



Original: **French**

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

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

Defence Response to the “*Demande de participation dans la procédure en appel contre la décision du 13 juin 2008 de la Chambre de Première Instance I ordonnant la suspension de la procédure*” of 16 July 2008

Source: Mr Thomas Lubanga Dyilo’s Defence Team

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

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BACKGROUND

1. On 2 June 2008 the Defence requested Trial Chamber I (“the Chamber”) to stay the proceedings and release the accused.¹
2. On 13 June 2008 the Chamber ordered a stay of proceedings and scheduled for 24 June 2008 consideration of the release of the accused.²
3. On 2 July 2008 the Chamber ordered the release of Mr Thomas Lubanga.³
4. On 2 July 2008 the Chamber granted the Prosecutor leave to appeal the Decision ordering a stay of proceedings issued by the Chamber on 13 June 2008.⁴
5. On 16 July 2008 Victims a/0001/06 to a/0003/06 filed an application for participation in the Prosecutor’s appeal against the Decision of 13 June 2008 ordering a stay of the proceedings against Mr Thomas Lubanga.⁵
6. The Defence objects to the application for participation submitted by the Legal Representative for Victims a/0001/06 to a/0003/06 on the following grounds:

OBSERVATIONS

Criteria for victim participation in appeal proceedings

7. The Appeals Chamber laid down the criteria that must be satisfied by all victims seeking leave to participate in an appeal proceeding:

Such applications shall include a statement in relation to whether and how the personal interests of the victims concerned are affected by this appeal, indicating why it is appropriate for the Appeals Chamber to permit their views and concerns to be presented

¹ ICC-01/04-01/06-1366.

² ICC-01/04-01/06-1401.

³ ICC-01/04-01/06-1418.

⁴ ICC-01/04-01/06-1417.

⁵ ICC-01/04-01/06-1439.

at this stage of the proceedings and why the presentation of such views and concerns would not be prejudicial to or inconsistent with the rights of the Defence.⁶

8. It is not sufficient for the victims simply to allege that it is “appropriate for them to be afforded the opportunity to express their views and concerns in the appeal proceedings against this decision”, and that their “participation is not inconsistent with or prejudicial to the rights of the Defence”,⁷ without providing specific arguments in support of these assertions.

9. In the instant case, the matters brought before the Appeals Chamber relate solely to the Prosecutor’s obligations and the fundamental rights of the accused in relation to key, purely procedural, aspects - issues which do not affect the merits of the case, and do not in any way affect the implementation of the victims’ rights.

10. Under article 68(3) of the Statute, victims do not have a general and absolute right to participate in the proceedings, but must demonstrate their personal interest in participating, such interest not being limited to an interest in receiving reparations.⁸ In the instant case, however, the matters brought before the Chamber relate solely to the right of the accused to a fair trial, a matter in which the victims cannot justify any personal interest in participating whatsoever. Moreover, the victims’ wrongful participation in these matters could jeopardise the rights of the accused.

11. It follows that the victims’ applications for participation in the appeal against the Decision on the release of Mr Thomas Lubanga must be dismissed.

⁶ ICC-01/04-450, “Order”, para. 1. See also ICC-01/04-01/06-1239.

⁷ ICC-01/04-01/06-1439, para. 5.

⁸ ICC-01/04-01/06-1119, para. 98.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER

to TAKE NOTE OF the present observations;

to DISMISS the application for participation of Victims a/0001/06 to a/0003/06 in the appeal proceedings against the Decision ordering a stay of proceedings against Mr Thomas Lubanga.

[signed]

Ms Catherine Mabilie, Principal Counsel

Dated this 29 July 2008

At The Hague