

Situation in Democratic Republic of the Congo

*The Prosecutor v. Thomas Lubanga Dyilo*

ICC-PIDS-Q&A-DRC-01-01/15\_Eng

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ICC-01/04-01/06

## Appeals judgment on reparations in the Lubanga case

### WHAT WAS DECIDED BY THE APPEALS CHAMBER IN ITS JUDGMENT ON 3 MARCH 2015?

On 3 March 2015, the Appeals Chamber of the International Criminal Court (ICC) delivered, in open court, its judgment on the appeals against the Trial Chamber's "[decision establishing the principles and procedures to be applied to reparations](#)" in the case against Thomas Lubanga Dyilo. The Appeals Chamber amended the Trial Chamber's order for reparations and instructed the Trust Fund for Victims to present a draft implementation plan for collective reparations to the newly constituted Trial Chamber I no later than six months from the issuance of the 3 March 2015 judgment.

The Appeals Chamber established the necessary minimum elements required for a reparations order, and the principles governing the reparations for victims, including the fact that all victims are to be treated fairly and equally as regards reparations, irrespective of whether they participated in the trial proceedings.

The Appeals Chamber confirmed the Trial Chamber's finding that reparations programmes should include measures to reintegrate former child soldiers in order to eradicate the victimisation, discrimination and stigmatisation of these young people. It also highlighted that a gender-inclusive approach should guide the design of the principles and procedures to be applied to reparations. The Appeals Chamber found that the Trial Chamber did not err in deciding to award reparations only on a collective basis, and not on an individual basis, and highlighted that the number of victims is an important factor in determining that reparations on a collective basis are more appropriate.

The Appeals Chamber also found that the Trial Chamber erred in not making Mr Lubanga personally liable for the collective reparations due to his current state of indigence. The Appeals Chamber held that reparations orders must establish and inform the convicted person of his personal liability with respect to the reparations awarded, and that if the Trust Fund for Victims advances its resources in order to enable the implementation of the order, it will be able to claim the advanced resources from Mr Lubanga at a later date.

### WHAT ARE THE NEXT STEPS?

The Trust Fund for Victims is to present a draft implementation plan for collective reparations to Trial Chamber I no later than six months from the issuance of the 3 March 2015 appeals judgment.

The parties to the proceedings, as well as the Legal Representatives of the Victims, will be able to present their observations on the draft implementation plan to the judges of Trial Chamber I, who will render a final decision on the plan in due course. This may take some time, and the ICC will keep the public informed about the process.

### WHAT IS THE TRUST FUND FOR VICTIMS AND WILL IT HAVE ADEQUATE RESOURCES FOR THESE REPARATIONS?

The establishment of the International Criminal Court on 1 July 2002 also resulted in the creation of the Trust Fund for Victims by the States parties to the Rome Statute. The Fund's mission is to support and implement programmes that address harm resulting from genocide, crimes against humanity and war crimes.

The Trust Fund for Victims is funded by voluntary contributions from States, international organizations and other donors. The money collected allows the Fund to fulfil its two mandates, namely the mandate of general assistance to victims in situations where the ICC is active, and the mandate to contribute to the implementation of orders for reparations to victims in particular cases before the Court.

As part of its mandate, in preparing a reparations plan in a particular case, the Fund takes into account the amount it has available. It can, based on a plan adopted by the judges, request further contributions from States and other donors if need be.

The Appeals Chamber also recalled that as part of its first mandate, the Fund may consider providing support to victims of sexual violence in Ituri, although Mr Lubanga has not been accused or convicted of crimes of sexual violence.

## WHICH HARM WILL THE FUND CONSIDER TO ASSESS NECESSARY REPARATIONS?

The Fund will assess the damage suffered by the victims affected directly or indirectly by the crimes committed by Mr Lubanga. In accordance with the order of the Appeals Chamber, it will prepare a plan of collective reparations, taking into account the possibility of providing medical services (including psychological support) as well as assistance for general rehabilitation, housing, education and training. The cost of these collective reparations programs will be evaluated and submitted to the judges of Trial Chamber I.

The Appeals Chamber has indicated that reparations should support programs that are sustainable, in order to enable the direct and indirect victims, their families and communities to benefit from them in the long term.

## HOW LONG WILL IT TAKE BEFORE VICTIMS CAN BENEFIT FROM A REPARATIONS AWARD? WHAT IS THE MESSAGE THAT WILL BE GIVEN TO VICTIMS?

It is not possible at this stage to determine with certainty the time required for the implementation of the reparations plan. A first draft will be submitted to the judges of Trial Chamber I within six months by the Trust Fund for Victims. Subsequently, the parties and the Legal Representatives of the Victims will present their views and comments to the judges. Once the judges have issued a final decision, the implementation can begin.

We must keep in mind several messages with regard to this procedure. First of all, that justice moves slowly but surely. Secondly, that reparations will be collective, not individual, given the potential number of victims involved. And finally, that reparations programs will benefit the victims and their families and communities without discrimination and with the objective of promoting reconciliation and reintegration of victims into society in Ituri.