



Original: **French**

No.: **ICC-01/04-01/07**

Date: **4 May 2010**

THE APPEALS CHAMBER

Before: Judge Daniel David Ntanda Nsereko, Presiding Judge
 Judge Sang-Hyun Song
 Judge Akua Kuenyehia
 Judge Erkki Kourula
 Judge Anita Ušacka

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF

THE PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI

Public Document

Joint Application by the Legal Representatives of the Victims to Participate in the Proceedings Pertaining to the Appeal of the Defence for Germain Katanga Against the Decision of 22 January 2010 on the Modalities of Victim Participation at Trial

Source: The Legal Representatives of the Victims

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

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REGISTRY

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1. On 20 November 2009, Trial Chamber II issued a decision entitled *Directions for the conduct of the proceedings and testimony in accordance with rule 140*.¹
2. On 22 January 2010, that same Chamber issued a *Decision on the Modalities of Victim Participation at Trial*.²
3. On 1 February 2010, the Defence for Germain Katanga ("the Defence") sought leave to appeal that decision.³
4. The Legal Representatives of the Victims filed a joint response to the Defence request.⁴
5. On 19 April 2010, Trial Chamber II granted leave to appeal the second, third and fourth issues raised in the Defence request for leave to appeal the decision of 22 January 2010.⁵
6. The Legal Representatives of the Victims hereby request leave to participate in the proceedings pertaining to the appeal of the Defence for Germain Katanga against the Decision of 22 January 2010.
7. This application is submitted in light of the Appeals Chamber decisions addressing the issue of victim participation in interlocutory appeals proceedings. That Chamber held that legal representatives are under the

¹ ICC-01/04-01/07-1665 and corrigendum, filed on 1 December 2009.

² ICC-01/04-01/07-1788-tENG.

³ "Defence Request for Leave to Appeal the *Décision relative aux modalités de participation des victimes au stade des débats sur le fond* (ICC-01/04-01/07-1788)", ICC-01/04-01/07-1815.

⁴ ICC-01/04-01/07-1841-tENG.

⁵ *Decision on the "Defence Application for Leave to Appeal the Trial Chamber's Décision relative aux modalités de participation des victimes au stade des débats sur le fond"*, ICC-01/04-01/07-2032.

obligation to seek prior leave of the Chamber in order to be able to participate in any interlocutory appeals proceedings.⁶

8. The Appeals Chamber ruled that participation in interlocutory appeals can, in principle, be permitted: (1) if the applicants have been admitted to the proceedings as victims; (2) if it can be shown that their personal interests are affected by the issues on appeal; (3) if such participation is appropriate and (4) that it is not prejudicial to or inconsistent with the rights of the accused and the right to a fair trial.⁷

9. In the instant case, the aforementioned criteria set by the Chamber have been met.

I. The present application concerns victims who have all been authorised to participate at trial.

II. The personal interests of the victims are affected by the issues under appeal.

10. The decision of 22 January 2010 sets out the conditions under which victims may participate at trial; it defines their rights.

11. The Defence appeal seeks to limit some of these rights, including the right of victims participating at trial to lead evidence (particularly to call victims to testify at trial), and the right to call witnesses whose testimony pertains to the role of the accused in the crimes with which they have been charged.

12. Moreover, the appeal seeks to impose on the Legal Representatives of the Victims obligations which are not provided for by the Statute or the Rules of Procedure and Evidence of the Court, or by Trial Chamber decisions

⁶ See inter alia ICC-01/04-01/06-824 and ICC-01/04-01/06-1335.

⁷ ICC-01/04-01/06-1335, paras. 35 and 36.

governing the rights and obligations of the victims participating in the present trial.

13. As regards these grounds of appeal, the personal interests of all the victims authorised to participate at trial are, by their nature, directly affected by the three issues raised by the Defence in relation to which leave to appeal has been granted.

14. It should be recalled that, in *Lubanga*, the Appeals Chamber held that an appeal seeking to limit the right of victims to lead evidence affected the victims' personal interests. Accordingly, it found that the second criterion for authorising the Legal Representatives to participate in the appeals proceedings had been met.⁸

III. The victims' participation in the appeal is appropriate

15. The issue of the scope of the right of victims to participate at trial and the modalities thereof is, by its very nature, an issue for whose resolution victim participation is appropriate.

16. To debate this issue in the absence of the victims would be difficult to reconcile with the principle of a fair trial. Such a debate is, moreover, entirely appropriate in light of the terms of article 68(3) of the Statute.

17. The Appeals Chamber has already so ruled in *Lubanga*, holding that, in view of the matters at issue (which related to the modalities of victim participation at trial), it was appropriate and desirable for victims' views to be heard.⁹

⁸ ICC-01/04-01/06-1335, para. 46.

⁹ ICC-01/04-01/06-1335, para. 47.

IV. The participation of the victims in the appeal is not prejudicial to or inconsistent with the rights of the accused and a fair trial.

18. The participation of the victims in the Defence interlocutory appeal will not be prejudicial to the rights of the accused and the requirements of a fair and impartial trial.
19. The aim of participation by the victims in the appeals proceedings in the instant case will be to provide full clarification to the Appeals Chamber solely on those issues which have been submitted for its consideration and which directly affect the victims' rights.
20. Furthermore, in the event that the victims are to be granted leave to participate in the present appeals proceedings, rule 91(2) and regulation 24(1) will safeguard the rights of the accused, since the Defence will have the opportunity to respond to any written intervention by the Legal Representatives.¹⁰
21. Thus, the victims' participation in the present appeals proceedings will contribute to the effective and expeditious determination of the issues referred to the Appeals Chamber, with full respect for the rights of the defence and a fair trial.

¹⁰ In this regard, see ICC-01/04-01/06-824. Although that decision concerns an interlocutory appeal under article 82(1)(b), the principles it lays down should also be considered applicable, in light of the decision of 16 May 2008, ICC-01/04-01/06-824, to interlocutory appeals based on article 82(1)(d).

FOR THESE REASONS,

MAY IT PLEASE THE CHAMBER

(1) To find that the victims' personal interests are affected by the Defence appeal against the decision of 22 January 2010; and, accordingly,

(2) To grant the victims leave to participate, through their Legal Representatives, in the appeals proceedings, to present their views and concerns, inter alia by filing a response to the document in support of the appeal to be filed by the Defence, and to participate in any hearing held by the Appeals Chamber to consider the appeal at issue.

[signed]

Mr Fidel Nsita Luvengika

**Legal Representative of the main group
of victims**

[signed]

Mr Jean-Louis Gilissen

**Legal Representative of the group of
child-soldier victims**

Dated this 4 May 2010, at The Hague