

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

No.: ICC-01/04-01/06
Date: 10 January 2011

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

Defence Response to the 20 December 2010 "Prosecution's Application for Admission of three documents from the Bar Table Pursuant to Article 64(9)" and the 21 December 2010 "*Réponse du représentant légal des victimes a/0047/06, a/0048/06 et a/0050/06 [...]*"

Source: Defence Team for Mr Thomas Lubanga

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

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BACKGROUND

1. On 20 December 2010, the Prosecutor filed the "Prosecution's Application for Admission of three documents from the Bar Table Pursuant to Article 64(9)"¹ ("the Application").
2. On 21 December 2010, the Office of Public Counsel for Victims ("OPCV") filed its Response to the Application on behalf of Victims a/0047/06, a/0048/06 and a/0050/06² ("the Victims' Response").
3. The Defence objects to the Application on the following grounds.

SUBMISSIONS

4. Contrary to the Prosecutor's claims, the admission into evidence of the three written statements referred to in the Application would be seriously prejudicial to the Defence.³
5. The Defence was not present when the OPCV took the written statements, and was not invited to participate in that exercise. It was therefore deprived of any opportunity to put questions to the victims on the issues they raised in their written statements.
6. The Defence has previously stated clearly that it has not waived its right to cross-examine the victims on material contained in their written statements.⁴
7. Far from providing a clear explanation for the discrepancies between the victims' testimony and the information provided on their voting cards, the written statements referred to in the Application instead raise numerous additional questions, which the Defence considers necessary to explore in greater detail.

¹ ICC-01/04-01/06-2666.

² ICC-01/04-01/06-2667-Conf.

³ ICC-01/04-01/06-2666, paras. 17 and 18.

⁴ ICC-01/04-01/06-2652, para. 4.

a) Victim a/0047/06

- i) This victim held two student cards for the years 2007-2008 and 2008-2009. The Defence would like to know why those cards were not disclosed to it earlier, as it was only during the testimony given by Victim a/0047/06⁵ and his brother⁶ that the Defence was informed for the first time that Victim a/0047/06 was known by the name of [REDACTED].
- ii) At paragraph 4 of his statement, Victim a/0047/06, introducing himself as [REDACTED] ([REDACTED]), certifies that the information on his two student cards for the years 2007-2008 and 2008-2009 is correct. Yet, a different name appears on those two student cards: [REDACTED].
- iii) Victim a/0047/06's signature on his statement of 15 November 2010 begins with the letter "[REDACTED]".⁷ However, the Victim's signature on his application form to participate in the proceedings clearly starts with the letter "[REDACTED]".⁸
- iv) Victim a/0047/06's assertion that any person, even a minor, not in possession of a voting card in 2005 (the year the victim's voting card was issued)⁹ would be considered a foreigner or a member of a militia and would be arrested appears to be manifestly unfounded.

⁵ ICC-01/04-01/06-T-148-CONF-FRA CT, p. 16, line 25.

⁶ ICC-01/04-01/06-T-135-CONF-FRA CT2, p. 5, lines 9-11.

⁷ ICC-01/04-01/06-2666, Annex 1.

⁸ EVD-D01-00221, p. DRC-OTP-0206-0301.

⁹ DRC-D01-0003-5522. This document was admitted into the record of the case as evidence, but has not yet been given an EVD number (See ICC-01/04-01/06-2664-Conf, paras. 70-76).

b) Victim a/0048/06

- i) At paragraph 4 of his statement, Victim a/0048/06, introducing himself as [REDACTED], certifies that the information on his voting card issued in 2009 is correct. Yet, a different name appears on the voting card: [REDACTED].
- ii) The name “[REDACTED]” appears on the voting card of Victim a/0048/06 annexed to the Application and on the voting card tendered into evidence by the Defence. Yet, when asked at trial to state all of his names, a/0048/06 failed to mention the name “[REDACTED]”.¹⁰ Furthermore, this name did not appear on any of the documents disclosed by the Prosecutor to the Defence in relation to this witness.
- iii) The Defence submits that Victim a/0048/06’s claim to the effect that, in 2005 (the year the first voting card was issued),¹¹ a minor had to be in possession of a voting card in order to move around [REDACTED] at night without being arrested is manifestly unfounded.
- iv) Victim a/0048/06’s signature on the statement annexed to the Application begins with the letter “[REDACTED]”,¹² unlike his signature on his application form to participate in the proceedings.¹³

¹⁰ ICC-01/04-01/06-T-135-CONF-FRA CT2, p. 4, line 4 and p. 65, lines 15-19.

¹¹ EVD-D01-01028.

¹² ICC-01/04-01/06-2666, Annex 2.

¹³ EVD-D01-00207, p. DRC-OTP-0206-0333.

c) Victim a/0050/06

i) There is a blatant contradiction between Victim a/0050/06's statement annexed to the Application and her voting card.¹⁴ Although at paragraph 2 of her statement, Victim a/0050/06 maintains that she remembers her photograph being taken but did not recognize the card itself, at paragraph 4 she specifies the circumstances in which she allegedly obtained that same voting card.

ii) Victim a/0050/06 states that she was 17 at the time the voting card was issued. Given that the card was issued on [REDACTED] 2005,¹⁵ Victim a/0050/06 could not have been born in [REDACTED] 1989, as she stated in her testimony.¹⁶

iii) If relevant, the Defence would like to examine Victim a/0050/06 about the identity of the five persons with whom she allegedly left the forest, and who allegedly supported her in her mendacious statements to the Congolese authorities.¹⁷

8. The Prosecutor and the OPCV have themselves drawn attention to the importance of the issues raised in the written statements; the Prosecutor has even added that, in his opinion, the statements are "highly relevant and probative to the credibility of the witnesses and their evidence relating to the Accused's guilt."¹⁸

9. These circumstances are therefore different from those in which the Chamber ordered that a representative from the Registry provide a written statement to

¹⁴ ICC-01/04-01/06-2666, Annex 3.

¹⁵ EVD-D01-01005.

¹⁶ ICC-01/04-01/06-T-144-CONF-FRA CT, p.12, lines 13-15.

¹⁷ ICC-01/04-01/06-2647, Annex 3.

¹⁸ ICC-01/04-01/06-2666, para. 2.

be filed as evidence, since that statement simply attested to the validity of a signature.¹⁹

10. The Prosecutor cannot reasonably argue that the Defence should have put the matter of the voting cards to the witnesses at the time of their testimony, since the Defence only obtained those documents approximately one year after the witnesses appeared before the Court. Conversely, the Prosecutor could have easily obtained those documents during his investigations simply by asking those victims when verifying their identities and ages if identity cards had been issued in their names.

11. The Defence emphasises that no valid reason was advanced to justify the redaction of the identity of the interpreter from the Court Interpretation and Translation Section who assisted the OPCV in taking the statements referred to in the Application. The Chamber has already indicated that, save exceptionally, the Defence is entitled to know the name and functions of VWU staff given that they are part of a neutral organ which provides services equally to all of the parties and the participants in the case.²⁰ The Defence submits that the identity of the Court interpreter should be disclosed to it.

12. The Defence repeats the submissions set out in its response of 1 December 2010²¹ to the OPCV's Application.

¹⁹ ICC-01/04-01/06-2189-Conf.

²⁰ ICC-01/04-01/06-2597-Conf-Red, para. 57.

²¹ ICC-01/04-01/06-2652.

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER I:

TO DISMISS the Prosecutor's Application.

[signed]

Ms Catherine Mabile, Counsel

Dated this 10 January 2011

At The Hague, The Netherlands