-ENG CT (rev.dec. 1974), p. 37. See also the Transcription of the hearing held on 6 March 2009, No. ICC-01/04-01/06-T-145-CONF-ENG CT (rev.dec. 1974), pp. 6-8 and 78.

FOR THE FOREGOING REASONS, the Legal Representative respectfully requests the Trial Chamber to decide that the interests of the four victims she represents are affected by the testimony of the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict, and further requests that the Chamber authorise the questioning of the Special Representative concerning the areas of concerns and interests of the victims she represents.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

**Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims**

Dated this 23rd day of December 2009

At Genoa, Italy