

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

**Confidential**

**Decision on Supplementary Information concerning victims' applications  
a/0609/08 and a/0053/09**

**Decision 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 Carine Bapita 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**

**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 Supplementary Information concerning victims' applications a/0609/08 and a/0053/09.

### I. Background

1. On 10 July 2009, the Chamber issued a public "Decision on the applications by 7 victims to participate in the proceedings" with a confidential *ex parte* Registry-only Annex A.<sup>1</sup> The Chamber decided to grant six applicants (victims a/0523/08, a/0611/08, a/0610/08, a/0249/09/a/0060/09 and a/0053/09) the right to participate in the proceedings.<sup>2</sup> Even though application a/0609/08 was refused, the Chamber noted that the refusal would be reviewed if the applicant provided further clarification and information on his application.<sup>3</sup>
2. The Registry was instructed to contact applicant a/0609/08 and his legal representative, to seek clarification or further information on the application.<sup>4</sup> The Registry was further referred the issue of whether the person acting on behalf of victim a/0053/09, who alleges harm, wishes to participate on his own behalf for any personal harm he may have suffered.<sup>5</sup>
3. Acting on these instructions, on 22 September 2009 the Registry submitted a "Report on supplementary information concerning victims' applications for participation in accordance with Decision ICC-01/04-01/06-2053".<sup>6</sup>

<sup>1</sup> Decision on the applications by 7 victims to participate in the proceedings, 10 July 2009, ICC-01/04-01/06-2035 and confidential *ex parte* Annex A.

<sup>2</sup> ICC-01/04-01/06-2035, paragraph 34.

<sup>3</sup> ICC-01/04-01/06-2035, paragraphs 31 and 34.

<sup>4</sup> ICC-01/04-01/06-2035, paragraph 34.

<sup>5</sup> *Ibid.*

<sup>6</sup> Report on supplementary information concerning victims' applications for participation in accordance with Decision ICC-01/04-01/06-2053, 22 September 2009, ICC-01/04-01/06-2137-Conf-Exp.

4. On 5 October 2009, the Chamber instructed the Registry to transmit the supplementary information to the parties and participants in suitably redacted form so that they may file observations.<sup>7</sup> The Registry transmitted the supplementary information on 8 October 2009.<sup>8</sup> The Chamber also ordered the parties to file their observations by 16.00 on 23 October 2009.<sup>9</sup>
5. On 14 October 2009 the defence filed its observations.<sup>10</sup> The defence submitted that the additional information provided by applicant a/0609/08 did not alleviate its concerns as to the truthfulness and accuracy of his statements, in light of the contradictions between his statement and those of victims a/0610/08 and a/0611/08.<sup>11</sup> Therefore, the defence requested that application a/0609/08 is rejected.<sup>12</sup>
6. On 22 October 2009, the legal representative of victims a/0609/08, a/0610/08, a/0611/08 and a/0053/09 filed his observations on the supplementary information.<sup>13</sup> The legal representative submitted that applicant a/0609/08 had provided the additional information requested by the Chamber.<sup>14</sup> Further, he submitted that the defence, rather than providing support for its submission that the applicant's accounts do not clarify the suggested initial contradictions, simply requested that the application is rejected.<sup>15</sup> Therefore, the legal representative submitted that applicant a/0609/08 should be granted leave to participate in the

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<sup>7</sup> Email communication by the legal adviser to the Trial Division, dated 5 October 2009.

<sup>8</sup> Transmission to the parties of supplementary information on victims' applications for participation, 8 October 2009, ICC-01/04-01/06-2153.

<sup>9</sup> Email communication by the legal adviser to the Trial Division, dated 13 October 2009.

<sup>10</sup> Observations de la Défense sur les 2 formulaires intitulés "Informations supplémentaires reçues sur une demande de participation conformément à la norme 86.4 du Règlement de la Cour", transmis le 8 octobre 2009, 14 October 2009, ICC-01/04-01/06-2163-Conf.

<sup>11</sup> ICC-01/04-01/06-2163-Conf, paragraph 5.

<sup>12</sup> ICC-01/04-01/06-2163-Conf, page 4.

<sup>13</sup> Observations des représentants légaux sur la "transmission to the parties of supplementary information on victims' applications for participation", 22 October 2009, ICC-01/04-01/06-2169-Conf.

<sup>14</sup> ICC-01/04-01/06-2169-Conf, paragraphs 8 – 12.

