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**International
Criminal
Court**

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TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

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

Public Document

Prosecution's Response to the "*Observations conjointes des représentants des victimes sur les conséquences de l'effet suspensif accordé aux appels contre la décision du 18 janvier.2008*"

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Other

Procedural background

1. On 18 January 2008, the Trial Chamber rendered its “Decision on Victims’ Participation”,¹ (“Impugned Decision”), in which it issued decisions on the role of victims in the proceedings leading up to and during the trial, as well as eight specific orders.²
2. On 28 January 2008, the Prosecution³ and the Defence⁴ sought leave to appeal the Impugned Decision. On 26 February 2008, the Trial Chamber granted leave to appeal on three issues.⁵
3. On 10 March 2008, the Prosecution⁶ and the Defence⁷ filed their respective Documents in Support of the Appeal, in which they made requests for suspensive effect of the appeals.
4. On 22 May 2008, the Appeal Chamber issued the “Decision on the requests of the Prosecutor and the Defence for suspensive effect of the appeals against Trial Chamber I’s Decision on Victim’s Participation of 18 January 2008” (“Decision on Suspensive Effect”),⁸ granting the Prosecution and the Defence requests. The Appeals Chamber ordered suspensive effect in respect of the parts of the Impugned Decision that give rise to the three issues for which leave to appeal has been granted.
5. On 30 May 2008, the legal representatives of victims a/0001/06 to a/0003/06 and a/0105/06 (“Legal Representatives”) filed the “*Observations conjointes des représentants des victimes sur les conséquences de l’effet suspensif accordé aux appels*”

¹ ICC-01/04-01/06-1119.

² Impugned Decision, para. 138.

³ ICC-01/04-01/06-1136.

⁴ ICC-01/04-01/06-1135.

⁵ ICC-01/04-01/06-1191. The three issues concern (a) whether the notion of victim necessarily implies the existence of personal and direct harm; (b) whether the harm alleged by a victim and the concept of ‘personal interests’ under Article 68 of the Statute must be linked with the charges against the accused; and (c) whether it is possible for victims participating at trial to lead evidence pertaining to the guilt or innocence of the accused and to challenge the admissibility or relevance of evidence (see para. 54).

⁶ ICC-01/04-01/06-1219 OA9.

⁷ ICC-01/04-01/06-1220tENG OA 10.

⁸ ICC-01/04-01/06-1347 OA9 OA10.

contre la décision du 18 janvier.2008” (“Victims’ Observations”),⁹ which included four requests to the Trial Chamber.¹⁰

6. On 2 June 2008, the Trial Chamber issued the “Decision on the legal representative’s request for clarification of the Trial Chamber’s 18 January 2008 ‘Decision on victims’ participation’” (“Decision on Request for Clarification”).¹¹
7. Pursuant to Regulation 24(1) of the Regulations of the Court (“Regulations”), the Prosecution hereby files its response to the Victims’ Observations, presenting its submissions on each of the individual requests made by the Legal Representatives.

Submissions

8. The Prosecution understands the present Observations to be limited to the implementation of the Impugned Decision in light of the Decision on Suspensive Effect. To the extent that any request refers to the interpretation or amendment of the Decision on Suspensive Effect, the Prosecution submits that any such requests may not be entertained by the Trial Chamber but are within the sole prerogatives of the Appeals Chamber.¹²

- (i) The First Request: shorten deadlines for parties to make observations pertaining to applications for participation, and for applicants to respond to observations

9. On 6 May 2008, the Trial Chamber invited the Prosecution and the Defence to make observations on a number of applications for participation of victims in the proceedings, including the applications of the victims represented by the Legal

⁹ ICC-01/04-01/06-1362.

¹⁰ Victims’ Observations, paras. 37-40.

¹¹ ICC-01/04-01/06-1368.

¹² See Article 82(3) and Rule 156(5). See also ICC-01/04-01/06-1191, para. 55.

