



Original: French

No.: ICC-01/04-01/06
Date: 29 September 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
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 Document

**Decision authorising the filing of observations on applications for participation in
the proceedings a/0072/06 to a/0080/06 and a/0105/06**

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Mr Ekkehard Withopf

**Legal Representative of Applicant
a/0105/06**

Ms Carine Bapita Buyangandu

Counsel for the Defence

Mr Jean Flamme

Ms Véronique Pandanzyla

**Ad hoc Counsel for the Defence
Mr Joseph Tshimanga**

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

NOTING applications for participation in the proceedings a/0072/06¹, a/0073/06², a/0074/06³, a/0075/06⁴, a/0076/06⁵, a/0077/06⁶, a/0078/06⁷, a/0079/06⁸, a/0080/06⁹, a/0105/06¹⁰ (the “applications for participation”) filed confidentially and *ex parte* on 14 and 25 September 2006 in the record of the case of *The Prosecutor v. Thomas Lubanga Dyilo*, and of the investigation into the situation in the Democratic Republic of the Congo (“DRC”) whereby the applicants seek recognition of the right to participate as victims in the proceedings in the case of *The Prosecutor v. Thomas Lubanga Dyilo* and in the investigation into the situation in the DRC;

CONSIDERING articles 57 (3) (c) and 68 (1) of the Statute, rules 86 and 89 of the Rules of Procedure and Evidence (the “Rules”) and regulation 86 of the Rules of the Court;

CONSIDERING that under rule 89 (1) of the Rules, the Prosecutor and the Defence are entitled to reply to any application for participation within a time limit to be set by the Pre-Trial Chamber and that in order to allow them to effectively exercise this right, the Registrar shall provide them with a copy of any such application;

CONSIDERING that the format in which a copy of any application for participation is to be transmitted to the Prosecutor and the Defence is governed by the provisions of the Statute, in particular of article 68 (1), which states that the Pre-Trial Chamber and the other organs of the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims without being prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial;

CONSIDERING further that, under article 57 (3) (c) of the Statute, one of the functions of the Pre-Trial Chamber is to provide for the protection and privacy of victims and witnesses, where necessary, and that rule 86 of the Rules establishes, as a general principle, that the Pre-Trial Chamber, in making any direction or order, and other organs of the Court, in performing their functions under the Statute or the

¹ ICC-01/04-01/06-467-Conf-Exp, ICC-01/04-01/06-231-Conf-Exp

² ICC-01/04-01/06-468-Conf-Exp, ICC-01/04-01/06-232-Conf-Exp

³ ICC-01/04-01/06-469-Conf-Exp, ICC-01/04-01/06-233-Conf-Exp

⁴ ICC-01/04-01/06-470-Conf-Exp, ICC-01/04-01/06-235-Conf-Exp

⁵ ICC-01/04-01/06-471-Conf-Exp, ICC-01/04-01/06-234-Conf-Exp

⁶ ICC-01/04-01/06-472-Conf-Exp, ICC-01/04-01/06-236-Conf-Exp

⁷ ICC-01/04-01/06-473-Conf-Exp, ICC-01/04-01/06-237-Conf-Exp

⁸ ICC-01/04-01/06-474-Conf-Exp, ICC-01/04-01/06-238-Conf-Exp

⁹ ICC-01/04-01/06-475-Conf-Exp, ICC-01/04-01/06-239-Conf-Exp

¹⁰ ICC-01/04-01/06-482-Conf-Exp, ICC-01/04-01/06-240-Conf-Exp

Rules, shall take into account the needs of all victims and witnesses in accordance with article 68 of the Statute;

CONSIDERING, therefore, that when the safety of an applicant so requires, the Pre-Trial Chamber may instruct the Registrar to transmit to the Prosecutor and the Defence a redacted copy of the applicant's application for participation expunged of any information which could lead to his or her identification;

CONSIDERING, however, that the redactions must be limited to what is strictly necessary in light of the applicant's safety, and that they must allow the Prosecutor and the Defence to meaningfully exercise their right to reply to the application for participation;

CONSIDERING that the Pre-Trial Chamber is satisfied that the applicants' current circumstances require that Counsel for the Defence be provided with a redacted copy of the applications expunged of any information which could lead to the identification of the applicants;

CONSIDERING that in order not to be expose them to further risks, the applicants should not be contacted directly by any organ of the Court, but only through their legal representatives or through the Victims Participation and Reparations Section and, if necessary, through the Victims and Witnesses Unit;

FOR THESE REASONS

ORDERS the Registry to provide, at the earliest opportunity:

- i. the Prosecutor with an unredacted copy of applications for participation a/0072/06 to a/0080 and a/0105/06 registered in the record of the case of *The Prosecutor v. Thomas Lubanga Dyilo* and of the investigation into the situation in the DRC,
- ii. Counsel for the Defence with a redacted copy of applications for participation a/0072/06 to a/0080/06 and a/0105/06 registered in the record of the case of *The Prosecutor v. Thomas Lubanga Dyilo* expunged of any information which could lead to the identification of the applicants,
- iii. the *ad hoc* Counsel for the Defence with a redacted copy of applications for participation a/0072/06 to a/0080/06 to a/0105/06 registered in the record of the investigation into the situation in the DRC expunged of any information which could lead to the identification of the applicants;

ORDERS all organs of the Court to abstain from any direct contact with the applicants and, if necessary, only through their legal representatives, the Victims Participation and Reparations Section and, if necessary, through the Victims and Witnesses Unit;

DECIDES to grant:

- i. the Office of the Prosecutor and Counsel for the Defence the opportunity to present, no later than 16 October 2006, observations on applications for participation a/0072/06 to a/0080/06 and a/0105/06 and on the possibility of granting the applicants the status of victims authorised to participate in the proceedings before the Chamber in the case of *The Prosecutor v. Thomas Lubanga Dyilo*,
- ii. the Office of the Prosecutor and the *ad hoc* Counsel for the Defence the opportunity to present, no later than 8 December 2006, observations on applications for participation a/0072/06 to a/0080/06 and a/0105/06 and on the possibility of granting the applicants the status of victims authorised to participate in the investigation into the situation in the DRC.

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

Judge Claude Jorda
Presiding Judge

Judge Akua Kuenyehia

Judge Sylvia Steiner

Dated this Friday 29 September 2006

At The Hague, The Netherlands