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No.: ICC-01/04-01/06 OA18

Date: 1 October 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

**Prosecution's submissions on reclassification of Victims Observations
ICC-01/04-01/06-2559-Conf**

Source: Office of the Prosecutor

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

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**Unrepresented Applicants for
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1. On 30 July 2010, the Prosecution filed its document in support of the appeal¹ against the Trial Chamber's order to stay the proceedings for abuse of process of the Court.²
2. On 23 August 2010, Legal Representatives of victims confidentially filed the *"Observations pour les victimes a/0001/06, a/0002/06, a/0003/06, 3/00049/06, 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"* ("Victims Observations"),³ along with a public redacted version⁴
3. On 21 September 2010, the Appeals Chamber ordered the Legal Representative to indicate the factual and legal basis for filing as confidential the Victims Observations.⁵
4. On 23 September 2010, the Legal Representative made the following submissions:⁶
 2. *L'équipe de représentants légaux VOI 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.*
5. On 29 September 2010, the Appeals Chamber ordered the Victims and Witnesses Unit and the Prosecutor to submit their respective observations on the propriety of reclassifying as public the Victims Observations.⁷

¹ ICC-01/04-01/06-2544-Conf. A public redacted version of the document in support of the appeal was filed on the same date (ICC-01/04-01/06-2544-Red).

² ICC-01/04-01/06-2517.

³ ICC-01/04-01/06-2559-Conf.

⁴ ICC-01/04-01/06-2559-Red.

⁵ ICC-01/04-01/06-2568.

⁶ ICC-01/04-01/06-2572.

⁷ ICC-01/04-01/06-2575.

6. The Prosecution notes that only footnotes 8 and 9 in the public version of the Victims Observations include redactions of factual information and the source of the information. The information itself is already in the public domain.⁸ However, the source of that information -- persons identified in the Victims Observations by way of pseudonym -- is *not* public. The pseudonymic sources are identified in discrete portions of transcripts before the Trial Chamber that remain confidential.
7. The Prosecution submits that the Appeals Chamber should not reclassify the confidential version of the Victims Observations, thereby making public the sources of information, unless and until the relevant portions of the confidential transcripts themselves are reclassified pursuant to Regulation 42 of the Regulations of the Court.⁹ In the absence of such prior reclassification by the Trial Chamber, the Prosecution considers that a reclassification of the unredacted version of the Victims Observations as public would not be appropriate.
8. However, the Prosecution also considers that the Legal Representatives might be directed to file a new public redacted version of the Observations that includes the factual information and confines redactions to the sources referred to in para. 6 above.



Luis Moreno-Ocampo,
Prosecutor

Dated this 1st day of October 2010

At The Hague, The Netherlands

⁸ With respect to footnote 8, see public version of the decision of the Trial Chamber staying the proceedings (ICC-01/04-01/06-2517-Red, para. 4) and public version of the Prosecution's document in support of the appeal (ICC-01/04-01/06-2544-Red, paras. 28-29); with respect to footnote 9, see public version of the Trial Chamber's decision to stay the proceedings (ICC-01/04-01/06-2517-Red, para. 19) and the public version of the Prosecution's document in support of the appeal (ICC-01/04-01/06-2544-Red, paras. 3 and 28, as well as footnote 63).

⁹ The relevant protective measures were ordered by the Trial Chamber in the trial proceedings, of which it continues to be seized.