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No. ICC-01/04-01/06 A7 A8

Date: 26 July 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 Bossa**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public document

**Order on the reclassification of documents and on the filing of a public version of
the legal representatives of the V02 group of victims' consolidated response**

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

Legal Representatives of V01 Victims

Mr Luc Walley
Mr Franck Mulenda

Counsel for the Defence

Ms Catherine Mabile
Mr Jean-Marie Biju-Duval

Legal Representatives of V02 Victims

Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo

Trust Fund for Victims

Mr Pieter de Baan

Office of Public Counsel for Victims

Ms Paolina Massidda

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeals of the legal representatives of the V01 group of victims and of Mr Thomas Lubanga Dyilo against the decision of Trial Chamber II entitled ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’ of 15 December 2017 (ICC-01/04-01/06-3379-Red-Corr-tENG),

Having before it the ‘Consolidated Response of the Legal Representatives of the V02 group of victims to the Briefs of the Defence for Mr Thomas Lubanga Dyilo and the Legal Representatives of the V01 Group of Victims against the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable” Handed Down on 15 December 2017 by Trial Chamber II’ of 9 May 2018 (ICC-01/04-01/06-3404-Conf-Corr-tENG),

Having before it the ‘Consolidated Response to the Appeal Briefs of the Defence and the Legal Representatives of V01 Victims against the Trial Chamber II Decision of 15 December 2017’ of 18 May 2018 (ICC-01/04-01/06-3407-Conf-tENG),

Having before it the ‘Application for Leave to Reply to the “Consolidated Response to the Appeal Briefs of the Defence and the Legal Representatives of V01 Victims against the Trial Chamber II Decision of 15 December 2017” filed on 18 May 2018 by the Office of Public Counsel for Victims’ of 22 May 2018 (ICC-01/04-01/06-3408-Conf-tENG),

Having before it the ‘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)’ of 24 May 2018 (ICC-01/04-01/06-3409-Conf-tENG),

Having before it the ‘Defence Application for Leave to File a Consolidated Reply to the Responses of the Legal Representatives of the V01 Group of Victims and the Office of Public Counsel for Victims Respectively Filed on 15 and 18 May 2018’ of 24 May 2018 (ICC-01/04-01/06-3410-Conf-tENG),

Having before it the ‘Response to the “*Requête de la Défense afin de solliciter l’autorisation de déposer une réplique consolidée aux Réponses des Représentants légaux du groupe des victimes V01 et du Bureau du Conseil public pour les victimes déposées respectivement le 15 et 18 mai 2018*” (ICC-01/04-01/06-3410-Conf)’ of 28 May 2018 (ICC-01/04-01/06-3411-Conf-tENG),

Pursuant to regulations 23*bis* and 28 of the Regulations of the Court,

Issues the following

ORDER

1. The legal representatives of the V02 group of victims shall file, by 16h00 on 17 August 2018, a public version of ICC-01/04-01/06-3404-Conf-Corr, with redactions where considered necessary, or request its reclassification as ‘public’.
2. The parties shall provide reasons, if any, by 16h00 on 17 August 2018, as to why the following documents and their translations should not be reclassified as ‘public’: ICC-01/04-01/06-3407-Conf, ICC-01/04-01/06-3408-Conf, ICC-01/04-01/06-3409-Conf and ICC-01/04-01/06-3411-Conf.
3. Unless otherwise ordered by the Appeals Chamber, the Registrar shall reclassify as ‘public’, as soon as practicable after 17 August 2018, the following documents: ICC-01/04-01/06-3407-Conf, ICC-01/04-01/06-3408-Conf, ICC-01/04-01/06-3409-Conf and ICC-01/04-01/06-3411-Conf.
4. Within five days of the filing of the last document referred to in paragraphs 1 to 3 above, Mr Thomas Lubanga Dyilo shall file a public version of ICC-01/04-01/06-3410-Conf, with redactions where considered necessary, or request its reclassification as ‘public’.

