



Original: **French**

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

Date: **20 March 2019**

THE APPEALS CHAMBER

Before: Judge Piotr Hofmánski, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Chile Eboe-Osuji
Judge Howard Morrison

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Redacted Document

Public Redacted Version of "Defence Application for Suspension of the '*Décision approuvant les propositions du Fonds au profit des victimes portant sur la procédure visant à localiser et décider de l'admissibilité aux réparations des nouveaux demandeurs*' Issued on 7 February 2019 by Trial Chamber II" (ICC-01/04-01/06-3447-Conf)

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

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

Office of Public Counsel for Victims

Ms Paolina Massida

REGISTRY

Registrar

Mr Peter Lewis

Trust Fund for Victims

Mr Pieter de Baan

Victims Participation and Reparations

Section

Mr Philipp Ambach

CLASSIFICATION

1. The present application is filed as confidential for its references to submissions classified as confidential.
2. The Defence will subsequently file a public redacted version of the application.

PROCEDURAL HISTORY

3. By Decision¹ of 15 December 2017, Trial Chamber II (“Chamber”) set the size of Mr Lubanga’s monetary liability for the reparations.
4. The Defence and the V01 Legal Representatives team appealed the Decision and filed their appeal briefs on 15² and 19 March 2018,³ respectively.
5. The parties to the reparations proceedings responded to the appeals entered and the appellants were granted leave to file a reply.
6. By order of 2 January 2019,⁴ the Appeals Chamber invited the parties to make written submissions in response to the issues set out in the order of 6 November 2018.⁵
7. The submissions of the Defence and the Legal Representatives were filed on 31 January 2019.

¹ “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, 15 December 2017, ICC-01/04-01/06-3379-Red-Corr-tENG.

² “Appeal Brief of the Defence for Mr Thomas Lubanga Dyilo against the ‘*Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu*’ handed down by Trial Chamber II on 15 December 2017 and Amended by the Decisions of 20 and 21 December 2017”, 15 March 2018, ICC-01/04-01/06-3394-Conf-tENG.

³ “Corrigendum to the Appeal Brief against the ‘*Décision fixant le montant des réparations auxquelles Thomas Lubanga est tenu*’ Handed Down by Trial Chamber II on 15 December 2017”, ICC-01/04-01/06-3396-Conf”, 19 March 2018, ICC-01/04-01/06-3396-Conf-Corr-tENG.

⁴ “Order on the conduct of the proceedings”, 2 January 2019, ICC-01/04-01/06-3435.

⁵ “Order scheduling an oral hearing and determining the conduct of that hearing”, 6 November 2018, ICC-01/04-01/06-3429.

8. The appeals entered against the decision setting the size of Mr Lubanga's monetary liability for the reparations are currently awaiting determination.
9. On 7 February 2019, the Chamber issued the "*Décision approuvant les propositions du Fonds au profit des victimes portant sur la procédure visant à localiser et décider de l'admissibilité aux réparations des nouveaux demandeurs*" ("Decision").⁶
10. On 13 February 2019, the Defence applied for leave to appeal the Decision pursuant to the provisions of rule 155 of the Rules of Procedure and Evidence and article 82(1)(d) of the Rome Statute.⁷
11. On 4 March 2019, the Chamber dismissed the Defence application.⁸
12. The Defence hereby files an application for suspension of the Decision of 7 February 2019.

SUBMISSIONS

13. Rules 134(3) and 149 of the Rules of Procedure and Evidence provide that the parties to the proceedings may move the Appeals Chamber to dispose of any matter that arises during the trial proceedings.
14. These provisions form part of the proper administration of justice and ensure that the course of the proceedings runs efficiently and expeditiously.
15. In the Decision of 7 February 2019, the Chamber laid down:
 - the arrangements for the process to be undertaken by the Trust Fund of locating new applicants and deciding on their eligibility for reparations;

⁶ "*Décision approuvant les propositions du Fonds au profit des victimes portant sur la procédure visant à localiser et décider de l'admissibilité aux réparations des nouveaux demandeurs*", 7 February 2019, ICC-01/04-01/06-3440-Conf.

⁷ "*Requête de la Défense aux fins d'autorisation d'interjeter appel de la Décision rendue le 7 février 2019 (ICC-01/04-01/06-3440-Conf)*", 13 February 2019, ICC-01/04-01/06-3441-Conf.

⁸ "*Décision sur la demande de l'équipe de la défense de Thomas Lubanga Dyilo aux fins d'autorisation d'interjeter appel de la décision rendue le 7 février 2019*", 4 March 2019, ICC-01/04-01/06-3445.

- the remedies at the disposal of new applicants who are found not to qualify for reparations;
- the cut-off date for the admission of new victims.

16. The Chamber also directed the Trust Fund to [REDACTED].⁹
17. These issues are now being canvassed and have been put before the Appeals Chamber for consideration as part of the appeals entered against the Decision of 15 December 2017.
18. In its first ground of appeal, the Defence submits that, in setting Mr Lubanga's liability for the reparations, the Chamber should not have taken into consideration the existence of hundreds and possibly thousands more unidentified victims who did not apply to the Chamber.¹⁰
19. By directing the Trust Fund to [REDACTED], the Chamber has predetermined the Decision on appeal as regards the Defence's first ground of appeal.
20. Also posed for resolution before the Appeals Chamber is the issue of whether there is a date by which the applications for reparations from potential victims must be filed.
21. By setting the cut-off date for the filing of new applications from potential victims [REDACTED],¹¹ the Chamber has predetermined the Appeals Chamber's position.
22. That being so, the proper administration of justice and the right of Mr Lubanga to an impartial and independent hearing demand that the Decision of 7 February 2019 be suspended pending the appeals.

⁹ Decision, para. 14.

¹⁰ Defence Appeal Brief, paras. 11-48.

¹¹ Decision, para. 42.

23. Furthermore, it is also in the interests of the proper administration of justice that the Decision be suspended until such time as the Appeals Chamber gives judgment, since said Decision directs the Trust Fund to [REDACTED], the very substratum of which could come under review by the Appeals Chamber in relation to the appeals entered against the Decision of 15 December 2017.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER

TO SUSPEND the *“Décision approuvant les propositions du Fonds au profit des victimes portant sur la procédure visant à localiser et décider de l’admissibilité aux réparations des nouveaux demandeurs”* issued by Trial Chamber II on 7 February 2019.

[signed]

Ms Catherine Mabile, Lead Counsel

Dated this 20 March 2019

At The Hague