

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/04-01/06 OA18

Date: 27 August 2010

THE 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

Prosecution's Response to the Victim's Observations on the Appeal against Trial Chamber I's Decision of 8 July 2010 to Stay the Proceedings for Abuse of Process

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

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Legal Representatives of Victims

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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

Defence Support Section

Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 18 August 2010 the Appeals Chamber authorized Legal Representatives, on behalf of Victims a/0001/06, a/0002/06, a/0003/06, a/0049/06, a/0051/06, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0007/08, a/0149/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0523/08, a/0053/09, a/0249/09, a/0292/09, and a/0398/09, to file observations in the Prosecution's appeal against Trial Chamber I's 8 July 2010 stay of proceedings against Thomas Lubanga Dyilo (hereinafter, "the Accused").¹ Documents containing those observations (hereinafter, "the Observations") were filed on or before 24 August 2010.²
2. The Prosecution concurs with the Observations advanced by the Legal Representatives, which highlight a number of fundamental features of this appeal: first, as noted by the Legal Representatives, that the Trial Chamber insufficiently considered the interests of victims, which is a critical component of the Court's criminal process, and the consequences that the decision to stay all proceedings would entail for them, when making its determination.³ Also, the Observations confirm that the Trial Chamber's characterization of the Prosecution's conduct as an abuse of the process of the Court was erroneous⁴, and that the decision to stay proceedings against the Accused was unwarranted and disproportionate.⁵
3. The Observations also highlight the flaws in the Trial Chamber's interpretation of the relevant statutory provisions pertaining to the protection of victims and witnesses, and the importance of following proper processes and reaching informed decisions in matters of protection. In particular, the

¹ ICC-01/04-01/06-2556 OA18

² Documents ICC-01/04-01/06-2559-Red OA18 and ICC-01/04-01/06-2560 OA17 OA18. The latter document also includes observations pertaining to the separate appeal brought by the Prosecution against Trial Chamber I's 15 July 2010 oral ruling ordering the release of Thomas Lubanga Dyilo.

³ See ICC-01/04-01/06-2559-Red OA18, paras. 6-9.

⁴ ICC-01/04-01/06-2560 OA17 OA18, para. 10: "[a] la question 'Peut-on considérer l'examen de ces préoccupations importantes de l'Accusation comme un abus de procédure?', les représentants légaux de victimes estiment légitime de répondre par la négative ».

⁵ ICC-01/04-01/06-2559-Red OA18, paras. 10- 15.

Legal Representatives highlight that the Prosecution, like the Chamber, has the statutory duty to protect witnesses who appear before the Court;⁶ that the VWU was not given time to present proposals pertaining to the adequate protection of intermediary 143 in light of the disclosure ordered to the Accused and the defence team, so that the Chamber could not have reasonably concluded that protective measures would have effectively implied an excessive delay;⁷ and that the Chamber must assess the security situation in the field prior to any disclosure of a witness' identity.⁸

4. Finally, the Prosecution stresses that the Observations properly reflect the division of functions between the different organs of the Court. They recognize the statutory duties of protection attributed to both the Trial Chamber and the Prosecution, as well as the advisory functions of VWU.⁹ The Observations are consistent with the Prosecution's interpretation of the relevant provisions of the Statute. In particular, the Observations confirm that the Prosecution, due to its particular and autonomous statutory duties of protection –not shared by other parties or participants – along with its presence in the field, must be given adequate opportunity to discharge those duties. As the Prosecution has argued in this appeal,¹⁰ the Statute, as interpreted by this Chamber, does not vest any organ of the Court with exclusive duties of protection. Rather, it establishes a multi-pillared system that involves the Court, the Registry, and the Prosecution simultaneously. The Prosecution submits that, in accordance with the protection system defined by the Statute, the proper process to be followed when deciding protection

⁶ ICC-01/04-01/06-2560 OA17 OA18, para. 3.

⁷ Ibid., paras. 4-5.

⁸ Ibid., para. 6. The Legal representatives refer to the threats allegedly received by witnesses who had testified once they returned to the DRC

⁹ Ibid., paras. 3-4.

¹⁰ See ICC-01/04-01/06-2544-Red OA18.

measures includes the right of the Prosecution to be heard after the Chamber has received advice from VWU.

5. The Prosecution accordingly requests the Appeals Chamber to take into consideration the Victims' Observations and, as requested in the Prosecution's Document in Support of the Appeal, to reverse the impugned decision.



Luis Moreno-Ocampo,
Prosecutor

Dated this 27th day of August 2010

At The Hague, The Netherlands