

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06
Date: 24 February 2009

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 *ex parte* Annex 1, confidential Annex 2
and public Annex 3)**

**Decision issuing redacted and corrected versions of annex concerning applicant
a/0246/06**

Decision/Order/Judgment to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabile
Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
Mr Jean Louis Gilissen
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Paul Kabongo Tshibangu
Mr Hervé Diakiese

Unrepresented Victims

Legal Representatives of the Applicants

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

Mr Simo Vaatainen

Detention Section

Victims Participation and Reparations Section

Ms Fiona McKay

Other

1. The Trial Chamber issued an “Order issuing Annexes to the “Decision on the applications by victims to participate in the proceedings” of 15 December 2008” on 19 December 2008 (“Order”) with a full confidential *ex parte* Registry-only Annex A1 and a confidential redacted Annex A2 (notified to the parties, participants and legal representatives of applicants) which set out the Trial Chamber’s analysis of applications of the victims who applied to participate in the proceedings.¹ On 13 January 2009, the Chamber issued a “Corrigendum to ‘Decision on the applications by victims to participate in the proceedings’” which noted that the application of victim a/0246/06 had been considered incomplete in error.² The Chamber therefore hereby issues the correct versions of the annex concerning applicant a/0246/06.

2. The correct versions of the annex concerning applicant a/0246/06 are attached as follows:
 - Annex 1: confidential *ex parte* Registry-only Annex A1;

 - Annex 2: confidential redacted Annex A2 for notification to the parties, participants and legal representatives of applicant.

 - Annex 3: public redacted version of the annex.

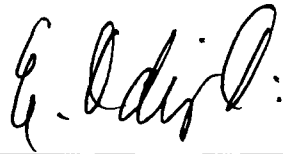
¹ ICC-01/04-01/06-1563.

² ICC-01/04-01/06-1556-Corr, paragraph 2

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 24 February 2009

At The Hague, The Netherlands

Public Annex 3

Applicant a/0246/06 [Annex 61]**Means of identification**

The Trial Chamber has been provided with a certificate of a former child soldier (EAFGA), a family search and a family reunification certificate, the applicant's demobilisation certificate, and the election card of the person acting on behalf of the applicant. The Chamber has also been provided with an identity card issued by a church establishing the kinship between the applicant and the person acting on the applicant's behalf (father).¹

Claim to victim status

The applicant states that on her way home from school in [REDACTED] 2003, when she was [REDACTED] or [REDACTED] years old, she was enrolled by the UPC and forced to "marry" one of its members. She stayed with the armed group for [REDACTED] weeks but was then taken to [REDACTED], from where she escaped. As a consequence of these events, the applicant lost time at school, and she suffered moral harm and violations of her fundamental rights.²

Phases of the proceedings

The applicant submits she has an interest to participate throughout the proceedings except at the appeals phase.³

The observations of the defence

The defence submits that this applicant should not participate in the proceedings, since two dates of birth have been given by the applicant, namely in [REDACTED] 1990 and [REDACTED] 1988.⁴

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation. The prosecution also states that this applicant was amongst those who were forcibly married to UPC soldiers. The Prosecutor supports this application.⁵

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution did not oppose the participation of the applicant. On the observations of the defence, the legal representative suggests that as regards the two dates of birth (1990 and 1988) further details will be provided. The legal representative requests that the applicant is granted status to participate in the proceedings.⁶

¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 121-122 and Annex 61.

² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 121-122 and Annex 61.

³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 121-122 and Annex 61.

⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13 and pages 12-13.

⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 26, pages 14-15.

⁶ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 17, 25

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.⁷

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has applied to participate in the DRC situation and her application was also provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber decided it would not determine the applicant's status as a victim, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in her recognition in the "situation".⁸ In a more recent decision of 3 July 2008, the Pre-Trial Chamber noted that the application was incomplete because the applicant was a minor when her application was submitted, and, given her guardian is acting for her and she is now an adult her consent must be given for another person to act on her behalf.⁹

The Chamber considers that the documents and the other materials provided prove, *prima facie*, the identity of the applicant and that of the person acting on her behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove *prima facie* that the applicant was ■ or ■ years old at the time of the relevant events.

The Chamber notes that the applicant was a child when the application was filed but is now an adult. The Chamber thus instructs the VPRS to ascertain whether the applicant wishes to participate of her own accord or whether she wishes to continue to participate through the person acting on her behalf

The Trial Chamber determines that the applicant has given sufficient evidence to establish *prima facie* that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant has suffered personal harm as a result of the commission of crimes included in the charges against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹⁰

⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 121-122 and Annex 61.

⁸ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁹ Decision on the applications for participation file din connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 34.

¹⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432