Representatives.¹³ The Legal Representatives request the Trial Chamber that the deadlines given to the parties to make these observations,¹⁴ and for the applicants to respond, should be shortened with a view to enabling the Trial Chamber to make decisions prior to 23 June 2008, the date on which the trial is scheduled to commence.¹⁵

10. As stated previously, the Prosecution does not object to the Trial Chamber considering pending applications for participation by victims which are directly linked to the charges in this case, while placing on hold all other applications for determination until after the Appeals Chamber decision.¹⁶ For those victims who appear to be directly linked to the charges in this case the Prosecution does not oppose the deadlines for the parties to file observations being shortened, so as to permit the Trial Chamber to rule on the applications prior to 23 June 2008.¹⁷

11. In addition, the Prosecution does not oppose victims a/0001/06 to a/0003/06 and a/0105/06 continuing to participate in the proceedings on a provisional basis.¹⁸ During the trial phase of the proceedings they may continue to express their views and concerns in a manner that is consistent with the Impugned Decision, the Decision on Suspensive Effect and the Decision on Request for Clarification.¹⁹

(ii) The Second Request: rule that no challenge to jurisdiction or admissibility may be discussed prior to a ruling by the Appeals Chamber on the pending appeals and rulings on all victim applications for participation

¹³ ICC-01/04-01/06-1308, see in particular para. 34. In this context, the Prosecution submits that the Legal Representatives only act on behalf of four victim applicants, namely a/0001/06 to a/0003/06 and a/0105/06, but not on behalf of other victim applicants.

¹⁴ The deadline for making these observations expires on 10 June 2008 (see Victims' Observations, para. 2).

¹⁵ Victims' Observations, paras. 35-37.

¹⁶ See ICC-01/04-01/06-1219 OA9, 28 January 2008, "Prosecution's Document in Support of Appeal against Trial Chamber I's 18 January 2008 Decision on Victims' Participation, fn 17. See also ICC-01/04-01/06-T-76-CONF-EXP-ENG, 13 February 2008, pp 22-28.

¹⁷ See Decision on Request for Clarification, in which the Trial Chamber found that "pending the decision on the substantive appeal on victims' participation, the personal interests of the victims are limited to those who have suffered personal and direct harm as a result of the events covered by the charges brought against the accused".

¹⁸ See Impugned Decision, para. 112.

¹⁹ The Trial Chamber has ruled previously that "in accordance with Regulation of the Court 86(8), their status as victims shall apply throughout the proceedings, subject to modification by a Chamber (Decision on Request for Clarification, para. 24). Furthermore, as indicated by the Appeals Chamber, there is a presumption that they have victim-status, given the decision of the Pre-Trial Chamber I, together with their participation in the proceedings before the Trial Chamber thus far (ICC-01/04-01/06-1335 OA9 and O A 10, 16 May 2008, para. 38).

12. The Legal Representatives request that the Trial Chamber rule at this stage of the proceedings, that in light of Article 19(3) of the Rome Statute ("Statute") and Rule 59 of the Rules of Procedure and Evidence ("Rules"), no discussions pertaining to jurisdiction and admissibility take place until the Appeals Chamber has issued its judgement on the pending appeals and all pending applications for participation have been decided.²⁰ The Legal Representatives further submit that in the event of a challenge of jurisdiction or admissibility, the trial should be suspended.²¹
13. The request is unfounded and accordingly should not be granted. The Legal Representatives, apart from making reference to Article 19(3) and Rule 59, have not provided any reason in support of their request. The Prosecution submits that nothing in Article 19(3) or Rule 59 suggests that proceedings pertaining to challenges to the jurisdiction of the Court or the admissibility of cases are subject to a final determination by the Appeals Chamber of issues pertaining to victim participation and a ruling on all pending applications for participation of victims in the proceedings.²²
14. Moreover, since there are no pending challenges of jurisdiction or admissibility in the present case, the request at hand is of an abstract nature and should be rejected for that reason alone.

(iii) The Third Request: rule that pending the decision by the Appeals Chamber, no evidence should be presented

15. The Legal Representatives submit that, pending the judgement of the Appeals Chamber on the appeals in question, the presentation of evidence by the parties should be suspended.²³ The Legal Representatives argue that questions of

²⁰ Victims' Observations, paras. 25 and 38.

²¹ Victims' Observations, para. 30.

²² To the contrary, Rule 59(1)(b) uses the broad term of "victims who have already communicated with the Court in relation to that case or their legal representatives".

