

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-01/04-01/06 OA 13**

Date: **6 August 2008**

THE APPEALS CHAMBER

Before:

Judge Sang-Hyun Song, Presiding Judge

Judge Philippe Kirsch

Judge Georghios M. Pikis

Judge Navanethem Pillay

Judge Erkki Kourula

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public document

Decision on the participation of victims in the appeal

Shs

Decision/Order/Judgment 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 Biju-Duval

Legal Representatives of Victims

Ms Carine Bapita Buyangandu
Mr Luc Walley
Mr Franck Mulenda

REGISTRY

Registrar

Ms Silvana Arbia

Shs

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor pursuant to the decision of Trial Chamber I of 2 July 2008 entitled “Decision on the Prosecution’s Application for Leave to Appeal the ‘Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused’” (ICC-01/04-01/06-1417),

Having before it the “Demande de participation dans la procédure en appel contre la décision du 13 juin 2008 de la Chambre de Première Instance I ordonnant la suspension de la procédure” of 16 July 2008 (ICC-01/04-01/06-1439),

Renders the following

DECISION

(i) Victims a/0001/06, a/0002/06 and a/0003/06 are granted the right to participate in the present appeal for the purpose of presenting their views and concerns respecting their personal interests in the issues raised on appeal. They may present their submissions by 4 p.m. on Tuesday, 12 August 2008.

(ii) The Prosecutor and Mr. Thomas Lubanga Dyilo may file their responses to the submissions presented by the aforesaid victims by 4 p.m. on Monday, 18 August 2008.

REASONS

I. RELEVANT PROCEDURAL BACKGROUND AND SUBMISSIONS OF THE PARTICIPANTS

1. On 13 June 2008, Trial Chamber I rendered the “Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues

raised at the Status Conference on 10 June 2008” (ICC-01/04-01/06-1401; hereinafter: “Impugned Decision”), which stayed the proceedings in respect of Mr. Thomas Lubanga Dyilo. By decision of 2 July 2008 entitled “Decision on the Prosecution’s Application for Leave to Appeal the ‘Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused’” (ICC-01/04-01/06-1417; hereinafter: “Decision Granting Leave to Appeal”) the Prosecutor was granted leave to appeal the Impugned Decision in respect of two issues, namely “[w]hether the Trial Chamber erred in the interpretation of the scope and nature of Article 54(3)(e) of the Statute and its characterization of the Prosecution’s use of it as constituting ‘a wholesale and serious abuse, and a violation of an important provision which was intended to allow the prosecution to receive evidence confidentially, in very restrictive circumstances’ and “[w]hether the Trial Chamber erred in the interpretation and exercise of its authority under Article 64 of the Statute; whether the Chamber correctly determined that its obligation to ensure the accused receives a fair trial is dependent on the prosecution disclosing any potentially exculpatory evidence to the defence under Article 67(2) of the Statute (having first delivered the evidence in full to the Chamber for review and decision in case of doubt); and whether it imposed a premature and erroneous remedy in the form of a stay of the proceedings” (Decision Granting Leave to Appeal, paragraph 32).

2. The Prosecutor filed his document in support of the appeal on 14 July 2008 (ICC-01/04-01/06-1434).¹

3. On 16 July 2008, the Legal Representatives of victims a/0001/06, a/0002/06 and a/0003/06 filed the “Demande de participation dans la procédure en appel contre la décision du 13 juin 2008 de la Chambre de Première Instance l’ordonnant la suspension de la procédure” (ICC-01/04-01/06-1439; hereinafter: “Application for Participation”), requesting the Appeals Chamber to be allowed to present the views and concerns of the victims in the framework of the Prosecutor’s appeal against the Impugned Decision. The Legal Representatives submit that the personal interests of the victims are affected by the

¹ The document in support of the appeal was re-filed on 24 July 2008 (ICC-01/04-01/06-1446-Anx1), following a decision of the Appeals Chamber to that effect (ICC-01/04-01/06-1445).

appeal because the Impugned Decision stayed the proceedings in respect of Mr. Lubanga Dyilo and could lead to their permanent termination. This would mean that the victims could not participate in a trial in respect of Mr. Lubanga Dyilo and that there would be no prospect that their claims for reparation against him be adjudicated by the Trial Chamber. The Legal Representatives recall the statements of the Trial Chamber at paragraph 95 of the Impugned Decision, which had found *inter alia* that “by staying these proceedings the victims have, in this sense, been excluded from justice.”