<sup>15</sup> ICC-01/04-01/06-2169-Conf, paragraph 13 and page 6.

proceedings.<sup>16</sup> With regards to the individual representing applicant a/0053/09, the legal representative noted that the supplementary information confirms that he does not separately wish to participate on his own behalf.<sup>17</sup>

7. On 23 October 2009, the Office of the Prosecutor (“prosecution”) submitted its observations on the supplementary information.<sup>18</sup> As regards the information provided by the representative of victim a/0053/09, given his wish not to participate on his own behalf, the prosecution submitted that it has no further observations.<sup>19</sup> The prosecution further submitted, with respect to applicant a/0609/08, that although he explained some of the discrepancies between the information provided by him and the information provided by his nephews, the applicant has not clarified the circumstances surrounding the disappearance of his son and the alleged connection between the harm he suffered and the current charges.<sup>20</sup>

## **II. Relevant Provisions**

8. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Trial Chamber has considered the following provisions under the Rome Statute framework.
9. Article 68 of the Statute on “Protection of the victims and their participation in the proceedings” provides:

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims

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<sup>16</sup> ICC-01/04-01/06-2169-Conf, page 6.

<sup>17</sup> ICC-01/04-01/06-2169-Conf, paragraph 14 and page 7.

<sup>18</sup> Prosecution’s Observations on the Redacted Supplementary Information concerning victims’ applications a/0609/08 and a/0053/09, 23 October 2009, ICC-01/04-01/06-2171.

<sup>19</sup> ICC-01/04-01/06-2171, paragraph 4.

<sup>20</sup> ICC-01/04-01/06-2171, paragraph 5.

where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

10. In order to assist the Court in determining who is a victim under the statutory framework, Rule 85 of the Rules of Procedure and Evidence (“Rules”) on the “Definition of victims” states:

For the purposes of the Statute and the Rules of Procedure and Evidence:

(a) Victims means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;

(b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

11. Rule 89 of the Rules sets out the following with regards to the applications for participation of victims in the proceedings:

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

2. The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.

3. An application referred to in this rule may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled.

4. Where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision.

### III. Analysis and Conclusions

12. The Chamber has evaluated the supplementary information provided by the Registry as well as the observations of parties and participants in accordance with the general criteria established in the Chamber's previous decisions on victims' participation<sup>21</sup> as confirmed or varied by the Appeals Chamber in its Judgment of 11 July 2008.<sup>22</sup>
13. The person acting on behalf of victim a/0053/09 stated that he has suffered personal harm as a result of a crime investigated in this case. The Chamber requested that the Registrar submit supplementary information with regards to this person's willingness to participate on his own behalf for any personal harm he may have suffered.<sup>23</sup> The Registry informed the Chamber that this individual, after consultation, indicated that he did not wish to participate.<sup>24</sup>
14. The Chamber has the power to rule on victims' applications to participate in proceedings, be it either to grant or to reject them. A prerequisite for the Chamber exercising this power is that the victim or the person acting with the consent or on behalf of the victim has applied to participate. There is no possibility of "compulsory" participation by victims in the proceedings before the ICC. Given this individual decided not to apply to participate in these proceedings, the Chamber makes no further order.
15. Turning to application a/0609/08, the Chamber notes that it has already refused this application and that it has stated that a review of that refusal would occur if the applicant provides the necessary clarification and

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<sup>21</sup> Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119; Decision on the applications by victims to participate in the proceedings, 15 December 2008, ICC-01/04-01/06-1556.

<sup>22</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>23</sup> ICC-01/04-01/06-2035, paragraph 34.

<sup>24</sup> ICC-01/04-01/06-2137-Conf-Exp, paragraph 4; ICC-01/04-01/06-2153-Conf-Anx1.

additional information specified in the confidential Annex A to the Decision of 10 July 2009.<sup>25</sup>

16. It is to be noted that clarification was requested with respect to some specific questions. The Chamber's concerns remain that, while the applicant set out formally that victim a/0611/08 lived with him and his family, the victim himself stated that he lived on the streets, has no parents and nobody is responsible for him. The Chamber is of the view that, on an overall assessment of the supplementary information provided by the applicant and his legal representative, the concerns on the accuracy of the material provided to the Chamber have not been adequately addressed or alleviated.

17. In conclusion, therefore, application a/0609/08 has already been rejected by the Chamber, with the caveat that this decision would be reviewed if the applicant provided the necessary clarification and additional information.<sup>26</sup> Having considered the supplementary information, the Chamber is unpersuaded that the original decision should be varied.

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<sup>25</sup> ICC-01/04-01/06-2035, paragraphs 31 and 34, and confidential *ex parte* Annex A.

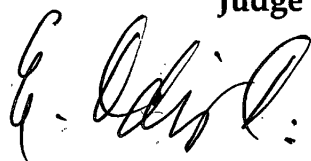
<sup>26</sup> *Ibid.*



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



**Judge Adrian Fulford**



**Judge Elizabeth Odio Benito**



**Judge René Blattmann**

Dated this 10 December 2009

At The Hague, The Netherlands