

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 20 August 2018

THE APPEALS CHAMBER

Before:

**Judge Piotr Hofmański
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

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” filed on 18 May 2018 by the Office of Public Counsel for Victims

Source: Legal Representative of the V01 group of victims

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

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I. PROCEDURAL HISTORY

1. On 15 December 2017, Trial Chamber II (“Chamber”) handed down the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”¹ (“Decision”), against which the Representatives of the V01 group of victims and the Defence gave notice of appeal on 16 January 2018.
2. The Defence filed its appeal brief on 15 March 2018² and the Representatives of Victims filed theirs on 18 March 2018.³
3. On 18 May 2018, the Office of Public Counsel for Victims (“OPCV”) filed a consolidated response to the two briefs (“Response”).⁴
4. On 22 May 2018, the Legal Representatives of Victims sought leave to reply to the response.⁵
5. Leave was accorded by decision of 26 July 2018.⁶

¹ See “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable” (Trial Chamber II), ICC-01/04-01/06-3379-Conf-Corr + Anxs, 15 December 2017.

² 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-tENG.

³ 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.

⁴ See “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”, ICC-01/04-01/06-3407-Conf A7 A8, 18 May 2018.

⁵ See “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”, ICC-01/04-01/06-3408-Conf-tENG A7 A8, 21 May 2018.

⁶ See “Decision on requests for leave to reply”, ICC-01/04-01/06-3412, 26 July 2018.

II. CLASSIFICATION

6. The OPCV Response was filed as confidential, but OPCV stated that it did not contain any confidential information and sought its reclassification as public. Reclassification has yet to be effected. In accordance with regulation 23 *bis* (2) of the Regulations of the Court, the present reply is similarly classified. Nonetheless, the Legal Representatives have no objection to its reclassification as public.
7. The decision of 26 July granted the Legal Representatives leave to reply to the OPCV document on three issues:
 - (a) Whether the victims' appeal is admissible vis-à-vis article 82(4) of the Statute.
 - (b) Whether a previous decision of the Trial Chamber denying leave to appeal an interlocutory decision may have an effect on the powers of the Appeals Chamber.
 - (c) Whether as result of the inability of the Trust Fund to carry out a process for assessing who qualifies for a collective reparations programme the Chamber had to examine every individual dossier.

III. PRELIMINARY MATTER: OPCV'S POSITION IN THE PROCEEDINGS

8. The Response filed by OPCV is presented as coming from its Lead Counsel "as legal representative of 392 applicants – 379 of whom, the Court has decided, are to receive collective reparations as victims".⁷

⁷ See "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 V01et du Bureau du Conseil public pour les victimes déposées respectivement le 15 et 18 mai 2018' (ICC-01/04-01/06-3410-Conf)", ICC-01/04-01/06-3411-Conf-tENG, 28 May 2018.

9. The Legal Representatives see that these 392 “applicants” have never filed an application for reparations within the meaning of rule 94; nor have they applied to participate in the proceedings; let alone have they ever been granted leave by decision of the Chamber to participate in the proceedings in accordance with rule 89.
10. OPCV, however, was given leave of Trial Chamber I to participate in the reparations proceedings to “(1) act as the legal representative of unrepresented **applicants for reparations** and (2) represent the interests of **victims who may receive reparations** awarded pursuant to rules 97 and 98 of the Rules of Procedure and Evidence”.⁸ Trial Chamber I specified:

10. In accordance with Rule 98(3) of the Rules, the Court may order that a collective award for reparations is made through the Trust Fund for Victims. Consequently, victims who may benefit from an award for collective reparations will not necessary participate in the proceedings, either in person or through their legal representatives. 11. The Chamber considers that the expertise of the OPCV will be useful, particularly in order to safeguard the rights of these potential beneficiaries of an award for collective reparations.⁹

11. Since Trial Chamber I rejected the applications for reparations put before it and the Appeals Chamber has held that the collective reparations would not be based on applications,¹⁰ it would appear that OPCV no longer represents individual applicants but rather the interests of those victims who may receive collective reparations.
12. The Legal Representatives therefore consider that the positions set out in the response do not reflect the “views and concerns” of the 392 persons who are at issue in the Response, but the views and concerns of OPCV. What they find

⁸ See, *inter alia*, “Decision on the OPCV’s request to participate in the reparation proceedings”, ICC-01/04-01/06-2858, 5 April 2012, para. 13, See also, “Order relating to the request of the Office of Public Counsel for Victims of 16 September 2016”, ICC-01/04-01/06-3252-tENG, 21 October 2016.

