

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 09 April 2014

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Anita Ušacka
Judge Ekaterina Trendafilova

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Confidential

**Prosecution, Ntaganda Defence, Lubanga Defence, VPRS and victim a/0078/06's
Legal Representative only**

**Prosecution's request for transmission by VPRS of the application for reparations
of victim a/0078/06**

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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Introduction

1. The Prosecution requests the Appeals Chamber to order the Victims Participation and Reparations Section ("VPRS") to file in the record of the *Ntaganda* case *ex parte*, Prosecution only, an unredacted version of the application for reparations filed in the *Lubanga* case by victim a/0078/06.
2. Victim a/0078/06, a victim who was granted status to participate in the *Lubanga* case, is a Prosecution witness (DRC-OTP-P-0758) in the *Ntaganda* case.
3. As a victim in *Lubanga*, witness P-0758 filed an application for reparations ("Application for Reparations"). The Prosecution requests access to this application, in exercise of its duty under article 54(1)(a) of the Statute.
4. Witness P-0758 is a protected witness whose identity has not been disclosed to the Defence at this stage in the *Ntaganda* proceedings. It follows that the Defence in *Ntaganda* should not be granted access to the application before the Prosecution is given an opportunity to propose redactions to its content.
5. The Prosecution requests that VPRS be ordered to file an unredacted version of the application in the record of the *Ntaganda* case *ex parte*, to the Prosecution only. The Prosecution will then request the Single Judge in *Ntaganda* (1) to authorise redactions to its content and (2) to order the Registry to implement these redactions and file the redacted application in the record of the *Ntaganda* case confidentially, giving access to the parties only.
6. The Prosecution submits that the Appeals Chamber is empowered to rule on the Prosecution's request because it is the only Chamber seized of issues arising out of the reparation proceedings in *Lubanga*.

Confidentiality

7. The present filing is classified as "Confidential" under regulation 23bis(1) as it identifies a confidential Prosecution witness in the *Ntaganda* proceedings by reference to the witness's victim code in the *Lubanga* proceedings and in the DRC situation.

Procedural background

8. On 20 May 2008, the Registry transmitted 105 applications for victim participation in the *Lubanga* proceedings, including that of applicant a/0078/06.¹
9. On 15 December 2008, Trial Chamber I granted applicant a/0078/06 status to participate in the proceedings.²
10. On 26 January 2009, the VPRS transmitted a redacted version of victim a/0078/06's application for reparations to the *Lubanga* Defence.³
11. On 7 August 2012, Trial Chamber I issued the "Decision establishing the principles and procedures to be applied to reparations" ("Decision").⁴ The Decision is under appeal.⁵
12. On 14 December 2012, the Appeals Chamber suspended the effects of the Trial Chamber's Decision ("Appeal Chamber's Decision").⁶
13. On 5 December 2013, the Single Judge in *Ntaganda* issued the "Third Decision on the Prosecutor's Requests for Redactions", granting the non-disclosure to the Defence of Bosco Ntaganda of the identity of Prosecution witness P-0758.⁷
14. On 3 April 2014, the Single Judge in *Ntaganda* issued the "Decision on the 'Prosecution's Urgent Application for Redactions and for a Variation of Protective Measures Applied by Trial Chamber I'" authorising the Prosecution to redact information and, pursuant to regulation 42 of the Regulations of the Court, to vary protective measures authorised by Trial Chamber I to the application for victim participation of victim a/0078/06 in *Lubanga* and ordering the Prosecution to disclose it to the Defence.⁸

¹ ICC-01/04-01/06-1339.

² ICC-01/04-01/06-1556; ICC-01/04-01/06-1556-Corr; ICC-01/04-01/06-1556-Corr-Anx1. See also Trial Chamber I's "Order issuing Annexes to the 'Decision on the applications by victims to participate in the proceedings' of 15 December 2008", 19 December 2008, ICC-01/04-01/06-1563 and ICC-01/04-01/06-1563-Conf-AnxA2, pages 18-20.

³ ICC-01/04-01/06-1652, Confidential *Ex Parte*, Defence only, Annex 5.

⁴ ICC-01/04-01/06-2904.

⁵ ICC-01/04-01/06-2905; ICC-01/04-01/06-2909; ICC-01/04-01/06-2911; ICC-01/04-01/06-2914.

