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TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Document

**Request for Leave to File a Reply to the Observations of the Defence for
Mr Lubanga to the Eighth Transmission of Redacted Application Forms for
Reparations**

Source: Office of Public Counsel for Victims

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

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I. PROCEDURAL HISTORY

1. On 22 February 2017, Trial Chamber II (“Chamber”) set the schedule for the transmission of the application files of victims who may be eligible for reparations.¹
2. On 15 June 2017, the Registry made the eighth transmission to the Defence of applications of victims who may be eligible. The transmission concerned 30 applications of victims represented by the Principal Counsel of the Office of Public Counsel for Victims (“Legal Representative” and “OPCV”).²
3. On 19 May 2017, the Chamber rendered a decision stating in particular that: “the applications for reparations must be considered to be a ‘document’ (within the meaning of regulation 22 of the Regulations of the Court) containing the submissions of applicants for reparations and thereby triggering the Defence’s right to respond”³ (“Decision”). Pursuant to this new precedent in case law, the Legal Representative had filed a request for leave to reply to the observations filed by the Defence on 22 May 2017.⁴ The Chamber granted the request.⁵

¹ “Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to the Defence Team of Thomas Lubanga Dyilo” (Trial Chamber II), ICC-01/04-01/06-3275-tENG, 22 February 2017.

² “Eighth Transmission to the Defence of Confidential Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017”, ICC-01/04-01/06-3330 + 3329-Conf-Anxs-Red, 15 June 2017.

³ “Decision on the Admissibility of Documents filed by the Parties on 13 and 21 April 2017 and 5 May 2017” (Trial Chamber II), ICC-01/04-01/06-3314-tENG, 19 May 2017, paras. 18-21.

⁴ See “*Demande d’autorisation de déposer une réplique aux ‘Observations de la Défense de M. Lubanga à la quatrième transmission des formulaires de réparation expurgés du 24 avril 2017’*”, ICC-01/04-01/06-3316, 26 April 2017; as well as the “Observations of the Defence for Mr Lubanga on the Fourth Transmission of Redacted Applications for Reparations of 24 April 2017”, ICC-01/04-01/06-3315-tENG, 22 May 2017.

⁵ “Decision on the Applications of the Office of Public Counsel for Victims and the Legal Representatives of the V02 Group of Victims for Leave to Reply to the Observations of the Defence Team of Thomas Lubanga Dyilo of 22, 30 and 31 May 2017” (Trial Chamber II), ICC-01/04-01/06-3331-tENG, 16 June 2017.

4. On 11 July 2017, the Defence filed its observations on the redacted application forms for reparations transmitted on 15 June 2017 (“Observations of the Defence”).⁶
5. In view of the Decision of 19 May 2017, the Legal Representative hereby files a request for leave to reply to the Observations of the Defence.

II. REQUEST FOR LEAVE TO FILE A REPLY

6. The Legal Representative notes that the Defence, after having submitted observations on each of the applications concerned, again requests the Chamber to reject all of them.
7. The Legal Representative reiterates *in toto* her previous observations,⁷ and re-emphasizes that the collective reparations procedure as adopted in the instant case should not be transformed into a debate on the admissibility of each *individual* application.⁸ Once again, the Legal Representative notes the Defence’s consistent and unmitigated opposition to all the applications presented to it as part of this procedure.⁹
8. The Legal Representative also points out that the applications for reparations are forms which are submitted by her clients and transmitted to the Defence

⁶ “Observations de la Défense de M. Lubanga à la huitième transmission des formulaires de réparation expurgés du 15 juin 2017”, ICC-01/04-01/06-3336, 11 July 2017.

⁷ “Demande d’autorisation de déposer une réplique aux ‘Observations de la Défense de M. Lubanga à la quatrième transmission des formulaires de réparation expurgés du 24 avril 2017’”, ICC-01/04-01/06-3316, 26 May 2017; and the “Réplique aux Observations déposées par la Défense de M. Lubanga aux 4ème, 5ème et 6ème transmissions des formulaires des potentiels bénéficiaires”, ICC-01/04-01/06-3333, 22 June 2017.

⁸ Observations of the Defence, footnote 6 above, para. 7.

