



Original: **French**

No.: **ICC-01/04-01/06**
Date: **22 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

**Observations of the Defence on the Order of the Appeals Chamber of
21 September 2010, ICC-01/04-01/06-2568 OA18**

Source: Defence Team for Mr Thomas Lubanga

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabilie,
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Paul Kabongo Tshibangu
Ms Paolina Massidda
Mr Hervé Diakiese
Mr Joseph Keta Orwinyo

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

BACKGROUND

1. On 8 July 2010, Trial Chamber I ordered the stay of the proceedings.¹
2. On 15 July 2010, Trial Chamber I granted the Prosecutor leave to appeal that Decision.²
3. On 30 July 2010, the Defence received the “Prosecution's Document in Support of Appeal against Trial Chamber I's Decision of 8 July 2010 to stay the proceedings for abuse of process”.³
4. On 9 August 2010, the Defence filed a confidential version and a public version of its response to the Prosecutor's document in support of appeal.⁴
5. On 21 September 2010, the Appeals Chamber ordered the Defence to indicate, by 4.00 p.m. on 23 September 2010, the reasons justifying filing as confidential its response to the Prosecutor's document in support of appeal.⁵

OBSERVATIONS

6. On 9 August 2010, the Defence filed a confidential version and a public version of its “Defence Response to the ‘Prosecution's Document in Support of Appeal against Trial Chamber I's decision of 8 July to stay the proceedings for abuse of process’, of 30 July 2010”.⁶
7. The Defence considered it necessary to redact from the public version of its Response certain confidential information having the potential to expose the

¹ ICC-01/04-01/06-T-313-ENG ET WT and ICC-01/04-01/06-2517-Conf.

² ICC-01/04-01/06-T-314-ENG.

³ ICC-01/04-01/06-2544-Conf. An initial document in support of appeal (ICC-01/04-01/06-2538-Conf AO 18) was filed on 26 July 2010 and was rejected by the Appeals Chamber on the ground that it did not comply with the Regulations of the Court. See ICC-01/04-01/06-2543 OA 18.

⁴ ICC-01/04-01/06-2550-Conf AO 18 and ICC-01/04-01/06-2550-Red AO 18.

⁵ ICC-01/04-01/06-2568 AO 18.

⁶ ICC-01/04-01/06-2550-Conf AO 18 and ICC-01/04-01/06-2550-Red AO 18.

identities of certain protected witnesses to the public.⁷ The Defence also redacted information which appeared only in the confidential versions of the written decisions rendered by Trial Chamber I, or in the confidential versions of transcripts of hearings.⁸

8. The submission of a confidential version fulfils the need for the Appeals Chamber to have at its disposal a non-redacted version of that document.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER:

TO TAKE NOTE OF the present observations.

Ms Catherine Mabilie, Lead Counsel

[signed]

Dated this 22 September 2010

At The Hague

⁷ Idem, paras. 6, 12, 17, 26, 49, 74 and footnotes 3, 71, 77, 79, 105 and 106.

⁸ Ibidem, para. 8 and footnote 32.