

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original English

No.: ICC-01/04-01/06  
Date 10 September 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**

**Decision on the applications by 2 victims to participate in the proceedings**

**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 n  
Mr Franck Mulenda  
Ms Carine Bapila Buyangandu  
Mr Joseph Keta Orwinyo  
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**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod Jacome

**Detention Section**

**Victims Participation and Reparations Section**

Ms Fiona McKay

**Other**

Trial Chamber I (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v Thomas Lubanga Dyilo*, delivers the following decision on the applications by two victims to participate in the proceedings, in accordance with Article 68 of the Rome Statute (“Statute”)

### **I. Background**

- 1 The relevant procedural history on participation by victims before the Chamber is set out comprehensively in the “Decision on the applications by victims to participate in the proceedings” issued on 15 December 2008 in which the applications of 117 individuals to participate in the proceedings were resolved (91 of which were granted) <sup>1</sup>
- 2 As regards the present applications, on 26 June 2009 the Registry filed a confidential, *ex parte*, Registry only, “Fourth Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court” (“Registry’s Fourth Report”) which dealt with the applications of 2 victims to participate in the proceedings <sup>2</sup>
- 3 At the hearing on 3 July 2009, the Trial Chamber instructed the Registry to provide the parties and participants with the 2 new applications included in the Registry’s Fourth Report, suitably redacted, by 6 July 2009 and any responses were to be filed by 14 July 2009 <sup>3</sup>
- 4 On 6 July 2009, the Registry’s Victims Participation and Reparation Section transmitted the relevant documents to the parties and participants <sup>4</sup>

<sup>1</sup> Decision on the applications by victims to participate in the proceedings, 15 December 2008 (notified on 16 December 2009), ICC-01/04-01/06-1556, paragraphs 1-27

<sup>2</sup> Fourth Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, 26 June 2009, ICC-01/04-01/06-2000-Conf-Exp

<sup>3</sup> Transcript of hearing on 3 July 2009, ICC-01/04-01/06-1-203-CONF-ENG, page 33, lines 19 et seq

<sup>4</sup> Transmission to the parties of two new victims’ applications for participation in accordance with Trial Chamber I’s oral decision of 3 July 2009, 6 July 2009, ICC-01/04-01/06-2027 with confidential annexes

- 5 The defence and the prosecution submitted their observations, on 10 and 14 July 2009 respectively <sup>5</sup>

## **II. Relevant Provisions**

- 6 The provisions of the Rome Statute framework and other relevant provisions are set out comprehensively in the decisions of the Chamber on victims' participation in the proceedings issued on 18 January 2008, 15 December 2008 and 10 July 2009 <sup>6</sup>

## **III. Submissions**

- 7 The submissions of the parties and participants have been analysed on a case-by-case basis in Annex A to this filing

## **IV. Analysis and Conclusions**

- 8 The Trial Chamber has carefully evaluated both applications in accordance with the general criteria established in the Trial Chamber's Decision on victims' participation of 18 January 2008,<sup>7</sup> as confirmed or varied by the Appeals Chamber in its judgment of 11 July 2008 <sup>8</sup>
- 9 The Chamber has additionally applied the criteria and principles to these two applications as set out in its "Decision on the applications by victims to participate in the proceedings" of 15 December 2008 <sup>9</sup> The applicant-by-applicant analysis is set out in Annex A

<sup>5</sup> Observations de la Defense sur les 2 demandes de participation a la procedure transmises le 6 juillet 2009, 10 July 2009, ICC-01/04-01/06-2034, Prosecution's Observations on Two new Applications for Victim Participation by applicants a'0292.09 and a'0398.09, 14 July 2009, ICC-01/04-01/06-2048

<sup>6</sup> Decision on victims' participation, 18 January 2008 ICC-01/04-01/06-1119, paragraphs 20-37, Decision on the applications by victims to participate in the proceedings, 15 December 2008 (notified on 16 December 2009), ICC-01/04-01/06-1556, paragraphs 34-49, Decision on the applications by 7 victims to participate in the proceedings, 10 July 2009, ICC-01/04-01/06-2035, paragraphs 10-26  
ICC-01/04-01/06-1119