4. Mr. Lubanga Dyilo filed the “Réponse de la Défense à la ‘Demande de participation dans la procédure en appel contre la décision du 13 juin 2008 de la Chambre de Première Instance I ordonnant la suspension de la procédure’ datée du 16 juillet 2008” dated 29 July 2008 (ICC-01/04-01/06-1449; hereinafter: “Response by the Defence”). He opposes the applications for participation and requests that they be rejected. He submits that the victims have not established that their participation would be appropriate and that their participation would not be inconsistent with or prejudicial to the rights of the accused (Response by the Defence, paragraph 8). He notes that the appeal concerns solely the procedural obligations of the Prosecutor and the rights of the accused, but not the substance of the case against Mr. Lubanga Dyilo, and submits that the appeal does not relate to the exercise of the rights of victims (Response by the Defence, paragraph 9). Mr. Lubanga Dyilo underlines that article 68 (3) of the Statute does not grant victims an unlimited right to participate; he submits that the present appeal concerns only the right of the accused to a fair trial and therefore does not affect the personal interests of the victims; their participation in the present appeal could put the accused’s rights into peril (Response by the Defence, paragraph 9).

5. The Prosecutor filed the “Prosecution’s Response to Application by Victims to Participate in the Appeal against Decision to Stay Proceedings” dated 29 July 2008 (ICC-01/04-01/06-1450; hereinafter: “Response by the Prosecutor”). The Prosecutor requests the Appeals Chamber to grant the Application for Participation, submitting that the stay of the proceedings directly impacted “on the ability of those victims who have been permitted to participate to realise their recognised interests in the case” (Response by the Prosecutor, paragraph 11). He submits furthermore that the Impugned Decision formed

the basis for the Trial Chamber's "Decision on the release of Thomas Lubanga Dyilo" of 2 July 2008 (ICC-01/04-01/06-1418), and that the release of a suspect had previously been found by the Appeals Chamber to affect the personal interests of victims (Response by the Prosecutor, paragraph 12).

II. DETERMINATION BY THE APPEALS CHAMBER

6. For the following reasons, the Appeals Chamber decides that victims a/0001/06, a/0002/06, and a/0003/06 may participate in the present appeal by making written submission for the purpose of presenting their views and concerns respecting their personal interests in the issues raised on appeal.

7. In the "Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled 'Decision on Victims' Participation'" of 16 May 2008 (ICC-01/04-01/06-1335; hereinafter: "Decision of 16 May 2008"), the Appeals Chamber explained that there are four criteria that need to be considered in respect of applications by victims for participation in appeals brought under article 82 (1) of the Statute, namely:

(i) whether the individuals seeking participation are victims in the case (ii) whether they have personal interests which are affected by the issues on appeal, (iii) whether their participation is appropriate and lastly (iv) that the manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

8. In the present case, all the criteria for participation are fulfilled. First of all, the Appeals Chamber notes that Pre-Trial Chamber I determined that the three victims were victims in the case against Mr. Lubanga Dyilo in the decision of 28 July 2006 (ICC-01/04-01/06-228). Their status was accepted by the Trial Chamber and the three victims have also participated in the proceedings before the Trial Chamber, including in those concrete proceedings that gave rise to the present appeal (see Impugned Decision, paragraph 55).

9. Secondly, 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; while the arguments on appeal are likely to relate to the obligations of the Prosecutor and the right of Mr. Lubanga Dyilo to a fair trial, the repercussions of the appeal on the personal interests of the three victims are considerable.

10. Thirdly, the Appeals Chamber considers that the participation of the Victims in the present appeal is appropriate, in particular in light of the consequences that the outcome of the present appeal may have.

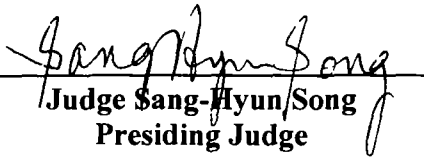
11. Finally, in respect of the manner of participation, the Appeals Chamber recalls paragraph 50 of the Decision of 16 May 2008, where the Appeals Chamber found that:

[I]n ordering the manner of participation of victims to comply with the rights of the Defence to a fair and impartial trial, the Appeals Chamber will limit the victims to presenting their views and concerns respecting their personal interests solely to the issues raised on appeal. Observations to be received by the victims must be specifically relevant to the issues arising in the appeal and to the extent that their personal interests are affected by the proceedings.

12. The Appeals Chamber considers that participation of the three victims in the present case in the same manner, i.e. limited to the presentation of their views and concerns respecting their personal interests solely relating to the issues raised by the parties in the appeal, is consistent with the rights of the accused and a fair and impartial trial.

