

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **21 July 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 supplementary information relevant to the
applications of 21 victims**

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

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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 relevant to the applications of 21 victims.

I. Background

1. On 15 December 2008, the Trial Chamber rendered its “Decision on the applications by victims to participate in the proceedings”.¹ The Trial Chamber reached the following decision as regards applicants who were children when the application forms were completed, but who are now adults:

78. Given that each applicant (now an adult or close thereto) has indicated his or her wish to participate in the proceedings, the Chamber infers that when they become adults they consent to the person continuing to act for them. If that is not the case, the obligation rests on the applicant to inform the Court.²

2. In the course of that decision, the Trial Chamber gave the following directions in relation to the parents of applicants who alleged personal harm as a result of their children’s recruitment:

118. Some parents acting on behalf of their children allege they suffered harm as a result of their children’s alleged conscription, enlistment or use to participate actively in the hostilities. The Trial Chamber refers to the Registry the issue of whether these parents wish to participate on their own behalf for the personal harm they have allegedly suffered.³

3. In relation to incomplete applications, the Chamber instructed the Victims Participation and Reparation Section (“VPRS”) to :

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

² *Ibid.*, paragraph 78. See also Annex A1 of the same Decision.

³ *Ibid.*, See also paragraph 137, point (d) of the same Decision.

113. [...] contact the applicants and their legal representatives in order to seek appropriate documentation.⁴
4. Acting on these instructions, on 16 April 2009 the Registry submitted a Report which provided supplementary information concerning the applications by victims to participate, in accordance with Decision ICC-01/04-01/06-1556 ("Supplementary Report"). The information provided therein supports the applications of 21 individuals: a/0002/06, a/0047/06, a/0048/06, a/0050/06, a/0052/06, a/0105/06, a/0231/06, a/0232/06, a/0245/06, a/0246/06, a/0248/06, a/0001/07, a/0005/07, a/0149/07, a/0155/07, a/0125/08, a/0612/08, a/0613/08, a/0252/07, a/0255/07, and a/0256/07.⁵
 5. On 8 May 2009, the Trial Chamber instructed the Registry to transmit the supplementary information contained in the report, together with the annexes, to the parties and participants by 16.00 on 11 May 2009. The Chamber also ordered that any submissions by the parties and the participants were to be filed by 16.00 on 15 May 2009.⁶
 6. The Registry transmitted the supplementary information to the parties on 11 May 2009.⁷
 7. However, during the hearing on 14 May 2009, the victims' legal representatives indicated they had not received the supplementary information. Thereon, the Chamber instructed the Office of Public Counsel for Victims ("OPCV") and Mr Mulamba to liaise with the VPRS on this matter.⁸

⁴ *Ibid*, paragraph 113. See also paragraph 137, point (c) of the same Decision.

⁵ Report on supplementary information concerning victims' applications for participation in accordance with Decision ICC-01/04-01/06-1556, 16 April 2009, ICC-01/04-01/06-1817-Conf-Exp.

⁶ Transcript of hearing on 8 May 2009, ICC-01/04-01/06-T-171-ENG, page 41, line 8 to page 42, line 1 et seq.

⁷ Transmission of the information contained in the Registry's report ICC-01/04-01/06-1817-Conf-Exp in accordance with Trial Chamber I's oral decision of 8 May 2009, 11 May 2009, ICC-01/04-01/06-1866 with Confidential Annexes.

⁸ Transcript of hearing on 14 May 2009, ICC-01/04-01/06-T-174-ENG, page 13, line 1 to page 14, line 21.