²³ Victims' Observations, para. 28. See also paras. 31-32.

relevance and admissibility of evidence are likely to affect the personal interests of victims in various ways.²⁴

16. The Prosecution opposes this request. Effectively, this request amounts to a request to stay the trial proceedings, as the critical component of the trial is the presentation of evidence, and any accompanying discussions pertaining to its relevance and admissibility.²⁵ The Trial Chamber has already stated that it “has no jurisdiction to grant or refuse the requests by the parties to stay the proceedings since under Article 82(3) of the Statute and Rule 156(5) of the Rules the Appeals Chamber alone has the power to determine an application”.²⁶
17. In addition, the suspensive effect of the part of the Impugned Decision pertaining to the rights of the victims to introduce evidence and to make submissions on the admissibility and relevance of evidence does not violate any rights of the victims under the Statute and the Rules. Should the Appeals Chamber confirm the relevant parts of the Impugned Decision,²⁷ victims may be given an opportunity to introduce evidence or to make submissions on the admissibility or relevance of evidence at a later stage. Their evidence and submissions may then be taken into consideration by the Trial Chamber in due course.²⁸

²⁴ Victims’ Observations, para. 27, where the Legal Representative submit that the production of a document or hearing of a witness is likely to violate a rule of confidentiality, especially if it is established for the protection of victims (Article 69(5)); is obtained by means which violates human rights internationally recognised to a victim or his relatives (Article 69(7)); risk compromising his security and dignity; risk violating Rules 70 and 71 in cases of sexual violence; may violate an arrangement with the victim or his relatives, concluded under Article 54(3)(d).

²⁵ The possible procedural steps identified by the Legal Representatives that could, in their submission, be conducted during the trial without affecting the rights of the victims are negligible compared to the presentation of evidence and discussions on the relevance and admissibility (see Victims’ Observations, para. 29).

²⁶ ICC-01/04-01/06-1191, para. 55. Should the Trial Chamber find that this ruling does not apply to the instant request, then the Prosecution further submits that the Decision on Suspensive Effect only suspends the exercise of the rights of victims to introduce evidence and to make submissions on the admissibility and relevance of evidence (Decision on Suspensive Effect, para. 1(c). Impugned Decision, para. 108). However, nothing in the Decision on Suspensive Effect prevents participating victims from presenting their views and concerns pertaining to any matter affecting their security and dignity during the trial proceedings. This may include matters pertaining to the confidentiality of information, or any alleged violations of arrangements between the Prosecution and the victims or their families under Article 54(3)(d). See for instance the general ruling in the Impugned Decision at para. 98.

²⁷ See in particular paras. 109 and 109 of the Impugned Decision.

²⁸ The Prosecution also submits that victims may not invoke a violation of a right whose exercise has been suspended by the Appeals Chamber. In light of the Decision on Request for Clarification, the victim participants are entitled to start the process aimed at receiving access to relevant materials in the possession of the Prosecution already at this stage.

(iv) The Fourth Request: respect the rights of victims

18. In their final request, the Legal Representatives request that the Trial Chamber take note that the Legal Representatives do not oppose either a postponement of the trial until after the decision of the Appeals Chamber, or the commencement of trial on 23 June 2008 for the completion of a limited set of procedures, provided that the rights of victims are respected.²⁹ The set of procedures referred to in this request is limited to the identification of the accused and the discussion of questions pertaining to the conduct of the proceedings pursuant to Rule 134(2).³⁰
19. To the extent that the Legal Representatives are requesting that trial proceedings be stayed or be limited to the procedures identified, pending the decision of the Appeals Chamber, the Prosecution also opposes this request. As stated above, the request by the Legal Representatives that no evidence should be presented pending the decision by the Appeals Chamber, effectively amounts to a request to stay the trial proceedings. For the sake of brevity, the Prosecution refers to its submissions made in relation to the Third Request above.

²⁹ Victims' Observations, para. 40.

³⁰ Victims' Observations, para. 29.

Relief Sought

20. For the reasons set out above, the Prosecution requests that the Trial Chamber consider the above submissions.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 3rd day of June, 2008

At The Hague, The Netherlands