



Original: French

No.: ICC-01/04-01/06
Date: 7 December 2006

APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

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

Urgent Public Document

Application by Victims a/0001/06, a/0002/06 and a/0003/06 to reply to the responses of the Defence and the Prosecutor filed in accordance with the Appeals Chamber Order of 4 December 2006

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

Counsel for Thomas Lubanga Dyilo

Mr Jean Flamme
Ms Véronique Pandanzyla

**Legal Representatives of Victims a/001/06 to
a/0003/06**

Mr Luc Walley
Mr Franck Mulenda

1. **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 of the Congo” rendered by Pre-Trial Chamber I on 28 July 2006 in which the Pre-Trial Chamber “decide[d] that the status of victim is granted to Applicants a/0001/06, a/0002/06 and a/0003/06 in the stage of the case of *The Prosecutor v. Thomas Lubanga Dyilo*;”¹

2. **NOTING** the “Defence Response to the Appeals Chamber Order of 4 December 2006”, filed by the Defence on 6 December 2006;²

3. **NOTING** the “Prosecutor’s Response to Request of Victims to Participate in the Appeal, pursuant to ‘Order of the Appeals Chamber’ of 4 December 2006” filed by the Prosecution on 6 December 2006;³

4. **PURSUANT** to regulation 24(5) of the Regulations of the Court, the Legal Representatives of Victims a/0001/06, a/0002/06 and a/0003/06 (“the Legal Representatives”) hereby apply to the Appeals Chamber for leave to file a reply to the above-mentioned responses of the Prosecution and the Defence.

5. The Legal Representatives are of the opinion that the matters raised by the parties are fundamental and have a direct impact on the situation of the victims. The Legal Representatives make particular reference to the argument by the Prosecution and the Defence that the victims should file an application for participation in the instant proceedings.

¹ See the “Decision on the Applications for Participation in the Proceedings of a/0001/06, a/0002/06 and a/0003/06 in the case of the *Prosecutor v. Thomas Lubanga Dyilo* and of the Investigation in the Democratic Republic of the Congo”, No. ICC-01/04-01/06-228, 28 July 2006, p. 16.

² See the “Defence Response to the Appeals Chamber Order of 4 December 2006”, ICC-01/04-01/06-756, 6 December 2006.

³ See the “Prosecutor’s Response to Request of Victims to participate in the Appeal, pursuant to ‘Order of the Appeals Chamber’ of 4 December 2006”, ICC-01/04-01/06-757, 6 December 2006.

6. Without setting out the grounds to be put forward should they be granted leave by the Chamber, the Legal Representatives note that this approach runs counter to regulation 86(8) of the Regulations of the Court and is inconsistent with regulation 64(4) and 64(5), which empower participants to file a response on appeal without requiring the prior filing of an application for participation. Furthermore, the Appeals Chamber Order of 24 November 2006⁴ implicitly granted the represented victims participant status by authorising them to file a response to some arguments raised by the Defence, although in accordance with the provisions of the Regulations of the Court, only participants may file responses.

7. Lastly, requiring, at the stage of an interlocutory appeal, that a new application for participation be filed by each victim who has participated in the proceedings before the Pre-Trial Chamber would be prejudicial not only to the victims, but to the efficacy and proper conduct of the proceedings, and thus to all participants.

FOR THESE REASONS,

MAY IT PLEASE THE APPEALS CHAMBER

To grant leave to Victims a/0001/06, a/0002/06 and a/0003/06 to file, within a time-limit to be set by the Chamber, a reply to the “Prosecutor’s Response to Request of Victims to participate in the Appeal, pursuant to ‘Order of the Appeals Chamber’ of 4 December 2006”⁵ and to the “Defence Response to the Appeals Chamber Order of 4 December 2006”⁶, filed on 6 December 2006 in regard to the fact that the decision

⁴ See the “Order of the Appeals Chamber”, No. ICC-01/04-01/06-727, 24 November 2006.

⁵ Cf. footnote 3 above.

⁶ Cf. footnote 2 above.

rendered by Pre-Trial Chamber I pursuant to rule 89 of the Rules of Procedure and Evidence⁷ also applies to the stage of the instant proceedings.

/signed/

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

Done on 7 December 2006

At Brussels, Belgium

⁷ Cf. footnote 1 above.