⁹ See also “Observations of the Defence for Mr Lubanga on the First Transmission of Redacted Applications for Reparations of 8 March 2017”, ICC-01/04-01/06-3291-tENG, 10 April 2017; “Observations of the Defence for Mr Lubanga on the Second Transmission of Redacted Applications for Reparations of 22 March 2017”, ICC-01/04-01/06-3299-tENG, 24 April 2017; “Observations of the Defence for Mr Lubanga on the Third Transmission of Redacted Applications for Reparations of 5 April 2017”, ICC-01/04-01/06-3311-tENG, 5 May 2017 and “Observations of the Defence for Mr Lubanga on the Fourth Transmission of Redacted Applications for Reparations of 24 April 2017”, ICC-01/04-01/06-3315-tENG, 22 May 2017.

by the Registry and which contain no legal submissions as such. As a result, pursuant to the new practice introduced by the Chamber,¹⁰ the only possibility the Legal Representative has to defend her clients' personal interests in the instant proceedings is to be able to reply to the Observations of the Defence in an "adversarial exchange"¹¹ in which the victims have a major interest in ensuring that their applications are found admissible.

9. Regulation 24(5) of the Regulations of the Court states that: "[u]nless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated."¹² In that respect, the Legal Representative notes that a ruling is yet to be made on some of the issues raised by the Defence in its last submissions in the instant case, in particular the following: the Defence disputes the credibility of certain applications, grounding its submission solely on the discrepancies noticed between the date of birth entered on the form and that which is found on the identification document (e.g. regarding applicant a/30212/17), although cogent explanations about the discrepancies have already been made available to the Defence.¹³ The Defence also rejects some of the information contained in certain applications on the grounds that they are irrelevant to the case at bar since, in the strict sense, they do not fall within the scope of the charges although the said information is of vital importance for determining the situation of applicants. Lastly, the Defence insists on reiterating the absence of documents, in particular medical documents in substantiation of applications, whereas the Trust Fund for

¹⁰ "Decision on the Admissibility of Documents filed by the Parties on 13 and 21 April 2017 and 5 May 2017", footnote 3 above.

¹¹ Observations of the Defence, footnote 6 above, para. 7.

¹² New text of the Regulations of the Court as amended and which entered into force on 6 December 2016. See also, for a recent interpretation of the text: "Decision on Mr Ntaganda's request for leave to reply", (Appeals Chamber) ICC-01/04-02/06-1813, 3 March 2017.

¹³ Observations of the Defence concerning Applicants a/30205/17, a/30212/17 and a/30237/17 as well as Annexes 30, 31 and 32 to Submission No. ICC-01/04-01/06-3329-Conf.

Victims (“Trust Fund”) will have the responsibility of making the appropriate checks when contemplating access to the programmes.

10. As the previous reply did not contain information on the above issues, the Legal Representative requests the Chamber’s leave to file a reply to the specific issues above.¹⁴ Indeed, all other submissions in the last Observations of the Defence appear to be a rehash of those made in its previous observations. Concerning the latter observations, the Legal Representative reiterates in full the submissions contained in both her reply of June 22¹⁵ and her observations of 13 April 2017.¹⁶

CONSEQUENTLY, and in conformity with the practice introduced in the Chamber’s Decision of 19 May 2017,¹⁷ the Legal Representative respectfully seeks leave to reply to the Observations of the Defence concerning the points specified in paragraph 9 above.

[signed]

Paolina Massidda
Principal Counsel

Dated this 17 July 2017

At The Hague, Netherlands

¹⁴ This issue was raised by the Defence, *inter alia*, concerning the applications of the following potential beneficiaries: a/30231/17, a/30235/17, a/30240/17, a/30219/17, a/30234/17 and a/30241/17.

¹⁵ Footnote 7 above.

¹⁶ “Information regarding the Issues as well as the Concerns and Wishes of the Potentially Eligible Victims in the Reparations Proceedings”, ICC-01/04-01/06-3293-Red-tENG, 13 April 2017.

¹⁷ “Decision on the Admissibility of Documents filed by the Parties on 13 and 21 April 2017 and 5 May 2017”, Footnote 3 above.