



Original: French

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

Date: 28 July 2010

THE APPEALS CHAMBER

Before :
Judge Sang-Hyung 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 8 July 2010 to Stay the Proceedings

Source: The 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, a/0523/08, a/0053/09, a/0292/09, a/0398/09 and 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

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Bijou-Duval

Legal Representatives of the Victims

Mr Luc Walley
Ms Carine Bapita Buyangandu

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 8 July 2010, whereby it decided to stay the proceedings against Thomas Lubanga Dyilo;¹

Noting that the Chamber has given the Prosecutor leave to appeal that decision;²

Noting that the Prosecution has reportedly filed an appeal document dated 26 July 2010,³ although this has not been disclosed to the Legal Representatives of the Victims;

1. The Legal Representatives consider, as does the OPCV,⁴ that, pursuant to regulation 86(8) of the Regulations of the Court, the victims permitted to participate in a given stage in the proceedings are also entitled, subject to a decision by the Appeals Chamber, to participate in an appeal against a decision taken in the course of those proceedings.⁵
2. The present Application is, however, submitted in light of the jurisprudence of the Appeals Chamber, which takes the view that, in all appeal proceedings, the victims participating in the trial proceedings must seek a further decision from the Appeals Chamber on their participation in the appellate proceedings.
3. By the present document, the Representatives of the Victims accordingly seek leave to participate in the appeal submitted by the Prosecutor against the stay of the proceedings against the accused, so that they may present the views and concerns of their clients regarding that decision.
4. Victims participating in the proceedings have an obvious personal interest in the arguments on the decision to stay the proceedings, since this could potentially result in their participation being terminated, their applications for reparations being deemed inadmissible and their being unable to obtain any form of reparation. For some of the victims it could also have an impact on their safety, particularly since the consequence of the decision in question was a decision to release the accused unconditionally.
5. In its decision of 6 August 2008,⁶ the Appeals Chamber ruled in a similar situation that:

¹ ICC-01/04-01/06-2517-Conf and –Red.

² See the transcript of the hearing of 15 July 2010, No. ICC-01/04-01/06-T-314-ENG ET WT, page 14, line 5, to page 22, line 8.

³ ICC-01/04-01/06-2528-Conf of 26 July 2010.

⁴ ICC-01/04-01/06-2535 of 23 July 2010, para. 8.

⁵ This was also the position adopted by a minority of judges of the Appeals Chamber in Decisions ICC-01/04-01/06-824 and ICC-01/04-01/06-2205.

⁶ ICC-01/04-01/06 OA 13.

“the personal interests of the three victims are affected by the principal issue on appeal, namely whether the proceedings in respect of Mr Lubanga Dyilo should be stayed. If the trial in respect of Mr Lubanga Dyilo does not take place, the victims will not have an opportunity to present their views and concerns in the course of that trial and will be unable to present a claim for reparations against him, should he be convicted. The Appeals Chamber therefore is not persuaded by the argument of Mr Lubanga Dyilo that the issues on appeal do not relate to the personal interests of the victims; [...] the repercussions of the appeal on the personal interests of the three victims are considerable”.

6. The victims consider it appropriate that they be given the opportunity to express their views and concerns in the proceedings on the appeal submitted by the Prosecutor. They submit that their participation would not be prejudicial to or inconsistent with the rights of the accused.
7. In the aforementioned judgment of 6 August 2008, the Appeals Chamber held that giving the victims the opportunity to express their views and concerns on a possible stay of proceedings is not inconsistent with the rights of the accused.

FOR THESE REASONS,

MAY IT PLEASE THE APPEALS CHAMBER

To grant leave to the victims to submit their views and concerns in the proceedings on the Prosecutor’s appeal against the decision of 8 July 2010 to stay the proceedings.

[signed]

Luc Walley, Counsel, for the group of victims V01

Dated this 28 July 2010

At Brussels