

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/09-02/11

Date: 2 April 2015

APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Piotr Hofmański
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF KENYA

*IN THE CASE OF
THE PROSECUTOR v. UHURU MUIGAI KENYATTA*

Public

Prosecution Response to Victims' request to participate in the Prosecutor's appeal against the "Decision on Prosecution's application for a finding of non-compliance under Article 87(7) of the Statute"

Source: Office of the Prosecutor

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

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Introduction

1. The Legal Representative of Victims (“LRV”), on behalf of 839 victims, seeks to participate in the Office of the Prosecutor’s (“Prosecution”) interlocutory appeal against the Trial Chamber’s “Decision on Prosecution’s application for a finding of non-compliance under Article 87(7) of the Statute”.¹ The Prosecution does not oppose the LRV Application.²

Submissions

2. Article 68(3) of the Rome Statute (“Statute”) requires the Appeals Chamber to assess if the participation of the victims is appropriate in the interlocutory appeal.³ Accordingly, the individuals seeking to participate must demonstrate that (i) they are victims in the case; (ii) they have personal interests affected by the issues on appeal; (iii) their participation is appropriate; and (iv) the manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.⁴
3. Consistent with the Appeals Chamber case law on article 68(3) of the Statute and its own policy on victim participation,⁵ the Prosecution supports the participation of victims in appeals so long as the legal requirements for participation are met. First, the LRV Application, also verified by the Registry,

¹ ICC-01/09-02/11-1009 OA5 (“LRV Application”); ICC-01/09-02/11-1006 OA5 (“Prosecution Appeal”); ICC-01/09-02/11-982 (“Decision”).

² The Prosecution files this response pursuant to regulation 24(1) of the Regulations of the Court (“RoC”) and ICC-01/09-02/11-1011-Corr.

³ ICC-01/04-01/06-824 OA7 (“*Lubanga* interim release appeal decision”), para.40; ICC-01/05-01/08-566 OA2, para.14.

⁴ ICC-01/04-01/06-1335 OA9 OA10, paras.35, 36; ICC-01/05-01/08-1597 OA7 (“*Bemba* provisional release appeal decision”), para.7; ICC-01/04-503 OA4 OA5 OA6 (“*DRC Situation* victim participation appeal decision”), paras.35-36, 90; ICC-01/04-01/06-1453 OA13, para.7; ICC-01/04-01/06-1452 OA12, para.7; ICC-02/04-164 OA, para.7; ICC-02/04-01/05-324 OA2, para.8.

⁵ OTP Policy Paper on Victims’ Participation, April 2010, pp.1,5-6, 15-16.

See <http://www.icc-cpi.int/NR/rdonlyres/9FF1EAA1-41C4-4A30-A202-174B18DA923C/281751/PolicyPaperonVictimsParticipationApril2010.pdf>

indicates that the 839 victims fall within the scope of the case.⁶ Accordingly, as the Appeals Chamber has previously stated, once the victim status of these individuals has been established, it need not be revisited for the purposes of this interlocutory appeal.⁷ Second, the LRV may appropriately present the victims' views on the Prosecution Appeal because the victims were represented before the Trial Chamber on similar issues. Further, the LRV was permitted to make submissions relating to the Prosecution's application for leave to appeal the Decision, and did so.⁸ The Trial Chamber also held that the "[t]ermination of [the] proceedings is without prejudice to the continuation of the mandate of the LRV for such limited period [...] if applicable, to participate in the outstanding proceedings before the Appeals Chamber."⁹

4. Third, the participation of the victims will not prejudice or be inconsistent with the rights of the accused and a fair and impartial trial. As stated by the Appeals Chamber, the LRV's submissions will be limited to those "specifically relevant to the issues arising in the appeal and to the extent that their personal interests are

⁶ LRV Application, para.21. See ICC-01/09-02/11-998-AnxA (Annex A to the Thirteenth Periodic Report on the general situation of victims in the case and the activities of the Victims Participation and Reparations Section and the Common Legal Representative in the field), para.1. See also ICC-01/09-02/11-498, para.61, stating "[v]ictims who were authorised to participate in the confirmation of charges stage shall be considered as having registered for the purpose of participation through the common legal representation system [...]. The Registry shall review the applications of individuals who were authorised to participate in the confirmation of charges stage and assess whether they still fall under the definition."

⁷ *Lubanga* interim release appeal decision, para.45; *DRC Situation* victim participation appeal decision, para.92.

⁸ See ICC-01/09-02/11-986, p.4 (permitting the LRV to file a response to the Government of the Republic of Kenya's ("GoK") Observations on the Prosecution's leave to appeal request); ICC-01/09-02/11-993 (LRV's response to the observations of the GoK on the Prosecution's leave to appeal request); ICC-01/09-02/11-989 (LRV's response to the Prosecution's application for leave to appeal the decision on non-compliance). See also ICC-01/09-02/11-725, para.3, where the LRV was allowed to respond to the GoK's submissions on its cooperation with the Court; ICC-01/09-02/11-731 ("LRV Response to the GoK's Submissions on the Status of Cooperation with the International Criminal Court"). See also ICC-01/09-02/11-T-28-ENG (status conference of 13 February 2014), p.24 ln.12-p.25 ln.14, p.70 ln.13-p.84 ln.5; ICC-01/09-02/11-T-30-ENG (status conference of 9 July 2014), p.42 ln.3-p.46 ln.16.

⁹ ICC-01/09-02/11-1005, para.12.

affected by the proceedings.”¹⁰ Moreover, the Prosecution is entitled to reply to any submissions from the LRV.¹¹

5. For these reasons, the Prosecution does not oppose the LRV Application.



Fatou Bensouda, Prosecutor

Dated this 2nd day of April 2015

At The Hague, the Netherlands

Word Count: 949¹²

¹⁰*DRC Situation* victim participation appeal decision, para.101; ICC-01/04-01/06-1335 OA9 OA10, para.50; *Bemba* provisional release appeal decision”, para.12. *See also Lubanga* interim release appeal decision, para.55.

¹¹ Rule 91(2), Rules of Procedure and Evidence. *See also Lubanga* interim release appeal decision, para.49; *Bemba* provisional release appeal decision, para.12.

¹² It is certified that this document contains the number of words specified and complies in all respects with the requirements of regulation 36 of the RoC. This statement (51 words), not itself included in the word count, follows the Appeals Chamber’s direction to “all parties” appearing before it: ICC-01/11-01/11-565 OA6, para.32.