⁹ See “Decision on the OPCV’s request to participate in the reparations proceedings” ICC-01/04-01/06-2858, 5 April 2012, paras. 10-11.

¹⁰ 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*”, ICC01/04-01/06-3396-Conf, paras. 14-16.

particularly astonishing is that OPCV, whose duty it is to provide assistance to victims, objects to the consideration of an appeal brought by and/or which has the support of all the victims authorized to participate in the proceedings. Specifically, it is the prime task of OPCV to “[p]rovid[e] general support and assistance to the legal representative of victims and to victims, including legal research and advice ...”.¹¹ Throughout the pre-trial proceedings, the victims in the V01 group have enjoyed OPCV’s assistance, including at hearings, as part of an agreement concluded with OPCV, which sometimes represents their counsel. The victims are therefore even more baffled by the fact that OPCV is now their adversary.

13. Irrespective, the Legal Representatives, who also represent a number of victims who have yet submit a dossier to the Trust Fund, are of the view that were the Appeals Chamber to decide to entertain the substance of their appeal, or were the appeal found to have merit, the interests of those who may receive collective reparations would in no way be adversely affected – quite the contrary.

IV. REPLY

(a) The purported inadmissibility of the victims’ appeal vis-à-vis article 82(4) of the Statute

14. OPCV argues that the appeals entered by the Representatives of Victims and by the Defence are inadmissible for failure to have “stated clearly, let alone proved, that the criteria applicable under article 82(4) of the Rome Statute

¹¹ See Regulations of the Court, regulation 81(1)(a).

have been met.”¹² It seeks the denial of the appeals outright and objects to their consideration by the Appeals Chamber.

15. The Legal Representatives make the point that article 82(4), the sole provision explicitly cited in support of the motion, states: “A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence”. The sole conditions for admissibility in the article are that the appeal must come from a representative of victims, the convicted person or the owner of property affected by the order and that it be brought in accordance with the Rules of Procedure and Evidence.
16. Rule 150 prescribes that an appeal against an order for reparations be filed with the Registry within 30 days of the date on which the party filing the appeal is notified of the decision. The appeals at issue here complied with that condition.
17. OPCV cannot in all seriousness dispute that the Legal Representatives of the Victims who provide joint representation for the V01 group have standing as “representatives of the victims”, that the decision of 15 December 2017 is an “order for reparations” within the meaning of the Statute or that the appeal was entered on time.
18. To the extent that it may be necessary, the Legal Representatives recall that the requirements prescribed by regulations 57 and 58 of the Regulations of the Court as to form and particulars were also met, which OPCV does not, in any event, appear to dispute.

¹² See para. 10 of the Response of the Office of Public Counsel, at footnote 4, above.

19. OPCV sees article 82(4), however, as also introducing (implicitly?) a further legal basis for inadmissibility, namely a requirement that the appeal brief identify “the nature or the basis of the errors allegedly committed by the Trial Chamber” and that the document show “how the impugned decision was affected by the alleged errors.”¹³
20. OPCV advances no reason to infer such a stipulation for inadmissibility from the terms of article 82(4) and appears to confuse the conditions for admissibility of an appeal with substantive conditions.
21. That notwithstanding, it has to be noted that the appeal brief finds fault with the Trial Chamber for a number of errors of law: failure to comply with rule 98(3) of the Rules of Procedure and Evidence, regulations 62 to 64 of the Regulations of the Trust Fund, and the Appeals Chamber’s instructions (first ground); the introduction of a discriminatory process (second ground); violation of the principles for the identification of eligible victims which the Chamber itself had set out; and dismissal of the Trust Fund’s conclusions without sufficient reasons (third ground). In the alternative, the appellants raise abuse of discretion (second ground) and point out that, through the errors and post-facto change of the rules, the Chamber has deprived close to half of the participating victims of the right to receive collective reparations, necessarily entailing that the errors raised “materially affected” the Decision, which would have been altogether different absent the errors.
22. Accordingly, OPCV is incorrect to contend that the appeal did not comply with the provisions of article 82(4).

