



Original: **French**

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

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito Title
Judge René Blattmann Title

Registrar: Mr Bruno Cathala

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

Public Document

Application to File Submissions by the Legal Representative of Applicants for Participation a/0016/06 to a/0018/06; a/0021/06; a/0025/06; a/0028/06; a/0031/06; a/0032/06; a/0034/06; a/0037/06; a/0038/06; a/0042/06; a/0044/06; a/0045/06; a/0142/06; a/0143/06; a/0148/06; a/0150/06; a/0158/06; a/0163/06 to a/0183/06; a/0185/06 to a/0189/06 ; a/0193/06; a/0194/06; a/0196/06 to a/202/06; a/0204/06; a/0205/06, a/0207/06; a/0208/06; a/0210/06 to a/0214/06; a/0216/06 to a/0218/06; a/0221/06; a/0223/06 to a/0230/06; a/0234/06 to a/0239/06; a/0241/06; a/0042/07 to a/0075/07; a/0167/07 to a/0191/07 and a/0270/07

(rule 103 of the Rules of Procedure and Evidence)

Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Legal Representatives of Victims

Ms Carine Bapita Buyangandu
Mr Luc Walley and Mr Franck Mulenda

Counsel for the Defence

Ms Catherine Mabilile
Mr Jean-Marie Biju Duval

Office of Public Counsel for Victims

Ms Paolina Massidda

Applicant (Legal Representative of Applicants for Participation)

Mr Joseph Keta

Noting the order of 5 September 2007, by which the Chamber invites submissions on issues that require early determination,¹ and in particular question 3(e) on “the role of victims in the proceedings leading up to, and during, the trial”;

Noting the decision of 18 July 2007 directing the Registry to inform those victims who have applied to participate in proceedings of the schedule and deadlines for filing written submissions and that, without prejudice to any later decisions, such victims are prohibited from taking part in the scheduled hearings;

Noting that victims’ participation in proceedings is a key element of the Rome Statute as well as an important means for the ICC to involve communities affected by the crimes that have been committed in the quest for the justice owing to them and that the ability of victims to present their views and concerns may significantly contribute to a fair and in-depth trial;

Noting that victims’ participation in preliminary interlocutory hearings is important in that these hearings will have a bearing on the overall conduct of the trial and guarantee that it will be a complete success;

Noting that the crimes charged potentially affect a very large number of victims, that victims may have distinct interests and perspectives and that for the time being only four victims are participating;

Noting that, so that affected persons who are eligible can present their views and concerns in an appropriate manner in compliance with article 68(3) of the Statute, it is the Chamber’s duty to determine their status with all speed;

¹ See “Order setting out schedule for submissions and hearings regarding the subjects that require early determination”, ICC-01/04-01/06-947, 5 September 2007.

1. The Applicant, the representative of numerous victims, hereby respectfully submits to the Trial Chamber an application pursuant to rule 103(1) read in conjunction with rule 93 of the Rules of Procedure and Evidence to file submissions concerning the role of victims in the proceedings leading up to, and during, the trial, in the light of the fact that victims who have been notified of the schedule and the deadlines for filing written submissions are henceforth unable to lodge written submissions as they are not allowed to participate in the scheduled hearings either orally or in writing.

2. Having perused the observations made by Mr Luc Walleyne and Ms Carine Bapita² in their written submissions, with which the Applicant essentially concurs, the Applicant wishes to tender observations on issues not covered by Mr Walleyne and Ms Bapita and which may clearly be relevant to the management and determination of any applications filed by persons seeking to be granted the status of victim, in particular if the number of such applications grows significantly (as is and will be precisely the case in the instant proceedings).

3. Although the Applicant believes that the issues that he wishes to raise are urgent, he is aware that hearings are scheduled for the instant trial for 29-31 October and he does not want to run the risk of causing delays. Accordingly, he would be content for his application to be examined at a later date should this be more convenient.

