

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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

**Prosecution's Observations on the Applications for Participation of Applicants
a/0053/06 to a/0063/06 and a/0071/06**

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
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Legal Representatives of the Applicants

Mr. Michel Shebele (applicants a/0053/06-
a/0056/06, a/0062 and a/0063/06)
Mr. Emmanuel Daoud (applicants a/0057/06-
a/0061/06 and a/0071/06)
Mr. Patrick Baudouin (applicant a/0071/06)

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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 31 July 2006 and on 3 and 4 August 2006, forty-one applicants filed confidentially and *ex parte* forty-three applications² to participate in the proceedings in the case of *The Prosecutor vs. Thomas LUBANGA*. The Single Judge³ issued, on 4 August 2006, the "Décision autorisant le Procureur et la Défense à déposer des observations sur les demandes des requérants a/0004/06 à a/0009/06, a/0016/06 à a/0046/06 et a/0047/06 à a/0052/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo", in which she invited the Parties to comment on the applications. The Parties filed their observations on these applications on 22 August 2006⁴, 25 August 2006⁵, 4 September 2006⁶ and 6 September 2006⁷.
3. On 22 September 2006, the Pre-Trial Chamber issued a "Décision autorisant le dépôt d'observation sur les demandes de participation à la procédure a/0004/06 à

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

² Applications a/0004/06 to a/0009/06, a/0016/06 to a/0046/06 and a/0047/06 to a/0052/06.

³ See "Décision désignant un Juge unique dans l'affaire *Le Procureur c/ Thomas LUBANGA DYILO*", filed on 22 March 2006.

⁴ Prosecution's Observations on the Applications for Participation of Applicants a/0004/06 to a/0009/06, a/0016/06 to a/0046/06, filed on 22 August 2006 both confidentially and *ex parte* and in public redacted form.

⁵ Prosecution's Observations on the Applications for Participation of Applicants a/0047/06-a/0052/06, filed on 25 August 2006, confidentially and *ex parte*.

⁶ Conclusions de la Défense quant aux demandes de participation à la procédure des requérants a/0004/06 à a/0052/06, filed on 4 septembre 2006.

⁷ Prosecution's Observations on the Applications for Participation of Applicants a/0047/06-a/0052/06, filed on 6 September 2006 in its public redacted form.

a/0009/06, a/0016/06 à a/0063/06 et a/0071" in which it invites, in part, the Prosecution and the Defence to comment on applications a/0053/06 to a/0063/06 and a/0071/06 (Applications) to participate in the proceedings of the case of *The Prosecutor v. Thomas LUBANGA* on 9 October 2006, at the latest.⁸ Following the Defence's "Demande d'extension de délai" filed on 5 October 2006, the Pre-Trial Chamber granted both Parties a 15 day extension from the date of receipt by the Parties of the redacted version of the Applications.

Scope of the present submission

4. Therefore, the present brief 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 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;"

⁸ The Prosecution received (unredacted) copies of applications a/0053/06 to a/0063/06 and a/0071/06 from the Registry on 4 October 2006 at approximately 11:00 hours.

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.⁹
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 and the commission of which is the subject of the Arrest Warrant issued by the Pre-Trial Chamber.¹⁰
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.¹¹

⁹ See Decision on the Applications on participation in the proceedings of a/0001/06, a/0002/06 and a/0003/06 in the case of the *Prosecutor v. Thomas Lubanga Dyilo* and of the investigation in the Democratic Republic of Congo, p.7

¹⁰ *Ibid*, p. 9.

¹¹ 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", filed on 17 January 2006, para. 62.

10. For an application to be successful pursuant to Article 68(3) of the Statute, the applicant must have a “judicially recognisable personal interest”¹² 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.¹³

Factual analysis

11. The charges against Thomas LUBANGA DYILO currently include (1) enlisting children under the age of fifteen years, (2) conscripting children under the age of fifteen years, and (3) using children under the age of fifteen years to participate actively in hostilities.¹⁴
12. In the present case, the applicants a/0053/06 to a/0063/06 and a/0071/06 (Applicants) have applied to qualify as victims in order to participate in the case of *The Prosecutor vs. Thomas LUBANGA DYILO*. All the Applicants have legal representation.¹⁵

Applications a/0053/06- a/0063/06 and a/0071/06

Application a/0053/06

13. Ms. REDACTED states in her application filed on behalf of her father, Mr. REDACTED, of Lendu origin, that from REDACTED 2003, UPC forces were

¹² See E. Haslam, “Victim Participation at the ICC”, in McGoldrick, Rowe and Donnelly (eds.): *The Permanent International Criminal Court* (2004), at page 326.

