



Original: French

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

Date: 11 March 2008

THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

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

Public Document

Application by Victims a/0001/06, a/0002/06 and a/0003/06 to Participate in the Proceedings Relating to the Appeals Taken by the Prosecutor and the Defence against Trial Chamber I's 18 January 2008 Decision on Victims' Participation

The Office of the Prosecutor

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

**Legal Representatives of Victims
a/0001/06, a/0002/06 and a/0003/06**

Mr Luc Walley
Mr Franck Mulenda

**Legal Representative of Victim
a/0005/06**

Ms Carine Bapita Buyangandu

**The Office of Public Counsel for the
Defence**

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

The Office of Public Counsel for Victims
Ms Paolina Massidda

Noting the 18 January 2008 decision of Trial Chamber I;¹

Noting the 26 February 2008 decision of the same Chamber;²

Noting the Defence appeal of 10 March 2008;³

Noting the Prosecutor's document in support of his appeal of 10 March 2008;⁴

1. Interests of the applicants in participating in the appeals proceedings

1. The decision of 18 January 2008 is a key decision which determines the criteria for permitting participation by applicants in the trial due to commence in June. The appeals seek to limit the rights of the applicants in those proceedings, in particular, the right, acknowledged by the Trial Chamber, to lead evidence and challenge the admissibility or relevance of evidence adduced (point (c)) from the conclusions of the decision of 27 February 2008).
2. Whilst it is not disputed that the applicants rely on the existence of personal and direct harm linked to the charges brought against the accused, they were not directly affected by points (a) and (b) of the decision of 26 February 2008. However, it is evident both from the Prosecutor's document in support of his appeal and from the Defence submission that, in their respective appeals, these parties advance arguments that could well have implications for the rights of the applicants. In particular, the applicants note the Prosecutor's assertion that

¹ ICC-01/04-01/06-1119.

² ICC-01/04-01/06-1191.

³ ICC-01/04-01/06-1220-tENG.

⁴ ICC-01/04-01/06-1219.

their rights might be infringed by the decision,⁵ which implies that their interests are also affected by this issue.

3. Moreover, the two parties request a stay of the proceedings against Thomas LUBANGA DYILO in which the applicants have been authorised to participate.
4. It follows from the above that the applicants have a direct and personal interest in participating in these appeals proceedings.
2. **The participation of the applicants in the appeals is appropriate and is not inconsistent with or prejudicial to the rights of the accused**
5. If there is a matter which directly affects the personal interests of the victims, it is certainly their right to participate in a specific proceeding and the modalities of that participation. Accordingly, such participation is entirely relevant, having regard to article 68(3) of the Statute.
6. It would be difficult to reconcile a scenario in which victims were not allowed to participate in a proceeding concerning their rights with the principle of a fair trial; indeed, such a prohibition would constitute a violation of the basic rights of the victims.
7. As the Prosecutor and the Defence were the ones who initiated the appeal, and will obviously have every opportunity to respond to any document filed by other participants, it is difficult to see how the participation of the applicants could be prejudicial to the rights of the accused.

⁵ ICC-01/04-01/06-1219 para. 25.

FOR THESE REASONS,
MAY IT PLEASE THE APPEALS CHAMBER,

To find that the personal interests of the applicants are affected by the appeals taken by the Prosecutor and the Defence against the decision of 18 January 2008;

To grant the applicants leave to participate in the appeals proceedings, to present their views and concerns, *inter alia*, by filing a response to the documents in support of the appeals filed by the respective parties on 10 March 2008, and by participating in any hearings that may be held by the Appeals Chamber to consider the appeals at issue.

[signed]

Luc Walley and Franck Mulenda (absent when signed)

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

Done at Brussels and at Kinshasa, 11 March 2008