



Original: **French**

No.: ICC-01/04-01/06
Date: **14 September 2017**

**THREE JUDGES OF THE APPEALS CHAMBER
APPOINTED FOR THE REVIEW CONCERNING REDUCTION OF SENTENCE:**

**Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Howard Morrison
Judge Piotr Hofmański**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Document

**Representations of the V02 Team of Legal Representatives of Victims
pursuant to Appeals Chamber Order ICC-01/04-01/06-3346
regarding the Review of Mr Thomas Lubanga's Sentence**

Source: V02 Team of Legal Representatives of Victims

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

Office of the Prosecutor

Ms Fatou Bensouda

Ms Helen Brady

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

Mr Franck Mulenda

Mr Luc Walleyen

Unrepresented Victims

Office of Public Counsel for Victims

Ms Paolina Massidda

States' Representatives

Democratic Republic of the Congo

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Herman von Hebel

Other

Presidency

Representations of the V02 Team
pursuant to Appeals Chamber Order ICC-01/04-01/06-3346
regarding the review of Mr Thomas Lubanga's sentence

I – Procedural history

1. On 22 September 2015, the Appeals Chamber rendered a decision in which it determined that the conditions for a reduction of sentence were not met, and resolved to review the matter again in two years.¹
2. On 7 August 2017, the Appeals Chamber issued an order inviting the parties and participants to submit representations concerning a possible reduction of sentence, and setting time limits for the submission of those representations.²
3. On 4 September 2017, the Registry submitted its observations and informed the Chamber of a request from the authorities of the Democratic Republic of the Congo (DRC) to extend the time limit for filing their observations to 11 September 2017.³
4. On 5 September 2017, in response to the request of the DRC authorities, the Appeals Chamber modified the deadlines for both the DRC authorities and the other parties to submit their written representations.⁴
5. On 11 September 2017, the observations of the DRC authorities were transmitted to the Chamber.⁵

¹ ICC-01/04-01/06-3173 EO RO.

² ICC-01/04-01/06-3346.

³ ICC-01/04-01/06-3352.

⁴ ICC-01/04-01/06-3355.

⁵ ICC-01/04-01/06-3364 and annex.

II – Applicable law

6. Article 110 of the Statute provides that the Court alone may decide on the release of a sentenced person before the expiry of his or her sentence, and that such a decision is possible when:
 - the person has served two thirds of the sentence (paragraph 3); and
 - one or more of the following factors are present (paragraph 4):
 - (a) the early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;
 - (b) the voluntary assistance of the person in enabling the enforcement of the judgments and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or
 - (c) other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.

7. Rule 223 of the Rules of Procedure and Evidence enumerates the criteria applicable to a review concerning reduction of sentence:
 - (a) the conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime;
 - (b) the prospect of the resocialization and successful resettlement of the sentenced person;
 - (c) whether the early release of the sentenced person would give rise to significant social instability;
 - (d) any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release; and
 - (e) individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.

III – Contextual factors and legal criteria

8. In their respective written representations, the Registry and the DRC authorities both invoke contextual factors related to the current situation in the DRC, but reach opposite conclusions as to the appropriateness of a sentence reduction.
9. The DRC authorities state that a reduction of sentence and possible release of the sentenced person would be inappropriate because social instability could ensue.
10. The Registry, however, represents that it would not expect the early release of the sentenced person to give rise to any social instability, or to any security problems for the victims who have testified or appeared before the Court.
11. The V02 Team of Legal Representatives of Victims shares the Registry's view and recalls that, while three of the victims it represents have testified before the Court, no reprisals against them have transpired to date. These circumstances suggest that the sentenced person is acting in good faith and is willing to cooperate with the reconciliation process in Ituri.
12. Accordingly, the V02 Team is of the view that Mr Thomas Lubanga Dyilo should be granted the opportunity to prove his good faith by playing a role in the reparations implementation process.
13. Mindful of their clients' interests in the pursuit of truth and justice, the V01 and V02 teams of Legal Representatives of Victims, in conjunction with the Office of Public Counsel for Victims ("OPCV"), have taken the initiative of addressing a letter to the Defence for Mr Thomas Lubanga, seeking Mr Lubanga's involvement in the reparations implementation process of the Trust Fund for Victims ("TFV").⁶ The Defence for Thomas Lubanga has responded favourably, reiterating Mr Lubanga's willingness to take part in the process.⁷

⁶ Annex 1: correspondence of 25 August 2017.

