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

Date: 28 March 2012

**TRIAL CHAMBER I**

**Before:** Judge Adrian Fulford, Presiding Judge  
Judge Elizabeth Odio Benito, Judge  
Judge René Blattmann, Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

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

**Public**

**With Confidential Annex, *EX PARTE* only available to the Registry**

**First Report to the Trial Chamber on applications for reparations**

**Source: Registry**

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

**The Office of the Prosecutor**

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**Legal Representatives of the Applicants**

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**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

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**States' Representatives**

**Amicus Curiae**

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**REGISTRY**

**Registrar**

Ms Silvana Arbia

**Counsel Support Section**

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Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

Mr Pieter de Baan, Executive Director,  
Trust Fund for Victims

**The Registrar of the International Criminal Court (the “Court”);**

**NOTING** the Scheduling Order (the “Order”) issued by Trial Chamber I (the “Chamber”) on 14 March 2012, ordering the Registry to transmit to the Chamber by 16.00 on 28 March 2012, the current applications for reparations, together with a report thereon which includes *inter alia*, the procedure it is recommended should be followed and any submissions as to the principles to be applied by the Chamber when considering the appropriate reparations in this case;<sup>1</sup>

**NOTING** articles 39, 64 and 75 of the Rome Statute (the “Articles”), rule 85, 94 and 97 of the Rules of Procedure and Evidence (the “Rules”), regulations 23(2), 23 *bis*, 24 *bis*(2) and 88 of the Regulations of the Court (the “Regulations”) and regulation 110 of the Regulations of the Registry (the “Regulations of the Registry”);

**CONSIDERING** that all the applications for reparations received to date have been transmitted to the Defence in compliance with Rule 94(2) of the Regulations;<sup>2</sup>

**TRANSMITS** to the Chamber the following report on all applications for reparations received so far by the Registry.

**A. Background and content of this report**

1. This report gives an overview of the content of the applications for reparations received so far by the Registry (Part B). It also sets out some recommendations as regards the procedural steps to be followed in reparations proceedings, as requested by the Chamber (Part C).

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<sup>1</sup> ICC-01/04-01/06-2844, para.7.

<sup>2</sup> ICC-01/04-01/06-1652; ICC-01/04-01/06-2270; ICC-01/04-01/06-2475; ICC-01/04-01/06-2841.

2. The Registry having already given some recommendations on the principles to be applied in reparations proceedings,<sup>3</sup> the present report does not include further submissions on this issue.
3. However the Registry may, in its submissions to be filed by 18 April 2012,<sup>4</sup> provide further views on issues relating to principles on reparations, as invited by the Chamber in its Order.

## **B. Overview of the reparations applications transmitted**

4. The present report covers 85 applications for reparations.
5. Of these, 73 applications appear to the Registry to be linked<sup>5</sup> to the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the "Case"),<sup>6</sup> and one appears to fall outside the scope of the Case.
6. While the Chamber has not requested the Registry to conduct assessments of the applications, in the preparation of this overview the Registry has conducted such a preliminary assessment of their completeness. Eleven applications appear to the Registry to require supplementary information<sup>7</sup> by reference to Rules 85 and 94(1) in order to permit an assessment as to whether or not they are linked to the case.
7. All 85 applications for reparations received have been transmitted to the Chamber, pursuant to Regulation 110(1) of the Registry and as requested by the Chamber's Order.

<sup>3</sup> See *Second Report of the Registry on Reparations* (ICC-01/04-01/06-2806).

<sup>4</sup> ICC-01/04-01/06-2844, paras.8 and 9.

<sup>5</sup> The link with the case has been assessed in the same way as for applications for participation, in the absence of other instructions.

<sup>6</sup> Because they have been submitted either by an applicant who has been previously granted victim' status by the Chamber, or by an applicant assessed by the Registry as meeting the criteria set by Rule 85. Among these 73 applications, six applicants have seen their participation status withdrawn by the majority of the Chamber in the Judgement pursuant to Article 74 issued on 14 march 2012 (ICC-01/04-01/06-2842, para.1362).

<sup>7</sup> Supplementary information can include clarifications pertaining to the date of the alleged events, to the description of the alleged events, to the age of the applicant at the time of the alleged events and to the identification of the perpetrators.