¹³ See para. 12 of the Response of the Office of Public Counsel, at footnote 4, above.

**(b) The effect of a previous decision of the Trial Chamber on the powers
of the Appeals Chamber**

23. In responding to the first and second grounds, OPCV cites the Trial Chamber's decision of 8 December 2016, which denied leave to enter an interlocutory appeal against the order of 21 October 2016. In its view, it was that decision which introduced for those potential victims who were as yet unknown a concurrent identification and assessment procedure to that which the Trust Fund implemented in accordance with the order of 9 February 2016.¹⁴ In OPCV's opinion, the Legal Representatives "are henceforth time-barred from appealing against a decision that simply applied a principle established by previous decisions of the Chamber".¹⁵ It argues that, by denying an interlocutory appeal against its order of 21 October 2016, the Chamber gave that order finality: "the order of 21 December 2016 (read "October") 2016 is *res judicata* [*a acquis l'autorité de la chose jugée*] and any appeal against the Decision of 15 December 2017 considering the terms that simply rehearse and take note of the Order is as a result inadmissible".¹⁶

24. The Legal Representatives note that contrary, to the OPCV's assertion, the Chamber decided to undertake an individual assessment of the dossiers of those who may qualify not by order of 21 October 2016 but by order of 9 February 2016, which made plain that "it [the Chamber] is responsible for deciding on the status of eligible victims once the Defence has had the opportunity to submit its observations on the eligibility of each victim";¹⁷ by so proceeding, the Chamber exceeded the task given to it by the Appeals

¹⁴ See "Order instructing the Trust Fund for Victims to supplement the draft implementation plan", ICC-01/04-01/06-3198-tENG, 9 February 2016.

¹⁵ See para. 20 of the Response of the Office of Public Counsel, at footnote 4, above [Emphasis added].

¹⁶ *Ibid*, para. 25 [Emphasis added].

¹⁷ See "Order relating to the request of the Office of Public Counsel for Victims of 16 September 2016", ICC-01/04-01/06-3252, 21 October 2016, para. 14.

Chamber.¹⁸ By that same order, the Trust Fund was directed to locate and identify the potential victims (with the assistance of the Registry, the Legal Representatives and OPCV) and “to prepare a file [dossier] for each potential victim, with a copy of the identification documents or other means of identification presented, the interviews and the TFV’s conclusions with regard to the victim’s status and the extent of the harm he or she has suffered”¹⁹ [emphasis added].²⁰ The Legal Representatives did not seek leave to appeal that decision – unlike the Trust Fund, which on 15 February 2016 filed a request for the purpose of seeking the opinion of the Appeals Chamber on the legality of the decision.²¹ Leave was denied by decision of 4 March 2016.²²

25. The order of 21 October 2016 was, however, where the Chamber introduced a procedure concurrent to the one implemented by the Trust Fund, by authorizing OPCV²³ to interview potential victims and to convey the resulting dossiers to the Chamber through VPRS.²⁴ Whereas the Trust Fund was tasked with undertaking an assessment of victim status and of the extent of the harm to the victims (hence the need to involve experts) and given specific instructions, including as regards the requisite time frame, the Chamber gave free rein to OPCV, deciding that the dossiers were to be provided “as they become ready” and that “it is for the OPCV to decide, on the basis of its own expertise, what approach it deems suitable for the conduct of interviews with

¹⁸ See para. 15 of the Legal Representatives’ Appeal Brief, at footnote 3, above.

