



Original: **French**

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

Date: **26 July 2010**

APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko
Judge Sanji Mmasenono Monageng

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 Proceedings against the Decision of 15 July
2010 to Release the Accused**

Source: Legal Representatives of Victims a/0001/06, a/0002/06, a/0003/06, a/0049/06, a/0149/06, a/0149/08, a/0007/08, a/0155/07, a/0156/07, a/0303/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0149/07, a/0162/07, a/0610/09, a/0611/09, a/0249/09, 0523/08, a/0053/09, a/0292/09, a/0398/09, a/0609/08.

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, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Defence Counsel

Ms Catherine Mabilie
Mr Jean-Marie Bijou-Duval

Legal Representatives of the Victims

Mr Luc Walleyne
Ms Carine Bapita Buyangandu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Noting the oral decision of Trial Chamber I of 15 July 2010 to release the accused, Thomas Lubanga Dyilo;¹

Noting the Prosecutor's appeal against that decision;²

Noting the Appeals Chamber's decision to give suspensive effect to the appeal;³

Noting the applications for participation filed by other legal representatives;⁴

1. The Legal Representatives share the view of the OPCV⁵ that the victims authorised to participate in a given stage of proceedings are also entitled, subject to a decision by the Appeals Chamber, to participate in the appeal against a decision taken in those proceedings by virtue of regulation 86(8) of the Regulations of the Court.⁶

2. Nevertheless this application is filed on the basis of the jurisprudence of the Appeals Chamber, which holds that, for each appeal proceeding, the victims participating in the initial proceedings must seek a new decision from the Appeals Chamber regarding their participation in the appeal.

3. The representatives of the victims accordingly hereby request that they be allowed to participate in the appeal filed by the Prosecutor against the release of the accused, in order to put forward the views and concerns of their clients, as

¹ See the transcript of the hearing of 15 July 2010, No. ICC-01/04-01/06-T-314-FRA, page 12, line 22, to page 20, line 12.

² ICC-01/04-01/06-2522, 16 July 2010.

³ ICC-01/04-01/06-2536, 23 July 2010.

⁴ ICC-01/04-01/06-2533-Conf and ICC-01/04-01/06-2535.

⁵ ICC-01/04-01/06 OA 17 of 23 July 2010, para. 8.

⁶ This position was also that of a minority of the Appeals Chamber judges in the decisions ICC-01/04-01/06-824 and ICC-041/04-01/06-2205.

they were able to do before the Trial Chamber during the hearings which preceded the decision.

4. The victims consider that they have a personal interest in the proceedings concerning the possible release of the accused, particularly in view of the fact that what is at issue is not interim release under the supervision of the Court, but unconditional release, the purported consequence of an unconditional stay of the proceedings.

5. The unconditional release of the accused could have real repercussions for the safety of the victims participating in the proceedings where their identity is known to the accused, particularly for those who had agreed to give evidence for the Prosecution.

6. The victims consider it appropriate that they be allowed to express their views and concerns at the appeal stage of the proceedings, just as at the trial stage. It is their view that participating in this way would not be prejudicial to or inconsistent with the rights of the defence.

7. Moreover, the Appeals Chamber has consistently held that the presentation of the views and concerns of the victims regarding a possible release of the accused is not inconsistent with the rights of the defence.⁷

⁷ ICC-01/04-01/06-1452 and ICC-01/04-01/06-623.

FOR THESE REASONS,

MAY IT PLEASE THE APPEALS CHAMBER

To grant the victims leave to present their views and concerns with regard to the Prosecutor's appeal against the decision of 15 July 2010 to release Thomas Lubanga Dyilo.

[signed]

Luc Walley, Counsel for Group of Victims V01

Done this 26 July 2010, at Brussels.