

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/04-01/06 OA 18

Date: 29 September 2010

THE APPEALS CHAMBER

Before:
Judge Sang-Hyun Song, Presiding Judge
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko
Judge Sanji Mmasenono Monageng

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 observations as to the confidential status of victims' observations
dated 23 August 2010 (ICC-01/04-01/06-2559-Conf)**

shs

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Paul Kabongo Tshibangu
Ms Carine Bapita Buyangandu
Mr Luc J. M. Walley

Legal Representatives of Applicants

REGISTRY

Registrar

Ms Silvana Arbia

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

shs

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber I entitled “Decision on the Prosecution’s Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with VWU” of 8 July 2010 (ICC-01/04-01/06-2517),

Having before it the “Observations pour les victimes a/0001/06, a/0002/06, a/0003/06, a/00049/06, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0007/07, a/0149/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0523/08, a0053/09, a/0249/09, a/0292/09 et a/0398/09 sur l'appel contre la décision du 8 juillet de la Chambre de Première Instance I de suspendre la procédure” of 23 August 2010 (ICC-01/04-01/06-2559-Conf) and the “Observations pour les victimes a/0001/06, a/0002/06, a/0003/06, a/00049/06, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0007/08, a/0149/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0523/08, a/0053/09, a/0249/09, a/0292/09 et a/0398/09 suite à l'ordonnance de la Chambre d'appel du 21 septembre 2010” of 23 September 2010 (ICC-01/04-01/06-2572),

Unanimously,

Issues the following

ORDER

The Victims and Witnesses Unit and the Prosecutor shall submit, by 16h00 on Friday, 1 October 2010, their respective observations on the propriety of reclassifying as public the “Observations pour les victimes a/0001/06, a/0002/06, a/0003/06, a/00049/06, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0007/07, a/0149/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0523/08, a0053/09, a/0249/09, a/0292/09 et a/0398/09 sur l'appel contre la décision du 8 juillet de la Chambre de Première Instance I de suspendre la procédure” of 23 August 2010 (ICC-01/04-01/06-2559-Conf).

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REASONS

1. On 23 August 2010, victims represented by Mr Walleyne filed as confidential the “Observations pour les victimes a/0001/06, a/0002/06, a/0003/06, a/00049/06, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0007/07, a/0149/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0523/08, a/0053/09, a/0249/09, a/0292/09 et a/0398/09 sur l'appel contre la décision du 8 juillet de la Chambre de Première Instance I de suspendre la procédure” (hereinafter “Victims Observations”).¹ The victims did not indicate the factual and legal basis for filing this document confidentially. They also filed a public redacted version of the same observations.²

2. On 30 August 2010, Mr Lubanga Dyilo filed as confidential his response to the Victims’ Observations.³ He noted his response was filed confidentially on the basis that it responded to certain allegations appearing in only the confidential version of the Victims’ Observations.⁴ He submitted that there was no difficulty in making public the Victims’ Observations or his response thereto, and he requested the Appeals Chamber to reclassify as public both documents.⁵

3. On 21 September 2010, the Appeals Chamber ordered, *inter alia*, the victims to indicate the factual and legal basis for filing as confidential the above-mentioned observations.⁶

4. On 23 September 2010, the victims filed their observations in relation to the Appeals Chamber’s order, wherein they alleged as follows:

2. L’équipe de représentants légaux V01 a estimé nécessaire d’expurger de ses observations certaines informations de natures confidentielles susceptibles de révéler au public des informations et identités de certains témoins protégés.

3. En effet, le fait que les noms des dits victimes soient indiqués avec un numéro ne garantit pas un anonymat absolu.⁷

¹ ICC-01/04-01/06-2559-Conf.

² ICC-01/04-01/06-2559-Red.

³ “Réponse de la Défense aux observations des représentants légaux des victimes relatives à l’appel à l’encontre de la décision ordonnant la suspension des procédures”, ICC-01/04-01/06-2563-Conf (hereinafter: “Response of Mr Lubanga Dyilo”).

⁴ Response of Mr Lubanga Dyilo, para. 20.

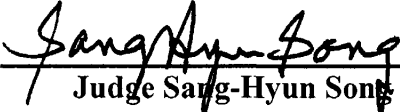
⁵ Response of Mr Lubanga Dyilo, para. 20.

⁶ “Order in relation to confidential filings”, ICC-01/04-01/06-2568.

⁷ “Observations pour les victimes a/0001/06, a/0002/06, a/0003/06, a/00049/06, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0007/08, a/0149/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0523/08,

5. Before determining whether or not to make public the Victims' Observations and Mr Lubanga Dyilo's response thereto, the Appeals Chamber considers it appropriate to hear from the Victims and Witnesses Unit and the Prosecutor as to making public the Victims' Observations, in particular in light of the use therein of pseudonyms to refer to victims or witnesses.

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


Judge Sang-Hyun Song
Presiding Judge

Dated this 29th day of September 2010

At The Hague, The Netherlands

a/0053/09, a/0249/09, a/0292/09 et a/0398/09 suite à l'ordonnance de la Chambre d'appel du 21 septembre 2010", ICC-01/04-01/06-2572, paras 2-3.