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No.: **ICC-01/04-01/06**
Date: **01 November 2010**

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***

Public redacted version

**Prosecution's Observations on Fifteen Redacted Applications for Victim
Participation in the Case**

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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Other

Background

1. On 17 June 2010, the Trial Chamber ("Chamber") ordered the Registry to transmit 15 applications for participation to the Prosecution and the Defence in confidential redacted form.¹ The Chamber ordered the Prosecution and the Defence to file responses on the applications by 4 p.m on 2 July 2010.²
2. On 29 June 2010, the Registry notified the parties with 15 redacted applications for participation as victims in the proceedings, from applicants a/0026/10, a/0027/10, a/0028/10, a/0029/10, a/0030/10, a/0031/10, a/0033/10, a/0035/10, a/0037/10, a/0333/10, a/0334/10, a/0336/10, a/0738/10, a/0739/10 and a/0740/10.³
3. At a hearing on 29 June 2010, the Chamber orally extended the deadline for the parties to file responses from 2 to 9 July.⁴
4. On 8 July 2010, the Chamber ordered a stay of proceedings.⁵ On 8 October 2010, the stay of proceedings was lifted.⁶
5. On 11 October 2010, the Chamber orally set a new deadline for the parties to file responses on the applications by 4 p.m on 22 October 2010.⁷
6. The Prosecution submits that 12 of the applications – a/0027/10, a/0028/10, a/0029/10, a/0030/10, a/0033/10, a/0334/10, a/0035/10, a/0037/10, a/0333/10, a/0336/10, a/0738/10, and a/0739/10 – are complete and appear to meet the requirements of Rule 85(a) and the jurisprudence of this Court. Of the remaining three applications, one -- a/0740/10 -- contains a redaction that makes it impossible for the Prosecution to assess if it meets the requirements; the Chamber, which presumably has access to the unredacted application, should

¹ ICC-01/04-01/06-T-303-CONF-ENG, page 18, lines 5 to 22.

² ICC-01/04-01/06-T-303-CONF-ENG, page 18, lines 17 to 22.

³ ICC-01/04-01/06-2509 with Conf.Anx. 1 to 15. Since the annexes were filed confidentially (Prosecution, Defence and Me Keta only) and since the information analyzed in this response is quoted from the annexes, the Prosecution, pursuant to Regulations 23 bis (2) files this response confidentially (Prosecution, Defence and Me Keta only) as well. The Prosecution will file a public redacted version of this response.

⁴ ICC-01/04-01/06-T-307-CONF-ENG, page 10, lines 5 to 10.

⁵ ICC-01/04-01/09-2517-Conf.

⁶ ICC-01/04-01/06-2582-OA18.

⁷ ICC-01/04-01/06-T-316-ENG ET WT, page 13, lines 21-25 and page 14, lines 1-4.

grant the application if it determines that the redacted information is sufficient to establish the victim's status. The applications filed by a/0026/10 and a/0031/10 require further information or clarification before the applicants should be granted status to participate as victims.

Legal criteria for victims' participation in the proceedings

7. For a person to be granted the status of a victim under Rule 85: (i) the applicant must be a natural person as set forth in Rule 85(a), or an organization or institution as set forth in Rule 85(b); (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (iv) there must be a causal link between the crime and the harm.⁸
8. The Appeals Chamber confirmed that in the case of natural persons, both direct and indirect victims may suffer harm, provided it is "personal to the individual".⁹
9. The jurisprudence has held that for the purpose of participation in the pre-trial or trial proceedings in a particular case, the harm suffered by a victim must be linked with the charges confirmed against the accused or, at earlier stages in the proceedings, the offences alleged in the warrant arrest or summons to appear or the document containing the charges.¹⁰
10. In this case, the harm suffered must have occurred to the applicant between early September 2002 and 13 August 2003, which are the dates within which the alleged crimes occurred.

Prosecution's Observations

11. The Prosecution supports the application of victims in the proceedings before the Court, when the legal requirements are met. In this case, all applicants are natural persons pursuant to Rule 85 (a) and have submitted proof to establish their

⁸ ICC-01/04-01/06-228-tEN, page 7.

