



Original: **French**

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

Date: **18 May 2011**

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

**IN THE CASE OF
THE PROSECUTOR *v.* THOMAS LUBANGA DYILO**

Public Document

**Defence Observations on the “*Informations supplémentaires reçues sur une demande de participation conformément à la norme 86.4 du Règlement de la Cour*”
transmitted on 12 May 2011**

Source: Defence for Mr Thomas Lubanga

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Legal Representatives of 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
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

BACKGROUND

1. On 11 May 2011, the Registry of the Court transmitted to the Defence the additional statements relating to the applications for participation by two victim applicants.¹
2. The Defence wishes to submit the following observations on the additional information provided by the two applicants:

OBSERVATIONS

Preliminary remarks

3. The Defence considers that many of the redactions in both additional statements appear on the surface to be unjustified. No security imperative can warrant the redaction of, for example, the ethnic group of the combatants, the date of transmission of the additional information, the locations of military camps or certain sites where the applicants reportedly took part in the fighting.
4. The extent of these redactions precludes the Defence from submitting comprehensive observations on the applicants' statements.

Applicant a/1610/10

- Discrepancies in the applicant's date of birth

5. In the form signed in October 2009, the applicant gave October 1990 as the date of birth (without any supporting documents). In the additional statement transmitted in March 2011, the applicant now gives December 1989 as the date of birth.² The only supporting document the applicant has included with the

¹ ICC-01/04-01/06-2736-Conf-Anx1-Red and Anx2-Red.

² ICC-01/04-01/06-2736-Conf-Anx1-Red, p. 21, "section A" lines 1-3.

additional statement states, however, that the applicant was born in December 1999.³

- **The facts alleged by the applicant have no nexus to the charges against the accused**
6. Only direct victims of the crimes with which the accused stands charged may be authorized to participate in the proceedings, *viz.* children under the age of 15 years who are able to show, *prima facie*, that they were enlisted into the FPLC during the time frame of the charges confirmed by the Pre-Trial Chamber, i.e. between September 2002 and 13 August 2003.
 7. However, Applicant a/1610/10 claims in the handwritten statement transmitted in March 2011 to have been abducted by soldiers from the APC and taken to a military camp in 2004.⁴ Therefore, from the applicant's account, this alleged abduction occurred outside the time frame of the charges against the accused, by soldiers belonging to another politico-military movement.
 8. As a result, the application for participation filed by Applicant a/1610/10 does not, *prima facie*, satisfy the conditions set out under rule 85 and must accordingly be rejected.

Applicant a/1619/10

9. The Defence considers that the applicant's submission in July 2010 of a new participation form, different from that presented in October 2009, casts serious doubt on the applicant's sincerity. Many of the details the applicant provides seem incompatible or contradictory, e.g.:

³ ICC-01/04-01/06-2736-Conf-Anx1-Red, p. 25.

⁴ ICC-01/04-01/06-2736-Conf-Anx1-Red, p. 22 (lines 2 and 7).

- In October 2009, the applicant claimed to have sustained a single gunshot wound in the right foot. In July 2010, the applicant claims to have been shot in three different parts of the body;
- In October 2009, the applicant claimed to have been examined by a doctor after the events but to have lost the doctor's medical report. In the form signed in July 2010, however, the applicant claims not to have been examined by a doctor after the events and that it was instead the soldiers who treated the applicant; and
- Although the applicant's statement of October 2009 places responsibility on the APC for the events alleged, the applicant omits any such reference in the additional statement submitted in July 2010.

10. As a result, the application for participation filed by Applicant a/1619/10 does not, *prima facie*, satisfy the conditions set out under rule 85 and must accordingly be rejected.

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER I TO:

REJECT the applications for participation of Applicants a/1610/10 and a/1619/10.

[signed]

Ms Catherine Mabile, Counsel

Dated this 18 May 2011

At The Hague, Netherlands