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

Date: **29 June 2006**

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, President
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

Public Redacted Version

**Decision on the Applications for Participation in the Proceedings
Submitted by VPRS 1 to VPRS 6 in the Case
the Prosecutor v. Thomas Lubanga Dyilo**

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Mr Ekkehard Withopf

Counsel for the Defence

Mr Jean Flamme

Legal Representative of the Applicants

Mr Emmanuel Daoud

PRE-TRIAL CHAMBER I (“the Chamber”) of the International Criminal Court (“the Court”);

NOTING the applications for participation in proceedings Nos. 01/04-1/dp to 01/04-6/dp (“the Applications for Participation”) and the supporting brief,¹ which were registered in the record of the Situation in the Democratic Republic of the Congo on 14 June 2005;

NOTING the “Decision on the applications for participation in the proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6”² (“the Decision”) in which, on 17 January 2006, the Chamber accorded the six applicants (“the Applicants”), the status of victim authorised to participate in proceedings at the investigation stage concerning the situation in the Democratic Republic of the Congo (DRC);

NOTING the arrest warrant issued against Thomas Lubanga Dyilo by the Chamber on 10 February 2006;³

NOTING the “Decision authorising the Prosecutor and the Defence to file observations on the victim status of applicants VPRS 1 to VPRS 6 in the case *The Prosecutor v. Thomas Lubanga Dyilo*”⁴ in which the Chamber, on 28 March 2006, decided to give the Prosecutor and Defence Counsel the opportunity to present their observations on the Applications for Participation and the possible recognition of the

¹ “Application for participation N° 01/04-1/dp” is that of the Applicant designated VPRS 1, “Application for participation N° 01/04-2/dp” is that of the Applicant designated VPRS 2, “Application for participation N° 01/04-3/dp” is that of the Applicant designated VPRS 3, “Application for participation N° 01/04-4/dp” is that of the Applicant designated VPRS 4, “Application for participation N° 01/04-5/dp” is that of the Applicant designated VPRS 5, “Application for participation N° 01/04-6/dp” is that of the Applicant designated VPRS 6. These applications for participation and the supporting brief filed by the Victims’ Legal Representative have been redacted and registered under reference number ICC-01/04-75-Conf.

² ICC-01/04-100-Conf-Exp. NB: the dates of registration in this decision are those in the original version of the corresponding documents, because the translations, if available, were filed later.

³ ICC-01/-4-01/06-2-US made public on 17 March 2003 under the reference number ICC-01/04-01/06-37.

⁴ ICC-01/04-01/06-60.

Applicants as victims authorised to participate in the case *The Prosecutor v. Thomas Lubanga Dyilo*;

NOTING the observations filed by the Office of the Prosecutor on 7 April 2006, relating to the status of applicants VPRS 1 to VPRS 6 and their participation in the case *The Prosecutor v. Thomas Lubanga Dyilo*⁵ (*Prosecution's Observations concerning the Status of Applicants VPRS 1 to 6 and their Participation in the Case of The Prosecutor vs Thomas LUBANGA DYILO* ("the Prosecutor's Observations")) in which the Prosecutor states that, when interpreted together, article 68 (3) of the Statute and rule 85 of the Rules of Procedure and Evidence ("the Rules") establish a two stage process through which the status of victim is granted to an individual so that he or she can participate in proceedings before the Court;⁶ that the applicant must first meet the criteria set out in article 68 (3) then satisfy the Chamber that the proceedings in which he or she wishes to participate have direct repercussions on his or her individual rights; that there must be a causal link between these repercussions on the victims' personal interests and crimes which are the specific subject of the prosecution;⁷ that in the light of the preceding analysis, the Prosecutor submits that none of the six Applicants have established a real link between the harm they have suffered and the crimes for which Thomas Lubanga Dyilo is being prosecuted,⁸ [REDACTED];

NOTING "Duty Counsel's observations on the subject of the status of applicants VPRS 1 to VPRS 6 as victims in accordance with the decision of 28 March 2006",⁹ ("the Defence Observations") filed in the record of the case *The Prosecutor v. Thomas Lubanga Dyilo* on 7 April 2006, in which the Defence submits that no application for participation of the relevant victims in the case *The Prosecutor v. Thomas Lubanga Dyilo* exists, in so far as no mention of this case was made in the initial application for

⁵ ICC-01/04-01/06-71-Conf.

⁶ Prosecutor's Observations, paragraph 8.

⁷ Prosecutor's Observations, paragraph 10.

⁸ Prosecutor's Observations, paragraph 17.