¹³ Emphasis added.

¹⁴ Arrest Warrant, 10 February 2006.

¹⁵ Mr. Michel Shebele represents applicants a/0053/06, a/0054/06, a/0055/06, a/0056/06, a/0062 and a/0063/06; Mr. Emmanuel Daoud is the legal representative of applicants a/0057/06, a/0058/06, a/0059/06, a/0060/06 and a/0061/06. Mr. Emmanuel Daoud and Mr. Patrick Baudoin both represent applicant a/0071/06.

targeting Lendus and that shots were "fired everywhere". On REDACTED 2003, the applicant and others left REDACTED and sought refuge in the REDACTED district of Bunia. Then, on REDACTED 2003, the applicant along with others, returned to her father's place of work in the center of Bunia, at the "REDACTED". The UPC militiamen plundered the REDACTED and asked those present whether they were Lendus, which the applicant and those seeking protection denied. Ms. REDACTED declares that around noon her father left the premises in search of food. The applicant was informed later in the afternoon that her father had been arrested by UPC forces in front of the REDACTED. On REDACTED 2003, REDACTED informed the applicant that her father's body had been found and had been buried. The victim's REDACTED.

14. According to the applicant, shortly after her father's disappearance UPC forces abducted her mother, as the group was en route to the MONUC to seek refuge. The applicant's older brother has also disappeared after he left the group in search of his mother. Neither the applicant's mother nor her older brother have been seen since and are presumed to be dead.
15. In her application, Ms. REDACTED mentions that her home was destroyed and the goods it contained plundered.
16. As a result of the death of her father and other relatives, Ms. REDACTED, suffers from mental trauma. Furthermore, the applicant mentions in her application that she faces a precarious financial situation because her household goods were plundered and her family home destroyed.

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Application a/0054/06

17. Mr. REDACTED, acting on behalf of his nephew, Mr. REDACTED, of Lendu/Pitsi origin, describes in his application how in REDACTED 2002 when the UPC forces REDACTED, they began a "manhunt" targeting the Lendus, Ngiti, Nande and others. The Lendus sought refuge in the REDACTED and REDACTED areas. While everyone was attempting to escape, his nephew's Hema neighbors feigned to help him by driving him, in his own car, to REDACTED to be reunited with his family. En route to REDACTED, the car was stopped in REDACTED, a UPC stronghold. There, he was taken out of the car and executed. His body was never found.

18. The death of his nephew has left Mr. REDACTED suffering from psychological trauma.

Application a/0055/06

19. Ms. REDACTED, acting on behalf of her son, Mr. REDACTED, of Hema/Mugegere origin, describes how when the UPC took over Bunia in August 2002, her son, whose father was a Hema, was forced to reside in the Hema area of Bunia while the applicant was obligated to reside in the Lendu area because of her Lendu origin. On REDACTED 2003, Mr. REDACTED's friend told UPC elements that the victim was not a Mugegere but rather a Lendu. According to the applicant, her son was arrested that day and taken by UPC elements to REDACTED, where he was executed. His body has never been found.

20. Ms. REDACTED suffers from physical and mental trauma due to the killing of her son. She also claims that her house was plundered and destroyed and is thus in a precarious financial position.

Application a/0056/06

21. Ms. REDACTED declares, in her application filed on behalf of her son, Mr. REDACTED of Alur/Lendu origin, that he was executed by UPC militiamen on REDACTED 2003. At that time, her son was residing in REDACTED locality where he had sought refuge because of the manhunt targeting Lendus. He was invited by UPC Commander REDACTED, along with other prominent Lendus, to attend a pacification meeting. The Lendus were apparently intercepted by UPC forces as they left their place of hiding in REDACTED. They were encircled, tied up and escorted by UPC forces to REDACTED where other Lendus were already gathered. There, they were summarily executed.

