



Original: **French**

No.: **ICC-01/04-01/06**
Date: **18 September 2009**

THE APPEALS CHAMBER

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR *v.* THOMAS LUBANGA DYILO**

Public Document

Application for Participation from the Legal Representative of Victims a/0051/06, a/0078/06, a/0232/06 and a/0246/08 in the Defence and Prosecution Appeals against the *Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court rendered on 14 July 2009*

Source: The Legal Representative of Victims a/0051/06, a/0078/06, a/0232/06, a/0233/06 and a/0246/08

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

The Office of the Prosecutor

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Ms Catherine Mabile
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Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
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Mr Paul Kabongo Tshibangu
Mr Hervé Diakiese

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
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States' Representatives

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REGISTRY

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Ms Silvana Arbia

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

I. Procedural history

1. On 22 May 2009, the Legal Representatives of the Victims submitted to Trial Chamber I a joint application for the implementation of the procedure under regulation 55 of the Regulations of the Court.¹
2. On 29 May 2009 and subsequently on 12 June 2009, the Prosecution filed its response to the Legal Representatives' joint application, as well as certain further observations.²
3. On 19 June 2009, the Defence filed its response to the Legal Representatives' application.³ On 26 June 2009, the Legal Representatives of the Victims replied to that response.⁴
4. On 14 July 2009, Trial Chamber I issued its decision informing the parties and participants that the legal characterisation of the facts may be subject to change in accordance with regulation 55(2) of the Regulations of the Court.⁵
5. On 17 July 2009, Presiding Judge FULFORD issued his dissenting opinion on the decision giving notice to the parties on a possible change of characterisation in accordance with the procedure under regulation 55(2) of the Regulations of the Court.⁶
6. On 11 and 12 August 2009, the Defence and Prosecution both submitted applications for leave to appeal the *Decision giving notice to the parties and participants*

¹ Document No. ICC-01/04-01/06-1891-tENG.

² Document No. ICC-01/04-01/06-1918 and Document No. ICC-01/04-01/06-1966.

³ Document No. ICC-01/04-01/06-1975.

⁴ Document No. ICC-01/04-01/06-1998.

⁵ See *Decision giving notice to the parties and participants that legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court*, Document No. ICC-01/04-01/06-2049.

⁶ Document No. ICC-01/04-01/06-2054.

*that legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court.*⁷

7. On 17 August 2009, the Defence [*sic*] submitted a joint response to the two Defence and Prosecution applications for leave to appeal.⁸

8. On 3 September 2009, the Chamber issued its *Decision on the prosecution and the defence applications for leave to appeal the "Decision giving notice to the parties and participants that the legal characterisation of fact may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court"*.⁹

9. On 10 September 2009, the Defence filed its appeal against the decision of 14 July 2009.¹⁰

10. Having regard to Appeals Chamber jurisprudence on victim participation in interlocutory appeals, and in particular to the decision of 13 February 2008,¹¹ the Appeals Chamber has held that, to participate in an appeal filed under article 82(1) of the Statute, victims must submit an application for leave to participate in the proceedings.

11. The Legal Representative of Victims a/0051/06, a/0078/06, a/0232/06 and a/0246/08 hereby submits to the Appeals Chamber the present application for participation, together with her preliminary observations.

II. Preliminary observations

12. The Defence and the Prosecutor have both requested the Appeals Chamber to grant suspensive effect to the decision of 14 July 2009.

⁷ Document No. ICC-01/04-01/06-2073. And Document No. ICC-01/04-01/06-2074.

⁸ ICC-01/04-01/06-2079.

⁹ ICC-01/04-01/06-2107.

¹⁰ ICC-01/04-01/06-2112.

¹¹ Document No. ICC-01/04-450, para. 1.

13. Since the victims' interests may be significantly affected by such suspensive effect, the Legal Representative requests the Appeals Chamber to defer ruling on those applications pending a decision on the said victims' participation.

III. The victims' personal interests

14. It should be noted that the victims who are represented in this application were all recruited at a young age as child soldiers. As such, they all underwent various forms of military training in order to be fit for combat.

15. During such training in training camps, they were subjected to all sorts of inhuman treatment, including all kinds of sexual violence.

16. Accordingly, they have a direct and personal interest in the current proceedings before the Appeals Chamber. Moreover, the issue of the interpretation of rule 55(2), which allows the facts to be recharacterised, is of the utmost interest to the victims.

IV. The appropriateness of participation, and compatibility with the rights of the Defence

17. Considering that victim participation in Defence and Prosecution interlocutory appeals is provided for by article 68(3) of the Rome Statute, which gives victims the right to present their views and concerns at all stages in the proceedings, including during interlocutory appeals proceedings if the Chamber so allows.

18. Considering, furthermore, that the victims are the source of the application which resulted in the decision of 14 July 2009 currently under appeal by the Defence and the Prosecution.

19. Considering that it would be inappropriate for proceedings instigated by the victims to continue at appeal level without them being able to present their concerns and observations at that level also.

20. It follows that the victims' participation is a logical consequence of the proceedings commenced on their initiative.

21. It should also be made clear that participation by the victims in the appeal proceedings could in no way affect the rights of the Defence, since such rights are safeguarded by national and international instruments, with the object of ensuring that accused persons have a fair trial.

22. Furthermore, the victims' role is not to replace the Prosecution: their participation is confined to ensuring that their rights under the Rome Statute are upheld. The judges are in charge of the proceedings and have the power, throughout the appeal proceedings, to keep the victims' interventions within proper limits.

23. Moreover, under regulation 24(1) of the Regulations of the Court, the Defence has the opportunity, throughout the proceedings, to respond and react to any document submitted by the victims. Such a procedure provides the Defence with the assurance that its rights will be strictly respected.

FOR THESE REASONS,

MAY IT PLEASE THE APPEALS CHAMBER

- To rule that Victims a/0051/07, a/0078/06, a/0232/07, a/0233/06 and a/0246/08 have personal and direct interests, since they are affected by the appeals lodged by the Prosecution and the Defence;

- To grant Victims a/0051/07, a/0078/06, a/0232/07, a/0233/06 and a/0246/08 leave to participate in the interlocutory appeals of the Defence and the Prosecution;

- Accordingly, to grant the victims leave to submit written observations on the issues raised by the Prosecution and Defence which affect their interests, in accordance with such modalities as the Appeals Chamber shall determine.

[signed]

Carine BAPITA

On behalf of Victims a/0051/07, a/0078/06, a/0232/07, a/0233/06 and a/0246/08.

Dated this 18 September, at The Hague, the Netherlands.