<sup>8</sup> 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

<sup>9</sup> Decision on the applications by victims to participate in the proceedings, 15 December 2008 (notified on 16 December 2009), ICC-01/04-01/06-1556

10 In the result, applicants a/0292/09 and a/0398/09 are granted status to participate

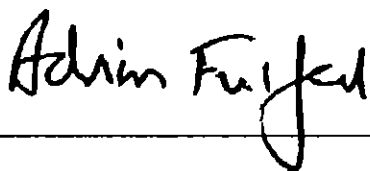
11 Given that both victims are already represented by legal representatives currently acting in the proceedings, the Chamber directs that these victims are allocated to their legal representatives' respective teams

#### **V. Orders of the Chamber**

12 For these reasons, the Trial Chamber hereby

- a Grants the applications to participate in the proceedings to victims a/0292/09 and a/0398/09,
- b Instructs the Registry to allocate the victims to their legal representatives' existing teams,
- c Orders the Registry to submit to the Chamber a report on the requests for protective and special measures for these two victims no later than 30 September 2009

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



**Judge Adrian Fulford**



**Judge Elizabeth Odio Benito**



**Judge René Blattmann**

Dated this 10 September 2009

At The Hague, The Netherlands

# **Annex A1**

## **Public**

## Annex A

### Confidential *ex parte* Registry only

#### Application of victim a/0292/09 [Annex 2]

##### **The means of identification**

The Chamber has been provided with two student cards for the applicant<sup>1</sup>

##### **The claim to victim status**

The applicant claims that in [REDACTED] 2002 (when he was 11 years old) he was forcibly recruited by UPC combatants. Militiamen entered his house, killed his father and pillaged their property, and then took him to [REDACTED] for training. He fought in [REDACTED], [REDACTED] and [REDACTED], until he left the UPC in [REDACTED] 2003. The applicant particularly suffered from the death of his father, the loss of his property and his recruitment. He also suffers from loss of memory.<sup>2</sup>

##### **The phases of the proceedings**

The applicant submits he has an interest in participating in all phases of the proceedings.<sup>3</sup>

##### **The observations of the Defence**

In general, the defence argues that due to redactions to essential information – such as the relevant locations and the exact date of the relevant events – it is unable to make substantive submissions on the admissibility of these applications. The defence also contends that the applications are vague and they lack supporting documentation, thus affecting the accused's rights under Rule 89(1) of the Rules of Procedure and Evidence ("Rules") and the Chamber's ability to make informed decisions.<sup>4</sup> As regards this victim, the defence opposes his application given that there are contradictions that affect the applicant's reliability, namely the applicant states in his application that he was born in 1990, although the date of birth set out in the documents annexed to the application is 1991. Likewise, the defence argues that the name in the application form is different from the name in the identification document.<sup>5</sup> It appears that in the application form the name is recorded as "[REDACTED] [REDACTED]", (reflecting the first of the student identity cards), whereas the second card (which is slightly damaged and therefore not wholly legible), appears to give the name as "[REDACTED]"

<sup>1</sup> Fourth Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 26 June 2009, ICC-01/04-01/06-2000-Conf-Exp, Anx2, pages 18-21

<sup>2</sup> *Ibid.*, pages 9-11

<sup>3</sup> *Ibid.*, page 9

<sup>4</sup> Observations de la Défense sur les 2 demandes de participation à la procédure transmises le 6 juillet 2009, 10 July 2009, ICC-01/04-01/06-2034, paragraphs 3-4

<sup>5</sup> *Ibid.* paragraphs 5-8



### **The observations of the Prosecution**

The prosecution submits that the applicant meets, *prima facie*, the criteria for participation. Although the application was submitted after the trial began (indeed, when the prosecution's case was almost complete), the prosecution does not oppose the request for this reason, so long as the victim's participation does not impede the efficiency and management of the proceedings.<sup>6</sup>

### **Legal representation**

The applicant has been represented thus far by the Mr Diakiese.<sup>7</sup>

### **The Chamber's analysis and decision**

The documents and other material provided have assisted the Chamber in determining the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. Although there appear to be contradictions as to the exact year of birth of the applicant (1990 or 1991), the Chamber considers that the information provided (particularly the applicant's two student cards) result in a *prima facie* determination that the applicant was approximately 11 years old at the time of the relevant events. Additionally, the differences as regards the applicant's name are not such as fatally to undermine the reliability of this application, given the potentially wide range of reasons why individuals in the Democratic Republic of Congo may sometimes use various combinations or versions of names. This phenomenon has been dealt with in evidence by a significant number of prosecution witnesses.

