

VICTIMS' JUSTICE AND RE-CHARACTERIZING FACTS IN THE *LUBANGA* TRIAL AT THE ICC

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Following some victims' request in the Lubanga trial, Trial Chamber I of the International Criminal Court issued a split decision on 14 July 2009 notifying all parties that the legal characterization of the facts may be changed to re-qualify the charges against Thomas Lubanga Dyilo. On 8 December 2009, the Appeals Chamber reversed this decision, rightly ruling that the Trial Chamber exceeded its authority and encroached on the Prosecutor's powers to amend charges. These decisions reveal the victims' dissatisfaction with the charges. But underneath this dissatisfaction are ambiguous provisions for victims' participation in the formulation of the charges. This Paper describes the re-characterization debate, and examines whether, and to what extent victims can contribute to the formulation of the charges. Using the notion of substantive justice, it posits that the victims' desire for justice may not be satisfied with the present charges against Lubanga.

I. INTRODUCTION

Following a joint request by the legal representatives of 27 victims in the *Lubanga* trial at the International Criminal Court (hereinafter "ICC" or "the Court"), Trial Chamber I, on 14 July 2009, issued a remarkable ruling. In a split decision, it gave notice to the parties in the trial "that the legal characterization of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court."¹ It stated that it would entertain submissions at an appropriate stage of the proceedings on the re-characterization of facts.² On 8 December 2009, the Appeals Chamber reversed the Trial Chamber's decision (hereinafter "Appellate Decision").³ It held that the Trial Chamber employed a wrong

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¹ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06-2049, Decision Giving Notice to the Parties and Participants that the Legal Characterization of the Facts may be Subject to Change in Accordance with Regulation 55(2) of the Regulations of the Court (July 14, 2009) [hereinafter *Majority Opinion*].

² See generally Rome Statute of the International Criminal Court, July 17, 1998 (CN.177.2000.TREATIES-5); *Id.* ¶ 33–35.

³ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06-2205, Judgment on the Appeals of Mr Lubanga Dyilo and the Prosecutor Against the Decision of Trial Chamber I of 14 July 2009 Entitled "Decision Giving Notice to the Parties and Participants that the Legal Characterization of the Facts may be Subject to Change in Accordance with Regulation 55(2) of the Regulations of the Court," ¶ 112 (Dec. 8, 2009) [hereinafter *Appellate Decision*].