Judge Sang-Hyun Song appends a separate opinion to this decision. The position of Judge Georgios M. Pikis on the issues raised, their resolution and the outcome of the application for participation will be set out in an opinion to be filed shortly.

Done in both English and French, the English version being authoritative.


Judge Sang-Hyun Song
Presiding Judge

Dated this 6th day of August 2008

At The Hague, The Netherlands

Separate Opinion of Judge Sang-Hyun Song

1. For reasons first expressed in my “Separate and partly dissenting opinion of Judge Sang-Hyun Song and reasons for dissent from the order of the Appeals Chamber of 20 March 2008” of 16 May 2008 (ICC-01/04-01/06-1335, pp. 18 to 22), I disagree with the approach of the majority to participation of victims in appeals brought under article 82 (1) (d) of the Statute. In my view, victims a/0001/06, a/0002/06 and a/0003/06 have a right to file a response to the Document in Support of the Appeal pursuant to regulations 64 (4) and 65 (5) of the Regulations of the Court, as they were participants in the proceedings that gave rise to the present appeal.
2. I nevertheless agree with the result of today’s decision of the Appeals Chamber. The three victims have, in my view, a right to file a response; therefore, they are allowed to participate in the appeal.


Judge Sang-Hyun Song

Dated this 6th day of August 2008

At The Hague, The Netherlands

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-01/04-01/06 OA 13**

Date: **29 August 2008**

THE APPEALS CHAMBER

Before:
Judge Sang-Hyun Song, Presiding Judge
Judge Philippe Kirsch
Judge Georghios M. Pikis
Judge Navanethem Pillay
Judge Erkki Kourula

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

THE PROSECUTOR v. THOMAS LUBANGA DYILO

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Decision on the participation of victims in the appeal

Dissenting Opinion of Judge Georghios M. Pikis



Decision/Order/Judgment 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 Biju-Duval

REGISTRY

Registrar

Ms Silvana Arbia



1. On 13 June 2008, Trial Chamber I ordered the stay of criminal proceedings against the accused, bringing to a halt his trial for the crimes under the Statute for which he was indicted. The Trial Chamber ordered stay because “the trial process has been ruptured to such a degree that it is now impossible to piece together the constituent elements of a fair trial”¹. In coming to its decision, guidance was derived, *inter alia*, from the decision of the Appeals Chamber of 14 December 2006², the following passage in particular:

Where the breaches of the rights of the accused are such as to make it impossible for him/her to make his/her defence within the framework of his rights, no fair trial can take place and the proceedings can be stayed. To borrow an expression from the decision of the English Court of Appeal in *Huang v. Secretary of State*, it is the duty of a court: “to see to the protection of individual fundamental rights which is the particular territory of the courts [...]” Unfairness in the treatment of the suspect or the accused may rupture the process to an extent making it impossible to piece together the constituent elements of a fair trial. In those circumstances, the interest of the world community to put persons accused of the most heinous crimes against humanity on trial, great as it is, is outweighed by the need to sustain the efficacy of the judicial process as the potent agent of justice.³

The Trial Chamber did not resolve other issues posed before it, considering that stay rendered them redundant, adding, “However, if the stay on the proceedings is lifted hereafter, at that stage these matters will be resolved”.⁴ Such issues might, as the Trial Chamber says, become live only if stay is lifted.

2. On 2 July, the Trial Chamber granted the Prosecutor leave to appeal the decision to stay the proceedings on the following issues:

¹ *Prosecutor v Lubanga Dyilo* “Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008” 13 June 2008 (ICC-01/04-01/06-1401), para. 93.

² *Prosecutor v Lubanga Dyilo* “Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006” 14 December 2006 (ICC-01/04-01/06-772), para. 39.

³ *Ibid*

⁴ *Ibid.*, para. 97.



a. Whether the Trial Chamber erred in the interpretation of the scope and nature of Article 54(3)(e) of the Statute and in its characterization of the Prosecution's use of it as constituting "a wholesale and serious abuse, and a violation of an important provision which was intended to allow the prosecution to receive evidence confidentially, in very restrictive circumstances".

b. Whether the Trial Chamber erred in the interpretation and exercise of its authority under Article 64 of the Statute; whether the Chamber correctly determined that its obligation to ensure the accused receives a fair trial is dependent on the prosecution disclosing any potentially exculpatory evidence to the defence under Article 67(2) of the Statute (having first delivered the evidence in full to the Chamber for review and decision in case of doubt); and whether it imposed a premature and erroneous remedy in the form of a stay of the proceedings.⁵

In the submission of the Prosecutor, the decision of the Trial Chamber on the issues raised is fraught with errors that vitiate the order made, meriting its reversal on appeal.