REASONS

1. On 15 March 2018, Mr Thomas Lubanga Dyilo (hereinafter: ‘Mr Lubanga’) filed the ‘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 2017¹ (hereinafter: ‘Mr Lubanga’s Appeal Brief’).

2. On 19 March 2018, the legal representatives of the V01 group of victims (hereinafter: ‘Victims V01’) filed the ‘Appeal Brief against the “*Décision fixant le montant des réparations auxquelles Thomas Lubanga est tenu*” Handed Down by Trial Chamber II on 15 December 2017’² (hereinafter: ‘Victims V01’s Appeal Brief’).

3. Regulation 23bis (1) of the Regulations of the Court requires that, should a participant wish to file a document as ‘confidential’, the participant must ‘state the factual and legal basis for the chosen classification’. If there is no such basis, a document should be filed as ‘public’ or ‘public redacted’.

4. The Appeals Chamber notes that Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’ of 15 December 2017³ is available in a public redacted version, and that there are public redacted versions of both Mr Lubanga’s Appeal Brief and Victims V01’s Appeal Brief.

5. The Appeals Chamber notes that the legal representatives of the V02 group of victims (hereinafter: ‘Victims V02’) have provided no justification for filing their ‘Consolidated Response of the Legal Representatives of the V02 Group of Victims to the Briefs of the Defence for Mr Thomas Lubanga Dyilo and the Legal Representatives of the V01 Group of Victims against the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable” Handed Down on 15 December 2017 by Trial Chamber II’ of 9 May 2018⁴ as ‘confidential’. As stated above, a participant should state the factual and legal basis for a chosen classification.

¹ ICC-01/04-01/06-3394-Conf; a public redacted version was filed on 16 March 2018 (ICC-01/04-01/06-3394-Red), and English translations of the confidential and public redacted versions were filed on 16 May and 18 May 2018, respectively (ICC-01/04-01/06-3394-Conf-tENG and ICC-01/04-01/06-3394-Red-tENG).

² ICC-01/04-01/06-3396-Conf, to which a corrigendum was filed on 20 March 2018 (ICC-01/04-01/06-3396-Conf-Corr); a public redacted version was filed on 5 April 2018 (ICC-01/04-01/06-3396-Corr-Red), and English translations of the confidential and public redacted versions were filed on 23 May and 17 July 2018, respectively (ICC-01/04-01/06-3396-Conf-Corr-tENG and ICC-01/04-01/06-3396-Corr-Red-tENG).

³ A corrigendum was issued in a public redacted version (ICC-01/04-01/06-3379-Red-Corr-tENG) and a confidential version (ICC-01/04-01/06-3379-Conf-Corr-tENG) on 21 December 2017.

⁴ ICC-01/04-01/06-3404-Conf-Corr-tENG.

Given the need for proceedings to be public, the Appeals Chamber directs Victims V02 to file, by 16h00 on 17 August 2018, a public version of ICC-01/04-01/06-3404-Conf-Corr, with redactions where considered necessary, or to request its reclassification as public.

6. The Appeals Chamber notes that the Office of Public Counsel for Victims (hereinafter: ‘OPCV’) has indicated in its ‘Consolidated Response to the Appeal Briefs of the Defence and the Legal Representatives of V01 Victims against the Trial Chamber II Decision of 15 December 2017’ of 18 May 2018⁵ (hereinafter: ‘OPCV’s Consolidated Response to the Appeal Briefs’), filed as ‘confidential’, that the document does not contain any confidential information and that it requests that the document be reclassified as ‘public’.⁶

7. The Appeals Chamber notes that Victims V01 have indicated in their ‘Application for Leave to Reply to the “Consolidated Response to the Appeal Briefs of the Defence and the Legal Representatives of V01 Victims against the Trial Chamber II Decision of 15 December 2017” filed on 18 May 2018 by the Office of Public Counsel for Victims’ of 22 May 2018⁷ (hereinafter: ‘Victims V01’s Request for Leave to Reply to the OPCV’s Response’), filed as ‘confidential’, that, as the OPCV has sought reclassification of the OPCV’s Consolidated Response to the Appeal Briefs as ‘public’, Victims V01’s Request for Leave to Reply to the OPCV’s Response can also be filed as ‘public’.⁸

