

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 June 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

**Instructions to the Court's expert on names and other social conventions in the
Democratic Republic of Congo**

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 Mabilie
Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

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

Legal Representatives of the Applicants

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

Other

I. BACKGROUND

1. On 20 March 2009, the legal representatives of victims, Mr Diakiese and Mr Keta, filed submissions on the use of names in the Democratic Republic of Congo (“DRC”).¹
2. This issue was thereafter raised by Trial Chamber I (“Chamber”) during the hearings of 24 and 25 March 2009. The Chamber indicated that certain questions were to be sent to the expert witness on background and history in the DRC (Mr Prunier), called by the Office of the Prosecutor (“prosecution”), in advance of his testimony, to enable him to determine whether he was competent to give evidence on the matter. The Trial Chamber ordered that he should be provided with the filing of Mr Diakiese and Mr Keta.²
3. During his evidence on 26 March 2009, Mr Prunier explained why he did not, in his estimation, have the necessary expertise to give expert testimony on this issue.³
4. Thereafter, during the hearing of 27 March 2009, the Chamber instructed the prosecution to liaise with the parties and the participants, to facilitate joint instructions to an expert on this matter.⁴
5. On 31 March 2009, the defence indicated to the Chamber that it does not intend to call evidence on these issues, whilst the prosecution indicated that they would revert to the Chamber in due course as to whether or not it proposes securing a separate expert to give evidence.⁵

¹ Analyse relative à l’attribution et aux composantes du nom en République démocratique du Congo, 20 March 2009, ICC-01/04-01/06-1793.

² Transcript of hearing on 24 March 2009, ICC-01/04-01/06-T-153-ENG, page 7, line 10 to page 8, line 23; Transcript of hearing on 25 March 2009, ICC-01/04-01/06-T-154-ENG, page 3, line 23 to page 4, line 11.

³ Transcript of hearing on 26 March 2009, ICC-01/04-01/06-T-156-ENG, page 5, line 4 to page 6, line 11.

⁴ Transcript of hearing on 27 March 2009, ICC-01/04-01/06-T-157-ENG, page 55 lines 9-19.

⁵ Transcript of hearing on 27 March 2009, ICC-01/04-01/06-T-158-ENG, page 3, line 22 to page 5, line 8.

6. On 7 April 2009 the prosecution informed the Chamber (via an e-mail to the Legal Adviser to the Trial Division) that they wish to introduce evidence on the use of names, although, given the position of the defence, it considered it impossible to issue joint instructions to an expert.⁶
7. On 8 and 29 April 2009, the legal representative of victims, Mr Walley, sent the name of two potential experts to the Legal Adviser to the Trial Division.⁷
8. On 8 May 2009, the Chamber invited submissions from the parties as regards Mr Walley's proposals. The defence informed the Chamber it did not, at this stage, intend to make any observations. The prosecution, on the other hand, indicated its intention to make submissions, to be filed by 12 May 2009.⁸
9. In its filing of 12 May 2009, the prosecution indicated it had no objection as to either expert giving evidence on the conventions regarding names, along with the relevant aspects of cultural relationships, in the DRC.⁹
10. On 22 May 2009, the defence submitted certain proposed questions for the experts.¹⁰
11. On 25 May 2009, the victims' legal representatives and the prosecution submitted their various proposed questions for the experts.¹¹

⁶ E-mail communication to the Chamber through the Legal Adviser to the Trial Division of 7 April 2009.

⁷ E-mail communication to the Chamber through the Legal Adviser to the Trial Division of 8 and 29 April 2009.

⁸ Transcript of hearing on 8 May 2009, ICC-01/04-01/06-T-171-ENG, page 39, line 6 to page 40, line 12.

⁹ Prosecution's Submission on the Suitability of Two Proposed Experts, 12 May 2009, ICC-01/04-01/06-1870-Conf.

¹⁰ Questions soumises par la Défense aux experts sur la question des noms en République démocratique du Congo, 22 May 2009, ICC-01/04-01/06-1892.

¹¹ Observations conjointes des représentants légaux des victimes sur les questions à poser au(x) expert(s) concernant l'attribution et les composantes du nom en République démocratique du Congo, 25 May 2009, ICC-01/04-01/06-1896 ; Prosecution's Submission of Questions for Experts on Names/Cultural Conventions in the Democratic Republic of Congo, 25 May 2009, ICC-01/04-01/06-1897.

II. ANALYSIS AND CONCLUSIONS

12. The Chamber is persuaded that the circumstances in which names are used in the DRC has emerged as a potentially important issue in the case, since in its questioning of the witnesses called by the prosecution the defence has highlighted differences in the names used by, or for, some of them. The Chamber anticipates that the suggestion may be made in due course that, at least with some witness, their credibility is in doubt because of these discrepancies. In the circumstances, it would assist the Chamber if expert evidence is provided as to the circumstances in which names are used within the DRC. Therefore, the Chamber appoints Mr Kambayi Bwatshia as an expert witness to assist on this issue.
13. The Registry is to contact Mr Bwatshia to ascertain his availability to give evidence. If convenient, arrangements are to be made for the witness to be called either before the summer recess or during the first week of September 2009.
14. The Registry is to provide this order, as well as filings ICC-01/04-01/06-1793, ICC-01/04-01/06-1892, ICC-01/04-01/06-1896, and ICC-01/04-01/06-1897 to the expert.
15. The witness is to be invited to submit a report to the Chamber no later than 3 July 2009, which will be notified to the parties and the participants.
16. Taking into account the submissions of the parties and the participants, the Chamber hereby instructs Mr Bwatshia, to the extent to which his expertise permits, to address in a report, and prepare to give testimony on, the following issues, within the framework of the general subject matter and context of this trial:

Civil status and registration

- a) What are the different modes of establishing civil status in the DRC?
- b) When and where can names be registered in the DRC, and by what method are they registered? Can the population readily gain access to official registries or records (i.e. identification documents, birth certificates, death certificates, *etc.*)?
- c) Is the process of registration of names adversely affected in times of armed conflict, particularly in the Ituri region?
- d) Generally, are names in the DRC, and particularly in Ituri, registered or are they in any other way made official or permanent?
- e) Do families systematically register the names of their children at birth, with a competent government office, or otherwise? If so, what is the practice in this regard?
- f) How is a child's civil status determined during registration in the DRC school system?
- g) When a government official issues a document carrying, or purportedly verifying, someone's identity, does the government official conduct checks as to the information that has been provided? If so, what controls (if any) are applied and generally what procedures are adopted?
- h) To what extent can the name(s) indicated on "official" documents relating to a person differ from the names he or she commonly uses, and the reasons for any differences?

- i) How, and on what basis, are names entered on the voting cards (“carte d’électeur”) by the officer completing them? Does this lead to mistakes in, or inconsistencies between, the voting cards and other "official" documents? In this context, are variations in the spelling of names (between documents) sometimes caused by such factors as differences in pronunciation, and do citizens in the DRC use a variety of different names?

Names

- j) How are names chosen in the DRC and particularly in Ituri? Do members of the population, on occasion, have one or more last names, middle names, first names or nicknames? If so, are they interchangeable?
- k) Can the ethnic, tribal or geographical origin of an individual be established from his or her name?
- l) What factors or circumstances influence the choice of names given to a person in the DRC and more specifically in Ituri? What role does custom, along with ethnic, tribal and family tradition, play in this process? Can names have a particular significance or meaning?
- m) Are there family or other names that are shared among members of an extended family? Do children bear the last names of their parents?
- n) What are the different elements of a name? Is it appropriate to apply the concepts of family name, last name, first name, second name and nicknames to the different elements of an individual’s various names (noms de famille, post nom, premier prénom, deuxième prénom, surnoms)? If an individual bears a “first name”, is he or she given one or two such names (prénoms)?

Are the names given at birth permanent or are additional names be added afterwards?

- o) Is the use of Congolese names unchangeable as regards the order in which names are used (*i.e.* reversing Dheda Lomu to Lomu Dheda)? Are names in the DRC strictly spelt?
- p) Is it possible for a child to choose a name other those given by his or her parents at birth? In the hypothesis that names are not permanent, in what circumstances are new elements added to, or removed from, the individual's original name (put otherwise, what are the criteria or reasons for such changes)? Do famous people or events affect such changes?
- q) Can a person choose to use different names depending on the family, social, professional or official context in which he or she is functioning at a particular moment? May these include names other than those given to him or her at birth?
- r) Are "respect names" a recognised category, and, if so, are such names used in the DRC, and in Ituri particularly, and are there identifiable circumstances for their use?
- s) Is it possible that some children may only be aware of some of the names used by, or given to, his parents?

Family

- t) How are family units defined in the DRC and particularly in Ituri? What are the conventional links or bonds?

- u) Is polygamy common in the DRC? In general terms, how do polygamous families live in the DRC?
- v) What is the situation of children born outside of wedlock or from a previous or earlier marriage?
- w) Is the family bond defined by the mother or the father in DRC society? Are half-siblings recognized equally, regardless of whether they are from the father's or mother's side?
- x) Do the words "brother", "father", "sister", "mother" have any meaning or use in the DRC outside of the strict blood relationship between parents and their children, and between siblings?
- y) Generally, how do children refer to their parents in the DRC?

Date of birth

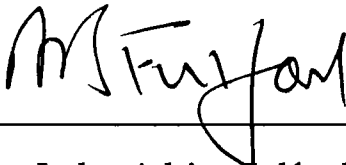
- z) Is it common for citizens in the DRC to know their real date of birth and are birthdays celebrated?

III. ORDERS OF THE CHAMBER


17. Pursuant to Regulation 44 of the Regulations of the Court, the Chamber hereby:
- a) Appoints Mr Kambayi Bwatshia as an expert witness to give evidence, to the extent that he is able, on the matters set out above.
 - b) Instructs the Registry to contact him to establish his availability.
 - c) Instructs the Registry to arrange for his testimony, if convenient, either before the judicial recess or during the first week of September 2009.

- d) Instructs the Registry to provide this order, as well as filings ICC-01/04-01/06-1793, ICC-01/04-01/06-1892, ICC-01/04-01/06-1896, and ICC-01/04-01/06-1897 to the expert.
- e) Instructs the expert to submit to the Chamber first, a report and second, his curriculum vitae, if possible no later than 3 July 2009.
- f) Instructs the Registry to notify the report to the parties and participants.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 5 June 2009

At The Hague, The Netherlands