⁹ ICC-01/04-01/06-1335, para. 36.

¹⁰ ICC-01/04-01/06-1432, para. 2.

identities in the form of [REDACTED]¹¹ or [REDACTED].¹² However, the Prosecution submits that only 12 applicants provide sufficient information to link their harm suffered to the crimes charged and thus *prima facie* meet the necessary requirements for victims' participation.

12. A thirteenth applicant *may* meet the necessary requirements but an essential fact is redacted from the application furnished to the Prosecution.

The 12 applicants who prima facie meet the necessary requirements for victim participation and an additional applicant whose unredacted application may meet the necessary requirements.

Application a/0027/10 (annex 2)

13. [REDACTED].¹³ For these reasons, the Prosecution submits that applicant a/0027/10 should be granted status to participate as a victim.

Application a/0028/10 (annex 3)

14. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0028/10 should be granted status to participate as a victim.

Application a/0029/10 (annex 4)

15. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0029/10 should be granted status to participate as a victim.

Application a/0030/10 (annex 5)

16. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0029/10 should be granted status to participate as a victim.

Application a/0033/10 (annex 7)

17. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0033/10 should be granted status to participate as a victim.

¹¹ The Trial Chamber accepted that the attestation of loss of specified official document may establish proof of the applicant's identity (ICC-01/04-01/06-1119, para. 87iii). [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

Application a/0035/10 (annex 8)

18. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0035/10 should be granted status to participate as a victim.

Application a/0037/10 (annex 9)

19. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0037/10 should be granted status to participate as a victim.

Application a/0333/10 (annex 10)

20. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0333/10 should be granted status to participate as a victim.

Application a/0334/10 (annex 11)

21. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0334/10 should be granted status to participate as a victim.

Application a/0336/10 (annex 12)

22. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0334/10 should be granted status to participate as a victim.

Application a/0738/10 (annex 13)

23. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0738/10 should be granted status to participate as a victim.

Application a/0739/10 (annex 14)

24. [REDACTED]. For these reasons, the Prosecution submits that applicant a/0334/10 should be granted status to participate as a victim.

Application a/0740/10 (annex 15)

25. [REDACTED]. The Prosecution submits that should the events fall within the time frame of the charges – i.e., before 13 August 2003 -- the Prosecution requests the Trial Chamber to recognize the applicant a/0740/10 should be granted status to participate as a victim.

The applicants whose applications require further clarification

Application a/0026/10 (annex 1)

26. [REDACTED].

27. The applicant does not specify whether [REDACTED] underwent military training or actively participated in hostilities. The Prosecution submits that the applicant needs to provide further information or clarification on facts linking [REDACTED] application to the charges before [REDACTED] application is granted.

Application a/0031/10 (annex 6)

28. [REDACTED].

29. Although the application meets most legal requirements, the date of [REDACTED] must be clarified, as the personal harm [REDACTED] alleges may have been suffered after the relevant time period. For this reason, the Prosecution submits that applicant a/0031/10 needs to provide further information or clarification before [REDACTED] application is granted.

Conclusion

30. For the reasons outlined above, the Prosecution requests the Trial Chamber to grant participation status as victims in the case against Thomas LUBANGA to applicants a/0027/10, a/0028/10, a/0029/10, a/0030/10, a/0033/10, a/0334/10, a/0035/10, a/0037/10, a/0333/10, a/0336/10, a/0738/10, and a/0739/10.

31. The Prosecution does not have sufficient access to the unredacted application of applicant a/0740/10, but if the unredacted application states that the events occurred before 13 August 2003 (the end of the time-frame applicable to the charges), the applicant meets the requirements and should be granted participation status.

32. The Prosecution contends that applicants a/0026/10 and a/0031/10 should be requested to provide further information before their applications may be granted.

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is positioned above a horizontal line.

Luis Moreno-Ocampo, Prosecutor

Dated this 01 November 2010
At The Hague, The Netherlands