



Original: **French**

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

Date: **2 February 2007**

THE APPEALS CHAMBER

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

REGISTRAR: Mr Bruno Cathala

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

**Public
URGENT**

**Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the
“Directions and Decision of the Appeals Chamber”, filed on 1 February 2007**

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia, Senior Appeals
Counsel
Mr Ekkehard Withopf, Senior Trial Lawyer

**Legal Representatives of Victims a/0001/06
to a/0003/06**

Mr Luc Walley
Mr Franck Mulenda

Legal Representative of Victim a/0105/06

Ms Carine Bapita Buyangandu

Counsel for Thomas Lubanga Dyilo

Mr Jean Flamme
Mr Geoff Roberts
Ms Véronique Pandanzyla

The Office of Public Counsel for Victims

Ms Paolina Massidda

NOTING the “Decision on the applications for participation in the proceedings of a/0001/03, a/0002/03 and a/0003/03 in the case of *The Prosecutor v. Thomas Lubanga Dyilo* and of the investigation in the Democratic Republic”, rendered by Pre-Trial Chamber I on 28 July 2006 in which it “decide[d] that the status of victim is granted to Applicants a/0001/06, a/0002/03 and a/0003/03 at the stage of the case of *The Prosecutor v. Thomas Lubanga Dyilo*,”¹

NOTING the “Decision on applications for participation in proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 in the case of *The Prosecutor v. Thomas Lubanga Dyilo*”, rendered by Pre-Trial Chamber I on 20 October 2006 in which it “decide[d] that victim status is granted to Applicant a/0105/06 at this stage of the case of *The Prosecutor v. Thomas Lubanga Dyilo*”² on the same terms as those granted to victims a/0001/06 to a/0003/06;³

NOTING the “Décision sur la confirmation des charges”, rendered by Pre-Trial Chamber I on 29 January 2007;⁴

NOTING the “Defence Appeal Against the Pre-Trial Chamber’s ‘Décision sur la confirmation des charges’ of 29 January 2007” of 30 January 2007;⁵

¹ See “Decision on the applications for participation in the proceedings of a/0001/03, a/0002/03 and a/0003/03 in the case of *The Prosecutor v. Thomas Lubanga Dyilo* and of the investigation in the Democratic Republic”, No. ICC-01/04-01/06-228, 28 July 2006, p. 16.

² See “Decision on applications for participation in proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 in the case of *The Prosecutor v. Thomas Lubanga Dyilo*”, No. ICC-01/04-01/06-601, 20 October 2006, p. 13.

³ *Ibid.*, p. 13.

⁴ The public version of this decision was not available at the time of the drafting of this submission.

⁵ See “Defence Appeal Against the Pre-Trial Chamber’s ‘Décision sur la confirmation des charges’ of 29 January 2007”, No. ICC-01/04-01/06-797, 30 January 2007.

NOTING the “Urgent Defence Request for Extension of Time and Page Limits for Brief in Support of Appeal Against the ‘Décision sur la confirmation des charges’” of 30 January 2007;⁶

NOTING the “Directions and Decision of the Appeals Chamber” of 1 February 2007;⁷

NOTING regulation 24(2) of the Regulations of the Court.

The Legal Representatives of Victims a/0001/06 to a/0003/06 and a/0105/06 (the “Legal Representatives”) note that regulation 86(8) of the Regulations of the Court provides that “[a] decision taken by a Chamber under rule 89 shall apply throughout the proceedings *in the same case*,⁸ subject to the powers of the relevant Chamber in accordance with rule 91, sub-rule 1”.

The principle set out in rule 89(1) of the Rules of Procedure and Evidence reflects the general principle set out in article 68(3) of the Rome Statute under which victims may participate in proceedings in order to present their views and concerns where their personal interests are affected.

The Legal Representatives of the Victims submit that in the absence of any decision of the Appeals Chamber relating to participation, Victims a/0001/06 to a/0003/06 and

⁶ See “Urgent Defence Request for Extension of Time and Page Limits for Brief in Support of Appeal Against the ‘Décision sur la confirmation des charges’”, No. ICC-01/04-01/06-798, 30 January 2007.

⁷ See “Directions and Decision of the Appeals Chamber”, No. ICC-01/04-01/06-800 OA8, 1 February 2007.

⁸ Emphasis added.

a/0105/06 should be considered as participants in the proceedings and, in fact, may respond to any filing made by the other participants.

This interpretation of regulation 86-8 of the Regulations of the Court is in no way prejudicial to or inconsistent with the rights of the Defence and the requirements of a fair and impartial trial. Moreover, any other interpretation of this regulation would require the Victims to submit a new application for participation in any appeal proceedings, although this appeal by the Defence flows directly from the confirmation hearing in which Victims a/0001/06 to a/0003/06 and a/0105/06 were authorized to participate.⁹

In addition, it should be noted that Pre-Trial Chamber I granted victim status to applicants a/0001/06 to a/0003/06 and a/0105/06 “at this stage of the **case** of *The Prosecutor v. Thomas Lubanga Dyilo*”¹⁰ upon determining that the harm alleged resulted from the commission of the crimes set forth in the warrant of arrest issued against Thomas Lubanga Dyilo. This conclusion cannot differ at this stage of the proceedings, as there has been no intervening new fact. Moreover, Pre-Trial Chamber I confirmed the charges brought against Mr Lubanga Dyilo, with regard to a time frame which directly affects the interests of the victims.¹¹

The interests of the Victims in participating in these appeal proceedings is obvious, as the appellant is requesting, *inter alia*, that the decision confirming the charges be quashed. Such a decision would mean the end of the prosecution and, as such, would

⁹ See “Decision on the Arrangements for Participation of Victims a/0001/06, a/0002/06 and a/0003/06 at the Confirmation Hearing”, No. ICC-01/04-01/06-462, 22 September 2006. See also “Decision on applications for participation in the proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 in the case of *The Prosecutor v. Thomas Lubanga Dyilo*”, *op. cit. supra* footnote 2, p. 13.

¹⁰ See *supra* footnotes 1, 2 and 3. Emphasis added.

¹¹ The public version of this decision was not available at the time of the drafting of this submission.

preclude any possibility for the Victims to later seek compensation for the harm they have suffered.

FOR THESE REASONS,

MAY IT PLEASE THE APPEALS CHAMBER:

To authorise Victims a/0001/06 to a/0003/06 and a/0105/06 to file, within a time limit to be set by the Chamber, a response to the submission of the Defence as stated in paragraph 3 of the “Directions and Decision” of the Appeals Chamber.

Generally, and, if need be, to authorise, on such terms as the Court may see fit, their Legal Representatives to participate in the appeal proceedings, in particular, by submitting written observations on any issue raised by the Prosecution or the Defence that affects their interests.

Luc Walley and Franck Mulenda (absent when signed)
Legal Representatives of Victims a/0001/06, a/0002/06, a/0003/06

Carine Bapita Buyangandu
Legal Representative of Victim a/0105/06

DATED this 2 February 2007, at Brussels, Belgium, and at The Hague, The Netherlands.