



Original: **French**

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

Date: 25 February 2013

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Anita Ušacka
Judge Ekaterina Trendafilova

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

PUBLIC DOCUMENT

**Observations of the Defence for Mr Thomas Lubanga Dyilo pursuant to the
Appeals Chamber's Order No. ICC-01/04-01/06-2978**

Source: Defence team for Mr Thomas Lubanga Dyilo

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

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I PROCEDURAL BACKGROUND

1. On 8 February 2013, the Registry transmitted the following information to the Appeals Chamber:¹
 - During the trial stage, the Registry received twenty-nine new applications for participation as victims in the proceedings which, in its view, were connected to the *Lubanga* case;
 - Three victims whose applications for participation in the case had been rejected by the Trial Chamber in December 2008² completed their applications for participation by filing “supplementary information”;
 - These thirty-two applicants indicated that they wished to participate in the appellate or all the stages of the proceedings;
 - None of these applications have to date been transmitted to the Chamber or the parties;
 - Of the thirty-two applicants, twenty-eight are represented by Mr Joseph Keta and the other 4 are unrepresented.
2. On 15 February 2013, the Appeals Chamber ordered the Office of Public Counsel for Victims (OPCV) to represent the four unrepresented applicants, a/0198/09, a/2899/11, a/2901/11 and a/2917/11.³
3. Thereupon, the Appeals Chamber ordered the Defence, Mr Joseph Keta and the OPCV to file their submissions, if any, by 4 p.m. on 25 February

¹ ICC-01/04-01/06-2977.

² ICC-01/04-01/06-1556.

³ ICC-01/04-01/06-2978.

2013 on whether the Appeals Chamber should consider the new victim applications at the current stage in the proceedings.⁴

SUBMISSIONS

4. The participation of new victims at the appellate phase, by the filing of submissions, implies *imprimis* their admission to participate in the proceedings in accordance with the procedure established in the judgments of Trial Chamber I on 18 January 2008⁵ and the Appeals Chamber on 11 July 2008.⁶

5. As the Appeals Chamber emphasised in its decision of 11 July 2008:

“Participation of victims at trial will first and foremost, take place through the procedure of rule 89 (1) of the Rules. By way of written applications, applicants will have to demonstrate, firstly, that they are victims within the meaning of rule 85 of the Rules. Secondly, pursuant to article 68 (3) of the Statute, victims will first have to demonstrate that their personal interests are affected by the trial in order to be permitted to present their views and concerns at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”⁷

6. Accordingly, in all stages of the proceedings, *inter alia* the appellate stage, an applicant’s participation is conditional upon the filing of an application for participation in which the applicant must demonstrate that they are a victim of the crimes with which the accused is charged; this application is transmitted to the Defence which shall be entitled to reply in accordance with rule 89.⁸

⁴ ICC-01/04-01/06-2978.

⁵ ICC-01/04-01/06-1119.

⁶ ICC-01/04-01/06-1432.

⁷ ICC-01/04-01/06-1432, para. 61 [emphasis added].

⁸ Rule 89(1): “1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements”. [Emphasis added].

7. The Chamber dealing with the case shall determine thereafter, based on the form filed by the applicant, the documents attached thereto and the observations of the Defence and the Prosecution, whether the applicant has demonstrated (1) their identity and (2) the existence of personal harm resultant from the commission of the crimes charged.⁹
8. Experience garnered in this case confirms that the aforementioned process for admitting applicants lasts between eight and fourteen weeks from the moment their applications are transmitted to the Defence for observations.¹⁰
9. Moreover, once authorised to participate in the proceedings as victims, these applicants may be authorised, in parity with the other victims authorised to participate in this case,¹¹ to present their views and concerns on how their personal interests are affected by issues raised on appeal. The Defence must have the opportunity to respond to these observations.¹²
10. With respect to the Defence appeal against the *Judgment pursuant to Article 74 of the Statute* and the Prosecution and Defence appeals against the *Decision on Sentence pursuant to Article 76 of the Statute*, the victims were granted an eight-week time limit to file their written observations.¹³ The Defence also has an eight-week time limit to respond to these observations.
11. Given that the Defence has not yet received the applications for participation in the proceedings submitted by the new applicants, it is

⁹ For example, ICC-01/04-01/06-1119, paras. 87 *et seq.*

¹⁰ See the following decisions: ICC-01/04-01/06-1556 and ICC-01/04-01/06-1562 (eight weeks excluding the five-month stay of proceedings); ICC-01/04-01/06-2035 (eight weeks); ICC-01/04-01/06-2063 (eight weeks); ICC-01/04-01/06-2115 (eight weeks); ICC-01/04-01/06-2659 (ten weeks excluding the three-month stay of proceedings) and ICC-01/04-01/06-2764 (fourteen weeks).

¹¹ ICC-01/04-01/06-295.

¹² *Idem.*

¹³ *Idem.*

reasonable to presuppose that should the Appeals Chamber authorise the new applicants to submit their applications for participation and, where applicable, to submit observations in regard to the on-going appeals, similar time limits lasting several weeks will accrue.

12. Hence, the submission of new applications at this late stage of the appeal would undoubtedly violate Mr Thomas Lubanga's right to be heard within a reasonable time under article 67(1).
13. Additionally, it should be noted that the three applicants whose applications were rejected in December 2008 have waited several years before submitting the supplementary information requested by Trial Chamber I.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER TO:

TAKE NOTICE of the observations contained herein;

and

ADJUDGE and DECLARE that it would be inconsistent with the rights of the Defence to consider, at this late stage in the proceedings, the new applications submitted by the applicants who are the subject of the order of 15 February 2013.

[signed]

Ms Catherine Mabilie, Lead Counsel

Dated this 25 February 2013, at The Hague