

**Cour
Pénale
Internationale**

**International
Criminal
Court**

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

Date: 19 March 2008

Original: French

APPEALS CHAMBER

Before: Judge Navi Pillay, Presiding Judge
Judge Philippe Kirsch
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 for Participation Filed by Victims a/0009/06, a/0106/06,
a/0107/06, a/0108/06 Seeking Leave to Participate in the Appeals Proceedings
against the Decision issued on 18 January 2008 by Trial Chamber I**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda
Mr Fabricio Guariglia
Mr Ekkehard Withopf

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Diju-Duval

Counsel for the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Patrick Bauduin
Mr Emmanuel Daoud
Mr Bisimwa Ntakabajira Sylvestre
Mr Michaël Verhaeghe

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

The Office of Public Counsel for Victims

Ms Paolina Massidda

NOTING Trial Chamber I's decision of 18 January 2008;¹

NOTING this same Chamber's decision of 26 February 2008, allowing the Defence's and the Prosecutor's applications for leave to appeal;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

NOTING the Office of Public Counsel for Victims' request of 18 March 2008;⁵

NOTING Pre-Trial Chamber I's decision of 24 December 2007 on the applications for participation in the proceedings filed in connection with the investigation in the Democratic Republic of the Congo by a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 to a/0105/06 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 to a/0241/06 to a/0250/06;⁶

NOTING the corrigendum to the latter decision, dated 31 January 2008;⁷

I. Victim Status of the Applicants

1. In its Decision of 24 December 2007, Pre-Trial Chamber I granted the applicants the status of victims authorised to participate in the proceedings at the investigation stage of the situation in the Democratic Republic of the Congo.

With respect to the applicants' status, it was found, *inter alia*, that:

¹ ICC-01/04-01/06-1119, hereinafter the "Decision of 18 January 2008".

² ICC-01/04-01/06-1191.

³ ICC-01/04-01/06-1220.

⁴ ICC-01/04-01/06-1219.

⁵ ICC-01/04-01/06-1228.

⁶ ICC-01/04-423-tENG, hereinafter "the Decision of 24 December 2007".

⁷ ICC-01/04-423-tENG-Corr.

- (1) “[...] that there are grounds to believe that Applicant a/0009/06 suffered physical and mental harm, especially as a result of the death of his son, who was killed by a member of an armed group, and the pillaging of his property by members of the same armed group.”⁸
- (2) “[...] that there are grounds to believe that Applicant a/0106/06 suffered mental and material harm, especially as a result of the death of his father and brother, who were killed by members of an armed group, and the pillaging of their property and the destruction of their home by members of an armed group”⁹
- (3) “[...] that there are grounds to believe that Applicant a/0107/06 suffered mental and material harm, especially as a result of the death of his brother, who was killed by members of an armed group, and the pillaging of his home and land during an attack on his village by an armed group”¹⁰
- (4) “[...] that there are grounds to believe that Applicant a/0108/06 suffered mental and material harm, especially as a result of the attack on his home by members of an armed group. These persons allegedly gathered his family in his home, then killed his wife, after which they proceeded to pillage his property.”¹¹
- (5) “[...] that there are grounds to believe that Applicant a/0109/06 suffered physical, mental and material harm, especially as a result of the attack on her village, the pillaging of her home and the death of her father, who was tortured and killed by members of an armed group”¹²

2. The Pre-Trial Chamber granted, with respect to specific issues, the leave to appeal the Decision of 24 December 2007 sought by the Prosecutor and the Office of Public Counsel for the Defence. Since no stay has been ordered by the Appeals Chamber to date, the applicants’ victim status (with respect to the situation) remains unchanged pursuant to article 82(3) of the Statute.

III. The Applicants’ participation in the appeals proceedings

3. Concurring with the position of the Office of Public Counsel for Victims,¹³ the applicants consider that participation in the appeals proceedings against the Decision of 18 January 2008 rendered by Trial Chamber I in the Lubanga case cannot be limited to only those victims authorised to participate in the actual case, but should also be open to victims authorised to participate in the situation.

On the basis of the Appeals Chamber’s jurisprudence, the applicants will show hereinafter that (1) their personal interests are affected by the issues in relation to

⁸ ICC-01/04-423, number 43.

⁹ ICC-01/04-423, number 109.

¹⁰ ICC-01/04-423, number 111.

¹¹ ICC-01/04-423, number 113.

¹² ICC-01/04-423, number 115.

¹³ Request of 18 March 2008, ICC-01/04-06-1228, numbers 11-14.

which leave to appeal the Decision of 18 January 2008 was granted, that (2) the presentation of their views and concerns is appropriate; and that (3) such participation is not inconsistent with or prejudicial to the rights of the accused.

1. The Applicants' personal interests are affected by the appeals

4. The appeals, as authorised, seek to restrict the rights of the victims, as determined in the impugned decision, particularly in relation to:

- (a) the concept of victim and, more specifically, whether this concept requires the existence of personal and direct harm;
- (b) whether victim participation in a case must be contingent upon proof of a causal link between the harm suffered and the charges against the accused;
- (c) whether the victims may be authorised to lead evidence and challenge the admissibility or relevance of evidence adduced by the other parties.

5. The Applicants' personal interests are affected by these three components of the appeal, particularly by the first two components insofar as the responses to issues (a) and (b) may be decisive for the decision to be taken on the applications for participation in the Lubanga case, as filed on 7 June 2006 for Applicant a/0009/06, on 16 October 2006 for Applicants a/0107/06, a/0108/06 and a/0109/06 and on 7 December 2006 for Applicant a/0106/06.

In participating in the appeals proceedings, the applicants specifically intend to present their views and concerns with respect to, *inter alia*, the direct or indirect nature of harm and the causal link between the crime and the harm.

2. The Applicants' participation is appropriate

6. Their participation is entirely appropriate since the issues which will be put to the Appeals Chamber are likely to have a direct impact on the current applications for participation.

Furthermore, it would be difficult to reconcile a scenario in which the applicants were not allowed to participate in a proceeding concerning their rights with the principle of a fair trial; indeed, this would constitute a violation of the basic rights of the victims.

3. The applicants' participation is not inconsistent with or prejudicial to the rights of the accused

7. The appeals were lodged by the Prosecutor and the Defence. They will have ample opportunity to respond to any document filed by the parties by another participant.

The Applicants do not see how their participation could be prejudicial to the rights of Mr Thomas Lubanga Dyilo's defence.

FOR THESE REASONS,

MAY IT PLEASE THE APPEALS CHAMBER,

To find that the applicants' personal interests are affected by the Prosecutor's and the Defence's appeals against the Decision of 18 January 2008, that their participation is appropriate at this stage and is not inconsistent with or prejudicial to the relevant rights of the accused;

To grant the applicants leave to participate in the appeals proceedings, to express 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 to participate in any hearing that may be held by the Appeals Chamber to consider the appeals at issue.

Respectfully done at Brussels and Kinshasa

No. ICC-

Official Court Translation

19 March 2008

on 19 March 2008

[signed]

Michaël Verhaeghe and Sylvestre Bismwa Ntakabajira (absent when signed)

Legal Representatives of Victims a/009/06 and a/0106/06 to a/0109/06