



Original: **French**

No.: **ICC-01/04-01/06**
Date: **8 October 2012**

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 DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public Document

Defence application to have the “Prosecution’s Response to the Defence Appeal against the ‘Decision establishing the principles and procedures to be applied to reparations’”, ICC-01/04-01/06-2924, declared inadmissible

Source: Defence team for Mr Thomas Lubanga Dyilo

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

Office of the Prosecutor

Ms Fatou Bensouda
Mr Manoj Sachdeva

Counsel for the Defence

Ms Catherine Mabile
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Carolone Buteau

Legal Representatives of Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

Ms Paolina Massidda

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

PROCEDURAL BACKGROUND

1. On 7 August 2012, the Trial Chamber issued 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 with a view to safeguarding its rights.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 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
6. On 10 September 2012 the Defence filed a document in support of its appeal lodged pursuant to article 82(1)(d), rule 155, and regulation 65(4) of the Regulations of the Court.⁶
7. The Prosecutor filed her response on 21 September 2012 (“Response”).⁷

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-tENG; ICC-01/04-01/06-2917-tENG, para. 8.

⁴ ICC-01/04-01/06-2909-tENG.

⁵ ICC-01/04-01/06-2911.

⁶ ICC-01/04-01/06-2919-tENG OA21.

⁷ ICC-01/04-01/06-2924.

OBSERVATIONS

8. The Defence submits that the Response filed by the Prosecutor⁸ is inadmissible, on the following grounds:
9. The provisions on reparations in no wise contemplate the Prosecutor's participation at the reparations stage: she is not notified of the reparations proceedings under rule 95, her observations are not invited under article 75(3), she cannot request the appointment of an expert under rule 97 and, specifically, she cannot appeal against the Decision under article 82(4). Finally, she is not one of the parties whose rights at this stage of the proceedings are provided for by rule 97(3), i.e. the victims and the convicted person alone.
10. Consequently, the procedural regime governing the reparations stage of the trial, which is confined to discussion of "civil" (or "private", or "specific") interests, provides for the participation solely of the Defence and the victims represented by their counsel and not, therefore, of the Prosecutor, whose intervention at this stage of the proceedings is unfounded and would adversely affect the rights of the convicted person.
11. The Prosecutor's participation in appellate proceedings would, likewise, jeopardise the rights of the Defence.
12. Hence, there is no doubt that the States Parties did not vest the Prosecutor with the right to intervene in any way whatsoever in the proceedings arising from the appeals lodged against the 7 August 2012 Decision on Reparations.

⁸ This has been the Defence's position since its first observations on the issue of reparations, in April 2012. See, in particular, ICC-01/04-01/06-2866-tENG, paras. 82 *et seq.*, and ICC-01/04-01/06-2885-tENG, p. 18.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER TO:

ADJUDGE and DECLARE that the Prosecutor has no grounds on which to intervene in any way whatsoever in the proceedings arising from the appeals lodged against the 7 August 2012 Decision on Reparations;

and

DECLARE the Prosecutor's Response inadmissible.

[signed]

Ms Catherine Mabile, Counsel

Dated this 8 October 2012

At The Hague, The Netherlands