

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: **ICC-01/04-01/06**
Date: **19 October 2007**

TRIAL CHAMBER I

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

Registrar: Mr Bruno Cathala

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

Public Document

**Submissions of Victims a/0001/06 to a/0003/06 for the hearing of
29 October 2007**

Office of the Prosecutor

Mr Louis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial
Lawyer

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

**Legal Representative of
Victim A/1005/06**

Ms Carine Bapita Buyangandu

**Legal Representatives of
Victims a/0001/06 to a/0003/06**

Mr Luc Walley
Mr Franck Mulenda

Office of Public Counsel for Victims

Ms Paolina Massida

Noting the decision of Trial Chamber I of 5 September 2007;¹

Noting the submissions filed by the Legal Representatives on 12 October 2007;

Noting the decision of 17 October 2007;²

1. The Court invited participants to present their submissions by 19 October 2007, in particular as regards the procedures to be followed for giving instructions to expert witnesses and the approach to be taken for preparing witnesses for hearings.
2. The decision of 17 October 2007 adds the following items to the agenda of the hearing to be held on 29 October:
 - o 3. 1) common legal representation of victims;
 - 2) criteria for granting victim status in accordance with rule 85 of the Rules of Procedure and Evidence;
 - o 4. place of trial.
3. The Legal Representatives of Victims a/0001/06 to a/0003/06 hereby give their views on these items.

1. Instructions to be given to expert witnesses

4. The Legal Representatives believe that it is too soon to establish general rules for every expert examination and that initially these rules should be determined on a case by case basis.

¹ ICC-01/04-01/06-947.

² ICC-01/04-01/06-985.

5. In the view of the Legal Representatives, a distinction should also be made between a witness/expert presented by one of the Parties (including representatives of victims, in the case of an application for reparations) and an expert appointed by the Court under rule 97(2) of the Rules of Procedure and Evidence.
6. The Legal Representatives have no opinion on the possibility of parties giving joint instructions to expert witnesses whom they themselves have called. However, should the Prosecution and the Defence hold discussions to agree joint instructions, it would also be useful to request victims' representatives to submit their observations on such instructions in order to achieve the best quality testimony, in particular if the Court decides to apply regulation 56 of the Regulations of the Court.
7. Should the Court nominate an expert pursuant to rule 97(2), it would be preferable if the parties concerned (at the reparations stage, the victim applicants and the Defence) tried to agree a list of questions on which the expert should give his or her opinion and, if appropriate, how he or she should proceed. If the two sides cannot agree, the Court could settle the issue.
8. The Legal Representatives believe that the *inter partes* nature of proceedings should be observed with regard to expert reports commissioned by the Court, and that representatives of the Defence or the victim concerned must be present when experts are carrying out their assessments. However, as regards medical expert testimony, such representation should be limited to one doctor chosen by the parties concerned in order to protect the dignity and privacy of the victim under examination.

2. Familiarisation of witnesses

9. In its decision of 8 November 2006,³ Pre-Trial Chamber I recalled the provisions of the Rome Statute and the Rules of Evidence and Procedure that concern the protection of victims and witnesses, the duty to ensure their physical and psychological well-being, dignity and privacy, and measures to facilitate their testimony.⁴
10. The Pre-Trial Chamber concluded that the task of preparing witnesses for their appearance before the Court could be properly attributed to the Victims and Witnesses Unit in consultation with the party proposing to call the witness concerned.
11. The Legal Representatives are not familiar with the content of the Defence submissions to which the Chamber alludes.⁵ While the Legal Representatives approve of what would *prima facie* seem to be the Pre-Trial Chamber's approach in that it encompasses the rule enshrined in the Code of Conduct of the Bar Council of England and Wales cited by the Pre-Trial Chamber,⁶ the Legal Representatives hold that preliminary contact between a party's representative and a witness that the representative intends to call is always legitimate, provided that such contact takes place before the witness begins to testify.
12. The Legal Representatives recall that if witnesses have also been victims of traumatic events, in particular if they are minors, they should be informed of their right to request special measures pursuant to rule 28 and in particular that a counsel, a legal representative, a psychologist or a family member be permitted to attend during their testimony.

³ ICC-01/04-01/06-679.

