

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/04-01/06**
Date: **16 November 2016**

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

**Response from the V02 Team to the V01 Team Application Requesting Leave to
Appeal the Orders of 21 October 2016**

Source: V02 Team of Legal Representatives of Victims

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

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**Victims Participation and Reparations
Section**

Response from the V02 Team to the V01 Team Application Requesting Leave to Appeal the Orders of 21 October 2016

I – INTRODUCTION

1. The legal representatives of victims comprising the V02 team consider that this Chamber should entertain and find merit in the application requesting leave to appeal the Orders of 21 October 2016 filed by their colleagues of the V01 team.¹
2. In its application, the V01 team identified an appealable issue on whether priority is to be given to collective reparations with individual impact or to community-based (symbolic) collective reparations. This issue may significantly affect the outcome of the trial, or the expeditious and fair conduct of the proceedings, and therefore requires an immediate resolution by the Appeals Chamber to materially advance the proceedings.
3. Indeed, in documents ICC-01/04-01/06-3251 and ICC-01/04-01/06-3252, this Chamber partially approved the proposed reparations plan of the Trust Fund for Victims (TFV), whereas it should have approved it in its entirety. This Chamber also gave priority to potential victims – discounting the 150 victims participating in the proceedings – while instructing the Office of Public Counsel for Victims (OPCV) to identify these potential victims and paying absolutely no attention to the V01 and V02 teams, although they have databases of potential victims (applicants in the record of the Democratic Republic of Congo (DRC) situation).
4. These two decisions are detrimental to the interests of the participating victims who are being neglected.

II – PROCEDURAL HISTORY

5. On 9 February 2016, Trial Chamber II issued its Order instructing the TFV to supplement the draft implementation plan, to prepare files of victims potentially eligible to benefit from reparations, and to submit those files to the Chamber by the dates indicated.
6. On 31 May and 7 June 2016, the TFV filed the first batch of files of victims represented by the V01 and V02 teams.

¹ ICC-01/04-01/06-3254-tENG.

7. On 15 July 2016, the Chamber issued its Order instructing the Registry to provide aid and assistance to the legal representatives of victims and the TFV to identify victims potentially eligible for reparations.²
8. On 16 September 2016, the OPCV representative filed a request for guidance from the Chamber further to the Order of 15 July 2016.³
9. On 19 September 2016, at the request of the Chamber, the TFV submitted a symbolic collective reparations project.⁴
10. On 3 and 6 October 2016, the TFV, the Registry, the V01 and V02 teams and the Defence all submitted their observations on the OPCV's request.
11. On 11 and 13 October 2016, the Chamber held public hearings to discuss the collective reparations projects for victims of the crimes of which Mr Lubanga was convicted.
12. On 21 October 2016, this Chamber issued its Orders ICC-01/04-01/06-3251 and ICC-01/04-01/06-3252.
13. On 28 October 2016, the V01 team of legal representatives of victims filed an application requesting leave to appeal the two Orders of 21 October 2016.
14. On 3 November 2016, the OPCV representative filed a response to the application of the V01 legal representatives, submitting that this Chamber should reject the V01 team's request.
15. The V02 team of legal representatives of victims endorses the V01 team's application requesting leave to appeal.

III – Response from the V02 team to the request for leave to appeal

16. This request by the V01 team meets the criteria in article 82(1)(d) of the Rome Statute and is therefore founded, given that both ICC-01/04-01/06-3251 and ICC-01/04-01/06-3252, issued by this Chamber, involve an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.
17. First example: in its submission ICC-01/04-01/06-3244 (paragraphs 20-24 and 33-42), the V02 team insists on giving priority to the collective reparations with individual impact over the community-based (symbolic) collective reparations, which could come afterwards.

² ICC-01/04-01/06-3222.

³ ICC-01/04-01/06-3257.

⁴ ICC-01/04-01/06-3223-Conf.

The V02 team also contends that a distinction must be made between the victims participating in the proceedings who have already been identified (150) and the potential victims to be identified.

The V02 team has pointed out, in particular in paragraph 33, that the TFV had envisaged a time frame from 2014 to 2017 for the reparations plan project; however, the implementation of this plan has yet to begin.

18. Second example: in document ICC-01/04-01/06-3252-Anx-tENG (dissenting opinion of Judge Herrera, paragraphs 1 and 9):

The V02 team shares Judge Herrera's view expressed in paragraph 1:

I am compelled to insist on my earlier opinion, namely that the Chamber must **without delay** make a decision on two issues [...]: (a) the request for reconsideration submitted by the Trust Fund for Victims; and (b) approval of **full** implementation of the overall draft plan of the Trust Fund for Victims and **not merely the part concerning symbolic reparations**.

The V02 team again agrees with Judge Herrera where she avers in paragraph 9:

To the extent possible, the TFV could: (a) include the victims it has already identified (of whom there are currently 42), who participated in the proceedings and whose applications for reparations have already been submitted; [...] the V01 team mentions 14 victims and the V02 team mentions 129 victims already identified, as well as another 400 potential victims.

19. Lastly, the V02 team concurs with Judge Herrera with regard to the essence of the concept of collective reparations. As she states in paragraph 8 of her dissenting opinion:

[...] participants are almost unanimous in their belief that the reparations projects must benefit the victims and affected communities in general[;] the Chamber could approve the implementation of the TFV's draft plan on the condition that it takes into account the **views and consent of the victims** [...].

It is therefore an issue that could materially affect the fair and expeditious conduct of the proceedings; as a result, it must be entertained by the Appeals Chamber.

Disregarding the needs of participating victims is a violation of articles 68(1)(3) and 75(6) of the Rome Statute, as well as rules 86 and 97(3) of the Rules of Procedure and Evidence.

FOR THESE REASONS

MAY IT PLEASE TRIAL CHAMBER II TO:

- ❖ Entertain and find merit in the application by the legal representatives of victims of the V01 team requesting leave to appeal Orders ICC-01/04-01/06-3251 and ICC-01/04-01/06-3252 issued by this Chamber; and
- ❖ Authorize the legal representatives of victims of the V02 team to act jointly with those of the V01 team, and authorize them to appeal the two Orders of 21 October 2016.

AND JUSTICE SHALL BE DONE.

Dated this 16 November 2016

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

[signature]

Joseph Keta Orwinyo

[signature]

Carine Bapita Buyangandu

[signature]

Paul Kabongo Tshibangu

Legal representatives of victims