8. With regard to the type of application introduced, the Registry notes that among the 85 applications, one applicant has applied for reparations only and 84 applicants have applied for both participation and reparations. Of these 84 applicants, 50 were granted participation status by the Chamber, four were rejected and 30 applications were not filed.<sup>8</sup>
9. Of the 85 applications, 53 have been introduced by women and 32 by men; 77 applications have been submitted by or on behalf of persons claiming to be under the age of 15 at the time of the events, seven by parents of such persons and one school Director.
10. Regarding the type of reparations requested, the Registry notes that 19 applicants have expressed the wish to benefit from only individual reparations, five applicants request only collective reparations, 59 expressed the wish for both individual and collective reparations and two did not give their preference.
11. The Registry has summarised the different types of reparations sought by the applicants and notes with regard to individual reparations a preference for:
  - (a) Monetary compensation to enable the applicant to pursue his/her education, to enable the applicant to start a business and/or to enable the applicant to purchase land;
  - (b) Access to medical care and/or psychological support;
  - (c) Restitution of belongings, livestock and property.
12. With regard to collective reparations, the Registry notes a preference for:
  - (a) Rehabilitation and/or construction of schools and hospitals for the affected community;
  - (b) Establishment of vocational training centres;

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<sup>8</sup> These applications were not filed in accordance with the Order of the Chamber of 27 January 2012, ICC-01/04-01/06-2838, para.5.

(c) Measures such as building psychosocial centres to enable the child soldiers to reintegrate the community.

13. The table attached in Annex 1 gives more detailed information regarding each application. The Registry would be able to provide individual reports compiling information from the applications at the Chamber's request, whether regarding the applicants' claims, information relevant to an assessment of compliance with Rule 85, the link to the case, or other. It would be helpful for the Registry to receive instructions with as much advance warning as possible in order to enable sufficient time to prepare any reports.

#### **Notification of the applications**

14. The Registry notes that the 85 applications which are the subject of this report have already been transmitted in redacted form to the Defence, pursuant to Rule 94(2).<sup>9</sup>
15. As already noted in the Second Report on Reparations,<sup>10</sup> should the Chamber consider ordering reparation through the Trust Fund for Victims ("TFV") under Article 75(2), second sentence, it should order the applications to be also notified to the TFV. The present report is public and was specifically notified to the TFV, in compliance with the notification of the Order.<sup>11</sup>

#### **Publication of Reparation Proceedings**

16. The Registry further notes that the Chamber, in its Order, has requested the Registry to report on steps it intends to take to notify the Judgment pursuant to Rule 96 of the Rules and, in light of article 75(3) of the Statute,

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<sup>9</sup> ICC-01/04-01/06-2841.

<sup>10</sup> ICC-01/04-01/06-2806, par. 157, 198 (ii).

<sup>11</sup> ICC-01/04-01/06-2844, p. 2.

may grant leave to individuals or interested parties to make representations. The Registry will therefore await any further instructions under Rule 94(2), to notify the requests for reparations to any such others.

17. The Registry further notes that, under Rule 96(2) of the Rules, the Court may seek, in accordance with Part 9, the cooperation of the relevant States Parties and seek the assistance of intergovernmental organizations in order to give publicity, as widely as possible and by all possible means, to the reparation proceedings before the Court. In light of the limited scope of the *Lubanga* case and in order not to raise undue expectations on behalf of victims in the whole Democratic Republic of Congo ("DRC"), the Registry would not recommend resorting to such broad cooperation at this stage. Should the Court meet problems at a later stage that could be addressed by resorting to the cooperation of DRC or intergovernmental organizations, it will be still time to issue formal requests for that very purpose.

### **Legal representation of the applicants**

18. The Registry notes that currently among the 85 applicants for reparations, five are represented by the Common legal representatives ("CLR") of team "V01",<sup>12</sup> 41 by the CLR of team "V02",<sup>13</sup> four by the Office of Public Counsel for Victims (the "OPCV"),<sup>14</sup> and 35 are not represented. Among these 35 unrepresented applicants, 33<sup>15</sup> have requested in their application for reparation to be represented by Joseph Keta and two have given no indication as to the legal representative they wish to have.
19. As noted in the Registry's Second Report on Reparations,<sup>16</sup> the Chamber may consider it appropriate to appoint a legal representative to represent

<sup>12</sup> Team V01 is composed of Me Walley and Me Mulenda.

<sup>13</sup> Team V02 is composed of Me Bapita, Me Keta and Me Kabongo.

<sup>14</sup> Forty nine victims mention in their reparation form at least one of the legal representatives who currently compose the CLR team, or the OPCV in charge of their representation in the proceedings. Only one victim currently represented by the team V01 did not mention any legal representative in his/her reparation form.

<sup>15</sup> Among these 33 applicants, 24 have the same intermediary.

<sup>16</sup> ICC-01/04-01/06-2806, para. 184.

the interests of other victims who have not submitted applications for reparation but, who, as noted, may still be considered by the Chamber within the scope of any reparations award. The Registry, and in particular the Outreach Unit of the Public Information and Documentation Section, and the VPRS, may be in a position to provide support to any such legal representative, for instance in directing victims who respond to the activities pursuant to Rule 96 to the legal representative.

