

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 19 October 2006

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr. Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF THE PROSECUTOR vs. THOMAS LUBANGA DYILO**

Public Redacted Document

**Formatted and Redacted Version of Prosecution's Observations on the Applications
for Participation of Applicants a/0072/06 to a/0080/06 and a/0105/06**

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Mr. Ekkehard Withopf, Senior Trial Lawyer

Legal Representatives for the Victims

a/0001/06 to a/0003/06

Mr. Luc Walley
Mr. Franck Mulenda

Legal Representative for the Applicant

a/0105/06

Ms. Carine Bapita Buyangandu

Counsel for the Defence

Mr. Jean Flamme
Ms. Véronique Pandanzyla

Office of Public Counsel for the Defence

Ms. Melinda Taylor

Background

1. On 10 February 2006, the Pre-Trial Chamber issued a warrant of arrest against Thomas LUBANGA DYILO, in which he is alleged to have committed the crimes of enlisting, conscripting and using children to participate actively in hostilities under Article 8(2) of the Rome Statute ("Statute") between July 2002 and December 2003.¹
2. On 14 and 25 September 2006, ten applicants (Applicants) filed confidentially and *ex parte* applications a/0072/06 to a/0080/06 and a/0105/06 (Applications) in which they seek, *inter alia*, to participate in the proceedings of the case of *The Prosecutor vs. Thomas LUBANGA*.² The Pre-Trial Chamber issued, on 29 September 2006, the "Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0072/06 à a/0080/06 et a/0105/06", in which it invited the Parties to comment on the applications by 16 October 2006, at the latest.³
3. Following the Defence's request for an extension,⁴ the Pre-Trial Chamber granted both Parties a ten day extension from the date of receipt by the Parties of the redacted version of the Applications.⁵ The Prosecution received the (un-redacted) version of the Applications on 10 October 2006.

¹ Arrest warrant, 10 February 2006 (Arrest Warrant), at page 4.

² The Applicants also filed requests to participate in the proceedings of the investigations in the situation of the Democratic Republic of Congo. Observations on these requests are the subject of a future filing by the Prosecution.

³ Décision autorisant le dépôt d'observations sur les demandes de participation à la procédure a/0072/06 à a/0080/06 et a/0105/06, at page 5.

⁴ Demande d'extension de délai, public, 5 October 2006.

⁵ Décision relative à la demande d'extension de délai du 5 octobre 2006, public, 6 October 2006.

Scope of the present submission

4. The present submission will exclusively address the Applications in respect of their request to participate in the case at hand.

Legal Qualification of "Victim"

5. Pursuant to Rule 89(2) of the Rules of Procedure and Evidence (Rules) to determine whether an applicant may participate in the proceedings, the Pre-Trial Chamber must first decide if he/she qualifies as a "victim" as defined in Rule 85.
6. According to Rule 85 (a),

"Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;"

7. As the Pre-Trial Chamber determined, for the status of a victim to be recognized four criteria must be satisfied: (a) the victim must be a natural person; (b) he or she must have suffered harm; (c) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (d) a causal link between the crime and the harm must exist.⁶
8. Moreover, the Applicants must demonstrate that there is a sufficient causal link between the harm they suffered and the crimes for which there are reasonable grounds to believe that Thomas LUBANGA DYILO is criminally responsible

⁶ See Décision sur les demandes de participation à la procédure a/0001/06, a/0002/06 et a/0003/06 dans le cadre de l'affaire *Le Procureur c. Thomas Lubanga Dyilo* et de l'enquête en République démocratique du Congo, public redacted version, 28 July 2006, at page 7.

and the commission of which is the subject of the Arrest Warrant issued by the Pre-Trial Chamber⁷ and the Document Containing the Charges, filed by the Prosecution on 28 August 2006.

