

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: 27 March 2019

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding Judge
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.* LUBANGA DYILO**

Confidential

Corrected version of

Response of the Legal Representatives of the V02 Group of Victims to the 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) (ICC-01/04-01/06-3450-Conf)

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

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

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Peter Lewis

Other

I. CLASSIFICATION

1. This response is filed as confidential in accordance with the classification of the document to which it relates.
2. A public version will be filed subsequently with, if necessary, the relevant redactions.

II. PROCEDURE

3. On 15 December 2017, Trial Chamber II ("Chamber") set the size of the reparations award for which Mr Lubanga is liable.¹
4. On 15 and 16 January 2018, the Defence for Mr Lubanga ("Defence") and the Legal Representatives of the V01 group of victims ("LRV01") filed, respectively, their notices of appeal² against the decision above, which were supported by their respective Appeal Briefs of 15 and 19 March 2018.³
5. On 16 March 2018, the Chamber instructed the Trust Fund for Victims ("Trust Fund") to file the documents relating to the process for locating new applicants and determining whether they are eligible for reparations, to the possibility of earmarking an additional amount for reparations, and to the progress in the implementation of reparations.⁴
6. On 21 March and 13 April 2018, the Trust Fund filed the documents requested.⁵

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 ICC-01/04-01/06-3387-tENG and ICC-01/04-01/06-3388-tENG.

³ ICC-01/04-01/06-3394-Conf-tENG and ICC-01/04-01/06-3396-Conf-Corr-tENG.

⁴ "Order Instructing the Trust Fund for Victims to File the Documents Requested by the Chamber on the Process of Screening New Victims, the Progress of Discussions with the Stakeholders Involved in Locating and Identifying New Victims, the Possibility of Earmarking an Additional Amount for Reparations and the Progress of the Implementation of Reparations", 16 March 2018, ICC-01/04-01/06-3395-tENG ("Order of 16 March 2018").

⁵ "Observations in relation to the victim identification and screening process pursuant to the Trial Chamber's order of 25 January 2018", 21 March 2018, ICC-01/04-01/06-3398; "Further information on the reparations proceedings in compliance with the Trial Chamber's order of 16 March 2018", 13 April 2018, ICC-01/04-01/06-3399-Conf.

7. On 25 and 26 April 2018, the Defence, the Office of Public Counsel for Victims ("OPCV"), the LRV01 and the LRV02 submitted their respective responses to the documents filed by the Trust Fund.⁶
8. 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*"⁷ ("Decision of 7 February 2019").
9. On 13 February 2019, the Defence filed an application for leave to appeal against the Decision of 7 February 2019⁸ ("Defence Application").
10. On 26 February 2019, the Legal Representatives of the V02 group of victims ("LRV02") submitted their response to the Defence Application.⁹
11. On 4 March 2019, the Chamber issued the decision rejecting the Defence Application for leave to appeal against the Decision of 7 February 2019.¹⁰
12. On 20 March 2019, the Defence filed an application for suspension of the Decision of 7 February 2019¹¹ ("Defence application").

⁶ "Réponse consolidée de la Défense aux Observations du Fonds au profit des victimes communiquées les 21 mars et 13 avril 2018", dated 24 April 2018 and registered on 25 April 2018, ICC-01/04-01/06-3401.

⁶ "Réponse aux observations du Fonds au profit des victimes sur le processus d'identification et de sélection des autres victimes potentiellement éligibles aux réparations ainsi que sur les prochaines étapes de la mise en œuvre des réparations", 26 April 2018, ICC-01/04-01/06-3403-conf."; "Réponse consolidée aux 'Observations in relation to the victim identification and screening process pursuant to the Trial Chamber's order of 25 January 2018' du 23 mars 2018 et au 'Fourth progress report on the implementation of collective reparations as per Trial Chamber's II's orders of 21 October 2016 and 6 April 2017' avec annexes du 13 avril 2018", 26 April 2018, ICC-01/04-01/06-3402-Conf with one confidential annex.

⁷ "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.

⁸ "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.

⁹ "Réponse des représentants légaux du groupe des victimes V02 à la Requête de la Défense aux fins d'autorisation d'interjeter appel de la Décision rendue le 7 février 2019 (ICC-01/04-01/06-3441-Conf)", 26 February 2019, ICC-01/04-01/06-3444-Conf.

