



Original: **French**

No.: **ICC-01/04-01/06**
Date: **15 December 2006**

APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Philippe Kirsch
Judge Navanethem Pillay
Judge Sang-Hyun Song
Judge Georghios M. Pikis

Registrar: Mr Bruno Cathala

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

Public redacted version

**Submissions by Victims a/0001/06, a/0002/06 and a/0003/06
further to the Appeals Chamber's Decision of 12 December 2006**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia, Senior Appeals
Counsel
Mr Ekkehard Withopf, Senior Trial Lawyer

Counsel for Thomas Lubanga Dyilo

Mr Jean Flamme
Ms Véronique Pandanzyla

**Legal Representatives of Victims a/0001/06
to a/0003/06**

Mr Luc Walleyrn
Mr Franck Mulenda

NOTING the Appeals Chamber's Decision of 12 December 2006;

A. Victims' interests in participating in the appellate proceedings

1. As both the Single Judge and the Prosecutor have rightly stated, in the decision of 22 September 2006 in the first instance¹ and the response on appeal² respectively, the granting of interim release to Thomas Lubanga Dyilo may affect the personal interests of victims participating in the proceedings.

B. Victims' views and concerns regarding the application for release of Thomas Lubanga Dyilo

2. In the first place, Victims a/0001/06 to a/0003/06 are concerned that, should Thomas Lubanga Dyilo be released by the Court, there is a real risk that he might obstruct or endanger the investigation or court proceedings, for instance, by contacting witnesses and even victims in order to influence them.

3. The Defence has on several occasions in its written submissions and public statements stated its opinion that victims participating in the proceedings are "accusers" who wish to see Thomas Lubanga convicted at all costs. The possibility that he might harbour some hostility towards them cannot therefore be excluded.

4. As a result, the victims are concerned that granting Thomas Lubanga interim release might enable him to establish their identities and, thus, potentially pressure them into withdrawing their requests to participate or, even, seek revenge....

REDACTED.

5. Granting Thomas Lubanga Dyilo interim release could also enable him to reassume the leadership of the UPC movement, even were he to be released in a country other than the DRC. Whilst he was on supervised release in Kinshasa,

¹ ICC-01/04-01/06-465, p. 2, para. 4.

² ICC-01/04-01/06-736, para. 18.

Thomas Lubanga Dyilo was perfectly able to continue leading his movement and it is hard to see why he could not do likewise were he to be released in another country.

6. This would create the risk that Thomas Lubanga might launch new recruitment campaigns, likewise targeting children under the age of fifteen, which would directly endanger demobilised former child soldiers in transit camps or in locations still under UPC control. Such is the case for several children from the families participating as victims in the current proceedings.

7. The Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo presented to the Security Council on 13 June 2006 states: *"In Ituri and North Kivu, cases of recruitment and re-recruitment by uncontrolled armed groups have been documented in the past months"*³ and *"... In Ituri there have been constant allegations of recruitment by militia groups, especially of ... UPC armed groups."*⁴ The report continues: *"From January 2004 to May 2006, more than 18,000 children have been released from forces and armed groups in the Democratic Republic of the Congo. Because of limited integration support and programmes, however, children are still vulnerable to new threats and harassments, including re-recruitment. The MONUC Child Protection Section and UNICEF continue to receive reports of abuses against children formerly associated with armed forces and groups perpetrated by elements from different armed groups and the Congolese armed forces.*

*The abuses identified consist of arbitrary arrests, illegal detention and ill-treatment during deprivation of liberty by FARDC and threats of re-recruitment by armed groups or elements thereof which remain active. In addition, many children suffer from harassment by both FARDC and other armed groups, such as destruction of official demobilization certificates and sometimes forced payment of a ransom."*⁵

³ S/2006/389. Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo, p. 6, para. 18. Emphasis added.

⁴ S/2006/389, p. 7, para. 23.

⁵ S/2006/389, pp. 7 and 8, paras. 26 and 27.

8. In Bunia especially, there remains a real risk of re-enlistment of children – and even children of the victims participating in the proceedings.⁶ Not only have certain UPC officials called for the re-recruitment of demobilised child soldiers, but the representatives of the victims have also just learnt that...**REDACTED**....

9. On a final note, granting interim release might be interpreted by others – albeit wrongly – as proof that crimes such as those enumerated in the arrest warrant are not to be viewed as very serious since they “do not even warrant provisional detention.” This might even be perceived by some as an encouragement to continue committing such crimes and could undermine the fight against impunity in the DRC.

10. In conclusion, granting interim release would represent a direct danger to the victims and, hence, seems premature.

⁶ In video EVD-OTP-00060 shown by the Office of the Prosecutor at the hearing of 14 November 2006, the UPC Minister for Pacification, under Thomas Lubanga Dyilo’s control, referred to these practices. See English transcript no. 01/04-01/06-T-34, p. 37, lines 20 *et seq.*

FOR THESE REASONS,

MAY IT PLEASE THE APPEALS CHAMBER:

To dismiss the appeal and affirm the Pre-Trial Chamber's decision.

(signature)

Luc Walley and Franck Mulenda (absent when signed)
Legal Representatives of Victims a/0001/06, a/0002/06 and a/0003/06

Dated this 15 December 2006

At Brussels and Kinshasa