

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/04-01/06 A 4, A 5, A 6

Date: 13 December 2012

THE APPEALS CHAMBER

Before:
Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Anita Ušacka
Judge Ekaterina Trendafilova

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 appeals against
Trial Chamber I's conviction and sentencing decisions**

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence
Ms Catherine Mabile
Mr Jean-Marie Biju Duval

Legal Representatives of Victims V01
Mr Luc Walley
Mr Franck Mulenda

Legal Representatives of Victims V02
Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta Orwinyo

REGISTRY

Registrar
Ms Silvana Arbia

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Thomas Lubanga Dyilo against the decision of Trial Chamber I entitled "Judgment pursuant to Article 74 of the Statute" of 14 March 2012 (ICC-01/04-01/06-2842), and

In the appeals of Mr Thomas Lubanga Dyilo and the Prosecutor against the decision of Trial Chamber I entitled "Decision on Sentence pursuant to Article 76 of the Statute" of 10 July 2012 (ICC-01/04-01/06-2901),

Renders the following

DECISION

- (1) The victims who participated in the trial proceedings in the case of *Prosecutor v. Thomas Lubanga Dyilo* and whose right to participate in the proceedings as victims was not withdrawn, may, through their legal representatives, participate in the present appeal proceedings for the purpose of presenting their views and concerns in respect of their personal interests in the issues on appeal.
- (2) The Registrar shall file a list of the victims referred to in the preceding paragraph, indicating in respect of each of those victims:
 - a. The number assigned and any identifying information, subject to any protective measures ordered by Pre-Trial Chamber I or Trial Chamber I, as well as the date on which the victim was granted the right to participate in the proceedings; and
 - b. The legal representative representing the victim.The list shall be filed by 16h00 on 7 January 2013 and be notified to Mr Thomas Lubanga Dyilo, the Prosecutor and the Legal Representatives of Victims V01 and V02.
- (3) Objections to the inclusion of specific victims or the correctness of information in the list referred to in the preceding paragraph may be raised by 16h00 on 14 January 2013.
- (4) The Legal Representatives of Victims V01 and those of Victims V02 may file consolidated observations on the documents in support of the

appeals (ICC-01/04-01/06-2948-Conf; ICC-01/04-01/06-2949; ICC-01/04-01/06-2950). These observations must be filed by 16h00 on 4 February 2013 and may be no longer than 100 pages each.

- (5) Mr Thomas Lubanga Dyilo and the Prosecutor may each file a consolidated response to the victims' observations filed in accordance with the preceding paragraph. These responses must be filed by 16h00 on 4 April 2013 and may be no longer than 100 pages each.

REASONS

1. The purpose of the present decision is to regulate the participation of victims in the appeals brought by Mr Thomas Lubanga Dyilo¹ (hereinafter: "Mr Lubanga") against Trial Chamber I's "Judgment pursuant to Article 74 of the Statute"² of 14 March 2012 (hereinafter: "Conviction Decision") and the "Decision on Sentence pursuant to Article 76 of the Statute"³ of 10 July 2012 (hereinafter: "Sentencing Decision"), as well as by the Prosecutor⁴ against the Sentencing Decision. The respective documents in support of these appeals were filed on 3 December 2012⁵ (hereinafter collectively referred to as: "Documents in Support of the Appeals").

2. Under article 68 (3) of the Statute, the Court shall permit victims to present their views and concerns where their personal interests are affected, "at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial". The Appeals Chamber recalls that 129 victims participated in the trial

¹ "Acte d'appel de la Défense de M. Thomas Lubanga à l'encontre du « Jugement rendu en application de l'article 74 du Statut » rendu par la Chambre de première instance I le 14 mars 2012", 3 October 2012, ICC-01/04-01/06-2934 (A 5) (hereinafter: "Notice of Appeal against the Conviction Decision"); "Acte d'appel de la Défense de M. Thomas Lubanga à l'encontre de la « Décision relative à la peine, rendue en application de l'article 76 du Statut » rendue par la Chambre de première instance I le 10 juillet 2012", 3 October 2012, ICC-01/04-01/06-2935 (A 6).

² ICC-01/04-01/06-2842.

³ ICC-01/04-01/06-2901.

⁴ "Prosecution's Notice of Appeal against Trial Chamber I's 'Decision on Sentence pursuant to Article 76 of the Statute'", 3 October 2012, ICC-01/04-01/06-2933 (A 4).

