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No.: **ICC-01-04/01-06**
Date: **29 November 2010**

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

Application for leave to tender into evidence material from the “bar table”

Source: OPCV as Legal Representative of victims a/0047/06, a/0048/06 and a/0050/06

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

Court to:

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**Victims Participation and Reparations
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Other

I. Background

1. On 18 January 2008, Trial Chamber I issued its Decision on Victims' Participation¹ (the "Decision") whereby it established, *inter alia*, that "*the right to introduce evidence during trials before the Court is not limited to the parties, not least because the Court has a general right (that is not dependent on the cooperation or the consent of the parties) to request the presentation of all evidence necessary for the determination of the truth, pursuant to Article 69(3) of the Statute. [...] It follows that victims participating in the proceedings may be permitted to tender and examine evidence if in the view of the Chamber it will assist it in the determination of the truth, and if in this sense the Court has 'requested' the evidence.*"²

2. On 11 July 2008, the Appeals Chamber issued the "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008"³ whereby it upheld the Trial Chamber I's findings regarding the possibility for victims to tender and examine evidence⁴ and identified the following modalities for the victims to be authorised to do so: "*(i) a discrete application, (ii) notice to the parties, (iii) demonstration of personal interests that are affected by the specific proceedings, (iv) compliance with disclosure obligations and protection orders, (v) determination of appropriateness and (vi) consistency with the rights of the accused and a fair trial.*"⁵

3. On 8 November 2010, the Defence submitted the « Troisième requête de la Défense aux fins de dépôt de documents » (the "Third application for the admission of documents") in which it requested for admission into evidence, *inter alia*, of the

¹ See the "Decision on victims' participation" (Trial Chamber I), No. ICC-01/04-01/06-1119, 18 January 2008.

² *Idem.*, par. 108.

³ See the "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008" (Appeals Chamber), 11 July 2008, No. ICC-01/04-01/06-1443 OA9 OA10.

⁴ *Idem.*, paras. 93 to 105.

⁵ *Ibid.*, para. 104.

information contained in the database of the Independent Electoral Commission of the Democratic Republic of the Congo (the “IEC of the DRC”) regarding the voting cards No. 5007-11-0678, 5149-11-0600 and 5129-21-0099 issued on the name of victims a/0047/06, a/0048/06 and a/0050/06 respectively⁶.

4. On 15 November 2010, two members of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) met with victims a/0047/06, a/0048/06 and a/0050/06 in order to clarify the circumstances under which the voting cards No. 5007-11-0678, 5149-11-0600 and 5129-21-0099 were issued to them. The statements of the said victims were registered in writing and signed by the victims themselves, the two members of the Office and an interpreter of the Interpretation and Translation Section of the Court (the “Written Statements”)⁷.

5. The Principal Counsel of the OPCV as Legal Representative of victims a/0047/06, a/0048/06 and a/0050/06 (the “Legal Representative”) respectfully requests for the Chamber’s leave to tender into evidence the written statements of its clients regarding the circumstances under which the voting cards No. 5007-11-0678, 5149-11-0600 and 5129-21-0099 were issued.

II. Request for leave to tender into evidence written statements

6. The Legal Representative submits first that the Written Statements were provided by victims a/0047/06, a/0048/06 and a/0050/06 in person and clarify the circumstances under which the voting cards No. 5007-11-0678, 5149-11-0600 and 5129-21-0099 were issued to them. It follows that the admission of the Written Statements into evidence clearly concerns the said victims’ personal interests as far

⁶ See Annexes 39 and 41 to 43 to the «Troisième requête de la Défense aux fins de dépôt de documents» (« Third application for the admission of documents »), No. ICC-01/04-01/06-2604-Conf, 8 November 2010.