20. The Registry is currently reviewing whether to recommend changes to the arrangements for common legal representation in place during the trial, and will shortly be in a position to submit, if necessary, its recommendations on the organisation of common legal representation for the reparations phase. In the meantime, the Registry recommends that the OPCV be appointed to represent the unrepresented applicants for reparations and any new applicant that may apply for reparations following the notification under Rule 96.

### **C. Procedural steps**

21. The Registry notes that it already set out fairly detailed proposals relating to the procedural steps it proposes the Chamber to follow in the reparations proceedings in its Second Report on reparations.<sup>17</sup> The Registry will address substantive issues regarding the principles that may be applied by the Chamber with regard to reparations in its forthcoming observations of 18 April 2012.<sup>18</sup>
22. The Registry notes that the procedural steps may be shaped by the type of award the Chamber decides to take. While the Registry has already made some observations concerning this issue in its Second Report on Reparations, some summarized suggestions are made below as to the

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<sup>17</sup> ICC-01/04-01/06-2806, para.198.

<sup>18</sup> ICC-01/01-01/06-2844, par. 9.



procedure that might be followed in each eventuality (only collective applications, only individual or both).

23. The Registry notes further the point previously made both by the Registry and the TFV that while victims have the right to submit application for reparations, the Chamber may decide not to conduct a process based uniquely on applications,<sup>19</sup> especially, but not only, if a collective award only is contemplated. Even if the Chamber decides to award reparations on an individual basis, it may still not be necessary to require individual applications to be submitted. In this regard, the Registry notes that the Chamber may consider whether to use its *proprio motu* powers under Article 75 in relation to victims who do not approach the Court even after measures to publicise the reparations proceedings are taken pursuant to Rule 96. If the Chamber issues its decision on reparations based on detailed information on harm submitted by some but not all victims, there is a risk that these victims may have a disproportionate impact on a decision that will apply to a much broader group, or indeed, that it may make it difficult to avoid a decision to allow only those victims to benefit. This situation may be mitigated by appointing legal representation to represent the interests of victims who have not communicated with the Court, which is suggested in this report, as well as the appointment of appropriate experts.
24. The Registry may also assist the Chamber, should it decide to encourage a more collective application process, by proposing a draft collective application form to apply for reparations. The possibility of developing a draft application form for participation is currently being discussed before Pre-Trial Chamber II in the situation of Côte d'Ivoire. The reparation aspect is not sufficiently addressed in the current draft, which would thus require improvements. The Registry just wants to inform the Chamber of

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<sup>19</sup> ICC-01/04-01/06-2806, paras.188 to 193.

this possibility, while mentioning that a complete finalization of this new form, including approval by the Presidency under regulation 23(2) of the Regulations, will take time and may cause delay to the reparation proceedings in the *Lubanga* case. The Registry is ready to expand on this possibility should the Chamber request so.

25. The Registry also reiterates what was said in its Second Report on Reparations drawing attention to the fact that the distinction between individual and collective measures is not always easy to make,<sup>20</sup> as well as the potential disadvantages of an adversarial procedure concerning reparations.<sup>21</sup>

**Recommendations concerning the procedure to be followed should the Chamber decide to award reparations on a collective basis**

26. If the Chamber decides to award reparations on a collective basis only, the Registry suggests that appropriate experts be consulted pursuant to Rule 97(2), since they may be of assistance in the conduct of reparations proceedings or the implementation of reparation awards.
27. The Registry also recommends the appointment of legal representatives to represent the views of victims who have not been participating or communicated with the Court but who may wish to apply for reparations following the notification under Rule 96.

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<sup>20</sup> ICC-01/04-01/06-2806, paras. 60-66.

<sup>21</sup> ICC-01/04-01/06-2806, paras. 52-59.

**Recommendations concerning the procedure to be followed should the Chamber decide to award reparations on an individual basis based on applications**

28. If the Chamber were to institute an application based process, the Registry suggests the setting of a deadline for the submission to the Registry of any new victims' applications for reparations, allowing victims sufficient time to submit their request following the notification under Rule 96. It would be helpful if any deadline could also enable the Registry to organise the use of resources available in an efficient and timely fashion in order to receive, process and report on applications received in accordance with any instructions issued by the Chamber.
29. Should such an applications based approach be followed, the Registry suggests that the Chamber provides guidance to the Registry on matters such as which applications for reparations should be transmitted (for example whether the Chamber would like all the applications for reparations to be transmitted or only those assessed to be complete by the Registry based on criteria established by the Chamber) and whether the Chamber wishes to set any parameters at the outset as regards the scope of the harm to be considered for the purposes of a reparations award; (b) what type of information it wishes to receive; for example, what kind of documents victims would need to provide to support their claim for restitution, compensation and rehabilitation. This would put the Registry in a better position to assist victims in completing their applications for reparations pursuant to Regulation 88(2).
30. It is also recommended to set a deadline for the filing by the Registry of these applications together with a report to the Chamber, the Defence and other interested persons, pursuant to Regulation 110 of the Registry and Rule 94(2) on applications received.