8. On that same day the Principal Counsel of the OPCV contacted the Head of VPRS, who in turn responded on 15 May 2009.⁹
9. On 15 May 2009, the Chamber instructed the OPCV to liaise with the VPRS to disclose the relevant email communications to all the parties and participants.¹⁰ During the hearing, the Chamber suspended the deadline to submit observations on the two filings referred to in the oral ruling of 8 May 2009 (see ICC-01/04-01/06-1817 and ICC-01/04-01/06-1823). The Chamber ordered that any observations on the issue of the notification of redacted application forms to the victims' legal representatives were to be filed by 16.00 on Monday 18 May 2009.¹¹
10. On 15 May 2009, the defence filed its observations on the supplementary information.¹²
11. On 18 May 2009, the victims' legal representatives filed their observations on the issue of the notification of redacted application forms.¹³
12. On 12 June 2009, the Trial Chamber instructed the Registry to notify any relevant document to the legal representatives of victims whose interests and concerns are engaged by filings 1817 and 1823, including any confidential or *ex parte* documents transmitted to the parties in accordance with the Chamber's oral ruling of 8 May 2009, to the extent that this did not breach protective measures that need to remain in place.¹⁴ The Chamber also instructed the Office of the Prosecutor ("prosecution") to file any observations to the supplementary information no later than 15 June 2009.¹⁵

⁹ E-mail communication from the Head of VPRS to the Principal Counsel of the OPCV, 15 May 2009.

¹⁰ Transcript of hearing on 14 May 2009, ICC-01/04-01/06-T-175-ENG, page 50, lines 14-19.

¹¹ *Ibid.*, page 50, lines 7-13 and page 86, lines 14-16.

¹² Observations de la Défense sur les 21 « Informations supplémentaires reçues sur une demande de participation conformément à la norme 86.4 du Règlement de la Cour » transmises le 11 mai 2009, 14 May 2009, ICC-01/04-01/06-1874.

¹³ Observations of the legal representatives of victims on the access to standard applications form for victims' participation and related documents, 18 May 2009, ICC-01/04-01/06-1882.

¹⁴ Transcript of hearing on 12 June 2009, ICC-01/04-01/06-T-191-CONF-ENG, page 59, line 3 et seq

¹⁵ *Ibid.*, page 60, line 10 et seq

13. On 15 June 2009, the prosecution filed its observations.¹⁶

II. Relevant Provisions

14. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Trial Chamber has considered the following provisions under the Rome Statute framework.

15. Article 68 of the Statute on "Protection of the victims and their participation in the proceedings" provides:

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

[...]

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

16. Article 69(3) of the Statute under the heading "Evidence" sets out that:

3. [...] The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.

¹⁶ Prosecution's Observations on Supplementary Information relevant to 21 Victim Applications, 15 June 2009, ICC-01/04-01/06-1968.

17. 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.

18. Rule 89(1) of the Rules under the heading “Application for participation of victims in the proceedings” stipulates that once victims have applied to participate, the Chamber:

[...] shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

19. As regards common legal representation, Rule 90 of the Rules on the “Legal representation of victims” provides that the Chamber:

2. [...] may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives [...]

[...]

4. [...] shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.

20. Regulation 79(2) of the Regulations of the Court (“Regulations”) on the “Decision of the Chamber concerning legal representatives of victims” states:

When choosing a common legal representative for victims in accordance with rule 90, sub-rule 3, consideration should be given to the views of the victims, and the need to respect local traditions and to assist specific groups of victims.

III. Analysis and Conclusions

21. The Trial 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 Trial Chamber's previous decisions on victims' participation,¹⁷ and as confirmed or varied by the Appeals Chamber in its judgment of 11 July 2008.¹⁸ For the purposes of this Decision, the Chamber has divided the applicants into the following groups, reflecting particular features which various individual victims and applicants share:

Group 1: Victims currently participating in the proceedings who were children at the time of application but who are now adults

22. Victims a/0047/06, a/0048/06, a/0050/06, a/0052/06, a/0231/06, a/0232/06, a/0245/06, a/0246/06, a/0248/06, a/0001/07, a/0005/07, a/0149/07, a/0155/07, a/0125/08, a/0612/08 and a/0613/08 are in this group.

