

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/06 OA13

Date: 29 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 to Stay Proceedings**

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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Introduction

The Prosecution is appealing Trial Chamber I's Decision to Stay Proceedings in the case against Thomas Lubanga Dyilo ("the Accused"). The legal representatives of victims in this case have filed an application 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 11 June 2008, the Trial Chamber orally announced that the trial date was vacated,¹ and on 13 June 2008, the Trial Chamber ordered that proceedings in the case be stayed.²
2. On 23 June 2008, the Prosecution sought leave to appeal against the Decision to Stay Proceedings.³
3. On 2 July 2008, the Trial Chamber granted the Prosecution leave to appeal the Decision to Stay Proceedings,⁴ in respect of two issues:

"Whether the Trial Chamber erred in the interpretation of the scope and nature of Article 54(3)(e) of the Statute and in its characterization of the Prosecution's use of it as constituting 'a wholesale and serious abuse, and a violation of an important provision which was intended to allow the prosecution to receive evidence confidentially, in very restrictive circumstances'".

¹ ICC-01/04-01/06-T-90-ENG. For further background to the vacating of the trial date and stay of proceedings, the Prosecution refers to the submissions cited in its Application for Leave to Appeal, para. 1.

² ICC-01/04-01/06-1401 ("Decision to Stay Proceedings"). The Decision to Stay Proceedings scheduled a hearing for 24 June 2008 to consider the release of the Accused (para. 94). The Prosecution subsequently filed submissions arguing that if the Trial Chamber granted leave to appeal the Decision to Stay Proceedings, then it should defer consideration of release pending resolution of the appeal (ICC-01/04-01/06-1407, 23 June 2008).

³ ICC-01/04-01/06-1407 ("Application for Leave to Appeal").

⁴ ICC-01/04-01/06-1417 ("Decision Granting Leave to Appeal").

“Whether the Trial Chamber erred in the interpretation and exercise of its authority under Article 64 of the Statute; [...] and whether it imposed a premature and erroneous remedy in the form of a stay of the proceedings”.⁵

4. On 2 July 2008, the Trial Chamber also issued a separate decision in which it ordered the release of the Accused.⁶ The Prosecution has appealed that Decision on Release,⁷ noting that the Decision on Release was solely based on the Decision to Stay Proceedings and the appeals against the two decisions are thus inextricably linked.⁸ The Prosecution did not oppose the participation of victims in that appeal against the Decision on Release.⁹
5. On 14 July 2008, the Prosecution filed its Document in Support of this appeal against the Decision to Stay Proceedings,¹⁰ in which it submitted that the Trial Chamber made three errors in the Decision:
 - (1) The Trial Chamber erred in law in its interpretation of the nature and scope of Article 54(3)(e);
 - (2) The Trial Chamber erred, in law and in fact, in its characterization of the Prosecution’s conduct pursuant to Article 54(3)(e); and
 - (3) The Trial Chamber erred in the exercise of its discretion, by imposing an excessive and premature remedy in the form of an indefinite stay of the proceedings.
6. On 16 July 2008, the legal representatives of victims a/0001/06 to a/0003/06 filed applications to participate in this appeal.¹¹

⁵ The Trial Chamber went beyond the Application for Leave to Appeal, also granting leave to appeal “whether the Chamber correctly determined that its obligation to ensure the accused receives a fair trial is dependent on the prosecution disclosing any potentially exculpatory evidence to the defence under Article 67(2) of the Statute (having first delivered the evidence in full to the Chamber for review and decision in case of doubt)”.

⁶ ICC-01/04-01/06-1418 (“Decision on Release”).

⁷ ICC-01/04-01/06-1419 OA12, 2 July 2008; ICC-01/04-01/06-1429 OA12, 10 July 2008. The Appeals Chamber has granted suspensive effect to that appeal (ICC-01/04-01/06-1423 OA12, 7 July 2008).

⁸ See ICC-01/04-01/06-1429 OA12, 10 July 2008, in particular paras. 11, 13-17, 21-23.

⁹ ICC-01/04-01/06-1442 OA12, 18 July 2008.

¹⁰ ICC-01/04-01/06-1434 OA13.

¹¹ ICC-01/04-01/06-1439 OA13.

7. On 24 July 2008, pursuant to an order of the Appeals Chamber,¹² the Prosecution re-filed its Document in Support of Appeal.¹³
8. On 25 July 2008, the Defence filed its response to the Prosecution's Document in Support of Appeal.¹⁴
9. Pursuant to a further order of the Appeals Chamber,¹⁵ the Prosecution hereby files its response to the application by victims to participate in this appeal.

Submissions

10. 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.¹⁶
11. The Prosecution submits that the personal interests of victims are affected by the third ground raised in this appeal, namely whether the Trial Chamber erred in imposing an indefinite stay of the proceedings.¹⁷ The Decision to Stay Proceedings has brought this case to a halt, directly impacting on the ability of those victims who have been permitted to participate to realise their recognised interests in the case. As the Trial Chamber itself recognised, as a result of the stay of proceedings:

“the Court will not make a decision on issues which are of significance to [*inter alia*] the victims [...] One consequence is that the victims will be denied an opportunity to participate in a public forum, in which their views and concerns were to have been presented and their right

¹² ICC-01/04-01/06-1445 OA13, 22 July 2008.

¹³ ICC-01/04-01/06-1446 and annexes.

¹⁴ ICC-01/04-01/06-1447 OA13.

¹⁵ ICC-01/04-01/06-1448 OA13, 28 July 2008.

¹⁶ 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 OA9 OA10, 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.

¹⁷ The Prosecution notes that the legal representatives only argue that the stay of the proceedings affects the personal interests of the victims (paras. 1-4), and do not appear to make any arguments regarding the interpretation of Article 54(3)(e) or the characterisation of the Prosecution's conduct under that article.

to receive reparations will be affected. The judges are acutely aware that by staying these proceedings the victims have, in this sense, been excluded from justice.”¹⁸

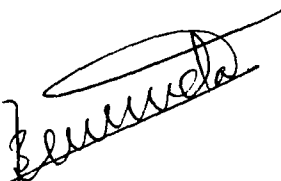
12. Furthermore, the Decision to Stay Proceedings formed the basis for the subsequent Decision on Release of the Accused: an issue which the Appeals Chamber has previously ruled may also affect the personal interests of victims.¹⁹

13. Given the nature of the proceedings in this appeal and the issues at hand, the Prosecution also submits that the presentation of views and concerns by the victims is appropriate. The Prosecution thus does not oppose the participation of victims in this appeal.

14. Such participation would be consistent with a fair trial and the rights of the Accused.

Relief Sought

15. For the reasons set out above, the Prosecution requests that the Appeals Chamber grant the present applications to participate in this appeal.



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

Dated this 29th day of July 2008
 At The Hague, The Netherlands

¹⁸ Decision to Stay Proceedings, para. 95.

¹⁹ See e.g. *Prosecutor v. Lubanga*, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 54.