



Original: French

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

Date: 22 May 2018

THE APPEALS CHAMBER

Before:

Judge Piotr Hofmański
Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Document

Application for Leave to Reply to the "Consolidated Response to the Appeal Briefs of the Defence and the Legal Representatives of V01 Victims against the Trial Chamber II Decision of 15 December 2017" filed on 18 May 2018 by the Office of Public Counsel for Victims

Source: Legal Representative of the V01 group of victims

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

Office of the Prosecutor

Counsel for the Defence

Ms Catherine Mabille
Mr Jean-Marie Biju-Duval

Legal Representatives of the

V01 Victims

Mr Luc Walleyn
Mr Franck Mulenda

V02 Victims

Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
Mr Paul Kabongo Tshibangu

Office of Public Counsel for Victims

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan, Director

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. PROCEDURAL HISTORY

1. On 15 December 2017, Trial Chamber II ("Chamber") handed down the "Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable"¹ ("Decision"), and on 16 January 2018 the representatives of the V01 group of victims and the Defence appealed against the Decision.
2. The Defence filed its appeal brief on 15 March 2018² and the Legal Representatives filed theirs on 18 March 2018.³
3. On 18 May 2018, the Office of Public Counsel for Victims ("OPCV") filed a consolidated response to both briefs.⁴

II. CLASSIFICATION

4. The OPCV's consolidated response was filed as confidential although the OPCV stated that it contained no confidential information and requested that it be classified as public.
5. Accordingly, the Legal Representatives are of the opinion that this application may be filed as public.

III. SUBMISSION

6. The Legal Representatives hereby seek leave to file a reply to the OPCV's consolidated response, in conformity with regulation 24(5) and regulation 60 of the Regulations of the Court.

¹ ICC-01/04-01/06-3379-Conf-tENG.

² ICC-01/04-01/06-3394-Conf-tENG.

³ ICC-01/04-01/06-3396-Conf-tENG.

⁴ ICC-01/04-01/06-3407-Conf-tENG.

7. In its response the OPCV raises two important legal issues and one important factual issue, which are stated below.

a) **Admissibility of the appeals under article 82(4) of the Statute**

8. The OPCV contends that the appeals lodged by the representatives of the victims and the Defence are inadmissible as the appellants have not "stated clearly, let alone proved, that the criteria applicable under article 82(4) of the Rome Statute have been met."⁵

9. Article 82(4) states that:

A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

10. According to the OPCV, this article, which specifies which parties may appeal against an order for reparations, also contains a legal basis for inadmissibility, namely by introducing the requirement to identify, in the appeal brief, "the nature or the basis of the errors allegedly committed by the Trial Chamber or show how the impugned decision was affected by the alleged errors".⁶

11. The Legal Representatives submit that article 82(4) does not create, not even implicitly, any such legal basis for inadmissibility, and neither does rule 150, which concerns the conditions for admissibility of an appeal against an order for reparations.

12. For its own reasons, the OPCV sees fit to restrict the victims' right to appeal against an order for reparations by relying on a non-existent legal basis for inadmissibility. The Legal Representatives of the Victims wish to reply to this argument, which is contrary to the Statute.

⁵ Response, para. 10.

⁶ Response, para. 12.

b) Effect of a previous decision of the Trial Chamber on the Appeals Chamber's powers

13. In its response to the first and second grounds of appeal, the OPCV asserts that the victims are time-barred from contending that the Trial Chamber has exceeded the (limited) task the Appeals Chamber had set it, has failed to comply with the Appeals Chamber's instructions and has excluded many victims from reparations in a discriminatory procedure.

14. The alleged reason for their exclusion is that – at the request of the OPCV – the Trial Chamber declined, on 8 December 2016, to grant the participating victims leave to appeal against an order issued on 21 October 2016, in which, six months after the Trust Fund had completed the first set of assessments of victims participating in the proceedings, a similar procedure was established for possible victims who were as yet unknown.

15. Therefore, the OPCV submits that, if a Trial Chamber has declined to grant leave to appeal against an interlocutory decision under rule 155, the powers of the Appeals Chamber would be lessened and subsequently the victims would be denied the right to appeal against the resulting final decision.

The Legal Representative submits, however, that it is on the basis of this same difference of opinion that the LRVs are once again attempting to challenge the process laid down by the Chamber and which, in any event, is being implemented. Consequently, even if the LRVs remain dissatisfied with the outcome of the application of this process in the case at hand, they are henceforth time-barred from appealing against a decision that simply applied a principle established by previous decisions of the Chamber.⁷

16. In the OPCV's view, the Trial Chamber's denial of the interlocutory appeal means that "Consequently, the order of 21 December 2016 is res judicata and any

⁷ Response, para. 20 [Emphasis added].

appeal against the Decision of 15 December 2017 considering the terms that simply rehearse and take note of the Order is as a result inadmissible".⁸

17. The Legal Representatives consider that this argument is contrary to the Statute and misconstrues the principle of *res judicata*. They would like an opportunity to reply.

a) **The purported inability of the Trust Fund to carry out the process of assessing who qualifies as victim for the purposes of the collective reparations programme**

18. The OPCV submits that it was the Trust Fund's inability to carry out the process that prompted the Chamber to take on the examination of all the dossiers of victims who had already been identified, including those of victims who – at the Chamber's request – had already undergone assessment by the Trust Fund:

Moreover, the Legal Representative notes that the Trust Fund currently has neither the experience nor the expertise required for assessing and screening hundreds of dossiers of potential victims, and that this is why the Chamber saw fit, in conformity with the instructions of the Appeals Chamber, to provide the Trust Fund with all the guidelines it needs to perform its role, while safeguarding the rights of the victims and the Defence throughout the proceedings.⁹

19. The Legal Representatives note that the Chamber did not put forward any such reason; the claim about the Trust Fund's ability is untrue; and the Chamber has done much more than provide the Trust Fund with guidelines it needs to perform its role. Consequently, they wish to reply to this ground also.

⁸ Response, para. 25 [Emphasis added].

⁹ Response, para. 17.

Pursuant to the Appeals Chamber's Order ICC-01/04-01/06-3413, dated 26 July 2018, this document is reclassified as "Public"

FOR THESE REASONS

MAY IT PLEASE THE APPEALS CHAMBER to

Grant the Legal Representatives of the Victims leave to file a reply to the OPCV's consolidated response;

Set the time limit for filing the reply.

On behalf of the V01 Group of Victims, the Legal Representatives

Luc Walleyn

[signed]

Franck Mulenda

[signed]

Dated this 22 May 2018,

At Brussels, Belgium, and Kinshasa, DRC