



Original: **French**

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

Date: **15 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 Victims' "Application to Participate in the Appeal Proceedings against the Release of the Accused" and to the "Application of the Legal Representative of Victim a/105/06 to Participate in the Appeal against the Decision on the Release of the Accused"

Source: 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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**Unrepresented Applicants for
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**Victims Participation and Reparations
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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 and postponed to 24 June 2008 its 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 of 13 June 2008 ordering the stay of the proceedings.⁴
5. On 3 July 2008 the Prosecutor announced his intention to appeal the Decision ordering the release of the accused and requested the Appeals Chamber to order suspensive effect for that decision (“the Application”).⁵
6. On 7 July 2008 the Appeals Chamber granted the Prosecutor’s Application for suspensive effect of the decision on release⁶ (“the Decision”).
7. On 8 July 2008 the Legal Representative of Victims a/0001/06 to a/0003/06 and the Legal Representative of Victim a/0105/06 filed an application for leave to participate in the appeal against the Decision.⁷
8. The Defence challenges the application for participation filed by the Legal Representatives of the victims on the following grounds:

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-01/04-01/06-1419 OA12 + Anx.

⁶ *Idem.*

⁷ ICC-01/04-01/06-1424 and ICC-01/04-01/06-1425.

OBSERVATIONS

Criteria for participation of victims in an appeal

9. The Appeals Chamber set out the factors which must be established by any victim seeking leave to participate in an appeal:

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 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.⁸

10. Victims a/0001/06 to a/0003/06 and a/105/06 found their application for participation on allegations relating to the overall security situation in the area where they are living. Such allegations – which rely on no serious factual evidence – in no way demonstrate how the personal interest of those victims is affected by the instant appeal.

11. Victims a/0001/06 to a/0003/06 maintain that the release of Mr Thomas Lubanga may endanger their personal safety. Yet those victims are still participating anonymously in the proceedings against Thomas Lubanga. The Defence remains unaware of the identity of the victims authorised to participate in the proceedings.

12. Furthermore, it is not enough for the victims simply to contend that it is “appropriate for them to be afforded the opportunity to express their views and concerns at the appeal stage as well”, and that “such participation would not be inconsistent with or prejudicial to the rights of the Defence”,⁹ without putting forward any specific arguments in support of these assertions.

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

⁸ ICC-01/04-450, *Order*, para. 1. See also ICC-01/04-01/04-1239.

⁹ ICC-01/04-01/06-1424, para. 6. See also ICC-01/04-01/06-1425, para. 3.

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

TAKE FORMAL NOTE of the observations herein;

DISMISS the application for participation of Victims a/0001/06 to a/0003/06
and Victim a/0105/06 in the instant appeal.

[signed]

Ms Catherine Mabile, Principal Counsel

Dated this 15 July 2008, at The Hague