⁷ See the « Déclaration a/0047/06 sur la carte d’électeur No. 5007-11-0678 », 15 November 2010 ; the « Déclaration a/0048/06 sur la carte d’électeur No. 5149-11-0600 », 15 November 2010 ; and the « Déclaration a/0050/06 sur la carte d’électeur No. 5129-21-0099 », 15 November 2010.

as such an admission aims at explaining the personal data as contained in the voting cards at stake as well as in the database of the IEC of the RDC. The issue as to the veracity of the said information not only is the subject of the proceedings related to the Third application of the Defence for the admission of documents but also is a live issue for an eventual Defence application for abuse of process⁸ since it is said to materially affect the credibility of the victims a/0047/06, a/0048/06 and a/0050/06 in their quality of the Prosecution witnesses OTP-0007, OTP-0008 and OTP-0010. In this sense, the admission of the Written Statements into evidence is relevant and highly appropriate at this stage of the proceedings. Furthermore, the admission of the Written Statements is consistent with the rights of the accused and with a fair trial.

7. Indeed, the admission of the Written Statements into evidence is likely to materially help the Chamber to establish the truth since the Written Statements clarify the circumstances under which personal data regarding three Prosecution witnesses, while being incorrect, were included into the Congolese authorities records and, in this regard, to understand the very realities of the field regarding the issuance of identity documents. In this sense, the Written Statements are not likely to prejudice in any way the rights of the accused but rather aim at establishing the truth and at ensuring fair trial requirements.⁹

8. Finally, in accordance with the aforementioned criteria established by the Appeals Chamber, the Written Statements were disclosed to the Prosecution and the Defence on 26 November 2010. In accordance with the protection orders issued by the Chamber, redactions were applied to the name of the STIC interpreter assisting members of the OPCV during the meeting with its clients, as well as to the place

⁸ The Defence has submitted, on multiple occasions, that the Prosecution witnesses falsified evidence or lied at the course of their testimony before the Chamber. See the Third application of the Defence for the admission of documents, *supra* note 6, para. 55. See also the « Requête de la Défense aux fins de dépôt de documents », No. ICC-01/04-01/06-2417-Conf, 5 May 2010, para. 10.

⁹ See the “Decision on the admission of material from the ‘bar table’” (Trial Chamber I), No. ICC-01/04-01/06-1981, 24 June 2009, paras. 45 to 48.

where the meetings took place, considering that the persons concerned are in the ICCPP.

9. Concerning the form of tendering of the Written Statements, the Legal Representative submits that the said Statements might be tendered as material from the “bar table” in accordance with article 64-9 of the Statute by analogy and under the same conditions that any material tendered from the “bar table” by the parties. In this regard, the Legal Representatives submits that the Chamber has authorised, on several occasions, the Prosecution¹⁰ and the Defence¹¹ to tender documents and material from the “bar table” in accordance with the admissibility criteria established in its decision of 13 June 2008.¹² Should the Trial Chamber authorise the Legal Representative to tender into evidence the Written Statements, via a “bar table” application, she will show that the admissibility criteria as set by the Chamber are met.

¹⁰ See the “Decision on the Prosecution third and fourth applications for admission of documents from the “bar table”” (Trial Chamber I), No. ICC-01/04-01/06-2600-Conf, 2 November 2010; the “Corrigendum of Decision on the “Prosecution's Second Application for Admission of Documents from the Bar Table Pursuant to Article 64(9)” (Trial Chamber I), No. ICC-01/04-01/06-2589-Corr-Conf, 26 October 2010 (dated 25 October 2010); and the “Decision on the admission of material from the “bar table”” (Trial Chamber I), No. ICC-01/04-01/06-1981, 24 June 2009.

¹¹ See the « Decision on the defence request for the admission of 422 documents » (Trial Chamber I), No. ICC-01/04-01/06-2595-Conf, 26 October 2010; and the “Decision on the « Seconde requête de la Défense aux fins de dépôt de documents »” (Trial Chamber I), No. ICC-01/04-01/06-2596-Conf, 26 October 2010.

¹² See the « Decision on the admissibility of four documents » (Trial Chamber I), No. ICC-01/04-01/06-1399, 13 June 2008.

FOR THE FOREGOING REASONS, the Legal Representative respectfully requests the Trial Chamber's leave to tender into evidence, through an application for admission of material from the "bar table" in accordance with article 64-9 of the Statute, the written statements of victims a/0047/06, a/0048/06 and a/0050/06 regarding the circumstances under which the voting cards No. 5007-11-0678, 5149-11-0600 and 5129-21-0099 were issued to them.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath the name.

**Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims**

Dated this 29th day of November 2010

At The Hague, The Netherlands