



Original: **French**

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

Date: **14 January 2013**

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Anita Ušacka
Judge Ekaterina Trendafilova

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public Document

Defence Submissions on the Registry's "Transmission of the List of Victims in compliance with the Decision ICC-01/04-01/06-2951" dated 7 January 2013

Source: Defence Team for Mr Thomas Lubanga Dyilo

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

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PROCEDURAL HISTORY

1. On 13 December 2012, the Court ordered the Registry to file, by 7 January 2013, the list of victims authorized to participate in the trial phase in the instant case whose right to do so was not subsequently withdrawn. The Court added that objections to the inclusion of specific victims or regarding the correctness of information in the list should be filed by 14 January 2013.¹
2. On 7 January 2013, the Registry filed the list of victims authorized to participate in the trial phase whose right to participate had not been withdrawn.²

OBSERVATIONS

3. The Defence has no specific objection to make with regard to the lists transmitted by the Registry.
4. However, the Defence wishes to bring the following information to the Court's attention:
 - 101 of the 120 victims on the lists remain completely anonymous to the Defence; the Defence has thus been deprived of any opportunity to carry out any verifications whatsoever regarding those victims or to make submissions on their applications for participation in the trial phase. The redactions in the applications thus render the Defence's right to respond totally ineffectual.
 - The Defence was informed of the identities and dates or years of birth of 19 victims. However, in respect of 17 of those victims, other information that

¹ ICC-01/04-01/06-2951, p. 3.

² ICC-01/04-01/06-2959.

would have enabled the Defence to carry out verifications³ – including the names of places, the names of commanders, the names of their schools, the identities of the persons who assisted them with their applications for participation, etc. – remains redacted for the Defence. The redactions in the applications thus render the Defence's right to respond totally ineffectual.

- The only two victims about whom the Defence had sufficient information to conduct verifications – Victims a/0049/06 and a/0051/06 – initially appeared on the Prosecution's list of witnesses, but ultimately the Prosecution decided not to call them to testify at trial. The Defence introduced information into the case record showing that those two victims gave false statements to the Court in order to obtain victim status.⁴
- Victims a/0049/06 and a/0051/06 are connected to Intermediary P-0143, who is acting on their behalf as a guardian. However, the Trial Chamber withdrew the right to participate from four victims⁵ who had been in contact with that intermediary and found that there was a possibility that he had persuaded, encouraged or assisted witnesses to give false evidence.⁶
- Victims a/0226/06, a/0224/06 and a/0230/06⁷ are connected to Victim a/0270/07, who is acting on their behalf as a guardian. However, the Trial Chamber withdrew the latter's right to participate in the proceedings, in particular because of a real possibility that he incited Victims a/0225/06 and a/0229/06 to usurp the identities of third persons.⁸

³ Victims a/0155/07, a/0149/07, a/0404/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0230/06, a/0232/06, a/0236/06, a/0221/06, a/0224/06, a/0003/07, a/0613/08, a/0156/07, a/0612/08 and a/0105/06.

⁴ EVD-D01-00763 and EVD-D01-000765.

⁵ Victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06, Judgment, para. 484.

⁶ Judgment, para. 483.

⁷ As confirmed by the letter signed by Victim a/0270/07, dated 16/11/2007: EVD-D01-00283, p. 10/13.

⁸ ICC-01/04-01/06-2842, para. 450.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER:

TO TAKE NOTE of the submissions contained herein.

[signed]

Catherine Mabile, Lead Counsel

Dated this 14 January 2013

At The Hague