22. Ms. REDACTED suffers from mental and psychological trauma due to the loss of her son. She also mentions, in her application, that her home was plundered and destroyed.

Application a/0057/06

23. Ms. REDACTED filed an application on behalf of her nephew, Mr. REDACTED, of Lendu origin, who was killed on REDACTED 2003 near the REDACTED in the REDACTED district of Bunia. The applicant describes how from REDACTED 2003 Hemas were targeting Lendus. Her nephew was killed on REDACTED 2003 in the morning, after Hema militiamen broke into the REDACTED in which the applicant's husband was REDACTED. On that

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occasion, the Lendus were attempting to flee REDACTED to reach the REDACTED district of Bunia. In her account the applicant also mentions the killing of her daughter. She further mentions the plunder and destruction of her home.

24. In her application, Ms. REDACTED, asserts that because of these events she suffers from a deep psychological trauma.

Applications a/0058/06

25. Mr. REDACTED states, in his application filed on behalf of his wife, Ms. REDACTED, of Bira origin, that she had sought refuge in REDACTED when the UPC REDACTED Bunia on REDACTED 2002. There, she was shot and killed along with other women on REDACTED 2002 by UPC and Ugandan forces. Her husband identified and collected her body on REDACTED 2002. In his application, Mr. REDACTED also mentions that his goods have been systematically plundered.

26. Mr. REDACTED mentions that he suffers from psychological trauma because of the loss of his wife.

Application a/0059/06

27. Mr. REDACTED asserts in his application on behalf of his father, Mr. REDACTED, of Lendu origin, that, at the beginning of REDACTED 2003, he and his father lived in fear and felt threatened by the Hemas. The two men resided in the "REDACTED" district. On REDACTED 2003, a "manhunt" against the Lendus took place. The applicant and his father locked themselves

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up in their home. REDACTED, manager of the “REDACTED” business, and four of his friends who were armed, lived in front of the applicant’s house. According to the applicant, REDACTED, after declaring that he and his friends knew the location of all the Lendus’ plots of land, announced that he and his friends would exterminate them that day.

28. When the REDACTED Hema militias advanced in the applicant’s street, he saw REDACTED and his four friends joining the UPC militiamen who were attacking his plot of land. Mr. REDACTED fled the house from the back. His father, however, was captured and knocked out after being hit with stones and machetes. The house belonging to the applicant and his father was set on fire and its goods plundered. Mr. REDACTED asserts that his father was killed on REDACTED 2003 after being hit with stones, machetes and an axe. His body remained outside, under the surveillance of UPC elements, until it decomposed. The day following the attack on his property, Mr. REDACTED was attacked and stabbed by UPC militiamen.

29. Mr. REDACTED seeks reparation for the pain and suffering due to the loss of his father and for the harm he personally suffered after being attacked and stabbed. He also claims in his application that his household goods were plundered and his property destroyed.

Application a/0060/06

30. Ms. REDACTED, acting on behalf of her son, Mr. REDACTED, a Lendu, describes how, in early REDACTED 2002, the UPC had organized a “manhunt” in Bunia against the Lendu population during which Lendus were systematically targeted: individual or collective killings of Lendus were

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organized and their property destroyed. The applicant and a number of other refugees sought protection on the property of a neighbor named REDACTED. Ms. REDACTED declares that, on REDACTED 2002 in the late evening, while she was hiding on her neighbors' property, Hema forces led by individuals identified by, and known to, the applicant entered her home and grabbed her son, tied him up and threw him inside the house after having plundered it. They, then, set the house on fire in which he perished.

31. The application seeks reparation for the pain and suffering due to the death of her son. She also mentions in her application that her household goods were plundered and her property destroyed.

Application a/0061/06

32. The applicant, Mr. REDACTED, acting on behalf of his sister, Ms. REDACTED, of Lendu/Pitsi origin, asserts in his application that, on REDACTED 2003, in the REDACTED, UPC militiamen were terrorizing the Lendu population. His sister and her friend sought refuge in a nearby house belonging to REDACTED. The UPC elements cried out in Kilendu to those hiding to come out of their hiding places because they, the UPC elements, were "on their side" and that they were Lendus. This is how, the applicant describes, his sister and her friend came out of their hiding places and, after confirming to the UPC forces that they were Lendus, the two women were shot by these armed elements.