23. Victims a/0047/06, a/0048/06, a/0050/06, a/0052/06, a/0231/06, a/0232/06, a/0245/06, a/0248/06, a/0001/07, a/0005/07, a/0155/07, a/0612/08 and a/0613/08, all wish to participate on their own behalf, whilst Victims a/0246/06, a/0149/07, a/0125/08 request that the individuals who have thus far acted on their behalf continue to do so.

24. The defence and the prosecution have not advanced observations as regards this group.¹⁹

¹⁷ 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.

¹⁸ 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.

¹⁹ ICC-01/04-01/06-1874, paragraph 2; ICC-01/04-01/06-1968, paragraph 3.

25. As regards the victims who now wish to participate on their own behalf, the Chamber authorises this variation, and instructs the Registry and the legal representatives to notify the relevant victims of this Decision, along with the individuals who to date have acted on their behalf.

Group 2: Parents of victims who allege personal harm

26. Victims a/0002/06, a/0105/06, a/0246/06, a/0149/07, a/0155/07 and a/0613/08 are in this group. They all are parents of direct victims who have been granted status to participate in the proceedings and they have acted thus far on behalf of their children. They all wish to act on their own behalf for the personal harm they each suffered as a result of their children's alleged recruitment.
27. The defence and the prosecution have not advanced observations as regards these individuals.²⁰
28. As provided by the Appeals Chamber in accordance with Rule 85(a) of the Rules, the harm suffered by a natural person must be personal harm (*viz.* suffered personally by the victim), regardless of whether he or she is a direct or indirect victim of a crime.²¹ Given the opportunity to participate that is thus extended to indirect victims, the Trial Chamber grants participation status to the parents of victims a/0002/06, a/0105/06, a/0246/06, a/0149/07, a/0155/07 and a/0613/08 for any personal harm they have suffered as a result of their children's alleged recruitment.
29. In the interests of continuity and consistency, and given that certain relevant information has been given to date under a particular reference number, the parents of the victims above shall participate under the same reference number as their children, that is: a/0002/06, a/0105/06, a/0246/06, a/0149/07, a/0155/07

²⁰ *Ibid.*

²¹ ICC-01/04-01/06-1432, paragraph 1.

and a/0613/08 and they shall be represented by the same legal representatives who have acted on behalf of their children thus far.

Group 3: Applicants with incomplete applications who provided additional information

30. Applicants a/0252/07, a/0255/07 and a/0256/07 are in this group.
31. As regards applicant a/0252/07, the Chamber has previously ruled that the identification document provided to the Chamber was insufficient to determine whether the applicant was under the age of 15 at the time of the relevant events, particularly since the applicant had indicated in his application form that he was born in 1987 and was thus 15 at the material time.²² In its Supplementary Report, the Registry indicated that the applicant has not provided any further identification document to establish his age.²³ The defence concurred with the Registry's view.²⁴ The prosecution argued, however, that given the supplementary information does not provide further clarification regarding the applicant's age, further information should be requested.²⁵
32. Since no substantive additional information has been provided to prove *prima facie* that the applicant was under the age of 15 at the time of the alleged recruitment, the inevitable conclusion is that there has been no alteration in the status of this individual, and the application for participation is therefore rejected.
33. As regards applicants a/0255/07 and a/0256/07, who are siblings and whose father has acted thus far on their behalf, the Chamber originally rejected their request to participate as victims because it considered that the information provided was insufficient to determine *prima facie* that the alleged recruitment

²² ICC-01/04-01/06-1556, Annex A1, page 270.

²³ ICC-01/04-01/06-1817-Conf-Exp, page 7 and Annex 19.

²⁴ ICC-01/04-01/06-1874, paragraph 4.

