



Original: **French**

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

Date: **16 July 2008**

THE APPEALS CHAMBER

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

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

Public Document

**Application to Participate in the Appeal against Trial Chamber I's Decision of
13 June 2008 Ordering a Stay of the Proceedings**

Source: Legal Representatives of Victims a/0001/06 to a/0003/06

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial
Lawyer

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Bijou-Duval

Legal Representatives of Victims

Ms Carine Bapita
Mr Luc Walley and Mr Franck Mulenda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Noting the Decision of Trial Chamber I of 13 June 2008 “on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008”,¹ by which it decided to stay the proceedings;

Noting that Chamber’s Decision of 2 July 2008 granting the Prosecutor leave to appeal the above Decision;²

Noting the “Prosecution’s Document in Support of Appeal Against Decision to Stay Proceedings” of 14 July 2008;³

1. The Legal Representatives of the victims hereby request leave to participate in the appeal lodged by the Prosecutor, so that they may present their views and concerns on the decision staying the proceedings.

2. Since the impugned decision provisionally halts the proceedings against the accused and since the grounds for the decision may even lead to a definitive end to the proceedings, the victims have an obvious interest in participating in this appeal.

3. The stay and, *a fortiori*, the risk of a definitive end to the proceedings also preclude any participation of victims in the proceedings, and may irrevocably prevent them from ever having judgement passed on their applications for reparations against the accused.

4. The Trial Chamber itself considered that:

[T]he Chamber [...] imposed [the stay of proceedings] with great reluctance, not least because it means the Court will not make a decision on issues which are of significance to the international community, the peoples of the Democratic Republic of the Congo, the victims and the accused himself. When crimes, particularly of a grave nature, are alleged it is necessary for justice that, whenever possible, a final determination is made as to the guilt or innocence of the accused. The judicial process

¹ ICC-01/04-01/06-1401.

² ICC-01/04-01/06-1417.

³ ICC-01/04-01/06-1434.

is seriously undermined if a court is prevented from reaching a verdict on the charges brought against an individual. 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 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.

5. The victims therefore consider it appropriate that they may present their views and concerns in the proceedings on the appeal against the aforesaid Decision. They consider that such participation would not be inconsistent with or prejudicial to the rights of the accused.

FOR THESE REASONS,

MAY IT PLEASE THE APPEALS CHAMBER

To grant the victims leave to present their views and concerns in the proceedings on the Prosecutor's appeal against the Decision of 13 June 2008.

[signed]

Luc Walley and Franck Mulenda (absent at signing)
Legal Representatives of Victims a/0001/06 to a/0003/06

Dated this 16 July 2008
At Brussels and Kinshasa.