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No.: ICC-01/04-01/06

Date: 10 July 2015

**THREE JUDGES OF THE APPEALS CHAMBER,
APPOINTED FOR THE REVIEW CONCERNING REDUCTION OF SENTENCE**

Before: Judge Silvia Fernández, Presiding Judge
Judge Howard Morrison
Judge Piotr Hofmański

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

**Public document
(with confidential annex)
Observations of the V01 group of victims on the possible review of Mr Thomas
Lubanga Dyilo's sentence**

Source: Legal representatives of the V01 group of victims

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

Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

Ms Paolina Massida

Trust Fund for Victims

States' Representatives

Amicus Curiae

REGISTRY

The Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Noting the decision of the Appeals Chamber of 15 June 2015 appointing three judges to examine the possibility of a reduction in Mr Thomas Lubanga Dyilo's sentence.¹
2. Noting the Scheduling Order of the Presiding Judge of 15 June 2015.²
3. By the aforementioned Order, the Appeals Chamber invited the participating victims to express in written submissions their views and concerns in relation to any reduction in the sentenced person's sentence, having regard to the criteria set out in article 110(4) of the Statute and rule 223 of the Rules of Procedure and Evidence.
4. Counsel were able, while on a field mission, to solicit the views and concerns of their clients in this connection.

A. Article 110 criteria

5. Article 110 of the Statute provides:

3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.

4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:

- (a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;

- (b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or

- (c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.

¹ ICC-01/04-01/06-3135 15-06-2015 1/3 RH RW.

² ICC-01/04-01/06-3137 15-06-2015 5/5 EK RW.

6. The victims do not know whether the factors referred to in article 110(3) are present. Indeed, as regards the attitude of the sentenced person to other ongoing investigations and proceedings, several victims who are also participating in the proceedings against Mr Bosco Ntaganda are concerned that early release could have an adverse effect on the conduct of those proceedings, in particular by creating fear of reprisals among certain witnesses.

B. Examination of the rule 223 criteria

7. Several criteria laid down by article 110(4) have been clarified by rule 223, and concern the victims directly:
 - (a) The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime;
 - (b) The prospect of the resocialization and successful resettlement of the sentenced person;
 - (c) Whether the early release of the sentenced person would give rise to significant social instability;
 - (d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release;
 - (e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.
8. Criteria (a) to (d) concern the interests of the victims directly.

Criterion (a): attitude towards the crimes committed

9. During the proceedings, Mr Lubanga Dyilo not only consistently denied his responsibility for the crimes of which he was convicted, but even the fact that those crimes had been committed. Since his conviction, the victims have noted no change in his behaviour in terms of his having dissociated himself from those crimes.

10. However, an apology and even an expression of regret on the part of the sentenced person would, for the victims, be a step towards reparations, in particular because of the potential impact of such an attitude on the continuing tension in Ituri.

Criterion (b): reintegration into society

11. The victims believe that Mr Lubanga could not be resettled positively into the community in a spirit of peace and reconciliation. They also believe that, if that were genuinely Mr Lubanga's motivation, it would also be reflected in his attitude towards the victims.

Criterion (c): risk of social instability

12. The victims fear that, as long as Mr Lubanga Dyilo maintains his current attitude, his release and return to the region could reignite tension between the communities, and even within his own community, which is also home to more than one of the victims, and give rise to a risk of resumption of the armed conflict and fresh war crimes, including crimes similar to those of which Mr Lubanga was convicted.

Criterion (d): positive action in favour of victims

13. The attitude of the sentenced person, who continues to wield significant political influence in Ituri, and in particular within the Hema community, has and will have a direct impact on how the participating victims are perceived by their immediate communities, sometimes even by their own families.

14. It will also determine the reparations process to be implemented by the Trust Fund for Victims. The Court has in fact chosen a collective reparations process, which requires a degree of collaboration between the local communities and their leaders, some of whom maintain close links with the political group led by the sentenced person.
15. In a letter of 2 July from their counsel to the Defence, the victims proposed a number of positive actions in favour of the victims which the sentenced person could undertake, even while in detention, and which would be such as to encourage social stability in Ituri and reconciliation between and within communities. They involve drawing up a proposal concerning his participation in the reparations and adopting a public stance to reassure victims, public acknowledgment that children under the age of 15 years were indeed enlisted into the UPC armed forces, an expression of regret in the absence of an apology, a statement affirming the legitimacy of the reparations programme to be put in place and the participation of victims in that programme. The victims also ask that Mr Lubanga call on the members of the former FPLC and on the population of Ituri to cooperate with officials of the Trust Fund for Victims responsible for implementing the reparations plan and to refrain from any negativity towards the beneficiaries of the programme.³
16. To date, the legal representatives have received only acknowledgement of receipt of this letter. The Defence state in that acknowledgement that they will respond to the letter of 2 July by way of observations.
17. Consequently, the victims are of the view that, subject to what is stated in the Defence observations and subject to a situation such as that referred to in rule 223(e), hitherto unknown, none of the criteria for a reduction in the sentence have been met – quite the contrary in fact.

³ See confidential annex.

FOR THESE REASONS,

MAY IT PLEASE THE APPEALS CHAMBER TO:

Take note of the observations of the legal representatives.

Find that the legal conditions for a reduction in the sentence have not been met.

On behalf of the V01 group of victims,

[signed]

Luc Walley and Franck Mulenda, Legal Representatives

Dated this 10 July 2015 at Brussels, Belgium, and Kinshasa, DRC.