

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 6 September 2012

THE APPEALS CHAMBER

Before Judge Erkki Kourula
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Anita Ušacka
Judge Sanji Mmasenono Monageng

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public Document

Appeal of the Defence for Mr Thomas Lubanga against Trial Chamber I's *Decision establishing the principles and procedures to be applied to reparation rendered on 7 August 2012*

Source: Defence team for Mr Thomas Lubanga Dyilo

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

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PROCEDURAL BACKGROUND

1. On 7 August 2012, the Trial Chamber rendered the *Decision establishing the principles and procedures to be applied to reparations* (“Decision on Reparations”).¹
2. On 10 August 2012, Trial Chamber I informed the parties and participants that the decision was “[TRANSLATION] to be considered to have been officially notified in English” and that it “[TRANSLATION] was not a reparation order within the meaning of rule 150”.²
3. On 13 August 2012, the Defence sought authorisation to appeal against the Decision on Reparations on the basis of article 82(1)(d) and rule 155.³
4. On 24 August 2012, the Office of Public Counsel for Victims and the V02 team of Legal Representatives filed an appeal against the Decision on Reparations.⁴ The V01 team of Legal Representatives filed its own appeal on 3 September 2012.
5. On 29 August 2012, Trial Chamber I authorised the Defence to appeal against the Decision on Reparations on four issues,⁵ further confirming that the Decision on Reparations did not constitute an “order for reparations” in the sense of article 82(4).⁶

APPEAL

6. Pursuant to the joint provisions of article 82(4), rules 150 and 153 and regulation 57 of the Regulations of the Court, the Defence hereby appeals against the

¹ ICC-01/04-01/06-2904.

² E-mail from the Chamber to the parties and participants on 10 August 2012.

³ ICC-01/04-01/06-2905.

⁴ ICC-01/04-01/06-2909.

⁵ ICC-01/04-01/06-2911.

⁶ ICC-01/04-01/06-2911, para. 20.

whole of Trial Chamber I's decision (ICC-01/04-01/06-2904) rendered on 7 August 2012 and seeks that it be set aside.

7. Pursuant to regulation 58 of the Regulations of the Court, the Defence will set out in its appellate brief the grounds of its appeal, as well as the legal and/or factual reasons it will advance in support of these grounds.

ADMISSIBILITY OF THE APPEAL

8. On 10 and 29 August 2012, the Trial Chamber stated that the Decision on Reparations did not constitute a reparation order within the meaning of rule 150. On this basis, for the sole purpose of safeguarding its rights, the Defence requested the Chamber's authorisation to appeal against the decision under article 82(1)(d) and rule 155.

9. Although the Trial Chamber considers that the impugned decision is not an "reparation order" within the meaning of rule 150, the Defence contends for the reasons set out below that the decision must be considered as automatically appealable:

- The Trial Chamber confirmed that it would not render another order or instruction regarding reparations in the instant case.⁷ This decision is therefore its final determination on the matter of reparations.
- The Trial Chamber charged the Trust Fund for Victims (TFV) with implementing the Decision on Reparations.⁸ Since the TFV is a non-judicial organ, the result of this implementation cannot be considered to be an "order for reparations" within the meaning of article 82(4) and

⁷ The Chamber states at paragraph 287 of the Decision on Reparations that it will not issue any other order or instruction regarding reparations in the instant case. ICC-01/04-01/06-2904, para. 287.

⁸ ICC-01/04-01/06-2904, para. 261.

rule 150, but rather as a routine implementation of the Chamber's final decision.

- Moreover, the procedure regarding reparations put in place by the Trial Chamber makes no provision for the participation of the Defence or for ensuring that it is kept abreast of orders or decisions made by the TFV.⁹
10. By relinquishing the prerogative to rule on any future orders for reparations, delegating its powers to a non-judicial organ, and failing to provide for any participation of the Defence in the implementation process, the Trial Chamber deprives the Defence of the possibility of exercising its right to appeal enshrined in article 82(4) and rule 150.
 11. It follows that the impugned decision must be construed as an "order for reparations" within the meaning of article 82(4) and is therefore appealable under rule 150.

SUSPENSIVE EFFECT OF THE APPEAL

12. Pursuant to article 82(3) and rule 156(5), the Defence seeks the suspension of the impugned decision.
13. As Trial Chamber I notes, the implementation of the impugned decision would directly affect the rights of the convicted person.¹⁰
14. Moreover, the irreversibility of the effects of the impugned decision, *viz.* the implementation of the reparations orders made, could be irremediably prejudicial to the convicted person.
15. Accordingly, it is proper to suspend implementation of the impugned decision in order to obviate the risk of irremediable harm to the Accused.

⁹ ICC-01/04-01/06-2904, paras. 282-285.

¹⁰ ICC-01/04-01/06-2911, para. 23.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER:

TO FIND that the Decision on Reparations rendered on 7 August 2012 constitutes an “order for reparations” within the meaning of article 82(4) and rule 150;

TO DECLARE the present appeal admissible;

TO ORDER the immediate suspension of the impugned decision;

TO SET ASIDE Trial Chamber I’s decision of 7 August 2012.

[signed]

Ms Catherine Mabile, Lead Counsel

Done this 6 September 2012

At The Hague