



Original: English

No. ICC-01/04-01/07 A3 A4 A5

Date: 14 September 2017

THE APPEALS CHAMBER

Before:
Judge Howard Morrison, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert
Judge Piotr Hofmański

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. GERMAIN KATANGA

Public document

Decision on the Trust Fund's request for leave to file observations

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

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Counsel for the Defence

Mr David Hooper

Ms Caroline Buisman

The Office of Public Counsel for Victims

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals filed pursuant to article 82 (4) of the Statute against the order of Trial Chamber II entitled “Order for Reparations pursuant to Article 75 of the Statute” of 24 March 2017 (ICC-01/04-01/07-3728-tENG),

Having issued the “Directions on the conduct of the appeal proceedings” on 7 August 2017 (ICC-01/04-01/07-3752),

Having before it the “Request for leave to file observations”, filed by the Trust Fund on 25 August 2017 (ICC-01/04-01/07-3755),

Renders the following

DECISION

1. The Trust Fund may file observations on the two issues for which leave was sought in the “Request for leave to file observations” (ICC-01/04-01/07-3755) by 16h00 on 5 October 2017. Such observations shall not exceed fifteen pages.
2. Responses to those observations, which shall not exceed fifteen pages, may be filed by Mr Germain Katanga, the OPCV and the Legal Representative of Victims by 16h00 on 26 October 2017.

REASONS

1. On 24 March 2017, Trial Chamber II issued the “Order for Reparations pursuant to Article 75 of the Statute”.¹
2. Mr Germain Katanga (on 26 April 2017),² the Office of Public Counsel for victims (on 26 April 2017), on behalf of a group of victims (“OPCV”),³ and a legal

¹ [ICC-01/04-01/07-3728-tENG](#).

² “Defence Notice of Appeal against the *Ordonnance de réparation en vertu de l’article 75 du Statut*”, [ICC-01/04-01/07-3738](#).

³ “Notice of appeal against the Reparations Order and its Annex II issued in accordance with article 75 of the Statute on 24 March 2017”, [ICC-01/04-01/07-3739](#).

representative of victims (on 25 April 2017), on behalf of another group of victims (“Legal Representative of Victims”),⁴ filed appeals against that decision, which were followed by appeal briefs, all registered on 27 June 2017.⁵

3. On 7 August 2017, the Appeals Chamber issued the “Directions on the conduct of the appeal proceedings”,⁶ in which it directed the Trust Fund to indicate, by 25 August 2017, “whether it seeks to submit observations on the appeals, and on which particular issues”.⁷ It also directed that “[a]ny other request for leave, under rule 103 of the Rules of Procedure and Evidence, to submit observations on the appeals, shall be filed by 16h00 on 25 August 2017, stipulating the specific issues to be addressed on the basis of the Appeal Briefs”.⁸

4. On 25 August 2017, the Trust Fund submitted the “Request for leave to file observations”⁹ (“Trust Fund’s Request for Leave”). The Trust Fund

considers that its interest in the present appellate reparations proceedings is primarily limited to issues raised on appeal that may impact upon the implementation of the order for reparations, specifically in terms of any potential amendment or modification that may be required of the draft implementation plan, as well as issues that directly relate to the TFW Regulations and the scope of authority granted therein to the Trust Fund’s Board.¹⁰

5. It sought leave to submit observations on two issues: 1) “The potential procedural and substantive impact of the parties’ requested relief on the draft implementation plan submitted in the *Katanga* case”;¹¹ and 2) “Whether the Trust

⁴ “Notice of Appeal against the ‘*Ordonnance de réparation en vertu de l’article 75 du Statut*’ and its Annex II”, [ICC-01/04-01/07-3737-tENG](#).

⁵ Legal Representative of Victims, “Document in Support of the Appeal against the Order for Reparations under Article 75 of the Statute with its Annex II”, [ICC-01/04-01/07-3745-tENG](#); OPCV, the “Public Redacted Version of Document in Support of the Appeal against Trial Chamber II’s ‘*Ordonnance de réparation en vertu de l’article 75 du Statut*’”, [ICC-01/04-01/07-3746-Red](#); Mr Germain Katanga, “Defence Document in Support of Appeal against the Reparations Order”, [ICC-01/04-01/07-3747-Red](#).

⁶ [ICC-01/04-01/07-3752](#) (“Directions of 7 August 2017”).

⁷ [Directions of 7 August 2017](#), para. 1.

⁸ [Directions of 7 August 2017](#), para. 2.

⁹ [ICC-01/04-01/07-3755](#).

¹⁰ [Trust Fund’s Request for Leave](#), para. 7.

¹¹ [Trust Fund’s Request for Leave](#), p. 4.

Fund can assume a ‘share of the reparations burden’ outside of or beyond the amount of liability imposed on the convicted person in the order for reparations”.¹²

6. No other requests under rule 103 of the Rules of Procedure and Evidence were filed.

7. The Appeals Chamber notes that the Trust Fund submits that the issues for which it seeks leave to file observations relate to the appeals filed by the OPCV and Mr Germain Katanga¹³ and, in respect of both issues, the Appeals Chamber considers that, pursuant to rule 103 of the Rules of Procedure and Evidence, it is desirable for the proper determination of the case to receive these observations.

8. Given the limited issues on which the Trust Fund wishes to make observations, the Appeals Chamber limits the page limit for both the Trust Fund’s observations, and any responses thereto by Mr Katanga and the victims, to fifteen pages. In respect of the latter, and bearing in mind the wording of rule 103 (2) of the Rules, which refers to the right to file a response by the Prosecutor and the defence, the Appeals Chamber considers that this provision applies *mutatis mutandis* to the victims in these proceedings, noting the Appeals Chamber’s previous reference to the fact that victims who had brought an appeal under article 82 (4) of the Statute were “parties to the proceedings”.¹⁴

Done in both English and French, the English version being authoritative.



Howard Morrison
Presiding Judge

Dated this fourteenth day of September 2017

At The Hague, The Netherlands

¹² [Trust Fund’s Request for Leave](#), p. 5.

¹³ [Trust Fund’s Request for Leave](#), paras 8, 11.

¹⁴ *Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the admissibility of the appeals against Trial Chamber I’s ‘Decision establishing the principles and procedures to be applied to reparations’ and directions on the further conduct of proceedings”, 14 December 2012, [ICC-01/04-01/06-2953](#) (A A2 A3 OA21).