9. Article 68(3) of the Statute provides that the Chamber shall permit participation of an individual (as defined by Rule 85) where the personal interests of the individual are affected. The Prosecution submits that Article 68(3) of the Statute and Rule 85, viewed together, establish a two-stage process for the Chamber to determine if an individual qualifies as a victim with standing to participate in proceedings: first, the applicant must fulfil the criteria set out in Rule 85, then the Chamber must be satisfied that the personal interests of the victim are directly affected by the proceedings in which he or she is applying to participate.⁸
10. For an application to be successful pursuant to Article 68(3) of the Statute, the applicant must have a “judicially recognisable personal interest”⁹ in the case. The personal interest of the applicant must be related to the *specific matters* at issue within the framework of the Court’s proceedings.¹⁰

Factual analysis

11. The charges against Thomas LUBANGA DYILO include (1) enlisting children under the age of fifteen years, (2) conscripting children under the age of fifteen

⁷ *Ibid*, at page 9.

⁸ See Pre-Trial Chamber’s “Décision sur les Demandes de Participation à la Procédure de VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6”, 17 January 2006, at para. 62.

⁹ See E. Haslam, “Victim Participation at the ICC”, in McGoldrick, Rowe and Donnelly (eds.): *The Permanent International Criminal Court* (2004), at page 326.

¹⁰ *Emphasis added*.

years, and (3) using children under the age of fifteen years to participate actively in hostilities.¹¹

12. In the present case, the Applicants have applied to qualify as victims in order to participate in the case of *The Prosecutor vs. Thomas LUBANGA DYILO*. Only one of the Applicants has legal representation¹², the others seek assistance from the Court in order to be represented.

Applications a/0072/06- a/0080/06 and a/0105/06

Application a/0072/06

13. Mr. REDACTED asserts in his application on behalf of his brother Mr. REDACTED, an Alur, that Mr. REDACTED's cattle was stolen by UPC forces in the course of the night of REDACTED 2002. While seeking information in REDACTED regarding the theft of his cattle, he was stopped and detained by a Commander of the UPC, REDACTED. He has not been seen alive since. According to the Applicant, he was tortured during the night of REDACTED 2002 and was then shot to death. His body was left outside the following day.

14. Before being arrested Mr. REDACTED entrusted Mr. REDACTED to transport his goods to REDACTED. Mr. REDACTED asserts that in REDACTED Mr. REDACTED sold Mr. REDACTED's goods without being authorized to do so.

15. The Applicant seeks reparation for the loss of his brother, Mr. REDACTED. The Applicant also filed his application seeking reparation for the theft of his cattle

¹¹ Arrest Warrant, p. 4.

¹² Ms. Carine Bapita Buyangandu represents Applicant a/0105/06.

REDACTED; for the value of the goods sold unlawfully at the market in REDACTED and for the sums of money taken from Mr. REDACTED, while in custody. The Applicant stresses his difficulty in raising Mr. REDACTED's children.

Application a/0073/06

16. Mr. REDACTED, acting on behalf and with the consent of Mr. REDACTED, filed an application to participate in the current proceedings. In the application, Mr. REDACTED describes how his wife, Ms. REDACTED, a Bira, was stopped, tortured, raped and killed by UPC elements while en route, with her nephew, to the REDACTED concession. The crime occurred on REDACTED 2003 and was ordered by UPC Commanders REDACTED present at REDACTED. According to the application, Mr. REDACTED's younger brother REDACTED was also tortured on that occasion.

17. Mr. REDACTED seeks redress because of the loss suffered due to his wife's death.

18. Mr. REDACTED also mentions that his goods have been plundered and/or destroyed.

Application a/0074/06

19. Mr. REDACTED, acting on behalf and with the consent of Ms. REDACTED, a Hema, filed an application in which Ms. REDACTED describes the Lendu militias' attack on REDACTED on REDACTED 2003 and its aftermath. Following the attack, Ms. REDACTED along with others was taken to the

REDACTED as a prisoner. She details how she and others were undressed and forced to REDACTED. At the camp, she was a sexual slave and was forced to "marry" a militiaman named REDACTED when she was still a young woman. The events occurred under the command of Commander REDACTED, who is presently in REDACTED. She and others were freed by commanders REDACTED, following negotiations, in REDACTED. In the application filed on her behalf, Ms. REDACTED also mentioned that she was raped by eight combatants.

