

Appeals Chamber of the International Criminal Court delivers three important judgments

On 8th March, 2018, the Appeals Chamber of International Criminal Court delivered three important judgments.

1. *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*

In the first case concerning *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, the Appeals Chamber rejected the appeals of the five accused against their conviction. While confirming the conviction for most of the charges, it acquitted Mr. Bemba, Mr. Kilolo and Mr. Mangenda under Article 70 (1) (b) of the Rome Statute holding that the provision only applies to the presentation of documentary evidence and not to the calling of witnesses. With the verdict, the convictions and acquittals of all the five accused stand confirmed.

Concerning defendants Bemba, Babala and Arido on whom Trial Chamber VII had imposed sentences, the Appeals Chamber concluded that the Trial Chamber committed numerous errors while assessing the gravity of the offences. In addition it was held that the Trial Chamber did not have the power to impose suspended sentences as was done in the cases of Mr. Mangenda and Mr. Kilolo. The Court remanded the case of all three defendants to the Trial Chamber for a new determination.

The Appeals Chamber verdict comes in the wake of the October 19, 2016 determination, wherein, Trial Chamber VII found the five accused guilty of intentionally influencing witnesses in a corrupt manner and soliciting false testimonies of defence witnesses in another case. The judgment is expected to strengthen the Offences Against Administration of Justice jurisprudence of the Court.

2. *The Prosecutor v. Germain Katanga (Reparations Order)*

In the reparations order case of *The Prosecutor v. Germain Katanga*, the Appeals Chamber rejected the appeals of Mr. Katanga and the Office of Public Counsel for Victims. The Chamber held that for the amount of reparations for which a convicted person is liable, it is, in principle irrelevant whether other individuals may also have contributed to the harm. For determining reparations, the Appeals Chamber was of the view that *cost to repair* as opposed to the *monetary value of the harm caused* is the appropriate approach. However, despite the case, the Appeals Chamber held that the determination of the Trial Chamber was neither an error of law nor an abuse of discretion.

On the question of transgenerational harm suffered by the applicants (who claimed to have suffered on account of their parents experience), the Appeals Chamber remanded the matter to the Trial Chamber to determine the nexus between the crimes committed by Mr. Katanga and the possible psychological harm suffered by the next generation.

The Appeals Court verdict comes in the wake of Trial Chamber II's Reparations Order of \$1,000,000 USD against Mr. Katanga on 24th March, 2017 pursuant to Article 75 of the Statute. 297 identified victims were awarded individual symbolic compensations of \$250 to each of the victims. Housing, educational, income generating measures and psychological rehabilitation was awarded to all victims. In the wake of Mr. Katanga's indigence, the Trust Fund's Board of Directors was requested to complement the payment of both individual and collective awards.

3. *The Prosecutor v. Ahmad Al Faqi Al Mahdi (Reparations Order)*

In the Reparations Order case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, the Appeals Chamber concluded that the Trial Chamber is free to decide on a case to case basis, for instance the assistance of Trust Fund for Victims to be taken for administratively screening the individual beneficiaries who meet the eligibility criteria set by the Trial Chamber.

On two issues, the Reparations Order was amended by the Trial Chamber. **Firstly**, the applicants for individual reparations should be allowed to challenge the decision of the Trust Fund for Victims on their eligibility for individual reparations before the Trial Chamber whose determination on the point shall be final. **Secondly**, for reparation applicants who are opposed to their identities being disclosed to Mr. Al Mahdi, should disclose it to the Trust Fund for Victims for claims.

The case pertained to the 27 September 2016 ruling of the Trial Chamber wherein, Mr. Al Mahdi was found guilty of the War Crime of intentionally directing attacks against religious and historical buildings in Timbuktu, Mali in 2012. The Reparations Order followed on 17th August, 2017, holding Mr. Mahdi liable for 2.7 million euros as individual and collective reparations for the Timbuktu community. The Trust Fund for Victims was encouraged to complement the Reparations Order in light of Mr. Al Mahdi's indigence.

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