

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/04-01/06 OA 18

Date: 18 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

**Decision on the Participation of Victims in the Appeal against Trial Chamber I's
Decision to Stay the Proceedings**

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Paul Kabongo Tshibangu
Ms Carine Bapita Buyangandu
Mr Luc J. M. Walley

REGISTRY

Registrar

Ms Silvana Arbia

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The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber I entitled “Decision on the Prosecution’s Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with VWU” of 8 July 2010 (ICC-01/04-01/06-2517),

Having before it the “Request for Participation in the Appeal against the Decision to Stay Proceedings for Abuse of Process of 8 July 2010 (ICC-01/04-01/06-2517-Conf) and against the Decision to Release the Accused of 15 July 2010 (ICC-01/04-01/06-T-314)” of 22 July 2010 (ICC-01/04-01/06-2533-Conf) and the “Demande de participation dans la procédure d’appel contre la décision du 8 juillet 2010 de suspendre la procédure” of 28 July 2010 (ICC-01/04-01/06-2541),

After deliberation,

Unanimously,

Renders the following

DECISION

1. 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 are granted the right to participate in the present appeal for the purpose of presenting their views and concerns with respect to their personal interests in the issues raised in the appeal. They may file their submissions by 16h00 on 24 August 2010.
2. The Prosecutor and Mr Lubanga Dyilo may file their responses to the submissions of the victims by 16h00 on 30 August 2010.

REASONS

I. RELEVANT PROCEDURAL HISTORY AND SUMMARY OF ARGUMENTS

1. On 8 July 2010, Trial Chamber I rendered the “Decision on the Prosecution’s Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with VWU”¹ (hereinafter: “Impugned Decision”), staying the proceedings against Mr Lubanga Dyilo.

2. On 14 July 2010, the Prosecutor filed the “Urgent Prosecution’s Application for Leave to Appeal the Trial Chamber I’s decision of 8 July 2010 staying the proceedings for abuse of process”.² On 15 July 2010, the Trial Chamber granted the Prosecutor leave to appeal the Impugned Decision.³

3. On 22 July 2010, Mr Paul Tshibangu and Ms Carine Bapita Buyangandu filed the “Request for Participation in the Appeal against the Decision to Stay Proceedings for Abuse of Process of 8 July 2010 (ICC-01/04-01/06-2517-Conf) and against the Decision to Release the Accused of 15 July 2010 (ICC-01/04-01/06-T-314)”⁴ (hereinafter: “First Application”). They argue that the security of the victims who they represent is at risk,⁵ because Mr Lubanga Dyilo might continue to commit the alleged crimes against them since their identities are known to him.⁶ They also contend that the possible release of Mr Lubanga Dyilo will make the victims less enthusiastic about presenting their views and concerns should the trial resume.⁷

4. On 28 July 2010, Mr Luc Walleyen filed the “Demande de participation dans la procédure d’appel contre la décision du 8 juillet 2010 de suspendre la procédure”⁸ (hereinafter: “Second Application”). Mr Walleyen argues that the victims who he represents have a personal interest in the appeal since it could terminate their

¹ ICC-01/04-01/06-2517.

² ICC-01/04-01/06-2520-Conf. A public redacted version was filed on the same day as ICC-01/04-01/06-2520-Red.

³ ICC-01/04-01/06-T-314.

⁴ ICC-01/04-01/06-2533-Conf-tENG.

⁵ First Application, para. 6.

⁶ First Application, para. 8.

⁷ First Application, para. 10.

⁸ ICC-01/04-01/06-2541.

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participation and affect their claim for compensation and reparation.⁹ He further submits that as the stay of proceedings is accompanied by an order for the release of Mr Lubanga Dyilo, it could have implications for the safety of some of the victims he represents.

5. On 6 August 2010, the Prosecutor filed the “Prosecution’s consolidated response to applications by Legal Representatives of victims to participate in the appeals against the decisions to stay the proceedings and to release the accused”¹⁰ (hereinafter: “Prosecutor’s Response”). The Prosecutor does not oppose the participation of the victims who have been granted victim status by the Trial Chamber in both the appeal against the decision to release Mr Lubanga Dyilo and against the Impugned Decision.¹¹ The Prosecutor draws attention to the fact that five of the victims represented by Mr Walleyne have not yet been granted victim status in the case.¹²

6. On 16 August 2010, Mr Lubanga Dyilo filed the “Observation de la Défense sur les demandes des victimes aux fins de participation à l’appel de la Décision du 8 juillet 2010 ordonnant la suspension des procédures”¹³ (hereinafter: “Mr Lubanga Dyilo’s Response”). Mr Lubanga Dyilo states that with the exception of victims a/0149/06, a/0303/08, a/0609/08, a/0610/09 and a/0611/09, who have not yet been granted victim status in the case, he does not oppose the victims’ applications for participation in the appeal.¹⁴ He reserves the right to respond to the victims’ observations, should the Appeals Chamber grant their applications.¹⁵

II. DETERMINATION BY THE APPEALS CHAMBER

7. To participate in an appeal under article 82 (1) (d) of the Statute, victims must meet the following criteria: (1) they must be victims in the case; (2) their personal interests must be affected by the issues on appeal; (3) their participation must be at an appropriate stage of the proceedings; and (4) the manner of participation should

⁹ Second Application, para. 4.