33. The applicant seeks reparation for the pain and suffering due to the death of his sister.

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Application a/0062/06

34. Mr. REDACTED, acting on behalf of his younger brother, Mr. REDACTED, a Bira, describes in his application how on REDACTED 2003, shots were fired in REDACTED, the UPC's stronghold. On the morning of REDACTED 2003, people were seen fleeing from REDACTED in the direction of the town of Bunia. According to those fleeing, the UPC was attacking Lendus and all those protecting them. The applicant and his family fled from REDACTED to the REDACTED district. During their flight, his younger brother stayed behind to organize the departure of certain family members. While organizing his family's departure Mr. REDACTED was shot by UPC forces in front of the "REDACTED" and the "REDACTED". The applicant learned of his brother's death on REDACTED 2003 upon his return from REDACTED.

35. The applicant claims compensation for the pain and suffering due to the slaying of his brother. He further submits that his brother, a mason by trade, supported the family. Finally, Mr. REDACTED mentions that his household goods were plundered from his family's property and that the property was destroyed.

Application a/0063/06

36. The applicant, Ms. REDACTED, acting on behalf of her nephew, Mr. REDACTED, of Lendu/Pitsi origin, describes in her account how in early REDACTED 2002 in Bunia, Lendus, Ngitis and Nande were targeted and massacred by the UPC and the Ugandans. These events occurred after REDACTED. The applicant, her nephew and others sought refuge in the REDACTED quarter. Mr. REDACTED and others were hiding in the house of

REDACTED. However, on a REDACTED morning, UPC forces searched REDACTED's property and found Mr. REDACTED outside and shot him.

37. Ms. REDACTED seeks compensation for the pain and suffering due to the slaying of her nephew. She also seeks redress for the plunder of her home after she fled her residence. In her application, Ms. REDACTED evokes the psychological trauma suffered due to the loss of another individual who apparently was also killed by "Gegere Militias".

Application a/0071/06

38. The applicant, Mr. REDACTED, of Nande origin, describes how on REDACTED 2003 UPC Hema militiamen broke into his property ordering him to show them "where the enemy is". When the applicant answered that there were none on the premises, they asked him for money. The militiamen shot him twice in REDACTED after he declared not having any money. Mr. REDACTED attempted to flee and was then shot REDACTED by his assailants. The applicant fell to the ground and was believed to be dead by the militiamen who proceeded to kill Mr. REDACTED's neighbors and guests on their property. REDACTED, Lendu fighters arrived and asked Mr. REDACTED's neighbors to take him to the hospital. REDACTED, the Hema militiamen appeared at the REDACTED and proceeded to kill the REDACTED who were not under guarded protection.

39. The applicant seeks reparation for the harm that he suffered as a result of the attack perpetrated by the Hema militias. He stresses that, because of the attack he is REDACTED and that he alone, must support an entire family. He further

seeks reparation for the goods plundered by the UPC militiamen and the destruction they caused to his home.

Conclusion regarding Applications a/0053/06 to a/0063/06 and a/0071/06

40. The Prosecution submits that, in relation to the above-mentioned alleged crimes the Applicants do not meet the criteria for participation as “victims” in the case of *The Prosecutor vs. Thomas LUBANGA DYILO*. The information provided in the Applications relating to the alleged crimes 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. Indeed, Applications a/0053/06 to a/0063/06 and a/0071/06 describe crimes that are not covered by the Arrest Warrant and the Document Containing the Charges.

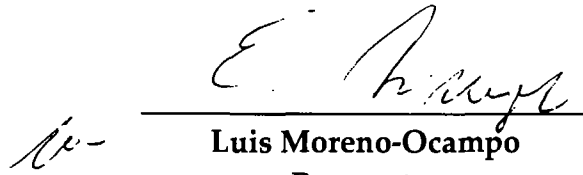
Classification of the present filing

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

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Request

42. For the foregoing reasons, the Prosecution requests that the Pre-Trial Chamber reject the Applications to participate as victims in the case of *The Prosecutor vs. Thomas LUBANGA DYILO* on the basis that the harm suffered by the Applicants has no causal link to the charges in the case at hand.



Luis Moreno-Ocampo
Prosecutor

Dated this 12th day of October 2006
At The Hague, The Netherlands