20. Ms. REDACTED is traumatized and has serious physical complaints due to the harm she suffered.

Application a/0075/06

21. Mr. REDACTED acting on behalf and with the consent of Ms. REDACTED, of Hema origin, filed an application describing how Ms. REDACTED was arrested on REDACTED by UPC elements on the road to REDACTED. They were acting on the order of Battalion Commander REDACTED. Commander REDACTED undressed her and raped her, after stealing the money she carried. He also called ten soldiers to rape her. According to the application, Ms. REDACTED was presumed a spy by the UPC, since she is the REDACTED, REDACTED. Ms. REDACTED was also tied up for five hours and was freed by a Commander REDACTED, who forced her to become his "wife". As her health deteriorated she was transferred to REDACTED to receive treatment on a certain REDACTED's order. Ms. REDACTED remained in the REDACTED from REDACTED until it was attacked by REDACTED.

22. Ms. REDACTED is traumatized and has serious physical complaints due to the harm she suffered.

Application a/0076/06

23. Ms. REDACTED, acting on behalf and with the consent of REDACTED, of Lendu origin, filed an application in which REDACTED describes how she along with others was arrested by UPC forces in front of REDACTED's compound in REDACTED. For a month, the prisoners were beaten, tortured, raped and subjected to other degrading and inhuman treatment. REDACTED was eight or nine years of age at the time of the events. According to the application it appears that REDACTED and others left their place of detention and went to REDACTED district to meet with or be with REDACTED. She asserts that she endured such treatment because she is a Lendu.

24. REDACTED is traumatized and has serious physical problems due to the harm she suffered.

Application a/0077/06

25. REDACTED declares in her application on behalf of and with the consent of Ms. REDACTED, that REDACTED, a Lendu, was arrested and detained in REDACTED by UPC forces at the REDACTED for a period of one month. Ms. REDACTED was arrested together with another woman or girl named REDACTED and a boy named REDACTED, who was REDACTED of these women (or girls). According to Ms. REDACTED's account, REDACTED was killed along with five other men with a spear while in their cell. The event was witnessed by Ms. REDACTED and REDACTED. They were systematically

9/13

raped every day by UPC soldiers. They were detained naked; they were beaten with weapons, tortured and insulted because of their Lendu origin. Every morning, REDACTED was poured on them. Occasionally, REDACTED.

26. Ms. REDACTED describes, in her account, how Thomas LUBANGA in person was present where they were detained and ordered his forces to beat them.

27. Ms. REDACTED is traumatized and has serious physical complaints due to the harm she suffered while in captivity.

Application a/0078/06

28. Ms. REDACTED, acting on behalf of and with the consent of Ms. REDACTED, of Lendu origin, describes in her application how Ms. REDACTED, born on REDACTED, was abducted, in REDACTED 2003, by UPC elements at REDACTED, along with REDACTED other children (girls and boys). She was detained in an underground cell in REDACTED where she was raped daily by UPC militiamen and their commanders. Later, she received military training. She was drugged and taken to the frontlines in REDACTED. Before being trained as a soldier, she was used as a human shield or a scout in the frontlines, along with the other children.

29. Ms. REDACTED is traumatized and has serious physical complaints due to the harm suffered while detained by the UPC.

Application a/0079/06

30. Ms. REDACTED declares in her application filed on behalf and with the consent of Ms. REDACTED, of Lendu origin, that the latter was arrested, during REDACTED, along with five other women, by UPC forces and brought to REDACTED. The abduction took place after the local men were killed. According to the application, the REDACTED was at the time of the events under the command of REDACTED. Once at the REDACTED, the women were stripped naked, raped, tortured, insulted and threatened to be killed. They were also subjected to forced labour. The application further mentions that Ms. REDACTED was raped daily by more than 6 militiamen. She, along with others, escaped when REDACTED was attacked by Lendu fighters.

31. Lately, Ms. REDACTED has received medical attention from REDACTED. However, on REDACTED, while en route to be treated, she was raped by REDACTED.

