

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06 OA15

Date: 24 September 2009

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko

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

Public

Prosecution's response to victims' application for participation in the Prosecution and the Defence appeals against the "Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court"

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Legal Representatives of Applicants

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

Mr Jean Chrysostome Mulamba

Nsokoloni

Mr Paul Kabongo Tshibangu

Mr Hervé Diakiese

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

Ms Paolina Massidda

States Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 22 May 2009, the Legal Representatives of the Victims asked the Trial Chamber to consider recharacterisation under Regulation 55 to include the crimes of sexual slavery (Articles 7(1)(g), 8(2)(b)(xxii), and/or 8(2)(e)(vi)) and inhuman and cruel treatment (Articles 8(2)(a)(ii) and/or 8(2)(c)(i)).¹
2. On 14 July 2009, the Majority of the Trial Chamber gave notice under Regulation 55(2) “that it appears to the majority of the Chamber that the legal characterisation of the facts may be subject to change.”² Both the Prosecution³ and the Defence⁴ sought leave to appeal, which was granted on 3 September 2009.⁵ On 10 September and 14 September 2009, the Defence⁶ and the Prosecution⁷ filed their respective documents in support of their appeals.
3. On 15 September and 18 September 2009, the Legal Representatives of three groups of victims requested leave to present their views and concerns on the Prosecution and the Defence appeals.⁸
4. The Prosecution agrees that the Legal Representatives of these victims should be permitted to present the victims’ views and concerns in this appeal. Consistent with the jurisprudence of the Appeals Chamber, the Trial Chamber has recognised these victims in this case, and the issues in this appeal appear to affect their personal interests. The Prosecution also considers that their participation in this appeal is appropriate and would not be prejudicial to the fair conduct of the proceedings, provided that the parties are allowed to reply to their views and concerns in accordance with Rule 91(2).⁹
5. In relation to the modalities of that participation, these proceedings were initiated by a joint request of three Legal Representatives to the Trial Chamber.¹⁰ Given the origins of

¹ ICC-01/04-01/06-1891-tENG.

² ICC-01/04-01/06-2049 (“Decision”), para. 35.

³ ICC-01/04-01/06-2074, 12 August 2009.

⁴ ICC-01/04-01/06-2073-Conf, 11 August 2009.

⁵ ICC-01/04-01/06-2107.

⁶ ICC-01/04-01/06-2112 OA15.

⁷ ICC-01/04-01/06-2120 OA15.

⁸ ICC-01/04-01/06-2121 15 September 2009, filed on behalf of victims a/0001/06, a/0002/06, a/0003/06, a/0049/06, a/0007/08, a/0149/08, a/0155/07, a/0156/07, a/0404/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0149/07 et a/0162/07, a/0610/08, a/0611/08 and a/0249/09. This request does not appear to distinguish between the two appeals by the Prosecution and the Defence, but refers generally to the appeals proceedings against the Decision.

ICC-01/04-01/06-2122, 15 September 2009, filed on behalf of victims a/0047/06, a/0048/06, a/0050/06 and a/0052/06.

ICC-01/04-01/06-2134, 18 September 2009, filed on behalf of victims a/0051/06, a/0078/06, a/0232/06, a/0233/06 and a/0246/08.

⁹ ICC-01/04-503 OA4 OA5 OA6, 30 June 2008, para. 101; ICC-01/04-01/06-824 OA7, 13 February 2007, para. 49.

¹⁰ See footnote 1, above. Two of the pending applications for participation in the appeals were filed by Legal Representatives who signed the original Joint Regulation 55 Request (ICC-01/04-01/06-2122; ICC-01/04-01/06-

this appeal in that joint filing, the degree of overlap between the appeals by the Prosecution and Defence against the Decision, and in order to expedite the proceedings, the Prosecution requests that the Appeals Chamber consider directing the Legal Representatives to file a consolidated document containing the views and concerns of all three groups of victims on both the Prosecution appeal and the Defence appeal against the Decision.



Luis Moreno-Ocampo,
Prosecutor

Dated this 24th day of September 2009
At The Hague, The Netherlands

2134). In relation to the third application (ICC-01/04-01/06-2121), while Mr Walleyne did not sign the original Regulation 55 Request, he represents victims in the same group as Mr Mulamba, who did sign the Request (see ICC-01/04-01/06-1602 14 January 2009, para. 8), and the vast majority of the victims represented by Mr Walleyne are listed in the original Regulation 55 Request.