⁹ ICC-01/04-01/06-72.

participation in proceedings relating to the situation in the DRC filed on 6 May 2005; that the application for “participation” of a victim against an individual accused is a procedural formality which could not be assumed;¹⁰ that alternatively, in order to evaluate personal interests in accordance with article 68 (3) of the Statute, victims must establish a specific interest in relation to Thomas Lubanga Dyilo and that none of the victims mentioned the accused nor the UPC as participants in the perpetration of the relevant crimes; that, finally, the Defence Counsel submits that rule 85 (a) of the Rules requires that reasonable grounds to believe that there is a causal link between the harm suffered and the crimes on which the arrest warrant is based, be established; and that none of the Applicants has described crimes committed by children;

NOTING the “Request for an extension to the time limit for submitting the brief of the Legal Representative of victims VPRS 1 to 6 , further to the observations made by the Prosecutor and Defence Counsel on the subject of the victim status of applicants VPRS 1 to VPRS 6 in the case *The Prosecutor v. Thomas Lubanga Dyilo*”,¹¹ filed in the record of the case *The Prosecutor v. Thomas Lubanga Dyilo* on 1 May 2006;

NOTING the “Decision relating to the request for an extension to the time limit for submitting the brief of the Legal Representative of victims VPRS 1 to 6 on their status as victims in the case *The Prosecutor v. Thomas Lubanga Dyilo*”,¹² in which, on 9 May 2006, the Chamber granted the Applicants’ Legal Representative a time limit of three weeks from the date of notification of the decision in which to file his observations;

NOTING the “Observations of the Legal Representative of victims VPRS 1 to 6 further to observations of the Prosecutor and the Defence Counsel on the subject of

¹⁰ Defence Observations, p. 3.

¹¹ ICC-01/04-01/06-90.

¹² ICC-01/04-01/06-96.

the status of applicants VPRS 1 to VPRS 6 as victims in the case *The Prosecutor v. Thomas Lubanga Dyilo*"¹³ ("Applicants' Observations"), filed in the record of the case *The Prosecutor v. Thomas Lubanga Dyilo* on 31 May 2005 in which the Applicants' Legal Representative states that an examination of the Applicants' status at this stage would appear premature as to the non-definitive and non-exhaustive character of the charges against Thomas Lubanga Dyilo;¹⁴ that it appears from the available public documents, that the charges against Thomas Lubanga Dyilo will be broader than those mentioned in the arrest warrant dated 10 February 2006;¹⁵ that an examination at this stage would result in the Chamber being obliged to reexamine the victim status of victims VPRS 1 to VPRS 6 every time the Prosecutor requests that the charges be broadened, which would significantly affect the expeditious conduct of the proceedings;¹⁶ that the Court is requested to defer the examination of the victim status of applicants VPRS 1 to 6 until after the confirmation hearing [...] and, in accordance with article 61 (11) of the Statute and to wait for the charges to be confirmed;¹⁷

NOTING, that, alternatively, the Applicants' Legal Representative requests that the Chamber grant VPRS 1 and VPRS 5 the status of victims authorised to participate in the case *The Prosecutor v. Thomas Lubanga Dyilo* because these applicants have suffered harm due to crimes committed which are set out in the arrest warrant against Thomas Lubanga Dyilo,¹⁸ and states that, in the light of the wording of the arrest warrant, it can be logically deduced that the UPC/FPLC led by Thomas Lubanga Dyilo made children under the age of 15 years actively participate in acts of widespread violence committed in Ituri;¹⁹ that as a consequence, any victim claiming harm suffered during the conflict in Ituri in the given period, and which is ascribable

¹³ ICC-01/04-01/06-132.

¹⁴ ICC-01/04-01/06-132, p.4.

¹⁵ Ibid, p.4.

¹⁶ Ibid, p 5.

¹⁷ Ibid, p.5.

¹⁸ Ibid, p.7.

¹⁹ Ibid, p. 7.

to the UPC/FPLC, has *de facto* suffered harm caused by the “war crime consisting of using children under the age of fifteen years to participate actively in hostilities”;²⁰

NOTING articles 58, 61 and 68 of the Rome Statute (“the Statute”) and rules 85, 89, 91 and 92 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING that in the Decision, the Chamber considered that “[a]s the applicants have applied to be accorded the status of victim ‘at the investigation, trial or sentencing stage’, once a case ensues from the investigation of the DRC situation, the Chamber will automatically address the question of whether the applicants seem to meet the definition of victims set out in rule 85 of the Rules in connection with such a case”;²¹

CONSIDERING that the Chamber recognises that there are grounds to believe that VPRS 1 to VPRS 6 have suffered harm due to crimes committed which were mentioned in their statements and which fall within the jurisdiction of the Court under articles 6 to 8 of the Statute;²²

CONSIDERING that the Chamber granted them the status of victims authorised to participate in proceedings at the stage of investigation of the situation in DRC;²³

CONSIDERING that at the case stage, the Applicants must demonstrate that a sufficient causal link exists between the harm they have suffered and the crimes for which there are reasonable grounds to believe that Thomas Lubanga Dyilo bears criminal responsibility and for which the Chamber has issued an arrest warrant;

²⁰ Ibid, p. 8.