²⁵ ICC-01/04-01/06-1968, paragraphs 6 and 8(i).

had occurred within the time frame of the charges, namely between September 2002 and 13 August 2003.²⁶ The Registry informs the Chamber in its Supplementary Report that the applicants have indicated they were both allegedly recruited within the time frame of the charges.²⁷ In its observations, the defence opposes the application to participate by these two individuals, arguing that the information provided is particularly vague and does not establish with certainty that the events occurred in the period relevant to the charges against the accused.²⁸ The prosecution submits that the supplementary information sufficiently clarifies the date of recruitment and the age of both applicants, and it suggests that the applications should now be granted.²⁹

34. On the basis of the information originally provided by the applicant, along with the supplementary information included in the Registry's Supplementary Report, the Chamber determines that the applicants have provided sufficient information to establish, *prima facie*, that they are victims under Rule 85(a) of the Rules, because the Chamber has been provided with information that leads it to conclude that the applicants suffered personal harm as a result of crimes confirmed against the accused, namely their alleged conscription and/or enlistment and/or use to participate actively in the hostilities, when they were under the age of 15 and between September 2002 and 13 August 2003.
35. The Trial Chamber observes that whilst a/0255/07 has indicated that he wishes his father to act on his behalf, a/0256/07 has not expressed a similar preference. However, considering that a/0256/07 is currently between 16-17 years old, the Chamber determines that their father should continue acting for him (as well as his brother). In the case of a/0256/07, this should be reviewed on his eighteenth birthday.

²⁶ ICC-01/04-01/06-1556, Annex A1, pages 284-288.

²⁷ ICC-01/04-01/06-1817-Conf-Exp, page 7, Annex 20 and Annex 21.

²⁸ ICC-01/04-01/06-1874, paragraph 5.

²⁹ ICC-01/04-01/06-1968, paragraphs 7 and 8(ii).

36. The Trial Chamber notes that the two victims have been represented thus far by Mr Paul Kabongo Tshibangu, who is currently a member of one of the teams of legal representatives that have been acting in the proceedings to date. In all the circumstances, the Chamber concludes that they should continue to be represented by the team to which Mr Kabongo belongs.

Group 4: Applicants and victims who did not provide additional information

37. As regards those applicants whose applications were originally rejected on the basis of a lack of information, and who the Registry has been unable to locate or who failed to provide relevant additional information, there is currently no basis for granting their applications to participate, which in consequence are rejected.

38. As regards those victims granted status to participate in respect of whom the Chamber had requested supplementary information, where no further information has been provided to the Chamber, there shall be no change to their participating status.

IV. Orders of the Chamber

39. For these reasons, the Trial Chamber hereby:

- a. Authorises victims a/0047/06, a/0048/06, a/0050/06, a/0052/06, a/0231/06, a/0232/06, a/0245/06, a/0248/06, a/0001/07, a/0005/07, a/0155/07, a/0612/08, and a/0613/08 to act on their own behalf and instructs the Registry and the legal representatives to transmit this Decision to the victims concerned, along with the individuals who, to date, have acted on their behalf.
- b. Orders that in relation to victims a/0246/06, a/0149/07, a/0125/08, the individuals who have thus far acted on their behalf continue in this role.

- c. Grants participating status to the parents of victims a/0002/06, a/0105/06, a/0246/06, a/0149/07, a/0155/07 and a/0613/08 for the personal harm they have suffered as a result of their children's alleged recruitment; orders that they participate under the same reference number as their children, namely: a/0002/06, a/0105/06, a/0246/06, a/0149/07, a/0155/07 and a/0613/08; and orders that they are represented by the same team of legal representatives which has acted on behalf of their children thus far.
- d. Grants status to participate in the proceedings to applicants a/0255/07 and a/0256/07 and orders that their father continues acting on their behalf and that they are represented by the team which includes Mr Paul Kabongo Tshibangu.
- e. Rejects the application to participate of applicant a/0252/07.
- f. Determines that no changes shall be made to the participation status of the applicants and victims who have provided no additional information.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 21 July 2009

At The Hague, The Netherlands