

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **8 March 2013**

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, President
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

Application by Child Soldiers International for leave to submit observations to Appeals Chamber of the International Criminal Court pursuant to Rule 103 of the Rules of Procedure and Evidence

Source: Child Soldiers International

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor

Counsel for the Defence
Ms Catherine Mabilie

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia
Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Child Soldiers International seeks leave of the Appeals Chamber of the International Criminal Court to submit observations concerning the elements of the war crime of conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities (Article 8(e)(vii) of the Rome Statute) in the case of the Prosecutor v. Thomas Lubanga Dyilo.
2. This application for leave is made pursuant to Rule 103 of the Rules of Procedure and Evidence.

I. Background

3. On 14 March 2012, Trial Chamber I of the International Criminal Court, presided by Judge Adrian Fulford, delivered its judgment pursuant to Article 74 of the Rome Statute of the International Criminal Court.
4. The judgment found Thomas Lubanga Dyilo guilty of the war crimes of conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities (article 8(e)(vii)).
5. The judgment was appealed by the defendant on 3 October 2012.

II. The applicant - Child Soldiers International

6. Child Soldiers International is an international human rights research and advocacy organisation that seeks to end the military recruitment and use of children worldwide. Formerly the Coalition to Stop the Use of Child Soldiers, it was founded in 1998 by leading human rights and humanitarian organisations to campaign for the adoption of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict – a human rights treaty that prohibits the use of children in

armed conflict and raises the age of military recruitment.¹ The treaty was adopted in 2000 and entered into force on 12 February 2002.

7. Child Soldiers International promotes global adherence to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It seeks to end all forms of military recruitment of children or the use in hostilities in any capacity of any person under the age of 18 by state armed forces or non-state armed groups, as well as other human rights abuses resulting from their recruitment or use. It advocates the release of unlawfully recruited children; promotes their successful reintegration into civilian life; and calls for accountability for those who recruit or use them.
8. Among Child Soldiers International's five strategic objectives is strengthening accountability for individuals responsible for the unlawful recruitment or use of children in hostilities.
9. Child Soldiers International carries out research and advocacy in the Democratic Republic of the Congo, with the aim of promoting the effective implementation of international standards to prevent child recruitment by armed forces and armed groups; supporting national non-governmental organizations (NGOs) working on child soldier prevention at provincial and community levels; and advocating for the strengthening of accountability measures against those who recruit and use children in hostilities.

III. The application for locus

10. According to Rule 103(1) of the Rules of Procedure and Evidence of the International Criminal Court: *'At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.'*

¹ The founder members were: Amnesty International, Defence for Children International, International Save the Children Alliance, International Federation Terre des Hommes, Human Rights Watch, Jesuit Refugee Service, Quaker UN Office-Geneva and World Vision International. Child Soldiers International became an independent organisation in 2011 but maintains close links with its former members.

11. Rule 103(1) allows for an organization to request leave to submit observations relevant to the case, if the Chamber deems such observations may assist 'in the proper determination of the case.'²

12. Child Soldiers International submits that it has useful information and experience as an international human rights organization working to prevent the recruitment of children or their use in hostilities to assist the Appeals Chamber on the issues of determining the elements of the war crimes of conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

IV. Summary of specific Issues to Address, and the Nature of the Observations Submitted

13. The definition of 'conscripting' and 'enlisting' children into armed groups

Child Soldiers International proposes to draw to the Appeals Chamber's attention the challenges of defining the concept of conscripting or enlisting with regards to armed groups and proposes an interpretation of the term 'recruitment' as any conduct accepting the child a part of the armed group, in line with jurisprudence of the Special Court for Sierra Leone.

14. Continuous nature of the crimes of enlisting or conscripting

Child Soldiers International proposes that the Appeals Chamber considers the implication of the continuous nature of the crimes of enlisting or conscripting children and suggests that the retention of children in an armed group should be considered, in light of the continuous nature of the crime, as amounting to enlisting or conscripting.

15. Using children to participate actively in hostilities

Child Soldiers International supports the Trial Chamber's interpretation of using children to participate actively in hostilities.

² Decision on 'Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence' ICC-01/04-01/06 OA 11 of 22 April 2008.

16. Child Soldiers International would like to draw to the Appeals Chamber's attention the different, overlapping roles child soldiers, including girls, are often used for and how they constitute active participation in hostilities in line with relevant international standards and jurisprudence.
17. Child Soldiers International proposes to the Appeals Chamber that there is no contradiction between the broad interpretation of active participation in hostilities required to protect children from the risks associated with armed conflict and upholding the principle of distinction between combatants and civilians under international humanitarian law.
18. Draft submissions on these issues are annexed to this document (**Annex I**.)

Conclusion

19. Child Soldiers International respectfully requests that the Appeals Chamber grants the organization leave to submit written observations on the matters set out above pursuant to Rule 103 of the Rules of Procedure and Evidence, within a time period determined by the Appeals' Chamber.

For the Applicant



Richard Clarke

Director, Child Soldiers International

Dated this 8 March 2013

In London, United Kingdom

Pursuant to Appeals Chamber's Order ICC-01/04-01/06-3001 A4 A5 A6, dated 26 March 2013, this document is re-stamped in order to reflect the correct appeals phase

At [place, country]