⁷ Annex 2: official correspondence of 7 September 2017.

14. These representations of the V02 Team will focus on the legal criteria for determining the review of a potential reduction of sentence under rule 223(c) and (d) of the Rules of Procedure and Evidence.

IV – Representations

15. It bears recalling that some of the victims represented by the V02 Team belong to the Hema ethnic group, among whom Mr Lubanga has some credibility (probably because he is of that group), while others belong to ethnic groups with greater concerns for their security. During the various meetings of the V02 Team of Legal Representatives with clients in the field, former child-soldier victims were found to fall into two categories: those who agree to meet the sentenced person unconditionally and reconcile with him because they still see Thomas Lubanga as their leader, and those who fear for their safety and refuse any measure of reconciliation until the sentenced person makes a public apology.

16. Persons in the former category believe that a reconciliation ceremony with the sentenced person should be held promptly. Conversely, those in the latter think it appropriate to await a gesture from the sentenced person first.

17. The Defence for Mr Thomas Lubanga appears to adhere to the position of the former category of victims. The Legal Representatives, who are under an obligation to represent the interests of all their clients, endorse that of the latter.

18. However, the V02 Team of Legal Representatives of Victims submits that the two positions may be reconciled if the Chamber agrees to a six-month deferral of its ruling on the reduction of sentence, so that the reparations process may be implemented effectively and with the involvement of all parties and the TFV.

A. Rule 223(c): risk of social instability

19. The V02 Team of Legal Representatives of Victims submits that any risk of social instability is traceable more to the potential for stigmatization between victims during the reparations implementation process than to the possibility of an adverse reaction to the sentenced person's early release. This is the reality reflected in paragraph 10 of the Registry's observations: "the overall political context in Ituri has not altered significantly since the first review decision."

20. The V02 Team of Legal Representatives of Victims is in favour of working towards the sentenced person's release in a climate of calm among all the parties, so as to enable his full reconciliation not only with the victims, but also with the communities in whose midst the hostilities unfolded. The reality is shown in paragraph 8 of the Registry's observations: "the overall context of continued tensions between Hema and Lendu communities has not significantly altered."

B. Rule 223(d): positive action in favour of victims

21. The Registry represents that the sentenced person has undertaken no positive action in favour of the victims in the two years elapsed since the Appeals Chamber's last ruling in 2015.⁸

22. The V02 Team of Legal Representatives of Victims corroborates that representation and expresses its astonishment at the sentenced person's negative attitude, whereby he has consistently disputed the standing of the persons recognized by Trial Chamber I as victims, despite their having provided the TFV with documentary proof including armed-group demobilization certificates issued during the programme of demobilization and reintegration (DDR) of former child soldiers in the DRC.

⁸ ICC-01/04-01/06-3352.

23. The V02 Team of Legal Representatives of Victims proposes that the sentenced person adopt a more cooperative approach to the victim identification process. Moreover, while systematically disputing applicants' standing as victims, the sentenced person has never provided the parties and participants in these proceedings with a FPLC/UPC personnel roster. An agreement by the Chamber to defer its ruling could afford the sentenced person an opportunity to tender those records as part of the reconciliation process.

V – Conclusion

(a) Identification of victims

24. It is the view of the V02 Team of Legal Representatives that the sentenced person should adopt a change in attitude towards the applicants for victim status. Some of them are already recognized victims, while others are in the midst of applying through the TFV, with a view to participating in the reparations process. The V02 Team suggests that the TFV should be fully able to play the role of mediator between these applicants and the sentenced person.

(b) Deferment of the review decision

25. On the basis of the correspondence between the Legal Representatives of Victims and the sentenced person's Defence team, it should be noted that the sentenced person has made promises to take part in the reparations process:

- (a) "[TRANSLATION] his prospective public apology could take place during his detention, as part of a traditional public ceremony";
- (b) "[TRANSLATION] the sentenced person has no intention of making his release a precondition to his contributing to reparations".

FOR THESE REASONS

May it please the Appeals Chamber to take formal note of these representations.

Dated this 14 September 2017,

At Kinshasa, Democratic Republic of the Congo, and Paris, France

[signed]

[signed]

[signed]

Carine Bapita Buyangandu

Joseph Keta Orwinyo

Paul Kabongo Tshibangu

Legal Representatives of Victims