²¹ ICC-01/04-101, paragraph 68.

²² ICC-01/04-101, paragraphs 123, 124, 134, 135, 152, 153, 166, 167, 175, 176, 185, 186.

²³ ICC-01/04-101.

CONSIDERING that in his/her statement, VPRS 1 [REDACTED];

CONSIDERING that in his/her statement, VPRS 2 [REDACTED];

CONSIDERING that in his/her statement, VPRS 3 [REDACTED];

CONSIDERING that in his/her statement, VPRS 4 [REDACTED];

CONSIDERING that in his/her statement, VPRS 5 [REDACTED];

CONSIDERING that in his/her statement, VPRS 6 [REDACTED];

CONSIDERING that the Chamber considers that Applicants VPRS 2, VPRS 3 and VPRS 6 have not demonstrated any causal link between the harm they suffered and the crimes contained in the arrest warrant against Thomas Lubanga Dyilo, [REDACTED];

CONSIDERING that the Chamber considers that the causal link required by rule 85 of the Rules at the case stage, is substantiated when the victim, and where applicable, close family or dependants,²⁴ provides sufficient evidence to allow it to be established

²⁴ See the “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”, United Nations General Assembly, resolution 40/34, 29 November 1985, 40th session, United Nations Document A/RES/40/34. See also “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, Human Rights Commission, resolution 2005/35, 19 April 2005; Inter-American Court of Human Rights, Case of Velásquez Rodríguez v. Honduras, Judgment of July 29 1988, paras 127-139; Inter-American Court of Human Rights, Case of Fairén-Garbi and Solís-Corrales v. Honduras. Judgment of March 15, 1989, paras 130-136; Inter-American Court of Human Rights, Case of the “Street Children” v. Guatemala. (Villagrán-Morales et al.)

that the victim has suffered harm directly linked to the crimes contained in the arrest warrant or that the victim has suffered harm whilst intervening to help direct victims of the case or to prevent the latter from becoming victims because of the commission of these crimes;²⁵

CONSIDERING that applicants VPRS 1, VPRS 4 and VPRS 5 have not provided sufficient evidence to allow the Chamber to consider that there are reasonable grounds for believing that the harm they have suffered is directly linked to the crimes contained in the arrest warrant against Thomas Lubanga Dyilo or that they have suffered harm by intervening to help direct victims in the case or to prevent the latter from becoming victims because of the commission of these crimes;

FOR THESE REASONS

REJECTS the request of the Applicants' Legal Representative not to examine at once the status of the Applicants in relation to the case *The Prosecutor v. Thomas Lubanga Dyilo*;

DECIDES that VPRS 2, VPRS 3 and VPRS 6 cannot be granted the status of victims authorised to participate in the case *The Prosecutor v. Thomas Lubanga Dyilo* as they have not demonstrated any causal link between the harm they suffered and the crimes contained in the arrest warrant against Thomas Lubanga Dyilo, [REDACTED];

Judgment of November 19, 1999, paras 174-177; Inter-American Court of Human Rights, Case of the "Panel Bianca" v. Guatemala. (Paniagua-Morales et al.). Reparations, Judgment of May 25, 2001; Inter-American Court of Human Rights, Case of the "Panel Bianca" v. Guatemala. (Paniagua-Morales et al.). Reparations, Public Hearing Declaration before the Court, August 11, 2000. pp 144-175.

²⁵ See the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power", United Nations General Assembly, resolution 40/34, 29 November 1985, 40th session, United Nations Document A/RES/40/34. See also "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", Human Rights Commission, resolution 2005/35, 19 April 2005.

DECIDES that as matters now stand the status of victim authorised to participate in the case *The Prosecutor v. Thomas Lubanga Dyilo* cannot be granted to VPRS 1, VPRS 4 and VPRS 5;

REMINDS all applicants whose application has been rejected, that they may file a new application later in the proceedings under rule 89 (2) of the Rules;

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

Judge Claude Jorda
President

Judge Akua Kuenyehia

Judge Sylvia Steiner

Dated this Thursday 22 June 2006

At The Hague (Netherlands)