¹⁹ *Ibid.*, para. 17.

²⁰ Of note is that in the order, “interviews”, not “applications”, are at issue.

²¹ See “Request for Leave to Appeal against the ‘*Ordonnance enjoignant au Fonds au profit des victimes de compléter le projet de plan de mise en œuvre*’”, ICC-01/04-01/06-3200, 9 February 2016

²² See “Decision on the request of the Trust Fund for Victims for leave to appeal against the order of 9 February 2016”, ICC-01/04-01/06-3202-tENG, 4 March 2016.

²³ By order of 21 December 2016 (ICC-01/04-01/06-3267) that authorization was also given to the Legal Representatives of the V02 group.

²⁴ See Order of the Chamber, at footnote 17, above.

Potentially Eligible Victims.”²⁵ The only specific instruction given to OPCV was “to use the form previously employed by the TFV”.²⁶

26. The present discussion confirms that the decision of 21 October 2016, against which the Legal Representatives wished to lodge an appeal, did involve an issue that would significantly affect the outcome of the trial and for which an immediate resolution by the Appeals Chamber would have materially advanced the proceedings (cf. article 82).

27. However, the assertion that by denying an interlocutory appeal a Chamber may give finality to its own decision, thereby precluding an appeal against the final judgment is, to say the least, a novel position to take. To so construe rule 155 would entail that a Trial Chamber could curtail the powers of the Appeals Chamber and deprive the victims of the right to enter an appeal against the final decision affected by a decision for which an interlocutory appeal was denied. Such a state of affairs would be antithetical to article 83(1) of the Statute, which states in no uncertain terms that “the Appeals Chamber shall have all the powers of the Trial Chamber”.

28. By asserting that “the order of 21 December 2016 is *res judicata* [*a acquis l'autorité de la chose jugée*] and any appeal against the Decision of 15 December 2017 considering the terms that simply rehearse and take note of the Order is as a result [emphasis added] inadmissible”, OPCV appears to confuse the concept of “autorité de la chose jugée” [*res judicata* attaching to a judgment when it is given], which precludes new proceedings between the same persons regarding the same subject and in relation to the same case²⁷) with the concept

²⁵ See para. 21 of the Order of the Chamber, at footnote 17, above.

²⁶ *Ibid.* In fact, that condition was not satisfied. Subsequent to the order, OPCV and the Trust Fund used the same form, but it was slightly modified, including by changing its title from “*Formulaire de réparation*” [TRANSLATION: “Reparations Form”] to “*Formulaire de demande de réparation*” [TRANSLATION: “Application Form for Reparations”]. See footnote 23 of the Brief, at footnote 3, above.

²⁷ See article 1351 of the French Civil Code “[TRANSLATION] *Autorité de la chose jugée* attaches only to that which was the object of the judgment. What was sought must be the same, the claim must be

of “*force de la chose jugée*” [*res judicata* attaching to a judgment when its enforcement can no longer be suspended by ordinary review], which entails only that a decision is no longer amenable to review.²⁸ What is more, the concept of *autorité de la chose jugée* applies only to final judgments,²⁹ whereas the decision of 21 October ruled only on a procedural problem and was interlocutory in nature.

(c) Whether Trial Chamber II had to undertake an individual assessment of the dossiers of victims who potentially qualify for the collective reparations programme as a result of the Trust Fund’s inability to carry out a process for the assessment of said victims

29. By its decision of 9 February 2016, the Trial Chamber deferred approval of the draft collective reparations programme submitted by the Trust Fund and decided that the Trust Fund was, in the first place, to locate and identify the victims who may qualify for its programme and assess their status and the extent of the harm done to them, so as to allow the Chamber to rule on the eligibility of each victim. The Legal Representatives regard that decision as inconsistent with rule 98(3) and the instructions of the Appeals Chamber set down in its judgment of 13 March 2015 (see first ground). The Trust Fund was of the same mind and sought, to no avail, leave to appeal the decision, arguing a violation of the same rule and of the Regulations of the Trust Fund.³⁰

founded on the same case and the claim must be between the same parties and must be brought by them and against them with the same standing”.

