

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/06 OA12

Date: 18 July 2008

**THE APPEALS CHAMBER**

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

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

**Public Document**

**Prosecution's Response to Application by Victims to Participate in the  
Appeal against "Decision on the release of Thomas Lubanga Dyilo"**

**Source: Office of the Prosecutor**

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

**The Office of the Prosecutor**

**Counsel for the Defence**

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

**Legal Representatives of Victims**

Mr Luc Walleyen

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

The Prosecution is appealing Trial Chamber I's order for the release of Thomas Lubanga Dyilo ("the Accused"), based on its earlier decision to stay the proceedings. Legal representatives of victims in this case have filed two applications to present their views and concerns on this appeal. Given the nature of the issues in this appeal, and in line with the Appeals Chamber's prior jurisprudence, the Prosecution does not oppose the applications to participate.

## Background

1. On 2 July 2008, the Trial Chamber rendered its Decision on Release, in which it ordered the release of the Accused.<sup>1</sup>
2. The Prosecution filed a notice of appeal against the Decision on Release, pursuant to Article 82(1)(b), on 2 July 2008 and urgently requested that the Appeals Chamber grant suspensive effect to that appeal, pursuant to Article 82(3).<sup>2</sup> The Appeals Chamber granted suspensive effect to this appeal on 7 July 2008.<sup>3</sup>
3. On 9 July 2008, the legal representatives of victims a/0001/06 to a/0003/06 and of a/0105/06 each filed applications to participate in this appeal.<sup>4</sup>
4. On 10 July 2008, the Prosecution filed its Document in Support of its appeal,<sup>5</sup> pursuant to Regulation 64(5), in which it submitted that the Trial Chamber made two errors in the Decision on Release:

(1) The Trial Chamber erred, procedurally, by entertaining the release of the Accused, based solely on the stay of the proceedings, pending a final determination on the stay of those proceedings ("the First Ground"); and

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<sup>1</sup> ICC-01/04-01/06-1418.

<sup>2</sup> ICC-01/04-01/06-1419 OA12; see also Decision on Release, para. 35.

<sup>3</sup> ICC-01/04-01/06-1423 OA12.

<sup>4</sup> ICC-01/04-01/06-1424 OA12; ICC-01/04-01/06-1425 OA12.

<sup>5</sup> ICC-01/04-01/06-1429 OA12. The Prosecution refers to the more detailed procedural history set out in paras. 1-8 of that Document in Support of Appeal.

- (2) The Trial Chamber erred by ordering, at this stage of the proceedings, the immediate and unconditional release of the Accused ("the Second Ground").
5. On 15 July 2008, the Defence filed its response to the Prosecution's Document in Support of Appeal,<sup>6</sup> and on 16 July 2008 the Defence responded to the applications by victims to participate in the appeal.<sup>7</sup>
6. Pursuant to an order of the Appeals Chamber,<sup>8</sup> the Prosecution hereby files its response to the applications by victims to participate in this appeal.

### Submissions

7. As the Appeals Chamber has previously ruled, victims who have been recognised as such in the relevant case may participate in an appeal if they demonstrate that their personal interests are affected by the appeal and that their participation is appropriate and would not be prejudicial to the rights of the Accused.<sup>9</sup>
8. The Prosecution recalls that the Appeals Chamber has previously ruled that the personal interests of victims may be affected by the issues arising out of an appeal regarding the release of the Accused, and that the participation of victims in such an appeal may be appropriate.<sup>10</sup>
9. In the present case, in the impugned Decision itself, the Trial Chamber further recognised "the potentially vulnerable position of the victims", and "stresse[d] that it has given full weight to the fears of, and the possible consequences to, the victims as a result of a decision to release the accused," considering that "[t]he victims are entitled to have their views and concerns taken into account on issues of this kind".<sup>11</sup>

<sup>6</sup> ICC-01/04-01/06-1437 OA12.

<sup>7</sup> ICC-01/04-01/06-1438 OA12.

<sup>8</sup> ICC-01/04-01/06-1435 OA12, 15 July 2008.

<sup>9</sup> See e.g. *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, paras. 2, 44 and 46; ICC-01/04-01/06-925 OA8, 13 June 2007, para. 23; ICC-01/04-01/06-1335 OA 9 and OA 10, 16 May 2008, para 36; *Situation in Darfur*, ICC-02/05-125 OA, 29 February 2008; ICC-02/05-138 OA OA2 OA3, 18 June 2008, paras. 49-51.

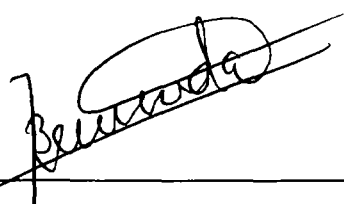
<sup>10</sup> See e.g. *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 54.

<sup>11</sup> Decision on Release, para. 33.

10. In the present circumstances, the Prosecution does not oppose the participation of victims in this appeal.
11. The Prosecution submits that, in conformity with the prior jurisprudence and practice of the Appeals Chamber,<sup>12</sup> the victims should be permitted to present their views and concerns in writing, within a period prescribed by the Appeals Chamber, and such submissions should be limited to the issues arising out of the appeal, to the extent that they impact on the personal interests of the victims.
12. The Prosecution submits that the participation of victims in accordance with the modalities proposed above would be consistent with a fair trial and the rights of the Accused.

### Relief Sought

13. For the reasons set out above, the Prosecution requests that the Appeals Chamber grant the present applications to participate in this appeal, in accordance with the modalities of participation proposed above.




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

Dated this 18<sup>th</sup> day of July 2008  
At The Hague, The Netherlands

<sup>12</sup> See e.g. *Prosecutor v. Lubanga*, ICC-01/04-01/06-1335 OA9 OA10, 16 May 2008, paras. 48-50; *Situation in Darfur*, ICC-02/05-138 OA OA2 OA3, 18 June 2008, paras. 60-62.