8. The Appeals Chamber notes that the OPCV has indicated in its ‘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)’ of 24 May 2018⁹ (hereinafter: ‘OPCV’s Response to Victims V01’s Request for Leave to Reply’) and in its

⁵ ICC-01/04-01/06-3407-Conf. An English translation was filed on 13 June 2018 (ICC-01/04-01/06-3407-Conf-tENG).

⁶ OPCV’s Consolidated Response to the Appeal Briefs, para. 5.

⁷ ICC-01/04-01/06-3408-Conf, paras 4-5. An English translation was filed on 18 June 2018 (ICC-01/04-01/06-3408-Conf-tENG).

⁸ Victims V01’s Request for Leave to Reply to the OPCV’s Response, paras 4-5.

⁹ ICC-01/04-01/06-3409-Conf. An English translation was filed on 1 June 2018 (ICC-01/04-01/06-3409-Conf-tENG).

‘Response to the “*Requête de la Défense afin de solliciter l’autorisation de déposer une réplique consolidée aux Réponses des Représentants légaux du groupe des victimes V01 et du Bureau du Conseil public pour les victimes déposées respectivement le 15 et 18 mai 2018*” (ICC-01/04-01/06-3410-Conf)’ of 28 May 2018¹⁰ (hereinafter: ‘OPCV’s Response to Mr Lubanga’s Request for Leave to Reply’), both filed as ‘confidential’, that neither document contains any confidential information and that they be reclassified as ‘public’.¹¹

9. The Appeals Chamber finds that no reasons exist for the OPCV’s Consolidated Response to the Appeal Briefs, the Victims V01’s Request for Leave to Reply to the OPCV’s Response, the OPCV’s Response to Victims V01’s Request for Leave to Reply, and the OPCV’s Response to Mr Lubanga’s Request for Leave to Reply to remain confidential, and directs the parties, pursuant to regulation 28 of the Regulations of the Court, to provide reasons, if any, why these documents should not be reclassified as ‘public’. The Appeals Chamber directs the Registrar to reclassify those documents as ‘public’ as soon as practicable after 17 August 2018, unless otherwise ordered by the Appeals Chamber.

10. Finally, the Appeals Chamber notes that in his ‘Defence Application for Leave to File a Consolidated Reply to the Responses of the Legal Representatives of the V01 Group of Victims and the Office of Public Counsel for Victims Respectively Filed on 15 and 18 May 2018’ (hereinafter: ‘Mr Lubanga’s Request for Leave to Reply’) of 24 May 2018, Mr Lubanga indicates that he files it as ‘confidential for its reference to documents disclosed on a confidential basis’.¹² However, the Appeals Chamber observes that such documents referred to in Mr Lubanga’s Request for Leave to Reply are either i) also filed in a public version currently, or ii) will be so filed pursuant to the present Order. The Appeals Chamber directs Mr Lubanga to file a public version of Mr Lubanga’s Request for Leave to Reply, taking into account any redactions


¹⁰ ICC-01/04-01/06-3411-Conf. An English translation was filed on 11 June 2018 (ICC-01/04-01/06-3411-Conf-tENG).

¹¹ OPCV’s Response to Victims V01’s Request for Leave to Reply, para. 2; OPCV’s Response to Mr Lubanga’s Request for Leave to Reply, para. 2.

¹² ICC-01/04-01/06-3410-Conf, para. 1. An English translation was filed on 13 June 2018 (ICC-01/04-01/06-3410-Conf-tENG).

made to the aforementioned documents, within five days of the filing of the last such public document, or to request its reclassification as public.

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



Judge Piotr Hofmański
Presiding Judge

Dated this 26th day of July 2018

At The Hague, The Netherlands