

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 4 April 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 Document

**Defence Response to “Request to appear before the Chamber pursuant to
Regulation 81(4)(b) of the Regulations of the Court on issues related to reparations
proceeding” dated 28 March 2012**

Source: Defence Team for Mr Thomas Lubanga

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

Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Legal Representatives of Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
Mr Paul Kabongo Tshibangu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

Ms Paolina Massidda
Ms Sarah Pellet

**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**

Other

BACKGROUND

1. On 14 March 2012, Trial Chamber I delivered its judgment pursuant to article 74 of the Statute in the case against Mr Thomas Lubanga.¹
2. In its judgment, the Chamber resolved to withdraw the right to participate in the proceedings as victims, from all the victims represented by the Office of Public Counsel for Victims (OPCV).² These are Victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06.
3. The OPCV's participation in the proceedings against Mr Thomas Lubanga was exclusively based on their mandate as legal representatives of these four victims.³ Therefore this decision precludes the OPCV from participating in the reparations proceedings in the instant case.
4. On 23 March 2012, the OPCV requested reconsideration of the Chamber's decision to withdraw the status of victims participating in the proceedings from the four victims.⁴ The Chamber rejected the OPCV's request for reconsideration on 27 March 2012.⁵
5. On 28 March 2012, the OPCV requested permission to participate in the proceedings pursuant to regulation 81(4)(b) of the Regulations of the Court and sought leave:
 - a. to be appointed legal representative of the victims currently without legal representation;

¹ ICC-01/04-01/06-2842.

² ICC-01/04-01/06-2842, para. 484.

³ See: T-104-FRA-ET, p.31, line 12 to p. 34, line 1. See also ICC-01/04-01/06-1211.

⁴ ICC-01/04-01/06-2845.

⁵ ICC-01/04-01/06-2846.

- b. to be authorised to make submissions on issues concerning the general interests of victims.

6. The Defence objects to this request for the following reasons:

SUBMISSIONS

1 – The representation of unrepresented victims

- 7. The OPCV requests that the Chamber appoint it as legal representative of the unrepresented victims. However, according to the information provided to the Defence to date, only two applicants had not chosen a legal representative specifically for their applications for reparation.⁶
- 8. As Trial Chamber III noted, it is clear from the Court's jurisprudence that the OPCV's role is primarily to assist legal representatives of victims rather than represent individual victims before the Court.⁷ Furthermore, the Chamber pointed out that "while Regulation 80(2) of the Regulations of the Court mentions that the Chamber has the possibility to appoint counsel of the OPCV, such appointment is to be considered on an exceptional basis [...]".⁸
- 9. The OPCV was also appointed to represent four victims authorised to participate in these proceedings⁹ owing to the exceptional nature of their dual status of witness and victim. However, the OPCV was specifically excluded

⁶ When analysing the applications for reparations, the Defence noted that only one applicant, victim a/2917/11, had not specified the name of a legal representative on the application form. According to the Registry, two applicants are unrepresented. See ICC-01/04-01/06-2850, footnote 6.

⁷ ICC-01/05-01/08-1005, para. 29; ICC-01/04-01/06-1211, para. 32. See also ICC-01/04-01/07-1488.

⁸ ICC-01/05-01/08-1005, para. 29.

⁹ T-104-FRA-ET, p. 31, line 12 to p. 34, line 1. ICC-01/04-01/06-1211, para. 32.

from the proceedings in the *Bemba* case¹⁰ and was not appointed to represent any victims in the *Katanga and Ngudjolo* case.¹¹

10. In view of the fact that only one or two applicants are currently awaiting the appointment of a legal representative, these applicants can easily be assigned to one of the two teams of legal representatives – consisting of five counsel – currently sharing the representation of victims.
11. Hence, the Defence submits that there are no exceptional circumstances in this case to justify the OPCV's appointment as legal representative.

2 – The OPCV's request to submit general observations on the issue of reparations

12. The Registry, with the assistance of the Victims Participation and Reparations Section (VPRS) and the Trust Fund for Victims, submitted to the Chamber substantial observations of a general nature on the issue of reparations. These observations run to 300 pages¹² and include an expert report sought by the Registry on reparations in the inter-American human rights system.¹³
13. The Defence submits that in these circumstances, it would be unfair to seek the views of another organ of the Court for the purposes of presenting additional general observations on the reparations stage.
14. Furthermore, the reparations stage concerns the specific interest of victims who were authorised to participate in the proceedings. Thus, the Chamber is due to receive, no later than 18 April 2012, specific observations from the two

¹⁰ ICC-01/05-01/08-1005, paras. 28-30.

¹¹ ICC-01/04-01/07-1488.

¹² See specifically ICC-01/04-01/06-2806, ICC-01/04-01/06-2803-Red, ICC-01/04-01/06-2851 and ICC-01/04-01/06-2847.

¹³ ICC-01/04-01/06-2806, Annex.

teams of legal representatives of victims currently participating in the proceedings regarding the personal interests of their clients.

15. In any event, the OPCV may, pursuant to its mandate to “support and assist”¹⁴ legal representatives, provide its observations on reparations to these legal representatives.

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER I:

TO REJECT the OPCV’s request.

[signed]

Ms Catherine Mabilie, Counsel

Dated this 4 April 2012

At The Hague, The Netherlands

¹⁴ Regulation 81(4).