



Original: English

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

Date: 5 April 2011

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

**With Confidential Annex A - Prosecution, Defence and Maitre Keta only and
Confidential Annex B - Prosecution, Defence and Maitre Diakiese only**

**Prosecution's Observations on Seven Redacted Applications for Victim
Participation in the Case**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Jean-Louis Gilissen
Mr Jean Chrysostome Mulamba Nsokoloni
Mr Paul Kabongo Tshibangu

Legal Representatives of Applicants

Mr Joseph Keta Orwinyo
Mr Hervé Diakiese

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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

Background

1. On 8 March 2011, Trial Chamber I (“Chamber”) ordered the Registry to transmit seven new victims’ applications for participation in the *Lubanga* case in a suitably redacted form to the Prosecution and the Defence by 14 March 2011.¹ The Chamber invited the Prosecution and the Defence to file observations on the applications by 5 April 2011.²
2. On 14 March 2011, the Registry provided the parties with the seven redacted victim applications for participation in the proceedings, from applicants a/0335/10, a/1610/10, a/1615/10, a/1616/10, a/1619/10, a/1621/10 and a/1622/10.³
3. The Prosecution submits that five of the applications – a/0335/10, a/1610/10, a/1615/10, a/1616/10 and a/1622/10 – are complete and appear to meet the requirements of Rule 85(a) and the jurisprudence of this Court. Of the remaining two applications, one – a/1619/10 – contains redactions that make it impossible for the Prosecution to assess whether it meets the requirements. If, on the basis of the unredacted application, the Chamber considers that the information provided therein is sufficient to establish the applicant’s victim status, the Prosecution submits that it would be appropriate for the Chamber to grant a/1619/10’s application to participate as a victim. If the redacted information provided in the application is not sufficient to make this determination, the Prosecution submits that further information or clarification should be provided by the applicant. As to the remaining application – a/1621/10 - in the Prosecution’s view, the application requires further information or clarification before the applicant should be granted status to participate as a victim.

¹ ICC-01/04-01/06-2698, para. 1.

² Ibid, para. 3.

³ ICC-01/04-01/06-2701. The applications for participation were provided in confidential annexes 2 to 8.

Legal criteria for victims' participation in the proceedings

4. For a person to be granted the status of a victim under Rule 85: (i) the applicant must be a natural person as set forth in Rule 85(a), or an organization or institution as set forth in Rule 85(b); (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (iv) there must be a causal link between the crime and the harm.⁴
5. The Appeals Chamber confirmed that in the case of natural persons, both direct and indirect victims may suffer harm, provided it is "personal to the individual".⁵
6. The jurisprudence of this Court indicates that for the purpose of participation in the pre-trial or trial proceedings in a particular case, the harm suffered by a victim must be linked to the charges confirmed against the accused (or, at earlier stages in the proceedings, the offences alleged in the warrant arrest or summons to appear or the document containing the charges).⁶
7. In this case, the harm suffered must have occurred to the applicant between early September 2002 and 13 August 2003, which are the dates within which the alleged crimes occurred.

The Prosecution's Observations

8. The Prosecution supports the application of victims in the proceedings before the Court, when the legal requirements are met. In this case, all applicants are natural persons under Rule 85(a) and have submitted proof to establish their identities. The Prosecution submits however that only five applicants - a/0335/10, a/1610/10, a/1615/10, a/1616/10 and a/1622/10 - have provided sufficient information to link the harm they have suffered to the crimes

⁴ ICC-01/04-01/06-228-tEN, page 7.

⁵ ICC-01/04-01/06-1335, para. 36.

⁶ ICC-01/04-01/06-1432, para. 2.

charged and thus *prima facie* meet the necessary requirements for victims' participation.

9. A sixth applicant - a/1619/10 - *may* meet the necessary requirements but an essential fact is redacted from the application transmitted by the Registry to the Prosecution.
10. The seventh applicant - a/1621/10 - needs to provide additional information or clarification before the application can be assessed.
11. The Prosecution's applicant-by-applicant analysis is set out in Annex A (for applicants a/0335/10, a/1610/10, a/1615/10, a/1616/10, a/1619/10 and a/1621/10) and in Annex B (for applicant a/1622/10).⁷

Conclusion

12. For the reasons outlined above and in the Annexes, the Prosecution requests that the Trial Chamber grant participation status as victims in the case against Thomas LUBANGA to applicants a/0335/10, a/1610/10, a/1615/10, a/1616/10 and a/1622/10.
13. The Prosecution does not have sufficient access to the unredacted application of applicant a/1619/10 to enable it to assess whether or not this applicant meets the requirements to be granted participation status as a victim in the present case. The Chamber, which presumably has access to the unredacted application, should grant the application if it determines that the redacted information is sufficient to establish the applicant's victim status.

⁷ The Annexes containing the seven applications were filed confidentially. Each Legal Representative representing the applicants was provided solely with the annexes related to his client(s). Accordingly, the Prosecution, pursuant to Regulation 23 *bis* (2), files a confidential applicant-by-applicant analysis of the applications in Annex A relating to the applicants represented by Maitre Keta and in Annex B relating to the applicant represented by Maitre Diakiese.

14. The Prosecution submits that further information is required from applicant a/1621/10 in order to assess whether or not her application should be granted.



Luis Moreno-Ocampo, Prosecutor

Dated this 5th day of April 2011
At The Hague, The Netherlands