



Original: **French**

No.: **ICC-01/04-01/06**
Date: **30 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 REDACTED VERSION

**Defence Response to the Observations of the Legal Representatives of the Victims
concerning the Appeal Against the Decision Ordering the Stay of Proceedings**

Source: Defence Team for Mr Thomas Lubanga

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
Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Paul Kabongo Tshibangu
Ms Paolina Massidda
Mr Hervé Diakiese
Mr Joseph Keta Orwinyo

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States' Representatives

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

BACKGROUND

1. On 8 July 2010, the Trial Chamber ordered the stay of proceedings against Mr Thomas Lubanga.¹
2. On 15 July 2010, Trial Chamber I ordered the release of Mr Thomas Lubanga.² On the same day, Trial Chamber I granted the Prosecutor leave to appeal the decision ordering the stay of proceedings.³
3. On 22 and 29 July 2010, the Defence received two requests from the Legal Representatives of the Victims seeking leave to participate in the appeal against the decision ordering the stay of proceedings.⁴
4. On 30 July 2010, the Prosecutor filed his document in support of appeal.⁵
5. On 9 August 2010, the Defence replied to the Prosecutor's document in support of appeal.⁶
6. On 17 August 2010, the Appeals Chamber granted leave for a certain number of victims to present their views and concerns in relation to the appeal against the release of Mr Thomas Lubanga, and ordered those victims to file their observations on the matter by 4 p.m. on 23 August 2010.⁷

¹ ICC-01/04-01/06-2517-Conf.

² ICC-01/04-01/06-T-314.

³ *Idem.*

⁴ ICC-01/04-01/06-2533-Conf OA17 OA18 and ICC-01/04-01/06-2541 OA18.

⁵ ICC-01/04-01/06-2544-Conf OA18. An initial document in support of the appeal (ICC-01/04-01/06-2538-Conf) was filed on 26 July 2010, and rejected by the Appeals Chamber on the ground that it did not comply with the Regulations of the Court. See ICC-01/04-01/06-2543 OA18.

⁶ ICC-01/04-01/06-2550-Conf OA18.

⁷ ICC-01/04-01/06-2555 OA17.

7. On 18 August 2010, the Appeals Chamber granted leave for a certain number of victims to present their views and concerns in relation to the stay of proceedings pronounced by the Trial Chamber on 8 July 2010, and ordered those victims to file their observations on the matter by 4 p.m. on 24 August 2010.⁸

8. On 23 August 2010, Mr Luc Walleyne filed, on behalf of the team representing the V01 victims, the “Observations on behalf of victims a/0001/06, a/0002/06, a/0003/06, a/0049/06, 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 on the appeal against Trial Chamber I’s decision of 8 July to stay the proceedings” (“the Observations of the V01 Group of Victims”).⁹

9. On 24 August 2010, Ms Carine Bapita Buyangangu and Mr Paul Kabongo Tshibangu filed the “Observations of the Legal Representatives of Victim a/0051/06 on the Appeal against the Decision to Stay Proceedings for Abuse of Process of 8 July 2010 and the Appeal against the Decision to Release the Accused of 15 July 2010” (“the Observation of Victim a/0051/06”).¹⁰

⁸ ICC-01/04-01/06-2556 OA18.

⁹ ICC-01/04-01/06-2559-tENG OA18.

¹⁰ ICC-01/04-01/06-2560-tENG OA17 OA18.

OBSERVATIONS

- As to the Observations of the V01 Group of Victims

10. The V01 Group of Victims submits, in footnote 9 of their Observations, that any disclosure to the Defence might involve major risks to the security of the persons concerned. The victims allege that [REDACTED] have mentioned being put under pressure, particularly by the Defence resource person in the field.

11. However, such assertions are without basis and contradict the evidence given by these witnesses before the Court.

12. [REDACTED],¹¹ [REDACTED]¹² [REDACTED]¹³ did not ever indicate that they had been subject to pressure from the Defence resource person.

13. [REDACTED] even expressly stated in testimony that the witness did not know the Defence resource person.¹⁴

14. The allegation by the V01 Group of Victims that Victims a/0002/06 and a/0007/08 were threatened and physically attacked has never been supported by any form of evidence, nor any specific factual information, as the Defence has already emphasised in its response to the appeal proceedings by the V01 Group of Victims against the decision ordering the release of Mr Thomas Lubanga.¹⁵

¹¹ [REDACTED].

¹² [REDACTED]

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ See ICC-01/04-01/06-2561 OA17, paras. 32-36.

- As to the Observations of Victim a/0051/06

15. In paragraph 6 of the Observations, Victim a/0051/06 raises the issue of the checks carried out by the Trial Chamber regarding the security situation in the field, “in light of certain observations made by some of the witnesses who came to testify to the Court and have been threatened on returning to their country, the DRC”.¹⁶

16. Victim a/0051/06 does not, however, provide any specific details about these alleged threats. It is not stated which witnesses are concerned, nor is any specific factual material cited in support of this assertion.

17. The Defence submits that, although the victims were granted leave to present their “views and concerns”, these must be expressed in a “manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”.¹⁷

18. In their observations on the instant appeal, and on the appeal against the decision ordering the release of Mr Thomas Lubanga, the victims make several references to alleged threats or attacks, without citing specific factual material.

19. The Defence also considers it unacceptable that some of the allegations made by the victims conflict with the evidence given at trial, or that the victims do not cite that evidence correctly in support of their allegations.

¹⁶ ICC-01/04-01/06-2560-tENG OA17 OA18, para. 6

¹⁷ Article 68(3).

- The confidentiality of the present response

20. The present response by the Defence is filed as confidential, since it responds to allegations which only feature in the confidential version of the Observations of the V01 Group of Victims. The Defence submits, however, that it would not pose any problem if all of this material were to appear in public proceedings. The Defence accordingly requests that the Appeals Chamber order the initial version of the Observations of the V01 Group of Victims to be reclassified as a public document, along with the present response.

FOR THESE REASONS, MAY IT PLEASE THE CHAMBER:

TO TAKE NOTE of the observations contained herein;

TO ORDER that the present response be classified as public, along with the initial version of the Observations of the V01 Group of Victims;

TO DISMISS the Prosecutor's appeal and the observations of the Legal Representatives;

TO CONFIRM the Trial Chamber's decision ordering the stay of proceedings against Mr Thomas Lubanga.

Ms Catherine Mabilie, Lead Counsel
[signed]

Done at The Hague

30 August 2010