

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/04-01/06 A 3**

**Date: 24 May 2013**

**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**

**Order**

**on the filing of a reply under regulation 60 of the Regulations of the Court**

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

**The Office of Public Counsel for Victims**  
Ms Paolina Massida  
Ms Sarah Pellet

**REGISTRY**

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**Registrar**  
Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Thomas Lubanga Dyilo against the decision of Trial Chamber I entitled “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 (ICC-01/04-01/06-2904),

Having before it the “Requête de la Défense aux fins de solliciter l’autorisation de déposer une réplique à la « Joint Response to the ‘Mémoire de la Défense de M. Thomas Lubanga relatif à l’appel à l’encontre de la ‘Decision establishing the principles and procedures to be applied to reparations’, rendue par la Chambre de première instance le 7 août 2012’ », déposée le 8 avril 2013”, dated 19 April 2013 and registered on 22 April 2013 (ICC-01/04-01/06-3020),

*Issues the following*

## ORDER

Mr Thomas Lubanga Dyilo shall file by 16h00 on 31 May 2013 a reply to the Joint Response to his document in support of the above-mentioned appeal, in accordance with regulation 60 of the Regulations of the Court.

## REASONS

### I. BACKGROUND

1. On 14 March 2012, Trial Chamber I (hereinafter: “Trial Chamber”) delivered the “Judgment pursuant to Article 74 of the Statute”<sup>1</sup> (hereinafter: “Conviction Decision”) in the case of *Prosecutor v. Thomas Lubanga Dyilo*, in which it, *inter alia*, found Mr Thomas Lubanga Dyilo (hereinafter: “Mr Lubanga”) guilty of the crimes of conscripting and enlisting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of articles 8 (2) (e) (vii) and 25 (3) (a) of the Rome Statute (hereinafter: “Statute”).<sup>2</sup>

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<sup>1</sup> ICC-01/04-01/06-2842.

<sup>2</sup> Conviction Decision, para. 1358.

2. On 7 August 2012, the Trial Chamber rendered the “Decision establishing the principles and procedures to be applied to reparations”<sup>3</sup> (hereinafter: “Impugned Decision”).

3. On 6 September 2012, Mr Lubanga appealed the Impugned Decision, pursuant to article 82 (4) of the Statute and rule 150 of the Rules of Procedure and Evidence.<sup>4</sup>

4. On 14 December 2012, the Appeals Chamber rendered the “Decision on the admissibility of the appeals against Trial Chamber I’s ‘Decision establishing the principles and procedures to be applied to reparations’ and directions on the further conduct of proceedings”,<sup>5</sup> in which it, *inter alia*, invited Mr Lubanga to submit his document in support of the appeal by 5 February 2013.<sup>6</sup> The Appeals Chamber also invited the Office of Public Counsel for victims and the legal representatives of the V02 group of victims (hereinafter: “OPCV” and “Legal Representatives of Victims V02”, respectively) to jointly<sup>7</sup> file any response to Mr Lubanga’s document in support of the appeal by 8 April 2013.<sup>8</sup>

5. On 5 February 2013, Mr Lubanga filed his document in support of the appeal<sup>9</sup> and, on 8 April 2013, the OPCV and the Legal Representatives of Victims V02 filed a joint response (hereinafter: “Joint Response”).<sup>10</sup>

6. On 22 April 2013, Mr Lubanga requested, pursuant to regulation 60 of the Regulations of the Court, leave to file a reply of no more than 6 pages to the Joint

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<sup>3</sup> ICC-01/04-01/06-2904.

<sup>4</sup> “Appeal of the Defence for Mr Thomas Lubanga against Trial Chamber I’s Decision establishing the principles and procedures to be applied to reparation rendered on 7 August 2012”, dated 6 September 2012 and registered on 11 September 2012, ICC-01/04-01/06-2917-tENG (A 3).

<sup>5</sup> ICC-01/04-01/06-2953 (A A 2 A 3 OA 21) (hereinafter: “Admissibility Decision”).

<sup>6</sup> Admissibility Decision, p. 4.

<sup>7</sup> On 24 August 2012, the OPCV and the Legal Representatives of Victims V02 jointly appealed the Impugned Decision, pursuant to article 82 (4) of the Statute and rule 150 of the Rules of Procedure and Evidence. See “Appeal against Trial Chamber I’s Decision establishing the principles and procedures to be applied to reparations of 7 August 2012”, 24 August 2012, ICC-01/04-01/06-2909-tENG (A).

<sup>8</sup> Admissibility Decision, p. 4.

<sup>9</sup> “Mémoire de la Défense de M. Thomas Lubanga relatif à l’appel à l’encontre de la ‘Decision establishing the principles and procedures to be applied to reparations’, rendue par la Chambre de première instance le 7 août 2012”, 5 February 2013, ICC-01/04-01/06-2972 (A 3).