¹⁰ ICC-01/04-01/06-2549.

¹¹ Prosecutor’s Response, para. 3.

¹² Prosecutor’s Response, para. 13.

¹³ ICC-01/04-01/06-2554.

¹⁴ Mr Lubanga Dyilo’s Response, paras 7-8.

¹⁵ Mr Lubanga Dyilo’s Response, para. 10.

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neither cause prejudice to nor be inconsistent with the rights of the accused and a fair and impartial trial.¹⁶

8. The Appeals Chamber notes that victims a/0149/06, a/0303/08, a/0609/08, a/0610/09, and a/0611/09 have not been granted victim status in the case. Accordingly, their application for participation in the present appeal is rejected.

9. The Appeals Chamber notes that the other victims have been granted victim status in the case¹⁷ and considers that these victims satisfy the remaining requirements for participation. Regarding their personal interests, the Appeals Chamber finds that a decision to stay the proceedings impacts the victims' ability to present their views and concerns and could ultimately preclude them from the opportunity to claim reparations, should the accused be convicted.¹⁸ The Appeals Chamber also considers that the present appeal is an appropriate stage of the proceedings for their participation. As to the manner of participation, the Appeals Chamber decides that the victims may participate in the present appeal by making written submissions limited to their views and concerns with respect to their personal interests relating to the issues raised in this appeal. The Appeals Chamber further considers that the participation of the victims in the present appeal, in the manner prescribed, is not inconsistent with the rights of the accused and a fair and impartial trial. Furthermore, Mr Lubanga Dyilo and the Prosecutor will have the right to respond to the views and concerns of the victims pursuant to rule 91 (2) of the Rules of Procedure and Evidence. Should the Appeals Chamber consider that an oral hearing is necessary, it will decide on the manner in which the victims may participate in the hearing, at that time.

10. Therefore, the Appeals Chamber grants 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,

¹⁶ See "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 (OA9 and OA 10), para. 36.

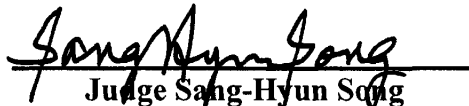
¹⁷ "Decision on the applications by victims to participate in the proceedings", 15 December 2008, ICC-01/04-01/06-1556-Corr-Anx1, para. 137; "Decision on the applications by 3 victims to participate in the proceedings", 18 December 2008, ICC-01/04-01/06-1562, para. 13; "Decision on the applications by 7 victims to participate in the proceedings", 10 July 2009, ICC-01/04-01/06-2035, para. 34; "Decision on the application by 2 victims to participate in the proceedings", 10 September 2009, ICC-01/04-01/06-2115, para. 12.

¹⁸ See also "Decision on the participation of victims in the appeal", 6 August 2008, ICC-01/04-01/06-1453 (OA 13), para. 9.

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 the right to participate in the present appeal for the purpose of presenting their views and concerns with respect to their personal interests in the issues raised in the appeal.

Judge Sang-Hyun Song appends a separate opinion to this decision.

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



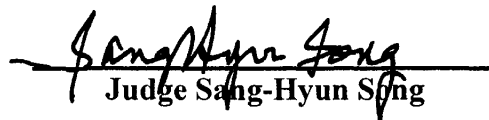
Judge Sang-Hyun Song
Presiding Judge

Dated this 18th day of August 2010

At The Hague, The Netherlands

Separate Opinion of Judge Sang-Hyun Song

I agree with the majority that the victims specified in the operative part of the present decision should be allowed to make submissions on the appeal. However, as constantly expressed since my first dissenting opinion on this issue of 13 February 2007,¹ 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 who have been permitted to participate in proceedings giving rise to an appeal under that provision are participants in terms of regulations 64 (4) and 65 (5) of the Regulations of the Court. They therefore have the right to file a response to the document in support of the appeal. There is neither a need for them to apply for participation, nor for the Appeals Chamber to rule on such applications.


Judge Sang-Hyun Song

Dated this 18th day of August 2010

At The Hague, The Netherlands

¹ *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “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’”, ICC-01/04-01/06-824 (OA 7), pp. 55-57.