²⁸ “[TRANSLATION] Definition of a judgment to which *force de chose jugée* attaches: a judgment which is no longer amenable to review because remedies have been exhausted or are time-barred”. *Service public français* website. Glossary: <https://www.service-public.fr/particuliers/glossaire/R15859>.

²⁹ See article 482 of the French Code of Civil Procedure “[TRANSLATION] *Autorité de la chose jugée* shall not attach to the substantive aspects of a judgment whose disposition is confined to ordering an investigative measure [*mesure d’instruction*] or an interim measure [*mesure provisoire*]”.

³⁰ See “Request for Leave to Appeal against the ‘*Ordonnance enjoignant au Fonds au profit des victimes de compléter le projet de plan de mise en oeuvre*’ (9 February 2016)” of 15 February 2016.

30. In its Response, OPCV defends the Chamber's decision, and claims that it was taken "in the interest of the victims" [emphasis added in the [original] text], whereas the Chamber itself drew attention to its adverse consequences for the victims: "It is also aware of the repercussions for the potential victims, who, more than 10 years after the events in question, are obliged to recall the trauma they have suffered". At the same time, the Chamber saw the exercise necessary as to be able "to rule on the monetary amount of Mr Lubanga's liability".³¹

31. Furthermore, OPCV downplays the effect of the decision, asserting, in contradiction with the Chamber's position,³² that the Chamber

never intended to replace a collective procedure with a procedure involving a systematic individual examination of the dossiers submitted by the applicants. It is patent, however, that the sole purpose [emphasis added] of the procedure implemented in the case was to collect the information necessary for the Trial Chamber to perform its task... and to provide the Trust Fund with indications for its task of assessing all the other dossiers of potential victims.³³

32. OPCV also maintains, in contradiction with the terms of the order of 15 December 2017,³⁴ that the order does not exclude the victims who were not accepted for the reparations programme, but appears to allow them "to supply additional information to the Trust Fund, which may determine [emphasis added], in accordance with the Chamber's instructions, whether their dossiers meet the established criteria".³⁵ As the Chamber has expressly ruled that some of the victims – whose dossiers the Trust Fund had already regarded as meeting the criteria – would not receive reparations, the Legal Representatives does not see how the Trust Fund could then proceed to

³¹ See paras. 13 and 14 of the Order of the Chamber, at footnote 14, above.

³² See footnote 14.

³³ See para. 16 of the OPCV Response at footnote 4, above.

³⁴ See para. 194 and disposition, third paragraph of the Decision at footnote 1, above.

³⁵ See para. 29 of the OPCV Response, at footnote 4, above.

“review” the Chamber’s decision. At most, it could, as the Chamber suggested, include those victims in its assistance programme.³⁶

33. In OPCV’s opinion, the Chamber had to so proceed because

the Trust Fund currently has neither the experience nor the expertise required for assessing and screening hundreds of dossiers of potential victims, and that this is why the Chamber saw fit, in conformity with the instructions of the Appeals Chamber, to provide the Trust Fund with all the guidelines it needs to perform its role, while safeguarding the rights of the victims and the Defence throughout the proceedings.³⁷

34. The Legal Representatives see that the Chamber gave no such reason. The Trust Fund has extensive experience in the assessment and screening of persons claiming to be victims and seeking to avail themselves of its assistance programmes, and has stated that it has been providing assistance to 400,000 victims since 2008, and has been doing so in a number of situations.³⁸

35. The “Draft Implementation Plan for collective reparations to victims”, filed by the Trust Fund on 3 November 2015 at the behest of the Appeals Chamber,³⁹ expounded on how the Trust Fund planned to identify victims and to assess the harm done to them and their eligibility for reparations. A draft “Eligibility Screening Tool” was appended.⁴⁰ In its order of 9 February 2016, the Chamber implicitly approved the Trust Fund’s method by making reference to the screening tool without finding fault with it.⁴¹ Had the Chamber really considered that the Trust Fund lacked the expertise to implement its proposals, this raises the question as to why it tasked the Trust Fund with the assessment by decision of 9 February 2016 and entrusted the Trust Fund alone, by order of 17 December 2017, with the assessment of new dossiers.

