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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

Decision on requests for leave to reply

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

Legal Representatives of Victims V01

Mr Luc Walley
Mr Franck Mulenda

Counsel for the Defence

Ms Catherine Mabile
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims V02

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 ‘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 ‘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),

Pursuant to regulation 60 of the Regulations of the Court,

Renders the following

DECISION

1. The legal representatives of the V01 group of victims may file a reply to the response of the Office of Public Counsel for Victims by 16h00 on Friday, 24 August 2018. The reply shall not exceed 20 pages, and its content must comply with paragraphs 5 and 12 below.
2. Mr Thomas Lubanga Dyilo may 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 by 16h00 on Friday, 24 August 2018. The consolidated reply shall not exceed 20 pages, and its content must comply with paragraphs 8, 9 and 12 below.

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 2017’.¹
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
3. On 15 May 2018, Victims V01 filed the ‘Response of the Legal Representatives of the V01 Group of Victims to 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 2017’³ (hereinafter: ‘Victims V01’s Response to Mr Lubanga’s Appeal’).
4. On 18 May 2018, the Office of Public Counsel for Victims (hereinafter: ‘OPCV’) filed 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 2017’⁴ (hereinafter: ‘OPCV’s Consolidated Response to the Appeal Briefs’).
5. On 22 May 2018, Victims V01 filed the ‘Application for Leave to Reply to the “Consolidated Response to the Appeal Briefs of the Defence and the Legal

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 ICC-01/04-01/06-3405-tENG.

⁴ ICC-01/04-01/06-3407-Conf. An English translation was filed on 13 June 2018 (ICC-01/04-01/06-3407-Conf-tENG).

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 Victims⁵ (hereinafter: ‘Victims V01’s Request for Leave to Reply to the OPCV’s Response’). In their application, Victims V01 seek leave to reply to three issues raised in the OPCV’s Consolidated Response to the Appeal Briefs:

- a. Whether Victims V01’s appeal is admissible;⁶
- b. Whether a previous decision of Trial Chamber II to reject leave to appeal against an interlocutory decision may have an effect on the current appeal;⁷ and
- c. Whether the Trust Fund for Victims’ alleged inability to carry out the process of assessment of victims’ dossiers prompted Trial Chamber II to take on the examination of those dossiers.⁸

6. On 24 May 2018, the OPCV filed 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)’⁹ (hereinafter: ‘Response to the Victims V01’s Request for Leave to Reply to the OPCV’s Response’). The OPCV opposes the Victims V01’s Request for Leave to Reply to the OPCV’s Response on the basis that i) it does not identify a new issue which could not have been reasonably anticipated, ii) Victims V01 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 Victims V01.¹⁰

7. On 24 May 2018, Mr Lubanga filed the ‘Defence Application for Leave to File a Consolidated Reply to the Responses of the Legal Representatives of the V01 Group

⁵ ICC-01/04-01/06-3408-Conf. An English translation was filed on 18 June 2018 (ICC-01/04-01/06-3408-Conf-tENG). This document and some of the other documents referred to in this decision are marked confidential. Nonetheless, some of the content of these documents is summarised in this decision, as there is no basis for its confidentiality.

⁶ Victims V01’s Request for Leave to Reply to the OPCV’s Response, paras 8-12.

⁷ Victims V01’s Request for Leave to Reply to the OPCV’s Response, paras 13-17.

⁸ Victims V01’s Request for Leave to Reply to the OPCV’s Response, paras 18-19.

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).

¹⁰ Response to the Victims V01’s Request for Leave to Reply to the OPCV’s Response, para. 2.

of Victims and the Office of Public Counsel for Victims Respectively Filed on 15 and 18 May 2018'¹¹ (hereinafter: 'Mr Lubanga's Request for Leave to Reply'), in which he seeks leave to reply to Victims V01's Response to Mr Lubanga's Appeal and the OPCV's Consolidated Response to the Appeal Briefs.

8. Mr Lubanga seeks leave to reply to the following issues raised in Victims V01's Response to Mr Lubanga's Appeal:

- a. Whether Trial Chamber II decided to proceed with reparations on its own motion within the meaning of article 75 of the Statute;¹²
- b. Whether the standard of proof applied in international law in the context of asylum and refugee status is the balance of probabilities;¹³ and
- c. Whether the quantum of individual harm must be assessed for collective reparations.¹⁴

9. Mr Lubanga seeks leave to reply to the following issues raised in OPCV's Consolidated Response to the Appeal Briefs:

- a. Whether Mr Lubanga's appeal is admissible;¹⁵
- b. Whether applications for reparations were put before Trial Chamber II by victims who did not submit any application form;¹⁶
- c. Whether Trial Chamber II took into account the actual cost of programmes and services that could be implemented in Ituri;¹⁷ and
- d. Whether the OPCV asked Trial Chamber II to set the amount of liability at USD 6,000,000 for the victims already known.¹⁸

¹¹ ICC-01/04-01/06-3410-Conf. An English translation was filed on 13 June 2018 (ICC-01/04-01/06-3410-Conf-tENG).

¹² Mr Lubanga's Request for Leave to Reply, paras 8-11.

¹³ Mr Lubanga's Request for Leave to Reply, paras 12-13.

¹⁴ Mr Lubanga's Request for Leave to Reply, paras 14-18.

¹⁵ Mr Lubanga's Request for Leave to Reply, paras 19-22.

¹⁶ Mr Lubanga's Request for Leave to Reply, paras 23-25.

¹⁷ Mr Lubanga's Request for Leave to Reply, paras 26-27.

10. On 28 May 2018, the OPCV filed 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)’¹⁹ (hereinafter: ‘Response to Mr Lubanga’s Request for Leave to Reply’). The OPCV opposes Mr Lubanga’s Request for Leave to Reply on the basis that i) it does not identify a new issue which could not have been reasonably anticipated, ii) Mr Lubanga does 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 Mr Lubanga.²⁰

11. The Appeals Chamber notes that the content of Victims V01’s Request for Leave to Reply to the OPCV’s Response and of Mr Lubanga’s Request for Leave to Reply is of such a character as to in fact constitute a substantive reply to issues raised in the responses. The Appeals Chamber disapproves of the practice of filing such a substantive reply prior to leave being granted.

12. At any rate, the Appeals Chamber considers it in the interests of justice to allow Victims V01 and Mr Lubanga to reply to the specific issues identified in their requests as set out above. The replies shall not repeat submissions already made in the responses. Furthermore, the Appeals Chamber considers it appropriate in the circumstances to limit Victims V01’s and Mr Lubanga’s replies to no more than 20 pages each.

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

¹⁸ Mr Lubanga’s Request for Leave to Reply, paras 28-29.

¹⁹ ICC-01/04-01/06-3411-Conf. An English translation was filed on 11 June 2018 (ICC-01/04-01/06-3411-Conf-tENG).

²⁰ Response to Mr Lubanga’s Request for Leave to Reply, para. 2.