



Original: **French**

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

Date: **18 August 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 Victims' Observations on the Prosecutor's Appeal
Against the Decision of 2 July 2008 Ordering the Release of the Accused**

Source: Mr Thomas Lubanga Dyilo's Defence Team

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Legal Representatives of Victims

Counsel for Victims a/0001/06 to
a/0003/06 and a/0105/06
Mr Luc Walley
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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

BACKGROUND

1. On 2 June 2008, the Defence submitted to Trial Chamber I (“the Chamber”) an application for the discontinuance of the prosecution and the release of the accused.¹
2. On 13 June 2008, the Chamber ordered a stay of the proceedings.²
3. On 2 July 2008, the Chamber ordered the release of Mr Thomas Lubanga³ (“the Decision”).
4. On 10 July 2008, the Prosecutor filed a document in support of the appeal against the Decision ordering the release of Mr Thomas Lubanga.⁴ On 15 July 2008, the Defence responded to the Prosecutor’s appeal brief.⁵
5. On 6 August 2008, the Appeals Chamber granted Victims a/0001/06 to a/0003/06 and a/0105/06 leave to participate in the appeal lodged by the Prosecutor; all observations had to be filed no later than 12 August 2008.⁶
6. The Appeals Chamber further authorised the Prosecutor and the Defence to file a response to the victims’ observations no later than 18 August 2008.⁷
7. On 12 August 2008, the Legal Representative of Victims a/0001/06 to a/0003/06 presented his observations on the Prosecutor’s appeal against the Decision ordering the release of the accused.⁸
8. On 13 August 2008, the Defence received the observations of Victim a/0105/06 on the release of Mr Thomas Lubanga.⁹

¹ ICC-01/04-01/06-1366.

² ICC-01/04-01/06-1401.

³ ICC-01/04-01/06-1418.

⁴ ICC-01/04-01/06-1429 OA12 + Anx.

⁵ ICC-01/04-01/06-1437 OA12-tENG.

⁶ ICC-01/04-01/06-1452 OA12.

⁷ *Idem.*

⁸ ICC-01/04-01/06-1455 OA12-tENG.

OBSERVATIONS

9. Regarding its submissions on the merits of the appeal, the Defence refers to the written observations set forth in its response of 15 July 2008.

– Observations of Victims a/0001/06 to a/0003/06

10. The allegations of the victims regarding the possible impact of Mr Thomas Lubanga's release on the security situation in Ituri – allegations for which no proof has been provided to the Court – cannot constitute a legitimate ground for keeping him in custody.

11. It must be stated that the allegations contained in paragraphs 7 to 20 [sic] are unfounded and no proof thereof has been provided to the Trial Chamber or the Appeals Chamber.

12. Consequently, they should not be taken into account by the Appeals Chamber when it considers the Prosecutor's appeal.

– Observations of Victim a/0105/06

13. The observations presented by Victim a/0105/06 do not call for any observation from the Defence because they are not supported by any relevant legal argument relating to the issues submitted to the Appeals Chamber.

14. The argument submitted by Victim a/0105/06 concerning the development of the situation¹⁰ is irrelevant. The Appeals Chamber can rule only on the appeal

⁹ ICC-01/04-01/06-1457-tENG OA13 [sic].

¹⁰ *Idem*, para. 14.

brought before it with regard to the situation pertaining at the date of the impugned decision.¹¹

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER TO:

TAKE FORMAL NOTE of the observations contained herein;

DISMISS the Prosecutor's appeal;

UPHOLD the Decision of the Trial Chamber ordering the release of Mr Thomas Lubanga.

[signed]

Ms Catherine Mabile, Principal Counsel

Dated this 18 August 2008, at The Hague

¹¹ See the arguments submitted to the Appeals Chamber: "Defence Response to the Prosecution's Document in Support of Appeal against 13 June 2008 Decision to Stay Proceedings", ICC-01/04-01/06-1447 OA13-tENG, paras. 63 ff.