



Original: English

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

Date: 31 July 2009

**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**

**Decision issuing a second corrigendum to the  
"Minority opinion on the "Decision giving notice to the parties and participants  
that the legal characterisation of facts may be subject to change in accordance with  
Regulation 55(2) of the Regulations of the Court" of 17 July 2009"**

**Decision/Order/Judgment to be notified in accordance with regulation 31 of the Regulations of the Court to:**

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo  
Ms Fatou Bensouda

**Counsel for the Defence**

Ms Catherine Mabile  
Mr Jean-Marie Biju Duval

**Legal Representatives of the Victims**

Mr Luc Walley  
Mr Franck Mulenda  
Ms Carine Bapita Buyangandu  
Mr Joseph Keta Orwinyo  
Mr Jean Louis Gilissen  
Mr Jean-Chrysostome Mulamba Nsokoloni  
Mr Paul Kabongo Tshibangu  
Mr Hervé Diakiese

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

1. The presiding judge of Trial Chamber I issued a "Minority opinion on the "Decision giving notice to the parties and participants that the legal characterisation of facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court" on 17 July 2009 ("Opinion").<sup>1</sup> A first corrigendum to the Opinion was issued on 21 July 2009.<sup>2</sup> It has come to the attention of the presiding judge that the first corrigendum to the Opinion contains clerical errors in three different paragraphs that necessitate correction.
  
2. The paragraphs concerned are paragraphs 36, 40, and 42. In consequence, the paragraphs should read as follows:

**Paragraph 36 of the Opinion:**

On 29 January 2007 the Pre-Trial Chamber confirmed six charges against the accused on which he was committed for trial, in the following way:

- CONFIRMS, on the evidence admitted for the purpose of the confirmation hearing, that there is sufficient evidence to establish substantial grounds to believe that Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the charges of enlisting and conscripting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of articles 8(2)(b)(xxvi) and 25(3)(a) of the Statute from early September 2002 to 2 June 2003;
  
- CONFIRMS, on the evidence admitted for the purpose of the confirmation hearing, that there is sufficient evidence to establish substantial grounds to believe that Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the charges of enlisting and conscripting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of articles 8(2)(e)(vii) and 25(3)(a) of the Statute from 2 June 2002 to 13 August 2003;

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<sup>1</sup> ICC-01/04-01/06-2054.

<sup>2</sup> Decision issuing a corrigendum to the "Minority opinion on the "Decision giving notice to the parties and participants that the legal characterisation of facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court" of 17 July 2009", 21 July 2009, ICC-01/04-01/06-2061.

Paragraph 40 of the Opinion:

On analysis, the true effect of the application in this case, is to advance the following five “proposals”:

**A. Sexual Slavery**

- On the evidence, Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the charge of **sexual slavery** as part of a widespread or systematic attack directed against a civilian population with knowledge of the attack within the meaning of Articles 7(1)(g) and 25(3)(a) of the Statute; (*A crime against humanity.*)

**B. Sexual Slavery**

- On the evidence, Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the charge of **sexual slavery** as part of a plan or policy or part of a large-scale commission of this crime within the meaning of Articles 8(2)(b)(xxii) and 25(3)(a) of the Statute; (*A war crime, committed in violation of the laws and customs applicable in international armed conflict;*)

**C. Sexual Slavery**

- On the evidence, Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the charge of **sexual slavery** as part of a plan or policy or part of a large-scale commission of this crime within the meaning of Articles 8(2)(e)(vi) and 25(3)(a) of the Statute; (*A war crime, which although committed during an armed conflict not of an international character, was nonetheless a serious violation of Article 3 common to the four Geneva Conventions of 12 August 1949, namely an act of violence to life and person committed against persons taking no active part in the hostilities.*)

**D. Inhuman treatment**

- On the evidence, Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the charge of **inhuman treatment** as part of a plan or policy or part of a large-scale commission of this crime within the meaning of Articles 8(2)(a)(ii) and 25(3)(a) of the Statute; (*A war crime, which involved a grave breach or grave breaches of the Geneva Conventions of 12 August 1949, namely inhuman treatment against someone protected under the provisions of a relevant Geneva Convention.*)

#### E. Cruel treatment

- On the evidence, Thomas Lubanga Dyilo is responsible, as a co-perpetrator, for the charge of **cruel treatment** as part of a plan or policy or part of a large-scale commission of this crime within the meaning of Articles 8(2)(c)(i) and 25(3)(a) of the Statute; (*A war crime, which although committed during an armed conflict not of an international character, was nonetheless a serious violation of Article 3 common to the four Geneva Conventions of 12 August 1949, namely an act of violence to life and person committed against persons taking no active part in the hostilities.*)

#### Paragraph 42 of the Opinion:

At present the charges are brought as war crimes only, but proposal A. is put as a crime against humanity. However, far more notably, the present charges relate to the conscription, enlistment or use of child soldiers, whilst these new proposals add the significant elements of sexual slavery, inhuman treatment and cruel treatment (requiring, it is to be noted, the probable reliance on additional facts and circumstances, as discussed in paragraphs 46, *et seq.* below), in the context of:

- separate and additional grave breaches of the Geneva Conventions, or
- separate and additional serious violations of the laws and customs applicable in international armed conflict, or
- separate and additional serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely an act, or acts, of violence to life and person committed against persons taking no active part in the hostilities.

3. For ease of reference, the correct version of the Opinion is attached as Annex 1.

Done in both English and French, the English version being authoritative.

  
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**Judge Adrian Fulford**

Dated this 31 July 2009

At The Hague, The Netherlands