

No.: ICC-01/04-01/06-1368

Date: 2 June 2008

**Public Decision on the legal representative's request for clarification
of the Trial Chamber's 18 January 2008 "Decision on victims'
participation"**

Headline

DRC, *The Prosecutor v. Thomas Lubanga Dyilo*—Trial Chamber I clarifies previous decision on victims' right to access Prosecution material relevant to their personal interest and manner in which Prosecution is to produce such material to them.

Brief Summary

On 2 June 2008, Trial Chamber I clarified its 18 January 2008 decision on the victims' right to access Prosecution material relevant to their personal interests and the manner in which the Prosecution is to produce such material to them.

In this decision, Trial Chamber I considered the following two issues for which the victims' legal representative had sought clarification:

- a) the victims' right to access annexes of the Prosecution's summary of presentation of evidence; and
- b) the victims' right to inspect material in the possession of the Prosecution.

Trial Chamber I found that granting participating victims access to the Prosecution's documents listed in the annexes would, in combination with the public redacted version of the Prosecution's evidence summary, be sufficient to enable them to prepare discrete applications for participation in the trial.

As regards victims' right to inspect material, Trial Chamber I noted that its 18 January 2008 decision¹ provided a mechanism whereby participating victims may be provided with "any materials within the possession of the prosecution that are relevant to the personal interests of victims". This procedure should be dealt with by the Prosecution and legal representatives of victims *inter se*. The legal representatives shall first identify (i) the victims' personal interests and (ii) the nature of the information that may be within the possession of the Prosecution which is material to the victims' participation at a particular phase of the proceedings. This will enable the Prosecution to identify the material in its possession, if any, that may be relevant. Any filing before a Chamber should only be made in case of disagreement.

¹ 18 January 2008 Trial Chamber I Decision (ICC-01/04-01/06-1119).

Full Summary

On 2 June 2008, Trial Chamber I clarified its 18 January 2008 decision² on victims' participation and the exercise of their right to access Prosecution material that is relevant to their personal interests. The Chamber also clarified the manner in which the victims are to request such material and the Prosecution is to provide it to them.

The clarification of Trial Chamber I was sought by the victims' legal representative in relation to two issues:

- c) the victims' right to access annexes of the Prosecution's summary of presentation of evidence; and
- d) the victims' right to inspect material in the possession of the Prosecution.

Trial Chamber I recalled that, on 22 May 2008, the Appeals Chamber issued a decision partially suspending Trial Chamber I's 18 January 2008 decision³ to the extent that it was affected by the issues on appeal⁴. Participating victims' access to the material which formed the subject of the present decision was, however, not subject to the pending appeal (para. 21). Therefore, the paragraphs for which clarification was sought should be clarified to the extent necessary and thereafter implemented (para. 22).

Trial Chamber I noted that an evaluation of the status of the victims was pending before it. In accordance with regulation 86(8) of the Regulations of the Court⁵, however, their status as victims should apply throughout the proceedings, subject to modification by a Chamber (para. 24).

Trial Chamber I ruled that, though the request had been made in relation to specific victims, any clarification of the 18 January 2008 decision applies identically to any other victims who hereafter are granted participating status (para. 26)

- a) The victims' right to access to annexes of the Prosecution's summary of presentation of evidence

Trial Chamber I reiterated that, once a victim has been granted participatory status, the Chamber will assess how his or her interests are engaged at a particular stage of the proceedings in order to decide on their modalities of participation. As part of this process, the Chamber will consider the Prosecution's summary of presentation of evidence (para. 27). Furthermore, in order for the victim to participate at a particular stage of the proceedings, the legal representatives of victims authorised to participate are instructed to set out in a discrete written application the nature and the detail of the

² 18 January 2008 Trial Chamber I Decision (ICC-01/04-01/06-1119).

³ 18 January 2008 Trial Chamber I Decision (ICC-01/04-01/06-1119).

⁴ 22 May 2008 Appeals Chamber Decision (ICC-01/04-01/06-1368).

⁵ Regulation 86(8) of the Regulations of the Court.

proposed intervention in which the victim must describe the way in which his or her personal interest is affected (para. 28).

Trial Chamber I noted that, in its 18 January 2008 decision, it authorised the present victims to participate at the current stage of the proceedings (post-confirmation of charges and pre-trial). Also, they had earlier been given the right of access to the public versions of the annexes of the Prosecution's summary of presentation of evidence. Subsequently, the Chamber concluded that filing a redacted public version of the annexes, essentially a list of documents, would not serve any practical purpose. Only if the victims had sufficient knowledge of the Prosecution's evidence would they be in a position to make discrete applications before the Chamber specifying how their personal interests are affected. The Prosecution has since filed *inter alia* a public redacted version of an updated evidence summary and a document listing the witnesses it intends to call in their order of appearance. Access to these documents would be sufficient to enable the victims to prepare discrete applications for participation (para. 29).

- b) The victims' right to inspect material in the possession of the prosecutor

Trial Chamber I recalled its 18 January 2008 decision in which it held that inspection, as provided for in rules 77⁶ and 78⁷ of the Rules of Procedure and Evidence, relates only to the Prosecution and the Defence (para. 30). However, the decision does provide a mechanism whereby the victims who have been given the right to participate may be provided with "any materials within the possession of the prosecution that are relevant to the personal interests of the victims". This mechanism shall operate, in the first instance, between the relevant victim's legal representative and the Prosecution. The legal representative shall identify (i) the victim's personal interest and (ii) the nature of the information that may be within the evidence in the possession of the Prosecution which is material to the preparation of the victim's participation. This will enable the Prosecution to identify whether the material in its possession is relevant (para. 31). The interests must relate to the evidence and the issues the Chamber will be considering in its investigation of the charges brought against the accused and are limited to those victims who have suffered personal and direct harm as a result of the events covered by the charges (paras. 32-33).

Trial Chamber I considered that this procedure for provision of material should be dealt with by the Prosecution and victims' legal representatives *inter se*. A filing before the Chamber should thus only be made in the event of a disagreement (para. 34).

For these reasons, Trial Chamber I made the following orders:

⁶ Rule 77 of the Rules of Procedure and Evidence.

⁷ Rule 78 of the Rules of Procedure and Evidence.

- a) Pending the decision on the substantive appeal on victims' participation, the personal interests of the victims are limited to those who have suffered personal and direct harm as a result of the events covered by the charges brought against the accused.
- b) In order to exercise their right to receive relevant material, the legal representatives of victims are instructed to set out in a document provided to the Prosecution how material in the Prosecution's possession is relevant to an individual victims' personal interest.
- c) The Prosecution shall thereafter identify and provide any material in its possession which satisfies the above criteria.
- d) The above procedure should be dealt with by the Prosecution and legal representatives of victims *inter se* and a filing before the Chamber should only be made in case of disagreement.
- e) In order to participate at the trial, and once victims have received the above documents, they are instructed to file discrete applications before the Chamber, specifying how their personal interests are affected at a given phase of the trial.