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

Date: **28 March 2012**

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

**Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the
Regulations of the Court on issues related to reparations proceedings**

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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Detention Section

**Victims Participation and Reparations
Section**

Other

I. BACKGROUND

1. On 14 March 2012, Trial Chamber I delivered its “Judgment pursuant to Article 74 of the Statute” (the “Judgment”)¹ by which it found Mr. Thomas Lubanga Dyilo guilty of the crimes of conscripting and enlisting children under the age of fifteen years into the *Force Patriotique pour la libération du Congo* and using them to participate actively in hostilities within the meaning of articles 8(2)(e)(vii) and 25(3)(a) of the Statute from early September 2002 to 13 August 2003².

2. On the same day, the Chamber issued a “Scheduling order concerning timetable for sentencing and reparations” (the “Scheduling Order of 14 March 2012”)³ by which it invited *inter alia* “other individuals” and “interested parties” to apply in writing for leave to file submissions on the principles to be applied by the Chamber with regard to reparations and the procedure to be followed by the Chamber, by 16:00 on 28 March 2012⁴. In this regard, the Chamber indicated that it will set a deadline thereafter for those individuals or interested parties who are granted leave to participate to file their submissions⁵.

3. The Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) respectfully requests to be authorised to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on the issues identified in part III *infra*.

¹ See the “Judgment pursuant to Article 74 of the Statute” (Trial Chamber I), No. ICC-01/04-01/06-2842, 14 March 2012 (the “Judgment”).

² *Idem.*, par. 1358.

³ See the “Scheduling order concerning timetable for sentencing and reparations” (Trial Chamber I), No. ICC-01/04-01/06-2844, 14 March 2012 (the “Scheduling Order of 14 March 2012”).

⁴ *Idem.*, par. 10.

⁵ *Ibid.*, par. 11.

II. LEGAL BASIS FOR THE REQUEST TO APPEAR BEFORE THE CHAMBER

4. In accordance with Regulation 81(4) of the Regulations of the Court, “[t]he Office of Public Counsel for victims shall provide support and assistance to [...] victims, including, where appropriate [...] [a]ppearing before a Chamber in respect of specific issues”.

5. The provision does not specify if such possibility is triggered by a request of a Chamber in this sense or by the Office itself. However, the *chapeau* of Regulation 81(4) of the Regulations of the Court clearly provides for an obligation binding upon the Office to provide, where appropriate, support and assistance to victims *inter alia* in appearing before the Chamber in respect of specific issues.

6. The Office has, in the past, requested and been granted leave to appear on specific issues of general interest for victims⁶. The Office has also appeared on specific issues having an impact on victims’ general interests directly at the request of a Chamber⁷.

⁶ See, *inter alia*, the “Order on the Office of Public Counsel for Victims’ request filed on 21 November 2007 (Trial Chamber I), No. ICC-01/04-01/06-1046, 27 November 2007, par. 2; the “Ordonnance relative à la soumission d’écritures sur l’interprétation de la norme 42 du Règlement de la Cour (norme 28 du Règlement de la Cour)” (Trial Chamber II), No. ICC-01/04-01/07-1205, 12 June 2009, which *inter alia* decided on the OPCV’s Request to appear filed on 20 May 2009 (“Demande du BCPV afin d’être autorisé en vertu de la norme 81-4-b du Règlement de la Cour à comparaître devant la Chambre dans le cadre de questions spécifiques liées aux mesures de protection au bénéfice du témoin W-007”, No. ICC-01/04-01/07-1160). See also the “Decision on the “Proposal on victim participation in the confirmation hearing” (Pre-Trial Chamber I, Single Judge) which *inter alia* decided on the OPCV’s Request to appear filed on 9 June 2011 (“Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court on the specific issue of victims’ participation in the confirmation hearing”, No. ICC-01/04-01/10-226), rejecting the said Request arguing “that any further observations from the OPCV are unnecessary, without prejudice to the question of whether there was a valid basis for its intervention before the Chamber on this issue” (*Idem.*, p. 5). See also the “Decision on the OPCV’s ‘Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims’ application process” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-57, 13 March 2012, by which the OPCV was authorised to submit written observations on the practical implications of the Registry’s proposal on a partly collective application form for victims’ participation.

