

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 24 May 2018

**THE APPEALS CHAMBER**

**Before:**

**Judge Piotr Hofmański, Presiding Judge  
Judge Chile Eboe-Osuji  
Judge Howard Morrison  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossas**

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

**Confidential**

**Response to the “*Demande des Représentants légaux de l’équipe V01 de répliquer à la ‘Réponse consolidée aux Mémoires d’Appel de la Défense et des Représentants légaux des victimes V01 contre la Décision de la Chambre de première instance II du 15 décembre 2017’*” (ICC-01/04-01/06-3408-Conf)**

**Source: Office of Public Counsel for Victims**

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

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**Legal Representatives of V02 Victims**

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**Participation/Reparations**

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**REGISTRY**

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**Registrar**

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**Counsel Support Section**

**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

## I. INTRODUCTION

1. Principal Counsel (“Legal Representative”) of the Office of Public Counsel for Victims (“OPCV”), as legal representative of 392 applicants – 379 of whom, the Court has decided, are to receive collective reparations as victims<sup>1</sup> – submits her response to the application from the Legal Representatives of the V01 team (“LRVs”) to file a reply to her consolidated response to the appeal briefs of the other parties against Trial Chamber II’s Decision of 15 December 2017.<sup>2</sup>

2. It is the Legal Representative’s submission that (i) the LRVs do not identify any new issue which could not reasonably have been anticipated; (ii) the LRVs do not show “good cause” for the filing of a reply; and (iii) a reply is, in any event, unnecessary to dispose of the matter initially raised by the LRVs. The application for leave to reply only repeats the LRVs’ previous arguments, which do nothing more than show a mere difference of opinion between the LRVs and the Legal Representative.

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<sup>1</sup> See “*Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu*” (Trial Chamber II), ICC-01/04-01/06-3379-Conf-Corr + Anxs, 15 December 2017. Further to a request for correction of a substantive error in its decision, the Chamber issued a corrected version of the decision on 21 December 2017. See “*Defence Request to correct a substantive error in the ‘Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu’ notified on 15 December 2017*”, ICC-01/04-01/06-3380-tENG, 19 December 2017 and “*Décision relative à la requête de la défense de Thomas Lubanga Dyilo du 19 décembre 2017*” (Trial Chamber II), ICC-01/04-01/06-3382, 20 December 2017.

<sup>2</sup> See “*Réponse consolidée aux Mémoires d’Appel de la Défense et des Représentants légaux des victimes V01 contre la Décision de la Chambre de première instance II du 15 décembre 2017*”, ICC-01/04-01/06-3407-Conf A7 A8, 18 May 2018.

## II. CLASSIFICATION

2. Per regulation 23 *bis*(2) of the Regulations of the Court, the present response is marked as confidential to accord with the classification of the previous filings put before the Appeals Chamber. The Legal Representative would, however, point out that the response does not contain confidential information and she requests its reclassification as public.

## III. PROCEDURAL HISTORY

3. On 15 January the Defence filed its notice of appeal,<sup>3</sup> followed, on 15 March 2018, by its appeal brief<sup>4</sup> against Trial Chamber II's decision of 15 December 2017 setting the size of the reparations award for which Thomas Lubanga Dyilo is liable ("Decision of 15 December 2017")<sup>5</sup>.

4. The LRVs filed their notice of appeal<sup>6</sup> and appeal brief<sup>7</sup> against the Decision of 15 December 2017 on 16 January and 19 March 2018, respectively.

5. On 18 May 2018, the Legal Representative filed her consolidated response to the respective appeal briefs from the Defence and the Legal Representatives of V01

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<sup>3</sup> See "Notice of Appeal by the Defence for Mr Thomas Lubanga Dyilo against the '*Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu*' Handed Down by Trial Chamber II on 15 December 2017 and Amended by way of the Decisions", ICC-01/04-01/06-3388-tENG A7 A8, 15 January 2018.

<sup>4</sup> See "Appeal Brief of the Defence for Mr Thomas Lubanga Dyilo against the '*Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu*' handed down by Trial Chamber II on 15 December 2017 and Amended by the Decisions of 20 and 21 December", ICC-01/04-01/06-3394-Conf A7 A8 et 3394-Red A7 A8, 15 March 2018.

<sup>5</sup> See Decision of 15 December 2017, above, footnote 1.

<sup>6</sup> See "Notice of Appeal against Trial Chamber II's '*Décision fixant le montant des réparations auxquelles Thomas Lubanga est tenu*' of 15 December 2017", ICC-01/04-01/06-3387-tENG A7 A8, 16 January 2018.

<sup>7</sup> See "*Mémoire dans l'appel contre la "Décision fixant le montant des réparations auxquelles Thomas Lubanga est tenu" du 15 décembre 2017 de la Chambre de première Instance II*", ICC-01/04-01/06-3396-Conf A7 A8, 19 March 2018. A corrected version was filed on 5 April 2018, see ICC-01/04-01/06-3396-Corr-Red A7 A8.