The applicant has provided sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules: the applicant suffered personal harm as a result of the crimes confirmed against the accused, namely his alleged conscription, enlistment or use to participate actively in the hostilities, between September 2002 and 13 August 2003.<sup>8</sup>

### **Application of victim a/0398/09 [Annex 3]**

#### **The means of identification**

The Chamber has been provided with a student card for the applicant.<sup>9</sup>

#### **The claim to victim status**

The applicant claims that he was recruited by UPC combatants in [REDACTED] 2002, when he was [REDACTED] years old. His father, who tried to prevent his recruitment, was

<sup>6</sup> Prosecution's Observations on Two new Applications for Victim Participation by applicants a/0292/09 and a/0398/09, 14 July 2009, ICC-01/04-01/06-2048, paragraphs 2-6

<sup>7</sup> Fourth Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 26 June 2009, ICC-01/04-01/06-2000-Conf-Exp, Annex 2, page 12

<sup>8</sup> 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

<sup>9</sup> Fourth Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 26 June 2009, ICC-01/04-01/06-2000-Conf-Exp, Annex 3, pages 18-19

killed. He was sent to [REDACTED] to be trained and he was later deployed in [REDACTED] and [REDACTED] to fight against the Balendus. He also fought at [REDACTED] and [REDACTED]. He states that he did things that are incomprehensible: he killed many people, he used drugs, he pillaged and looted property, and he raped women. As a result, the applicant suffers psychologically particularly from the death of his father, his recruitment and the loss of his youth.<sup>10</sup>

#### **The phases of the proceedings**

The applicant submits he has an interest in participating in all phases of the proceedings.<sup>11</sup>

#### **The observations of the Defence**

In general, the defence argues that due to redactions to essential information – such as the relevant locations and the exact date of the relevant events – it is unable to make substantive submissions on the admissibility of these applications. The defence also contends that the applications are vague and they lack supporting documentation, thus affecting the accused's rights under Rule 89(1) of the Rules and the Chamber's ability to make informed decisions.<sup>12</sup> However, the defence has no observations as regards this applicant in particular.

#### **The observations of the Prosecution**

The prosecution submits that the applicant meets, *prima facie*, the criteria for participation. Although the application was submitted after the trial began (indeed, when the prosecution's case was almost complete), the prosecution does not oppose the request for this reason, so long as the victim's participation does not impede the efficiency and management of the proceedings.<sup>13</sup>

#### **Legal representation**

The applicant has been represented thus far by the Mr Mulenda.<sup>14</sup>

#### **The Chamber's analysis and decision**

The documents and other material provided have assisted the Chamber in determining the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The applicant has provided sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules: the applicant suffered personal harm as a result of the crimes confirmed against the accused, namely his alleged conscription,

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<sup>10</sup> *Ibid*, pages 9-11

<sup>11</sup> *Ibid*, page 9

<sup>12</sup> Observations de la Défense sur les 2 demandes de participation à la procédure transmises le 6 juillet 2009, 10 July 2009, ICC-01/04-01/06-2034, paragraphs 3-4

<sup>13</sup> Prosecution's Observations on Two new Applications for Victim Participation by applicants a.0292.09 and a.0398.09, 14 July 2009, ICC-01/04-01/06-2048, paragraphs 2-6

<sup>14</sup> Fourth Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 26 June 2009, ICC-01/04-01/06-2000-Conf-Exp, Anx3, page 12

enlistment or use to participate actively in the hostilities, between September 2002 and 13 August 2003<sup>15</sup>

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<sup>15</sup> 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