¹⁰ "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.

¹¹ "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

III. CONTEXT

13. Acting pursuant to rules 134(3) and 149 of the Rules of Procedure and Evidence, the Defence for Mr Lubanga requests the Appeals Chamber to suspend the Decision of 7 February 2019 on the grounds that:

- the Chamber is predetermining the decision on appeal regarding, on the one hand, the Defence's first ground of appeal i.e. the identification of new victims and, on the other hand, the cut-off date for the filing of new applications from potential victims;¹² and
- this suspension will contribute to the proper administration of justice and the efficient and expeditious conduct of the instant proceedings.¹³

14. All of these issues were raised in the Defence Application against the Decision of 7 February 2019, which was rejected by the Chamber.¹⁴

15. Moreover, the Defence, having been authorized by the Chamber,¹⁵ filed its response¹⁶ to the submissions of the Trust Fund dated 21 March and 13 April 2018 on the process for identifying and screening other victims who might be eligible for reparations and the next steps in the implementation of reparations.

16. Lastly, the Defence is raising the same points again, this time by applying directly to the Appeals Chamber for suspension of the Decision of 7 February 2019 regarding the same issues.

demandeurs' Issued on 7 February 2019 by Trial Chamber II", 20 March 2019, ICC-01/04-01/06-3447-Conf-tENG.

¹² *Ibid.*, paras. 15-21.

¹³ *Ibid.*, para. 14.

¹⁴ Application for leave to appeal, ICC-01/04-01/06-3441, paras. 6 and 9.

¹⁵ Email from the Chamber on 23 March 2018 at 10.41.

¹⁶ See above, footnote 6.

IV. RESPONSE TO THE APPLICATION

1. Appeals Chamber not seized of the matter

17. Under rule 156(1)-(5) of the Rules of Procedure and Evidence, as soon as an appeal has been filed under rule 154, or as soon as leave to appeal has been granted under rule 155, the Registrar shall transmit to the Appeals Chamber the record of the proceedings of the Chamber that made the decision that is the subject of the appeal and, when filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82(3).
18. In the instant case, however, the Defence applied directly to the Appeals Chamber for suspension of the Decision of 7 February 2019.
19. As no appeal was filed, the Appeals Chamber will declare itself not seized of the matter insofar as it will be unable to consider such a request without the record of the proceedings leading to the decision in respect of which suspension is sought, which the Registry is supposed to transmit to it.
20. In the very unlikely event that the Appeals Chamber were to declare itself duly seized, it would nevertheless have to decline its lack of jurisdiction to rule on the application.

2. The Appeal Chamber's lack of jurisdiction

21. Apart from the power to confirm, reverse or amend the decision appealed in accordance with rule 158(1), the Chamber may order suspensive effect of a decision if, and only if, the party appealing made such a request when filing the appeal, not an application.
22. In the case at bar, however, no appeal was filed.
23. It follows that the Appeals Chamber cannot assume such power and, accordingly, will declare that it lacks jurisdiction to rule on the issue of suspensive effect.

24. In the even more unlikely event that the Appeals Chamber declares itself as having jurisdiction to rule on this application for suspension, it will nonetheless find it inadmissible.

3. The Defence application is inadmissible

25. Rules 134(3) and 149 provide that, after the commencement of the trial, the Trial Chamber, like the Appeals Chamber, on its own motion, or at the request of the Prosecutor or the defence, may rule on issues that arise during the course of the trial.

26. All the issues raised by the Decision of 7 February 2019, which the Defence mentions,¹⁷ did indeed arise during the course of the trial before Trial Chamber II, which is merely implementing the measures stemming from the decision setting the size of the reparations award, and not before the Appeals Chamber.

27. Accordingly, the Appeals Chamber will find the Defence application inadmissible.

FOR THESE REASONS, May it please Trial Chamber II to:

- Declare that it has not been seized of the matter;
- If not, declare that it has no jurisdiction to rule on the application for suspension;
- Otherwise, find the Defence application inadmissible;

¹⁷ "Defence application", para. 15.

Dated this 27 March 2019

At Kinshasa, Democratic Republic of the Congo

[signed]

[signed]

[signed]

Carine Bapita

Joseph Keta

Paul Kabongo

Legal Representatives of Victims V02