32. Ms. REDACTED seeks redress due to the pain and suffering she experienced while in captivity.

Application a/0080/06

33. Ms. REDACTED filed an application on behalf and with the consent of Ms. REDACTED, a Lendu. Ms. REDACTED describes, in her account, how she was arrested by fifteen UPC militiamen in REDACTED 2003. After killing all the men present, the UPC soldiers took her and five other women to REDACTED. There, the women were raped, kept as sexual slaves, married by force and tortured during six months. The application states that Thomas LUBANGA

stayed at REDACTED for several days while Ms. REDACTED was detained there. Ms. REDACTED also recalls hearing the names of UPC members named REDACTED and REDACTED. Ms. REDACTED asserts that she and the other women were arrested, raped and tortured because they were Lendu.

34. As a result of these events, Ms. REDACTED is traumatized and seeks redress for the pain and suffering she experienced while in the REDACTED.

Application a/00105/06

35. Ms. REDACTED describes in her application filed on behalf of her son, Mr. REDACTED, a minor born in 1992, an Alur, how he was first abducted by the UPDF along with other children, to transport ammunition from REDACTED in REDACTED. According to the application and the documents attached, it appears that Mr. REDACTED was on that occasion recruited by the UPC in REDACTED. In the UPC he served both as a soldier and as a body guard for a period of REDACTED months. He was approximately ten years of age at the time of his abduction.

36. Ms. REDACTED seeks reparation for the mental anguish suffered due to the disappearance of her son for a period of three years.

Conclusion regarding Applications a/0072/06 to a/0080/06 and a/0105/06

Applicant a/0105/06

37. The Prosecution submits that, in relation to the above-mentioned alleged crimes the Applicant a/0105/06 meets the criteria for participation as “victim” in the

case of *The Prosecutor vs. Thomas LUBANGA DYILO*. The information provided in the application relating to the alleged crimes is causally linked to the crimes and the charges levelled against Thomas LUBANGA DYILO as identified in the Arrest Warrant and the Document Containing the Charges. The crimes alleged in application a/0105/06 are covered by the scope of Article 8(2) of the Statute and occurred during the relevant period of time. The Applicant a/0105/06 identified the perpetrators as members of the UPC.

Applicant a/0078/06

38. According to the application, Applicant a/0078/06 was fifteen years at the time of the events and thus, at first glance, not a “child” in terms of Article 8 of the Statute. In order to eliminate all possible uncertainties in respect of the date of birth of the Applicant a/0078/06, the Prosecution suggests requesting Applicant a/0078/06 to provide documentary evidence in respect of her date of birth.

Applicants a/0072/06- a/0077/06 and a/0079/06- a/0080/06

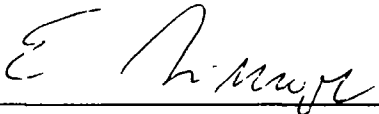
39. Applicants a/0072/06 to a/0077/06 and a/0079/06 to a/0080/06 do not meet the criteria for participation as victims in the case *The Prosecutor vs. Thomas LUBANGA DYILO*. The information provided in these applications does not allow the establishment of a causal link between the crimes and the charges against Thomas LUBANGA DYILO as identified in the Arrest Warrant and the Document Containing the Charges. In fact, applications a/0072/06 to a/0077/06 and a/0079/06 to a/0080/06 describe crimes that are not covered by the Arrest Warrant and the Document Containing the Charges.

Classification of the present filing

40. Because of security and safety concerns of the Applicants, the Prosecution has filed the present submission as a Public Redacted Document.

Request

41. For the foregoing reasons, the Prosecution requests that the Pre-Trial Chamber grant Applicant a/0105/06 the right to participate as victim in the case of *The Prosecutor vs. Thomas LUBANGA DYILO* because the harm he suffered has a causal link to the charges in the case at hand. The Prosecution however, requests that the Pre-Trial Chamber reject applications a/0072/06 to a/0077/06 and a/0079/06 to a/0080/06¹³ to participate as victims in the case of *The Prosecutor vs. Thomas LUBANGA DYILO* on the basis that the harm suffered by these applicants has no causal link to the charges in the case at hand.


Luis Moreno-Ocampo
Prosecutor

Dated this 19th day of October 2006
At The Hague, The Netherlands

¹³ In respect of Applicant a/0078/06, the Prosecution refers to para.38.