

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 16 May 2008

**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***

**URGENT**

**Public**

**Decision on the request of the OPCV and on the prosecution's filing which concern the Trial Chamber's decision inviting the parties' observations on applications for participation of victims issued on 6 May 2008**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr Ekkehard Withopf

**Counsel for the Defence**

Ms Catherine Mabile  
Mr Jean-Marie Biju Duval

**Legal Representatives of the Victims**

Mr Luc Walley  
Mr Franck Mulenda  
Ms Catherine Bapita Buyangandu

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massida

**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**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

Trial Chamber I (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, issues the following Decision on the “Request of the OPCV in relation to redactions to the applications of victims following the Trial Chamber’s decision of 6 May 2008”<sup>1</sup> filed on 9 May 2008 (“Request”), and on the “Prosecution’s information to the Trial Chamber regarding the prior notification of un-redacted applications for victim participation” (“prosecution’s filing”) filed on 13 May 2008.<sup>2</sup>

## I Background

1. The Trial Chamber issued a “Decision inviting the parties’ observations on applications for participation of a/0001/06 to a/0004/06, a/0047/06 to a/0052/06, a/0077/06, a/0078/06, a/0105/06, a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06, a/0001/07 to a/0005/07, a/0054/07 to a/0062/07, a/0064/07, a/0065/07, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0168/07 to a/0185/07, a/0187/07 to a/0191/07, a/0251/07 to a/0253/07, a/0255/07 to a/0257/07, a/0270/07 to a/0285/07, and a/0007/08” on 6 May 2008.<sup>3</sup> The Decision *inter alia* ordered the Registry to transmit the applications for participation for the purposes of Rule 89(1) of the Rules of Procedure and Evidence to the Office of the Prosecutor (“prosecution”) and the defence in confidential redacted form by 12 May 2008.<sup>4</sup> One of the redactions which the Registry was requested to make was the “exact date of birth (year of birth shall not be redacted)”.<sup>5</sup>
2. Following the filing of the “Request of the OPCV in relation to redactions to the applications of victims following the Trial Chamber’s decision of 6 May 2008”, the Chamber issued an order on 12 May 2008 suspending the 12 May

<sup>1</sup> A confidential *ex parte* OPCV only version was filed (ICC-01/04-01/06-1314-Conf-Exp) together with a public version (ICC-01/04-01/06-1315).

<sup>2</sup> ICC-01/04-01/06-1322-Conf.

<sup>3</sup> ICC-01/04-01/06-1308.

<sup>4</sup> ICC-01/04-01/06-1308, paragraph 33(ii).

<sup>5</sup> ICC-01/04-01/06-1308, paragraph 28(iv).

deadline until further notice.<sup>6</sup> Responses, if any, to the Office of Public Counsel for Victims' Request were to be filed by Tuesday 13 May 2008.

3. The prosecution raised two issues concerning the decision inviting the parties' observations on the victims' applications with the Chamber by way of email on 9 May 2008. Following instructions from the Chamber, the prosecution filed confidentially a "Prosecution's information to the Trial Chamber regarding the prior notification of un-redacted applications for victim participation" on 13 May 2008.<sup>7</sup> The defence responded confidentially to this filing on 14 May 2008.<sup>8</sup>
4. The Chamber raised with the prosecution the confidential nature of its filing. Having been informed that there was no further reason for it to be confidential,<sup>9</sup> the Chamber hereby orders that the prosecution's filing and the defence's response thereto should be reclassified as public.

## II The Office of Public Counsel for Victims' Request

### 1) Submissions

5. The Office of Public Counsel for Victims requests to be allowed to review the redactions to the applications concerning the victims it represents as implemented by the Registry, in accordance with the Chamber's Decision, before the applications are transmitted to the parties.<sup>10</sup> Further, should the Chamber accede to this request, the Office requests the Chamber to grant it two days from the receipt of the redacted versions of the applications by the

<sup>6</sup> ICC-01/04-01/06-1319, paragraph 3.

<sup>7</sup> ICC-01/04-01/06-1322-Conf.

<sup>8</sup> Réponse de la Défense à la "Request of the OPCV in relation to redactions to the applications of victims following the Trial Chamber's decision of 6 May 2008" déposée le 9 mai 2008, 12 May 2008, ICC-01/04-01/06-1329-Conf.

<sup>9</sup> Telephone and email communications through the Legal Advisor to the Trial Division on 15 May 2008.

<sup>10</sup> ICC-01/04-01/06-1315, paragraph 11.

Registry to submit to the Chamber any request for further redactions, or any concern related to the protection of the applicant it is representing,<sup>11</sup> or both.

6. The basis for the Office of Public Counsel for Victims' Request is that it is in a position to provide information on the security concerns of the victims since it is in constant contact with them as clients. In addition, it is submitted that in relation to those applicants enjoying dual status as victims and witnesses, the Office will be in a position to verify whether the redactions in the applications are in conformity with the redactions, if any, in the witnesses' statements, having been provided with the relevant witness statements and video footage of persons it is representing, as ordered by the Trial Chamber in its Decision issuing a confidential and public redacted version of the "Decision on disclosure issues, responsibilities for protective measures and other procedural matters".<sup>12</sup>
7. The defence responded on 12 May 2008, submitting that the Office of Public Counsel for Victims' Request was superfluous since the Chamber, in its Decision of 6 May 2008, clearly stipulates the parts which must be redacted in order to ensure the protection of the victims who have applied to participate. The defence submits that as these redactions will be made by a competent section of the Registry, it is therefore not necessary to submit the redactions to an additional review.<sup>13</sup> The defence consequently submits that the Request should be rejected.
8. The prosecution has indicated that it does not wish to file a response to this Request.<sup>14</sup>

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<sup>11</sup> ICC-01/04-01/06-1315, paragraph 13.

