



Original: **French**

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

Date: **7 April 2008**

**THE APPEALS CHAMBER**

**Before:** Judge Navi Pillay, Presiding Judge  
Judge Philippe Kirsch, Judge  
Judge Georgios M. Pikis, Judge  
Judge Sang-Hyun Song, Judge  
Judge Erkki Kourula, Judge

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

**Public Document**

**Defence Response to the “Order of the Appeals Chamber on the Date of Filing of Applications for Participation by Victims and on the Time of Filing of the Responses thereto by the Prosecutor and the Defence” dated 20 March 2008**

**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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**Other**

## **BACKGROUND**

1. On 10 March 2003, the Defence and the Prosecutor filed their briefs on appeal against Trial Chamber I's decision on victims' participation.<sup>1</sup>
2. On 12 March 2008, the Defence received the "*Demande des victimes a/0001/06, a/0002/06, a/0003/06 à participer à la procédure relative aux appels du Procureur et de la défense contre la décision du 18 janvier 2008 de la Chambre de Première Instance I sur la participation des victimes*".<sup>2</sup>
3. On 18 March 2008, acting as representative of applicants for the status of victim, the OPCV applied to the Chamber for leave to submit observations within the framework of this appeal.<sup>3</sup>
4. On 20 March 2008, the Appeals Chamber rendered the "Order of the Appeals Chamber on the date of filing of application for participation by victims and on the time of the filing of the responses thereto by the Prosecutor and the Defence".<sup>4</sup>
5. On 19 March 2008, the legal representatives of Applicants a/009/06, a/0106/06, a/0107/06 and a/0108/06 submitted an application for leave to participate in the appeal against the Decision of 18 January 2008.<sup>5</sup>

## **SUBMISSIONS**

### **A – The application for participation in the appeal of a/0001/06, a/0002/06 and a/0003/06**

6. The Defence will not submit any observations on the application of Victims a/0001/06, a/0002/06 and a/0003/06 to participate in the proceedings relating to the Prosecution and Defence appeals against the 18 January 2008 Decision on victims' participation.

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<sup>1</sup> ICC-01/04-01/06-1220 and ICC-01/04-01/06-1219.

<sup>2</sup> ICC-01/04-01/06-1222.

<sup>3</sup> ICC-01/04-01/06-1228.

<sup>4</sup> ICC-01/04-01/06-1239.

<sup>5</sup> ICC-01/04-01/06-1241.

**B – The OPCV’s application to participate in the appeal in its capacity as representative of applicants for the status of victim**

7. A person can only be considered to be a victim after being recognised as such, *prima facie*, by a decision of the Trial Chamber rendered as a result of the procedure defined in regulation 86 of the *Regulations of the Court*.
8. It follows from the combined provisions of rules 89, 91 and 93 of the *Rules of Procedure and Evidence* that victims cannot submit observations until after they have been authorised to participate in the proceedings.
9. The Trial Chamber has always refused to grant the right to submit observations to applicants for the status of victim who have not yet been authorised to participate in the proceedings.<sup>6</sup>
10. Furthermore, the Single Judge emphasised that applicants for the status of victim who have not yet been authorised to participate in the proceedings do not have the required standing to submit observations or to lodge an appeal against a decision, even if the decision is of direct interest to them.<sup>7</sup>
11. Contrary to the representations of the OPCV, the decision rendered by the Appeals Chamber on 13 February 2008 in the situation in the DRC did not by any means determine the issue of whether the applicants for the status of victim not yet authorised to participate in the proceedings are authorised to participate in the appeal.<sup>8</sup>
12. Accordingly, in the absence of a decision by the Trial Chamber authorising the applicants represented by the OPCV to participate in the proceedings, this application for participation is manifestly inadmissible.

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<sup>6</sup> ICC-01/04-01/06-1005-Conf, ICC-01/04-01/06-1004. See also, for instance, decision ICC-01/04-164-tENG of the Pre-Trial Chamber.

<sup>7</sup> ICC-01/04-437 and ICC-01/04-444.

<sup>8</sup> ICC-01/04-01/06-450.

**C – The application for participation of Applicants a/0009/06, a/0106/06, a/0107/06 and a/0108/06**

13. The Pre-Trial Chamber granted Applicants a/0009/06, a/0106/06, a/0107/06 and a/0108/06 the status of victim in the situation in the Democratic Republic of the Congo at the investigation stage.<sup>9</sup>
14. Applicants a/0009/06, a/0106/06, a/0107/06 and a/0108/06 have not been authorised to participate in the proceedings against Mr Thomas Lubanga.
15. The Legal Representative of these four applicants had initially sought leave to submit observations on issues relating to the participation of victims before the Trial Chamber during the hearing of 29 to 31 October 2007.<sup>10</sup> This application for participation was rejected by the Chamber.<sup>11</sup> The Chamber had expressly announced that only persons who had been granted the status of victim before the Pre-Trial Chamber could participate in the hearing of 29 to 31 October 2007.
16. Accordingly, since the four applicants have not been admitted to participate in the proceedings against Mr Thomas Lubanga, their application is manifestly inadmissible. In this regard, the Defence reiterates the submissions set out in paragraphs 7 to 12.

**FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER**

To reject the application for participation of the OPCV as legal representative of applicants for the status of victim who have not yet been admitted to participate in the proceedings.

To reject the application for participation of the Legal Representatives of applicants a/009/06, a/0106/06, a/0107/06 and a/0108/06.

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<sup>9</sup> ICC-01/04-423.

<sup>10</sup> ICC-01/04-01/06-1000.

<sup>11</sup> ICC-01/04-01/06-1005-Conf.

[signed]

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Ms Catherine Mabilie, Lead Counsel

Dated this 7 April 2007

At The Hague