3. Following the lodgement of the appeal, wherein the errors allegedly faulting the sub judice decision are articulated, the legal representatives of victims requested the leave of the Appeals Chamber to participate in the appeal proceedings, claiming legitimisation to do so on account of the affection of their personal interests. Such interests derive from the implications that stay may have on a contingent claim to reparations against the accused, adding that their participation will in no way be prejudicial to his rights.

4. The claim of victims to participate is opposed by the defendant, respondent to the appeal, because of failure on their part to identify a personal interest affected by the proceedings in hand. Moreover, such a course would, as submitted, be prejudicial to and inconsistent with the rights of the accused. The appeal, as suggested, concerns solely the right of the accused to a fair trial and the consequences of failure to ensure such a trial.

5. The Prosecutor supports the application of the victims. Their personal interests, he contends, are affected by the proceedings, a position that finds support in the judgment of

⁵ *Prosecutor v Lubanga Dyilo* "Decision on the Prosecution's Application for Leave to Appeal the 'Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused'" 2 July 2008 (ICC-01/04-01/06-1417), para. 32.

the Appeals Chamber of 13 February 2007⁶. The appeal in that case was directed against the decision of the Pre-Trial Chamber denying the application of the arrestee for interim release⁷. As can be gathered from the judgment in the above case, the risks to which victims would be exposed by the interim release of the person arrested provided the *raison d'être* for their participation, limited, as stressed, to voicing their views and concerns as to the consequences that release might have on the victims. The fairness of the proceedings was not at issue in the above case. The subject of the proceedings related to the implications of the release of a person against whom there were, according to a judicial decision, reasonable grounds to believe that he committed a crime within the jurisdiction of the Court. The proceedings in that case were in progress.

At issue in these proceedings is the soundness of the decision to stay the proceedings on the ground that a fair trial could not be held.

6. The requisites for victim participation in appeal proceedings and the course such participation may take were addressed, in addition to the aforesaid case, in two other decisions of the Appeals Chamber, those of 13 June 2007⁸ and 16 May 2008⁹.

I. DETERMINATION OF THE APPLICATION

7. The crucial question is whether the personal interests of the victims are affected by the present proceedings; put another way, whether victims have a legitimate interest to participate. The proceedings were, to use the wording of the Trial Chamber, "halted" because a fair trial was impossible owing to breach of the rights of the accused safeguarded by the Statute. Article 67 (2) assures to the accused the right to be informed of exculpatory evidence in the hands of the Prosecutor, and binds the latter to disclose

⁶ *Prosecutor v Lubanga Dyilo* "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo'" 13 February 2007 (ICC-01/04-01/06-824).

⁷ *Prosecutor v Lubanga Dyilo* "Decision on the Application for the interim release of Thomas Lubanga Dyilo" 18 October 2006 (ICC-01/04-01/06-586-tEN).

⁸ *Prosecutor v Lubanga Dyilo* "Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the 'Directions and Decisions of the Appeals Chamber' of 2 February 2007" 13 June 2007 (ICC-01/04-01/06-925).

⁹ *Prosecutor v Lubanga Dyilo* "Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled 'Decision on Victims' Participation'" 16 May 2008 (ICC-01/04-01/06-1335).

such evidence to him. Failure on the part of the Prosecutor to make disclosure of such evidence, be it due to the conditions under which the evidence was received (article 54 (3) (f) of the Statute), made a fair trial impossible, as the Chamber held, so the proceedings were halted. The question on appeal is whether the holding of a fair trial had been made impossible in the circumstances of the case, especially by the failure or inability of the Prosecutor to disclose to the accused exculpatory evidence in his possession. Do victims have a personal interest in the matter of the fairness of the proceedings?

8. The right of a victim to participate presupposes the existence of pending proceedings, conducted according to the norms of a fair trial, the only premise upon which the verdict of the court can be founded. The right to reparations against the accused is contingent upon conviction resulting from a fair trial.