**Recommendations concerning the procedure to be followed should the Chamber decide to award reparations on an individual or a collective basis or both**

31. Under Article 75(3), the Chamber may invite and shall take account of representations from or on behalf of the convicted person, victims and other interested persons or interested States. It is the view of the Registry that the TFV is among these “other interested persons”, especially in the case of reparations through the TFV under Article 75(2), second sentence.
32. The Registry refers to its earlier submissions as to the meaning of the words “the Court” in Article 75 of the Statute and the possible consequences as to which forum may be most appropriate for reparation proceedings.<sup>22</sup> It is the respectful view of the Registry that the Chamber has the discretion to consider handling a full reparation phase, or to issue a framework decision on the principles governing reparations – including procedural issues – and leave it for implementation by another designated authority, such as (i) another Trial Chamber, (ii) a single judge from the Pre-Trial Division, or (iii) one judge of the Chamber or of the Trial Division. Other forums (TFV, Registry, external commission) may also be contemplated, especially if the principles governing reparations set up by the Court under Article 75(1) provide for a more administrative procedure leading up to reparation orders. However, keeping in mind Article 75 requirement that reparation orders be ordered by “the Court”, the concrete modalities of such alternative solutions would require a more thorough analysis.
33. As to (i), designating another Trial Chamber for the purpose of reparations proceedings would have limited advantages. It is only in the perspective that all future reparation proceedings in all cases before the Court will be referred to the same Trial Chamber that this option offers the advantage of

<sup>22</sup> ICC-01/04-01/06-2806, para. 152-155, 198 (i).

building the expertise of a “specialized Chamber” within the Court and ensuring consistency in the Court’s approach to reparations. These advantages may be limited by the judges’ limited mandate and turn-over though.

34. As to (ii), the advantages of having a single judge specialized in reparation proceedings and the rationales for designating a judge from the Pre-Trial Division were already addressed in the Second Report on Reparations.<sup>23</sup>
35. As to (iii), the Registry is aware of the requirement under Article 39(2)(b)(ii) of the Statute that the functions of the Trial Chamber shall be carried out by three judges of the Trial Division. This requirement led to the earlier observation that a single judge for reparation should be chosen from the Pre-Trial Division. However, Article 39(2)(b)(ii) requirement may be interpreted in light of the Trial Chamber’s discretion to “adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings” under Article 64(3)(a) of the Statute and of the Court’s authority to “establish principles relating to reparations”. If such interpretation is accepted, then the Chamber may decide, pursuant to Article 64(3)(a), to adopt a procedure by which the reparation proceedings may take place before a designated judge. This designated judge may be one of the judges of the Chamber or another judge from the Trial Division. This single judge may then take steps and issue reparation orders implementing the principles set up by the full Chamber under Article 75(1).
36. Whatever the forum, the organisation of one or more reparations hearings where victims’ views regarding reparations could be presented may be desirable, as also the Registry notes that the organisation of hearings that can be followed outside the Court may be considered important by victims. Should the Chamber elect to limit its role to issuing a framework

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<sup>23</sup> ICC-01/04-01/06-2806, para. 154-155

decision on the principles of reparations, it may do so without any hearing on reparations. Reparation hearings would take place at a later stage before the designated authority in charge of issuing reparation orders.

37. As noted in its Second Report on Reparations, the Registry is of the view that it would be advisable not to issue the decision on reparations until such time as the judgment on guilt has become final, that is after the Appeals Chamber's judgment in case of appeal.<sup>24</sup> However the Chamber might also consider the option of issuing a decision on reparations without waiting for the Judgment to be final, and may include in its decisions awarding reparations the requirement that the Judgment on the culpability of the accused be final before the decision can be implemented.<sup>25</sup> Should the Chamber elect to limit its role to issuing a framework decision on the principles of reparations, it may do so without waiting the Appeals Chamber judgment and provide that reparation orders will be issued – or will be implemented – once the judgement on guilt has become final.




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For the Registrar,  
Didier Preira, Deputy Registrar

Dated this 28 March 2012

At The Hague, The Netherlands

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<sup>24</sup> ICC-01/04-01/06-2806, para.198 (vi).

<sup>25</sup> For more details, ICC01/04-01/06-2806, para.198 (viii)-(xvii).