Victims against Trial Chamber II's Decision of 15 December 2017 ("Legal Representative's Response").<sup>8</sup>

6. On 21 May 2018, the LRVs filed a "*Demande d'autorisation de répliquer à la Réponse consolidée aux Mémoires d'Appel de la Défense et des Représentants légaux des victimes V01 contre la Décision de la Chambre de première instance II du 15 décembre déposée par le Office of Public Counsel for Victims en date du 18 mai 2018*" ("LRVs' Application").<sup>9</sup>

#### IV. ARGUMENTS IN RESPONSE TO THE APPLICATION FOR LEAVE TO REPLY

7. The Legal Representative recalls that, according to regulation 24(5) of the Regulations of the Court, "[u]nless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated". The Court's previous decisions have made clear that an application for leave to reply may be granted only where the applicant shows good cause.<sup>10</sup> Moreover, as regards the criterion of a "new issue raised"<sup>11</sup> which the applicant could not reasonably have anticipated,<sup>12</sup> the Court has held that

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<sup>8</sup> See "*Réponse consolidée aux Mémoires d'Appel de la Défense et des Représentants légaux des victimes V01 contre la Décision de la Chambre de première instance II du 15 décembre 2017*", above, footnote 2.

<sup>9</sup> See "*Demande d'autorisation de répliquer à la Réponse consolidée aux Mémoires d'Appel de la Défense et des Représentants légaux des victimes V01 contre la Décision de la Chambre de première instance II du 15 décembre déposée par le Bureau du conseil public pour les victimes en date du 18 mai 2018*", ICC-01/04-01/06-3408-Conf A7 A8, 21 May 2018.

<sup>10</sup> See, *inter alia*, "Decision on the Defence's Request for Leave to Reply on the Motion for Provisional Release dated 24 November 2008" (Pre-Trial Chamber III), ICC-01/05-01/08-294, 27 November 2008, para. 3. See also "Decision on the Prosecution application under regulation 24(5) for leave to reply" (Pre-trial Chamber II), ICC-02/04-01/15-252, 17 June 2015, p. 3.

<sup>11</sup> See "Public redacted version of 'Decision on 'Defence Request for Leave to Reply to the Prosecution's Response to 'Defence Urgent Motion for disclosure of materials relating to P-169 and remedies for non-disclosure'''" (Trial Chamber III), ICC-01/05-01/08-3165-Red, 11 December 2014, para. 5. See also "Decision on 'Request concerning the review of seized material' and related matters" (Trial Chamber VII), ICC-01/05-01/13-893-Red, 9 April 2015, para. 10.

<sup>12</sup> See "Decision on Mr Laurent Gbagbo's request for leave to reply" (Appeals Chamber), ICC-02/11-01/15-284 OA7, 9 October 2015, para. 11.

leave to reply may be granted only where a reply is necessary to dispose of the initial matter.<sup>13</sup>

8. The Legal Representative submits that the LRVs' application does not identify any new issue which could not reasonably have been anticipated and does not show good cause for a reply. The application only repeats arguments made by the LRVs in the appeal brief, which do nothing more than show a difference of opinion between the LRVs and the Legal Representative.

9. Furthermore, the Legal Representative sees that, apart from the clear difference of opinion, the LRVs misconstrue her response and the arguments made. In that respect and on the matter of the inadmissibility of the appeals, the Legal Representative's Response makes plain that the Court's decisions on the interpretation of article 82(4) of the Rome Statute have clearly laid down the criteria for the admissibility of appeals, irrespective of what the LRVs think. The Legal Representative is not, therefore, in any way seeking to limit the right of the victims to appeal an order for reparations but is simply of the view that all of the parties must comply with the provisions in force. Likewise, regarding the effect of an earlier decision of the Trial Chamber on the powers of the Appeals Chamber and the purported inability of the Trust Fund for Victims to carry out the process of assessing which victims are to receive collective reparations, the Legal Representative sees that the submissions on those matters show only a difference of opinion.

10. Accordingly, the Legal Representative submits that the filing of a reply cannot be regarded as necessary to dispose of the grounds of appeal initially raised by the LRVs and should not, therefore, be allowed.

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<sup>13</sup> See "Decision on the 'Prosecution application under regulation 24(5) for leave to reply'", above, footnote 10, p. 3.

## V. CONCLUSION

11. The Legal Representative respectfully requests the Appeals Chamber to deny the application from the Legal Representatives of the V01 team for leave to reply to her consolidated response to the appeal briefs of the Defence and the Legal Representatives against Trial Chamber II's Decision of 15 December 2017.

[signed]

**Paolina Massidda**  
**Principal Counsel**

Dated this 24 May 2018

At The Hague, Netherlands