A. LEGAL REPRESENTATIVES

4. The Applicant respectfully wishes to intervene on behalf of numerous persons, namely Applicants for Participation a/0016/06 to a/0018/06; a/0021/06; a/0025/06; a/0028/06; a/0031/06; a/0032/06; a/0034/06; a/0037/06; a/0038/06; a/0042/06; a/0044/06; a/0045/06; a/0142/06; a/0143/06; a/0148/06; a/0150/06; a/0158/06; a/0163/06 to a/0183/06; a/0185/06 to a/0189/06 ; a/0193/06; a/0194/06; a/0196/06 to a/202/06;

² "Conclusions sur des questions préliminaires", ICC-01-04-01-06-964, 24 September 2007.

a/0204/06; a/0205/06, a/0207/06; a/0208/06; a/0210/06 to a/0214/06; a/0216/06 to a/0218/06; a/0221/06; a/0223/06 to a/0230/06; a/0234/06 to a/0239/06; a/0241/06; a/0042/07 to a/0075/07; a/0167/07 to a/0191/07 and a/0270/07.

5. In particular, Applicants for Participation a/0224/06, a/0225/06, a/0226/06, a/0229/06, a/0230/06, a/0237/06, a/0238/06, a/0239/06, a/0241/06, a/0054/07, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0059/07, a/0060/07, a/0063/07 and a/0064/07 allege that they have suffered harm directly connected with the crimes listed in the arrest warrant for the Accused as they were enlisted by the FPLC when they were children under 15 years of age, trained in the Bulé training camp between October 2002 and May 2003, and took part in hostilities in Libi and Mbau in October 2002, Largu at the beginning of 2003, Lipiri and Bogoru in March 2003, Bunia in May 2003 and Mongwalu in June 2003. Applicant a/0207/02, a head teacher at the time of the events, alleges that he suffered harm as a result of helping several direct victims and preventing the latter from falling victim to these crimes.

6. The Applicants for Participation completed the formalities to participate in the trial between 19 September 2006 and 31 August 2007. The failure to decide whether to grant their applications to be granted victim status prevented several from presenting their views and concerns during the confirmation hearings.

7. While no decision has been made on their request for participation and recognition as victims, it is evident that the response to questions regarding “the role of victims in the proceedings leading up to, and during, the trial” is likely to have a direct bearing on their future role, even though it is possible that opportunities to submit observations may not arise in future.

B. THE PROPOSED SUBMISSION WOULD ENHANCE THE CHAMBER'S ANALYSIS OF ISSUES

8. Rule 103 "Amicus curiae and other forms of submission" states, in sub-rule (1), that "[...] a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a [...] person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate".

9. Given that his work on behalf of numerous victims has enabled the Applicant to become closely acquainted with the procedure for applying to participate; that the Applicant has in-depth knowledge of the region from which victims come and its specific characteristics; that the victims' cases are highly relevant to the case submitted to trial; and that the Applicant has detailed knowledge of how other jurisdictions handle and deal with applications submitted by a large number of victims ("mass claims"/"class actions"), especially as regards the "role of victims in the proceedings leading up to, and during, the trial", it is respectfully submitted that the proposed submission would assist the Chamber in the proper determination of the case.

10. Traditionally, amici curiae tend to be neutral parties who bring fresh knowledge to the proceedings. In this case, the Applicant is also the legal representative of applicants for participation. However, rule 103 would seem to apply not only to traditional amici curiae but also to "other forms of submission". Furthermore, when read in conjunction with rule 93 (which states that "[...] a Chamber may seek the views of other victims [...]"), rule 103(1) implies that the Chamber may hear such a submission.

C. IF THE CHAMBER PERMITS, THE APPLICANT WILL SUBMIT HIS OBSERVATIONS ON THE FOLLOWING ISSUES:

- Σ local circumstances that restrict communication and accordingly victims' right to be informed of decisions that concern them, and any opportunities to be exploited;
- Σ the role of VPRS under rule 89(3)(9), given the ability on the ground to fill in forms;
- Σ the real security situation of victims and their intermediaries, and its implications for the means of communication used to transmit their requests to the Parties as well as for their protection during the application phase;
- Σ the need for legal aid in some cases;
- Σ the expediency of grouping victim applicants together by crime (jurisdiction *ratione materiae*) and geographic area (jurisdiction *ratione loci*) or grouping together victims represented by common legal representatives;
- Σ how to manage and deal with applications submitted by a large number of victims or applicants for the status of victims ("mass claims"/"class actions") and how to overcome evidential barriers.

For these reasons, if the Chamber sees fit, the Applicant respectfully requests that he be invited to present his written or oral observations on the above-mentioned questions.

Mr Joseph Keta
Legal Representative of Victims
 [signed]
 Dated this 19 October 2007

At Tours, France