<sup>10</sup> “Joint Response to the ‘Mémoire de la Défense de M. Thomas Lubanga relatif à l’encontre de la ‘Decision establishing the principles and procedures to be applied to reparations’, rendue par la Chambre de première instance le 7 août 2012’”, ICC-01/04-01/06-3010 (A 3).

Response (hereinafter: "Request to Reply").<sup>11</sup> Mr Lubanga submits that granting him leave to reply will assist the Appeals Chamber in the present appeal by giving him the opportunity to clarify and correct certain information related to the reliability of witnesses and the relevant testimonies referred to in the Joint Response.<sup>12</sup>

7. On 25 April 2013, the OPCV and the Legal Representatives of Victims V02 filed a joint response to the Request to Reply (hereinafter: "Joint Response to the Request to Reply"),<sup>13</sup> in which they request that the Request to Reply be rejected<sup>14</sup> for the following four reasons: (1) Mr Lubanga has already advanced substantive arguments in his Request to Reply and thus allowing him to repeat arguments he has already raised is not in the interest of justice;<sup>15</sup> (2) he waited too long before filing his Request to Reply as any delay in the proceedings is not in the interests of justice;<sup>16</sup> (3) he should not be allowed, pursuant to the doctrine of *non concedit venire contra factum proprium*,<sup>17</sup> to base his Request to Reply on the findings of the Trial Chamber in the Conviction Decision because he is appealing the Conviction Decision in its entirety;<sup>18</sup> and (4) the Appeals Chamber is not, in any event, bound by the findings set forth by the Trial Chamber in the Conviction Decision as regards the content of the witnesses' statements.<sup>19</sup>

## II. MERITS

8. Regulation 60 of the Regulations of the Court provides that:

(1) Whenever the Appeals Chamber considers it necessary in the interests of justice, it may order the appellant to file a reply within such time as it may specify in its order.

(2) Any reply filed in accordance with sub-regulation 1 shall not exceed 50 pages. To the extent possible, it shall be set out and numbered in the same order as in the documents described in regulations 58 and 59.

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<sup>11</sup> "Requête de la Défense aux fins de solliciter l'autorisation de déposer une réplique à la 'Joint Response to the 'Mémoire de la Défense de M. Thomas Lubanga relatif à l'appel à l'encontre de la 'Decision establishing the principles and procedures to be applied to reparations', rendue par la Chambre de première instance le 7 août 2012", déposée le 8 avril 2013", ICC-01/04-01/06-3020 (A 3).

<sup>12</sup> Request to Reply, para. 4.

<sup>13</sup> "Joint response to the Defence application for leave to reply", ICC-01/04-01/06-3024-tENG.

<sup>14</sup> Joint Response to the Request to Reply, p. 9.

<sup>15</sup> Joint Response to the Request to Reply, paras 13-14.

<sup>16</sup> Joint Response to the Request to Reply, para. 15.

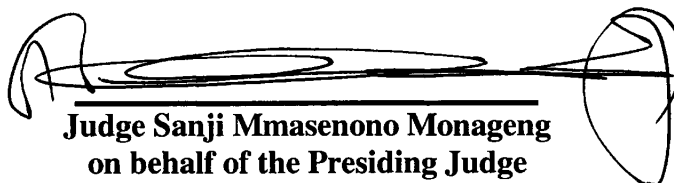
<sup>17</sup> Joint Response to the Request to Reply, para. 18.

<sup>18</sup> Joint Response to the Request to Reply, paras 16-18.

<sup>19</sup> Joint Response to the Request to Reply, para. 19.

The Appeals Chamber recalls that ordering the filing of a reply lies within its discretion and is to be decided on a case-by-case basis.<sup>20</sup> Contrary to the submissions of the OPCV and the Legal Representatives of Victims V02, the Request to Reply has been filed in a timely manner and is not excessive in its reasoning. In the specific circumstances of this case, the Appeals Chamber considers it in the interests of justice to order Mr Lubanga to file a reply to the Joint Response. In this regard, the Appeals Chamber notes that the OPCV and the Legal Representatives of Victims V02 have cited specific evidence in their Joint Response that was not explicitly mentioned in Mr Lubanga's document in support of the appeal. Therefore, Mr Lubanga should be given an opportunity to respond. The Appeals Chamber notes that the remaining arguments of the OPCV and Legal Representatives of Victims V02 refer to the substance of the reply not yet filed and therefore the Appeals Chamber will not address them. Finally, the Appeals Chamber considers that the length of the reply sought (6 pages) is reasonable and reiterates that the reply should be filed in accordance with regulation 60 of the Regulations of the Court.

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



**Judge Sanji Mmasenono Monageng**  
on behalf of the Presiding Judge

Dated this 24<sup>th</sup> day of May 2013

At The Hague, The Netherlands

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<sup>20</sup> See "Order on the filing of a reply under regulation 60 of the Regulations of the Court", 21 February 2013, ICC-01/04-01/06-2982, paras 6-7.