⁷ See, *inter alia*, the Transcripts of the hearing of 30 October 2007, No. ICC-01/04-01/06-T-58-ENG, p. 13, lines 4 to 18; and the Transcripts of the hearing of 4 December 2007, No. ICC-01/04-01/06-T-62-ENG-ET WT, pages 53 to 54.

7. Trial Chamber I has recognised the opportunity for the OPCV to appear before a Chamber in respect of specific issues, initiated either by: *“the Chamber (this will usually relate to issues of general importance and applicability); a victim or his or her representative, who has asked for its support and assistance; the Office, if it is representing one or more victims; or the Office, following an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability)”*⁸.

8. The Office is of the opinion that the approach to be adopted with regard to reparations in the present case constitutes a specific issue on which it is necessary and appropriate to assist victims, in particular the ones not benefiting from a legal representation and concerned by reparations proceedings. Indeed, the matters at stake have never been discussed before the Court and are therefore of such nature to impact on the participation of victims in said reparations proceedings, as well as on the principles to be established within the legal framework of the Court. Consequently, the Office contends that the issues give rise to a need for the general interests of victims to be duly represented.

9. In this regard, the Office highlights the reasons for its creation, namely to create an expert body within the Court in order to efficiently and timely address victims' issues⁹. The practice developed by the Court in this regard and the responsibilities vested in the OPCV by both the Chambers and the victims since the inception of the Office to date has clearly contributed to the development of such

⁸ See the “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents” (Trial Chamber I), No. ICC-01/04-01/06-1211, 6 March 2008, par. 35.

⁹ In this sense see Judge Sir Adrian FULFORD, “The role of the Office of Public Counsel for Victims in trial proceedings”, in OPCV, *Helping victims make their voice heard: The Office of Public Counsel for Victims 5 years of activities*, 2010, pp. 4-5. This booklet is available on the website of the Court at the following address:

<http://www.icc-cpi.int/NR/rdonlyres/01A26724-F32B-4BE4-8B02-A65D6151E4AD/282846/LRBookletEng.pdf>.

expertise. The possibility to appear before a Chamber in respect of specific issues falls in line with the reasons behind the creation of the Office.

III. ISSUES ON WHICH THE OFFICE WOULD LIKE TO APPEAR

10. Should its Request be granted, the Office proposes to address the principles to be applied by the Chamber with regard to reparations, *inter alia* the issues specified by the Chamber in the Scheduling Order of 14 March 2012¹⁰, in particular:

- i) whether reparations should be awarded on a collective or an individual basis (pursuant to Rule 97(1) of the Rules of Procedure and Evidence);
- ii) depending on whether there should be individual or collective reparations (or both), to whom are they to be directed; how harm is to be assessed; and the criteria to be applied to the awards;
- iii) whether it is possible or appropriate to make a reparations order against the convicted person pursuant to Article 75(2) of the Statute; and
- iv) whether it would be appropriate to make an order for an award for reparations through the Trust Fund for Victims pursuant to Article 75(2) of the Statute¹¹.

11. Furthermore, the Office proposes to submit observations with regard to matters on which appropriate experts should be appointed pursuant to Rule 97 of the Rules of Procedure and Evidence.

12. Finally, the Office proposes to submit observations on the procedure to be followed by the Chamber with regard to reparations, as requested by the Chamber¹².

¹⁰ See the Scheduling Order of 14 March 2012, *supra* note 3, par. 8.

¹¹ *Idem*.

¹² *Ibid*.

FOR THE FOREGOING REASONS, the Principal Counsel of the Office of Public Counsel for Victims respectfully requests the Trial Chamber to be allowed to appear before it, in order to assist victims concerned by the reparations proceedings not benefiting from a legal representation, as well as to represent the general interest of victims, on the issues related to reparations proceedings by way of submitting written observations within a deadline established by the Chamber.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath the name.

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

Dated this 28th day of March 2012

At The Hague, The Netherlands