⁴ ICC-01/04-01/06-679, pp. 10 and 11.

⁵ Confidential observations of 31.10.2006, ICC-01/04-01/06-Conf.

⁶ *Ibidem*, para. 38: "A barrister must not: (a) rehearse, practice or coach a witness in relation to his evidence; (b) encourage a witness to give evidence which is untruthful or which is not the whole truth; (c) except with the consent of the representative for the opposing side or of the Court, communicate directly or indirectly about a case with any witnesses, whether or not the witness is his lay client, once that witness has begun to give evidence until the evidence of that witness has been concluded."

13. The Legal Representatives also recall that the Rules of Procedure and Evidence explicitly prohibit violations of the privacy of victims and witnesses and require the Chamber to be vigilant “in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence”.⁷

3. Common representation of victims and eligibility criteria for victims

14. To date, only two groups of victims have been authorised to participate in proceedings. They are represented by one or more legal representatives.
15. Regulation 86(8) of the Court provides that “A decision taken by a Chamber under rule 89 shall apply throughout the proceedings in the same case, subject to the powers of the relevant Chamber in accordance with rule 91, sub-rule 1”.
16. As it stands the number of victims does not undermine the efficiency of proceedings. If other victims who have also chosen the same legal representatives were also to be authorised to participate in proceedings in the future, it would be logical for these victims to join the same group. In practice, a change to the make-up of each group will not have an impact on the course of the trial, in particular on the number of submissions filed and the speaking time allocated to the legal representatives of each group.
17. As long as they are members of the same group, the number of victims participating in proceedings will not have an impact except where victims file applications for reparations, and then only in hearings on reparations if the accused is convicted. However, admitting other groups of victims could affect the course of the trial during the phase where guilt is determined, and even questions currently discussed at status conferences.
18. The Legal Representatives therefore believe that it is in the interest of all participants and the Court for any applications to participate filed by other groups of victims to be decided as soon as practicable.

⁷ Rule 88(5).

19. It will be for the Court to judge when the number of groups of victims authorised to participate in proceedings would become an unreasonable burden or risk disrupting the normal course of proceedings and calls for them to be grouped together within the sense of rule 90(2), (3) and (4).
20. However, this step should not be taken too hastily if it is not necessary. Even if victims do not have a conflict of interest *prima facie*, grouping them together would not be unproblematic. The on-going insecurity in Ituri means that victims cannot always communicate easily with their legal representative or each other. Forcing victims to communicate in order to liaise with other people whom they do not know could pose a security risk.
21. In the view of the Legal Representatives, several groups of victims would not necessarily need to be put together to ensure the efficiency of proceedings, even if the number of groups was much higher than at present. It would depend on the circumstances.
22. Nor do victims have to be grouped together for the entire proceedings. Victims might group together to make particular interventions or submissions on points upon which several groups are in agreement.
23. The two groups of legal representatives have moreover acted spontaneously in this manner and have filed common applications or submissions on several occasions where this was possible.
24. The Court could also allocate speaking time to victims' representatives overall and ask them to decide between themselves how this time should be divided.
25. In any event, and in accordance with rule 90(2), any regrouping of victims should take place in consultation with all of these groups and their legal representatives, without interference from the Prosecution or the Defence. The latter may give their opinion on whether a regrouping is necessary, but not on how the process takes place in practice.

4. Place of trial

26. If some hearings were held in the DRC, this would increase the visibility of justice among victims and allow victims who have not been authorised to take part in proceedings to follow hearings.
27. If financial and logistical considerations allow, the Legal Representatives of Victims do not see any reason why some hearings should not be held in the Democratic Republic of the Congo, as long as the security of victims and witnesses can be ensured, in particular for victims granted protective measures.
28. In the view of the Legal Representatives, insecurity in Ituri is currently too great for a trial to be held in Bunia in normal conditions, but hearings could be held in Lubumbashi, for example.

FOR THESE REASONS,

MAY IT PLEASE THE TRIAL CHAMBER TO:

Take into consideration the observations of the Legal Representatives.

[signed]

Luc Walley and Franck Mulenda (absent at signing)
Legal Representatives of Victims a/0001/06 to a/0003/06

Dated this 19 October 2007

At Brussels, Belgium, and Kinshasa, Democratic Republic of the Congo