³⁶ See Decision of the Order of 15 December 2017, para. 301.

³⁷ See OPCV Response, para. 17.

³⁸ <https://www.trustfundforvictims.org/en/news/speech-motoo-noguchi-chair-board-directors-trust-fund-victims-commemoration-20th-anniversary>.

³⁹ See “Filing on Reparation and Draft Implementation Plan”, ICC-01/04-01/06-3177-AnxA,

⁴⁰ *Ibid*, pp. 75-80.

⁴¹ See para. 16 of the Order, at footnote 14, above.

36. The assessment process carried out by the Trust Fund subsequent to the decision of 9 February 2016 has been intensive and very costly,⁴² not least because of the Chamber's requirement for an estimate of the harm done to each victim, requiring the input of a number of experts. The Chamber did not, however, make use of the fruits of these efforts in assessing the total reparations award.

37. Moreover, the Chamber's "screening" of the victims whom the Trust Fund considered as potentially qualifying was unnecessary as a (post-facto) illustration of the selection criteria used, since the criteria are set out in the Appeals Chamber's "Order for Reparations (amended)",⁴³ to which the order of 9 February 2016 refers.⁴⁴

38. The order of 15 December 2017 does not take issue with the criteria applied by the Trust Fund or its conclusions on the individual dossiers. No mention is even made of the existence of the Trust Fund's assessment reports, which were nonetheless prepared at the behest of the Chamber. That notwithstanding, the order does give an overview of the method the Chamber followed in assessing the dossiers.⁴⁵ The method differs from that proposed and applied by the Trust Fund and, in the view of the Legal Representatives, is less suited to the situation on the ground.

⁴² See "First submission of victim dossiers", ICC-01/04-01/06-3208, para. 78. "An additional dimension of the current approach of considerable concern to the Trust Fund is the fact that this approach is very resource intensive in terms of financial cost, time, and effort of the Trust Fund, the Court and other actors.

79. As mentioned above, the April 2016 missions assessed a limited number of prior-known victim participants, 31 potential victims. However, the missions still took eleven full working days and involved the full-time participation of Trust Fund Secretariat staff, staff of the two legal teams and their intermediaries, VPRS, translators, experts of the Trust Fund's implementing partner, AMAB staff, and of course, the victims". 31 May 2016.

⁴³ See "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012" ICC-01/04-01/06-3129. Anx. pp. 12-14.

⁴⁴ See para. 16 of the Order, at footnote 14, above.

⁴⁵ See pp. 31-35 of the Decision, at footnote 1, above.

39. The Chamber explains that it relied primarily on its consideration of the internal consistency of the victims' statements (as recorded in the form), the content of previous applications for participation and/or reparations (discrepancies, if any, with the recent form), and the level of detail in the factual account given (by the person who completed the form).⁴⁶ It is the Legal Representatives' experience that the Trust Fund seems also to have taken account of the personality, socio-economic status, age and ethnic origin of the person interviewed, and the person's ability to answer the questions and familiarity with the militia's structure and practices. It also had regard to the opinion of medical and psychological experts regarding the likelihood of a nexus between the wounds or trauma recorded and the facts alleged.

40. To conclude, the Legal Representatives, with reference also to the brief and the response filed, request that their appeal be found admissible and, upon consideration, with merit.

FOR THESE REASONS

MAY IT PLEASE THE APPEALS CHAMBER:

To find that the appeal is admissible and with merit, and to rule as requested in the brief.

On behalf of the team of V01 victims, the Legal Representatives

[signed]

Luc Walley

[signed]

Franck Mulenda

Dated this 20 August 2018 at Brussels, Belgium, and Kinshasa, DRC.

⁴⁶ *Ibid.*, paras. 63-64.