

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01-04/01-06  
Date: 26 January 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  
With confidential Annexes**

**Discrete written application by the legal representative of victims a/0047/06,  
a/0048/06, a/0050/06 and a/0052/06 for participation in relation to witnesses OTP  
038, OTP 041, OTP 0298 and OTP 0299**

**Source:** Office of Public Counsel for Victims

**Document to be notified in accordance with regulation 31 of the *Regulations of the*****Court to:****The Office of the Prosecutor**

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## I. Procedural Background

1. On 18 January 2008, Trial Chamber I delivered its “Decision on victims’ participation” (the “Decision”) establishing general guidelines on all matters related to the participation of victims in the proceedings<sup>1</sup> and requesting that *“a victim who wishes to participate in relation to any identified stage of the proceedings should set out in a discrete written application the nature and the detail of the proposed intervention”*<sup>2</sup>. The Chamber further specified that *“[a]t this stage, the victim must describe the way in which his or her personal interest is affected, for example by identifying how the harm he or she suffered relates to the evidence or the issues the Chamber is considering in its determination of the charges”*<sup>3</sup>.

2. During the status conference held on 22 January 2009, the Presiding Judge clarified that for the Chamber to issue a decision, it will be sufficient for the legal representative to identify in detail the areas affecting the interests of his or her clients, without producing a list question by question<sup>4</sup>.

3. The Legal Representative of Victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06 (the “Legal Representative”) therefore submits the following application for participation in relation to Witnesses OTP 038, OTP 041, OTP 0298 and OTP 0299.

4. As a preliminary remark, the Legal Representative notes that she received disclosure by the Prosecution of documents and material it intends to use at trial on 19, 20, 21 and 22 January 2009. On 22 January 2009, she also received the documents

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<sup>1</sup> See the “Decision on victim's participation” (Trial Chamber I), 18 January 2008, No. ICC-01/04-01/06-1119.

<sup>2</sup> *Idem*, par. 103.

<sup>3</sup> *Ibid.*

<sup>4</sup> See the Transcription of the status conference held on 22 January 2009, No. ICC-01/04-01/06-T-105-ENG, p. 20, lines 16-18 and p. 21, lines 1-11.

and materials relevant to the personal interests of her clients in accordance with paragraph 111 of the Trial Chamber's decision dated 18 January 2008. As a consequence of this late disclosure, the Legal Representative is unfortunately not in a position to provide the Chamber with a complete request for participation. Furthermore, this exercise is rendered more difficult by the fact that the Legal Representative cannot foresee the extent of the Prosecution's questioning or the issues relevant to the interests of the victims she is representing, which might arise during the Prosecution or Defence questioning. Therefore, the Legal Representative would ask the Chamber to not consider this request as exhaustive for the purposes of participation by the victims she represents.

5. However, in an effort to comply with the Decision of the Chamber, the Legal Representative hereby submits a discrete written application which will be hopefully completed once she has knowledge of the entirety of the documents and material pertaining to the interests of her clients.

## II. Discrete written application

6. As specified by the Presiding Judge during the status conference held on 16 January 2009<sup>5</sup>, Victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06 are to be called by the Prosecution to testify at trial. All four witnesses are former child-soldiers and as such, their personal interests are undoubtedly affected by testimonies related to, *inter alia*, the following areas:

- the modalities of recruitment of child-soldiers;
- the treatment of child-soldiers in the training camps;
- the use of child soldiers in hostilities;
- the impact of the recruitment of children below the age of 15 and its physical and psychological consequences.

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<sup>5</sup> *Idem*, p. 33, lines 4-7.

In relation to the last area of interest, the Legal Representative would like to note that she is in the best position (*vis à vis* the Prosecution) to touch upon specific issues concerning the harm suffered by the victims, issue which goes to the fundamental right of reparations for victims at trial.

7. Therefore, the personal interests of victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06 are affected by the testimonies of the Prosecution witnesses OTP 038, OTP 041, OTP 0298 and OTP 0299. The specification per witness of the reasons why the victims' personal interests are affected by said witnesses' testimonies is explained in the attached confidential annexes available to the Prosecution, the Defence and the other legal representatives. The level of confidentiality of these annexes is justified by the fact that they describe in detail specificities linked to each of the four victims that the Legal Representative represents, and this information could lead to their identification.

8. Annex 1 contains the main specificities of the victims represented by the Legal Representative and is the basis for the four other annexes which follow. Indeed, each area of the testimonies possibly being of some interest for the victims<sup>6</sup> has been determined in Annexes 2, 3, 4 and 5 (which relate to each witness) on the basis of the information contained in Annex 1.

9. The matters detailed in the annexes concern<sup>7</sup>:

- Issues relating to the existence of child soldiers in the UPC in general;
- Issues concerning the abduction of children from specific locations, during a specific period of time covered by the charges confirmed by Pre-Trial Chamber I;
- Issues concerning the training of child soldiers in specific training camps;

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<sup>6</sup> See the 4<sup>th</sup> and 5<sup>th</sup> columns of Annexes 2, 3, 4 and 5.

<sup>7</sup> See *supra* par. 4.

- Issues related to specific camps;
- Issues related to specific commanding officers of the UPC/FPLC;
- Issues related to child-soldiers acting as body guards;
- Issues related to the active participation of child-soldiers during specific hostilities;
- Issues related to the treatment of female child soldiers; and
- Issues relating to reparations<sup>8</sup>.

10. The Legal Representative submits that as such, these issues concern the interests of the victims she represents. Indeed, they have suffered harms as a consequence of their recruitment and/or participation in hostilities at the same locations and at the same periods of time which will be described by the witnesses during their testimony. Furthermore, the specificities of each area addressed *supra* and which relate to these victims are appropriate and consistent with the rights of the defence to a fair and expeditious trial.

11. The Legal Representative is seeking authorisation from the Chamber to question the four Prosecution witnesses, immediately after the conclusion of the Prosecution's examination, on any areas covered in the annexes, should the Prosecution not sufficiently cover them during its own questioning.

12. The Legal Representative reiterates that she is not in a position, at this time, to provide the Chamber with a detailed list of questions she would like to put to the witnesses concerned. Therefore, should the Chamber grant this application, the Legal Representative respectfully requests to be authorised to submit, immediately after the conclusion of the Prosecution's examination, the list of questions she intends to

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<sup>8</sup> The Trial Chamber already established that it "*will not restrict questioning by victims to reparations issues, but instead will allow appropriate questions to be put by victims whenever their personal interests are engaged by the evidence under consideration*", recognising *de facto* that the interests of victims are affected by issues dealing with reparations. See the "Decision on victim's participation", *supra* note 1, par. 108.

put to the witnesses concerned, if any, to cover the residual areas of interests of her clients not covered by the Prosecution during its questioning.

**FOR THE FOREGOING REASONS**, the Legal Representative respectfully requests the Trial Chamber to find that the interests of the four victims she represents are affected by the testimonies of witnesses OTP 038, OTP 041, OTP 0298 and OTP 0299, and further requests that the Chamber authorise the questioning of these witnesses in the areas of concerns and interests of the victims she represents and not covered or not sufficiently dealt with by the Prosecution, as specified in a list of questions the Legal Representative will submit to the Chamber immediately after the conclusion of the examination of each witness by the Prosecution.



**Paolina Massidda**  
**Principal Counsel**  
**Office of Public Counsel for Victims**

Dated this 26<sup>th</sup> day of January 2009

At The Hague, The Netherlands