The Court is the guardian of the fairness of the judicial process, dependent in large measure upon the discharge of the investigatory and prosecutorial duties of the Prosecutor, upon whom the burden of proof lies (article 66 (2) of the Statute). The rights of the person under investigation and those of the accused, along with their sustenance, are vital components of a fair trial. The accused is entitled to assert his rights at the trial and confront his adversary, the Prosecutor, with breaches of them. In my partly dissenting opinion of 11 July 2008 in “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”¹⁰, the following was said: “The Prosecutor is the only authority the accused has to confront in relation to the charges. The two sides are locked into a conflict upon the denial of the charges by the accused”¹¹. Further down, it was stated: “A fair trial entails an adversarial hearing, warranted, *inter alia*, by the rights of the accused, the sustenance of which is an inseparable element of a fair trial”¹². In his partly dissenting opinion in the same case, Judge Kirsch states, “First, this conclusion results in the accused being faced by one Prosecutor, in accordance with the scheme of the Statute, rather than, potentially,

¹⁰ *Prosecutor v Lubanga Dyilo* “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008” 11 July 2008 (ICC-01/04-01/06-1432).

¹¹ *Ibid.*, para. 12.

¹² *Ibid.*, para. 13.



multiple accusers. Significant in this context are the provisions of article 66 (2) of the Statute, making it clear that it is the Prosecutor who bears the onus of proving guilt at the trial, entailing the related responsibility to lead evidence as to guilt or innocence at trial”¹³.

Victims, as well as the public at large, have a common interest in the holding of a fair trial. A fair trial entails an adversarial hearing, confining participation in the determination of the presence or absence of the requisites of a fair trial to the adversaries in the cause, the parties to the proceedings. Victim participation in the proceedings is incidental to the efficacy of the proceedings and not supplementary thereto.

9. In its decision of 13 June 2007¹⁴, the Appeals Chamber held that victims had no legitimate ground to participate in the determination of the admissibility of an appeal directed against a decision of the Pre-Trial Chamber to confirm the charges. As the Appeals Chamber pointed out in the majority decision, “Even when the personal interests of victims are affected within the meaning of article 68 (3) of the Statute, the Court is still required, by the express terms of that article, to determine that it is appropriate for their views and concerns to be presented at that stage of the proceedings and to ensure that any participation occurs in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”¹⁵. In my separate opinion, I debated at length the implications of victim participation in proceedings before the court. In answer to the question, “In relation to what can victims express their views and concerns,”¹⁶ I gave the following answer: “Not in relation to the proof of the case or the advancement of the defence. The burden of proof of the guilt of the accused lies squarely with the Prosecutor (article 66 (2) of the Statute). Provision is made in the Statute (article 54 (1)) for the Prosecutor to seek and obtain information from victims about the facts surrounding the crime or crimes forming the subject-matter of the proceedings. That the judicial process

¹³ *Prosecutor v Lubanga Dyilo* “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, Partly Dissenting Opinion of Judge Philippe Kirsch” 23 July 2008 (ICC-01/04-01/06-1432-Anx) para. 24.

¹⁴ *Prosecutor v Lubanga Dyilo* “Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the ‘Directions and Decisions of the Appeals Chamber’ of 2 February 2007” 13 June 2007 (ICC-01/04-01/06-925).

¹⁵ *Ibid.*, para. 28.

¹⁶ *Ibid.*, para. 16.



should follow its ordained course is a cause common to all; its sustenance is the responsibility of the Court, the guardian of the judicial process. It is not the victims' domain either to reinforce the prosecution or dispute the defence"¹⁷.

To my mind, victims can have no say in a matter relating to the proper conduct of the proceedings. In the above case, the issue was whether the appeal was legally acceptable. The Appeals Chamber held that victims could not validly claim a personal interest to be heard in the matter.

10. In conclusion, the very participation of victims is dependent on the existence of viable proceedings. It is within that context that they may voice their views and concerns incidental to the subject-matter of the proceedings. Viable proceedings are proceedings conforming to the norms of a fair trial. The duty to disclose evidence to the accused falls on the shoulders of the Prosecutor, the only party other than the accused with a right to be heard in relation to its discharge and the consequences that failure to disclose may entail. There is equality of arms between the two parties to the proceedings. Acknowledging an interest individuating to victims in relation to the holding of a fair trial would equate them with a party to the cause, which they are not. The holding of a fair trial is a prerequisite for the participation of victims, the only context within which victims may voice their views and concerns respecting personal interests affected by the proceedings.

11. For the aforesaid reasons, I would dismiss the application of the victims to participate in the pending appeal proceedings.

Done in both English and French, the English version being authoritative.



Judge Georghios M. Pikis

Dated this 29th day of August 2008

At The Hague, The Netherlands

¹⁷ *Ibid.*, para. 16.