<sup>12</sup> ICC-01/04-01/06-1311.

<sup>13</sup> ICC-01/04-01/06-1318, paragraph 3.

<sup>14</sup> Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 12 May 2008.

## 2) Analysis

9. In considering this Request, the Trial Chamber notes, as stated in its Decision of 6 May 2008, that at this stage it is essentially conducting a preliminary assessment on the merits of the applications that may lead to some of them being rejected and this could result in applicants not being granted the status of participants in proceedings.<sup>15</sup> The Chamber has ordered the Registry to transmit the applications for participation to both the prosecution and defence in confidential, redacted form, so that any information which may lead to the identification of the applicants and their whereabouts will have been expunged,<sup>16</sup> against the background that Regulation 99 of the Regulations of the Registry provides in any event that: "Upon receipt of an application from a victim and pending any decision by the Chamber, the Registry shall review the application and assess whether the disclosure to the prosecutor, the defence and/or other participants of any information contained in such an application, may jeopardise the safety and security of the victim concerned". Given the functions of the Victims Participation and Reparations Section, the Registry is well-equipped to undertake this task.
10. In the light of the above, the Chamber considers that it would be duplicative and unnecessary to accede to the Request of the Office of Public Counsel for Victims, given that it has already ordered the Registry to carry out this task and this provides a sufficient review mechanism, as set out in Regulation 99 of the Regulations of the Registry. For those victims whose applications to participate are granted, their legal representatives will have a particular role to play by advancing suggestions on appropriate protective measures in due course.<sup>17</sup>

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<sup>15</sup> ICC-01/04-01/06-1308, paragraph 24.

<sup>16</sup> ICC-01/04-01/06-1308, paragraph 33.

<sup>17</sup> ICC-01/04-01/06-1308, paragraph 29.

11. Accordingly the Request is denied for the above-stated reasons.

### III Prosecution's filing

#### 1) Submissions

12. The prosecution's filing informed the Chamber that the prosecution had received the 39 of the 105 applications in non-redacted form following decisions of the Pre-Trial Chamber.<sup>18</sup> The prosecution also drew the Trial Chamber's attention to the scope of the redactions to the applications that it had authorized in its Decision of 6 May 2008.<sup>19</sup> In the context of redactions concerning the applicants' identifying information, these include their month of birth, leaving only the year of birth as an indicator as to whether or not applicants meet the age requirement to qualify for victim participation.<sup>20</sup> In the light of this, the prosecution requested that the applicants' month of birth remains non-redacted.

13. The defence responded in writing to the prosecution's filing on 14 May 2008, submitting that it was in favour of not redacting the month of birth from the victims' applications, because it is necessary for the accused to know the applicant's month of birth in order to establish whether the person was over or under 15 years old during the relevant period covered by the charges. The defence argued that without this information, it would not be in a position to make any useful observations on the applications. The defence therefore agrees with the prosecution's request that the applicants' month of birth remain non-redacted.<sup>21</sup>

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<sup>18</sup> ICC-01/04-01/06-1322-Conf, paragraph 6.

<sup>19</sup> ICC-01/04-01/06-1308, paragraph 24.

<sup>19</sup> ICC-01/04-01/06-1308, paragraph 28 (iv).

<sup>20</sup> ICC-01/04-01/06-1322-Conf, paragraph 7.

<sup>21</sup> ICC-01/04-01/06-1329-Conf, paragraphs 5 and 6.

14. Regarding the 39 non-redacted applications which the prosecution received by way of prior notification, the defence submits that in its Decision of 6 May 2008, the Chamber ordered that both parties should receive the applications in redacted form, in conformity with the principle of equality of arms. Given that the prosecution already has 39 non-redacted applications in its possession from prior notifications, the defence submits that in keeping with the principle of equality of arms invoked by the Chamber, these 39 applications should be given to the defence in non-redacted form.<sup>22</sup>

## 2) Analysis

15. The prosecution should not gain an unfair advantage because it has received at an earlier stage in the proceedings 39 non-redacted applications out of the 105 applications. In consequence, the Trial Chamber directs the prosecution to restrict its observations on the victims' applications to the information contained in the redacted applications which it will receive pursuant to the Decision of 6 May 2008 and to the present Decision. Additionally, given the Chamber's obligation to protect victims, it would be inappropriate to order disclosure of the non-redacted 39 application forms to the defence at this early stage.

16. Therefore the Chamber modifies its Decision of 6 May 2008 to the extent that the month of birth of the victims, as set out in the application forms, should be disclosed to the parties, unless in the view of the Registry this may lead to the identification of a particular victim.

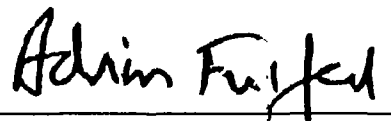
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<sup>22</sup> ICC-01/04-01/06-1329-Conf, paragraphs 7-9.



17. The Registry is ordered to transmit the applications for participation to both parties (prosecution and defence) in confidential redacted form no later than Monday 19 May 2008.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 16 May 2008

At The Hague, The Netherlands