⁵ "Mémoire de la Défense de M. Thomas Lubanga relatif à l'appel à l'encontre du « Jugement rendu en application de l'Article 74 du Statut » rendu le 14 mars 2012", ICC-01/04-01/06-2948-Conf (A 5); "Mémoire de la Défense de M. Thomas Lubanga relatif à l'appel à l'encontre de la « Décision relative à la peine, rendue en application de l'article 76 du Statut » rendue par la Chambre de première instance I le 10 juillet 2012", ICC-01/04-01/06-2949 (A 6); "Prosecution's Document in Support of Appeal against the 'Decision on Sentence pursuant to Article 76 of the Statute' (ICC-01/04-01/06-2901)", ICC-01/04-01/06-2950 (A 4). 

proceedings in the case of *Prosecutor v. Thomas Lubanga Dyilo*,⁶ and that in the Conviction Decision, Trial Chamber I decided to withdraw the right to participate in the proceedings in respect of nine of those victims.⁷ The remaining 120 victims are part of two different groups (Victims V01 and V02)⁸ and participated in the proceedings leading to the Conviction Decision and the Sentencing Decision.⁹

3. The Appeals Chamber notes that under regulation 86 (8) of the Regulations of the Court, “[a] decision taken by a Chamber under rule 89 shall apply throughout the proceedings in the same case, subject to the powers of the relevant Chamber in accordance with rule 91, sub-rule 1”. The Appeals Chamber notes that Mr Lubanga was convicted on all charges brought against him¹⁰ and that his appeal against the Conviction Decision is directed against the entirety of the decision.¹¹ Therefore, the Appeals Chamber finds that the 120 victims who participated in the trial proceedings and whose right to participate in the proceedings was not withdrawn may participate in the appeal proceedings against the Conviction Decision, as their personal interests are affected by the appeal in the same way as during trial. For the same reason, the 120 victims who participated in the sentencing proceedings may participate in the appeal proceedings against the Sentencing Decision.

4. For the sake of clarity, the Appeals Chamber orders the Registrar to file a list of those 120 victims who participated at trial and whose right to participate in the proceedings was not withdrawn. This list shall indicate the number of each individual victim and such identifying information as may be divulged to Mr Lubanga and the Prosecutor in accordance with the protective measures ordered by Pre-Trial Chamber I and Trial Chamber I, the legal representative of each victim, to which

⁶ Conviction Decision, para. 15.

⁷ Conviction Decision, paras 484, 502.

⁸ It should be noted that 5 of the withdrawn victims were also part of these groups and that four of the individuals whose right to participate was withdrawn were represented in the trial proceedings by the Office of Public Counsel for victims, *see* Conviction Decision, para. 20.

⁹ *See* with respect to the sentencing proceedings: “Observations sur la fixation de la peine et les réparations de la part des victimes a/0001/06, a/0003/06, a/0007/06 a/00049/06, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0149/08, a/0404/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0523/08, a/0610/08, a/0611/08, a/0053/09, a/0249/09, a/0292/09, a/0398/09, et a/1622/10”, 18 April 2012, ICC-01/04-01/06-2864; “Observations du groupe de victimes VO2 concernant la fixation de la peine et des réparations”, 18 April 2012, ICC-01/04-01/06-2869.

¹⁰ Conviction Decision, para. 1358.

¹¹ Notice of Appeal against the Conviction Decision, para. 4.

group the victim belongs (V01 or V02), as well as the date on which the victim was granted the right to participate in the proceedings.

5. Pursuant to rule 91 (1) of the Rules of Procedure and Evidence, and having regard to rules 91 (2), 92 (5) and (6) of the Rules of Procedure and Evidence, the Appeals Chamber determines that the victims may participate in the present appeals in the following manner: the Legal Representatives of Victims V01 and V02 may present the victims' views and concerns with respect to their personal interests in the issues on appeal by filing consolidated observations on the three Documents in Support of the Appeals. Mr Lubanga and the Prosecutor may each file a consolidated response to the victims' observations. Should the need arise to specify the modalities of victims' participation in the pending appeals further, the Appeals Chamber will give supplementary directions, either upon its own motion or upon application by the Legal Representatives of Victims V01 and V02.

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



Judge Erkki Kourula
Presiding Judge

Dated this 13th day of December 2012

At The Hague, The Netherlands