

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/06
Date: 18 December 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***

Public

Decision on the applications by 3 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
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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 Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
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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

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 three victims to participate in the proceedings, in accordance with Article 68 of the Rome Statute (“Statute”).

I. Background

1. The relevant procedural history on victim participation 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 which addressed the applications to participate in the proceedings of 117 individuals and granted the applications of 91 victims.¹
2. As regards the applications currently under consideration, on 21 November 2008 the Registry filed a confidential, *ex parte*, Registry only, “Second Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court” (“Registry’s Second Report”) which addressed the applications of 15 victims, including the 3 victims who are the subject of this decision.²
3. At the status conference on 25 November 2008, the Trial Chamber instructed the Registry to provide the parties with the 15 new applications included in the Registry’s Second Report in a redacted form, by 26 November 2008.³ The Trial Chamber invited the parties to file their responses by 5 December 2008.⁴

¹ Decision on the applications by victims to participate in the proceedings, 15 December 2008, ICC-01/04-01/06-1556, paragraphs 1-27

² Second Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, 21 November 2008, ICC-01/04-01/06-1501-Conf-Exp The other 12 applications were addressed in the “Decision on the applications by victims to participate in the proceedings” issued on 15 December 2008: ICC-01/04-01/06-1556.

³ Transcript of status conference on 25 November 2008, ICC-01/04-01/06-T-99-ENG, page 9, lines 4 -9.

⁴ *Ibid* , page 9, lines 12 -19

4. On 27 November 2008, the Registry filed a redacted version of the 15 applications.⁵ On 3 December 2008, the Registry submitted its “Report on supplementary information concerning applications for participation filed with the ‘Second Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court’ dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp)” (“Supplementary Information to the Second Report”), which relates to three of the applicants included in the Second Registry’s Report.⁶
5. On 4 December 2008, the Trial Chamber ordered the Registry to transmit the additional information on the applications for participation included in the Supplementary Information to the Second Report to both parties (prosecution and defence) in a confidential redacted form by 5 December 2008. In the same order the Trial Chamber set a new deadline for the parties to submit observations on the additional information relating to the 3 applicants by 10 December 2008, and for the legal representatives to file any further submissions by 15 December 2008.⁷
6. On 5 December 2008, the defence submitted its observations on the applications and the supplementary information provided in relation to these three applicants.⁸
7. On 10 December 2008, the prosecution filed its observations on the applications and the supplementary information.⁹

⁵ Transmission to the parties of redacted versions of 15 new applications for participation in accordance with Trial Chamber I’s oral decision of 25 November 2008, 27 November 2008, ICC-01/04-01/06-1507-Conf.

⁶ Report on supplementary information concerning applications for participation filed with the “Second Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court”, dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp), 3 December 2008, ICC-01/04-01/06-1532-Conf-Exp.

⁷ Order for transmission of additional documents on applications for participation a/0403/08, a/0407/08 and a/0408/08, 4 December 2008, ICC-01/04-01/06-1533, paragraph 3.

⁸ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536.

⁹ Prosecution’s Observations on 3 Redacted Applications for Victim Participation to the Case of Applicants a/0403/08, a/0407/08, a/0408/08, 10 December 2008, ICC-01/04-01/06-1550.

8. On 15 December 2008, the Chamber rendered its “Decision on the applications by victims to participate in the proceedings” as regards 117 individuals and granted the applications of 91 victims.¹⁰

II. Relevant Provisions

9. The relevant applicable law is set out in the “Decision on the applications by victims to participate in the proceedings” issued on 15 December 2008.¹¹

III. Submissions

10. The submissions of the parties and participants have been analysed on a case-by-case basis in Annex A to this filing. The annex will be issued in due course.

IV. Analysis and Conclusions

11. The Trial Chamber has carefully evaluated each application in accordance with the general criteria established in the Trial Chamber’s decision on victims’ participation of 18 January 2008,¹² as confirmed or varied by the Appeals Chamber in its judgment of 11 July 2008.¹³
12. The Chamber has applied the same criteria and principles to these three applicants as set out in its “Decision on the applications by victims to participate in the proceedings” of 15 December 2008. The applicant-by-applicant analysis is set out in Annex A.
13. In the result, applicant a/0407/08 is granted status to participate in the proceedings.
14. Applications a/0403/08 and a/0408/08 are refused on the basis that they are incomplete.

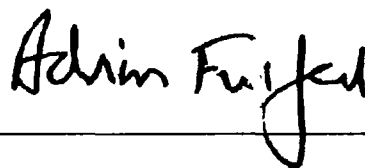
¹⁰ Decision on the applications by victims to participate in the proceedings, 15 December 2008, ICC-01/04-01/06-1556

¹¹ *Ibid*, paragraphs 34-50.

¹² ICC-01/04-01/06-1119

¹³ ICC-01/04-01/06-1432

15. Each of the orders of the Chamber included its “Decision on the applications by victims to participate in the proceedings” of 15 December 2008, in relation to: incomplete applications (order c), consultations concerning common legal representation (order e), a report on protective and special measures (order g), opening statements (order h), the prosecution’s document listing its witnesses (order i), and the mode of proposed interventions (order j) apply *mutatis mutandis* and as appropriate, to these victims.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 18 December 2008

At The Hague, The Netherlands