⁶ ICC-01/04-01/06-2953.

⁷ ICC-01/04-02/06-165-Conf-Red.

⁸ ICC-01/04-02/06-289-Conf.

Submissions

(1) Request for access to the Application for Reparations

15. The Prosecution requests access to the unredacted Application for Reparations filed in the *Lubanga* case by victim a/0078/06.
16. Victim a/0078/06 is a witness for the Prosecution in the proceedings against Bosco Ntaganda (DRC-OTP-P-0758). In the *Lubanga* proceedings, unredacted versions of applications for reparations were transmitted to Trial Chamber I, whilst redacted versions were transmitted to the Defence only.⁹ The Prosecution does not have access to the Application for Reparations of witness P-0758, filed *ex parte* in that case.
17. Yet, as the Prosecution relies on witness P-0758 in the proceedings against Bosco Ntaganda, it seeks access to the Application for Reparations in exercise of its duties under article 54(1)(a) of the Statute.
18. The Prosecution notes, additionally, that the Defence for Bosco Ntaganda has requested the Prosecution to disclose the Application for Reparations.¹⁰

(2) Prosecution's request for ex parte access to an unredacted version of the Application for Reparations

19. The Single Judge in *Ntaganda* ordered the non-disclosure of witness P-0758's identity. As a result, at this stage of the proceedings, the witness's statement and other evidence, including the witness's application for victim participation in *Lubanga*, have all been disclosed in *Ntaganda* with carefully considered and consistent redactions.
20. It follows that the Defence for Bosco Ntaganda should not be granted access to the Application for Reparations before the Prosecution can propose redactions that are in line with those ordered by the Single Judge.

⁹ ICC-01/04-01/06-1652.

¹⁰ The Prosecution has informed the Defence that it does not have access to the Application for Reparations and that Defence access to this item should be provided by the Registry through the record of the case.

21. The Prosecution further observes that witness P-0758's Application for Reparations does not come within its disclosure obligations as it does not form part of its evidence collection, but rather part of the court record in the *Lubanga* case. As such, the document falls within the category of material that the Defence should obtain through access to the court record, which is regulated by Chambers of this Court and implemented by the Registry, rather than disclosure.

22. In light of the above, the Prosecution submits that the proper procedure to facilitate the parties' access to the Application for Reparations is that the VPRS be ordered to file the unredacted version of the Application for Reparations in the *Ntaganda* case, *ex parte*, Prosecution only. The Prosecution will thereafter (1) propose redactions to the Single Judge in *Ntaganda* and (2) request that she order the VPRS to implement the redactions and file the redacted version of the Application for Reparations in the record of the *Ntaganda* case confidentially, Prosecution and Defence only.

(3) *The Appeals Chamber is empowered to rule on the Prosecution's request*

23. Trial Chamber I is no longer seized of issues arising out of the proceedings in the *Lubanga* case. Prior to ceasing its activities, Trial Chamber I issued the "Decision establishing the principles and procedures to be applied to reparations", wherein it "*consider[ed] that it [was] unnecessary for the present judges of Trial Chamber I to remain seized throughout the reparations proceedings*" and decided that "*reparations [...] will be dealt with principally by the [Trust Fund for Victims], monitored and overseen by a differently composed Chamber*".¹¹

24. The Trial Chamber's Decision is under appeal and the Appeals Chamber has suspended the effects of the Decision, pending a ruling on the appeal.¹²

25. Accordingly, the Trial Chamber's Decision has not been implemented and no "*differently composed Chamber*" has been constituted or assigned to monitor and oversee the reparation proceedings. The Appeals Chamber has not yet ruled on the merits of the appeal.

¹¹ ICC-01/04-01/06-2904.

¹² ICC-01/04-01/06-2953.

26. Consequently, the Appeals Chamber is the only Chamber currently seized of the reparation proceedings in the *Lubanga* case and therefore capable of dealing with judicable issues arising from it. The Prosecution submits that it is therefore the only Chamber empowered to rule on the present request.

Relief sought

27. Based on the foregoing, the Prosecution requests that the Appeals Chamber order the VPRS to file an unredacted version of the Application for Reparations in the record of the *Ntaganda* case *ex parte*, Prosecution Only.



Fatou Bensouda,
Prosecutor

Dated this 9th of April 2014
At The Hague, The Netherlands