

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **4 February 2020**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

CONFIDENTIAL

**Order relating to the request of the Victims Participation and Reparations Section of
21 January 2020**

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

Office of the Prosecutor

Counsel for Thomas Lubanga Dyilo

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of V01 Victims

Mr Luc Walley

Mr Franck Mulenda

Legal Representatives of V02 Victims

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

Office of Public Counsel for Victims

Ms Paolina Massidda

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

TRIAL CHAMBER II ("Chamber") of the International Criminal Court, acting pursuant to article 75 of the Rome Statute, issues the following order.

1. On 15 December 2017, the Chamber handed down its "Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable" ("Decision of 15 December 2017").¹ In its decision, the Chamber analysed applications for reparations from 473 persons alleging to be victims of the crimes of which Thomas Lubanga Dyilo ("Mr Lubanga") was convicted.² The Chamber was satisfied that 425 of those 473 persons had shown on a balance of probabilities that they had suffered harm as a result of the crimes of which Thomas Lubanga was convicted.³ Accordingly, the Chamber awarded them collective reparations approved by the Chamber in the case ("425 beneficiaries").⁴ The Chamber found, however, that the 425 beneficiaries were not the sum-total of the victims who had suffered harm as a consequence of the crimes of which Mr Lubanga was convicted, but that hundreds and possibly thousands of other victims were also affected by his crimes ("new applicants").⁵ Lastly, the Chamber recalled that the Trust Fund would, at the implementation stage of the reparations, screen for eligibility for the reparations those persons who had not had the opportunity to submit an application for reparations.⁶

2. On 7 February 2019, the Chamber approved the proposals put forward by the Trust Fund at the implementation stage of the reparations, relating to the process for

¹ "Corrected version of the 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'", 21 December 2017, ICC-01/04-01/06-3379-Red-Corr-tENG, with two public annexes (Annex I and Annex III) and one confidential annex *ex parte* Registry, Trust Fund for Victims, Legal Representatives of the V01 and V02 Groups of Victims, and Office of Public Counsel for Victims (Annex II), and a confidential redacted version of Annex II. This decision was handed down, with its annexes, on 15 December 2017 and the corrected versions were filed on 21 December 2017.

² Decision of 15 December 2017, paras. 35-191.

³ Decision of 15 December 2017, para. 190.

⁴ Decision of 15 December 2017, para. 194.

⁵ Decision of 15 December 2017, p. 111 and in particular, paras. 232-244.

⁶ Decision of 15 December 2017, para. 293 referring to the "Decision on the Motion of the Office of Public Counsel for Victims for Reconsideration of the Decision of 6 April 2017", 13 July 2017, ICC-01/04-01/06-3338-tENG, para. 11.

locating new applicants and determining their eligibility for reparations (“Decision of 7 February 2019”).⁷

3. On 18 July 2019, the Appeals Chamber handed down a unanimous judgment on two appeals brought against the Decision of 15 December 2017.⁸ The Appeals Chamber confirmed the impugned decision, with one amendment: the victims whom the Trial Chamber had not found eligible for reparations, and who considered that their failure to sufficiently substantiate their allegations by supporting documentation had been due to insufficient notice of the requirements for eligibility, could seek a new assessment of their entitlement to reparations by the Trust Fund at the same time as the other applicants who might come forward in the course of the implementation stage of the reparations.⁹ The Appeals Chamber also ordered that any recommendations by the Trust Fund as to the victims’ eligibility for reparations be subject to the approval of this Chamber.¹⁰

4. By email dated 21 January 2020,¹¹ the Victims Participation and Reparations Section (“VPRS”) requested leave from the Chamber to share with Trial Chamber VI, which is hearing the reparations proceedings in *The Prosecutor v. Bosco Ntaganda* (“Ntaganda case”), confidential information in its database on the victims who the Chamber found were entitled to reparations in the *Lubanga* case (“Request”).

5. By email dated 27 January 2020, the VPRS further clarified aspects of its Request.¹² The VPRS stated, first, that since not all the victims who might qualify for reparations in the *Lubanga* and *Ntaganda* cases have yet been identified, the sharing of

⁷ “Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations”, 7 February 2019, ICC-01/04-01/06-3440-Conf-tENG. A public redacted version of that decision was filed on 4 March 2019.

⁸ Appeals Chamber, “Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’”, 18 July 2019, ICC-01/04-01/06-3466-Conf (“Judgment of 18 July 2019”), with two public annexes. A public version of that judgment was filed the same day. Judge Eboe-Osuji and Judge Ibáñez Carranza each appended a separate opinion.

⁹ Judgment of 18 July 2019, para. 332.

¹⁰ Judgment of 18 July 2019, para. 332.

¹¹ Email to the Chamber, 21 January 2020 at 18.32.

¹² Email to the Chamber, 27 January 2020 at 19.04.

confidential information to which the Request relates also includes confidential information on the victims who will soon be found to qualify for the reparations in the *Lubanga* case. The VPRS stated, secondly, that the confidential information on the victims contained in its database and which is the subject matter of the Request concerns: (a) the total number of victims eligible for reparations in the *Lubanga* case who might potentially qualify for reparations in the *Ntaganda* case; and (b) the codes linked to the name of each victim awarded reparations in the *Lubanga* case.

6. The Chamber notes that the information to which the Request relates was gathered in accordance with the instructions it gave in the reparations proceedings in the *Lubanga* case.¹³ The Chamber is of the view that the VPRS, which is the section of the Registry that maintains that information in accordance with rule 94 of the Rules of Procedure and Evidence, regulations 86(9) and 88(2) of the Regulations of the Court and regulation 98 of the Regulations of the Registry, must apply to the Chamber before sharing such information, as it has correctly done.

7. The Chamber observes that the VPRS bases its application on an order of 5 December 2019 issued by Trial Chamber VI (“Order of 5 December 2019”) in which that chamber instructed the VPRS to “carry out an assessment of how many of the victims eligible for reparations as direct victim beneficiaries in the [*Lubanga* case] are also potentially eligible for reparations in the *Ntaganda* case”.¹⁴ The Chamber notes in that context that some of the victims in the *Lubanga* case probably overlap with those in the *Ntaganda* case, since Mr Lubanga and Mr Ntaganda were both convicted of the crime, under article 8(2)(e)(vii) of the Statute, of conscripting and enlisting children under the age of 15 years into the *Force Patriotique pour la Libération du Congo* and using them to participate actively in hostilities in an armed conflict not of an international character that occurred in the Democratic Republic of the Congo in 2002

¹³ “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, 9 February 2016, ICC-01/04-01/06-3198-tENG; “Order relating to the request of the Office of Public Counsel for Victims of 16 September 2016”, 21 October 2016, ICC-01/04-01/06-3252-tENG; Decision of 7 February 2019.

¹⁴ Email to the Chamber, 21 January 2020 at 18.32, referring to the “Order setting deadlines in relation to reparations”, 5 December 2019, ICC-01/04-02/06-2447, para. 9.

and 2003.¹⁵ The Chamber also highlights that the Request relates only to the sharing of confidential information about the victims who qualify for reparations in the *Lubanga* case with a different chamber of the Court, namely Trial Chamber VI. Lastly, the Chamber notes that the confidential information to which the Request relates concerns (a) the total number of victims eligible for reparations in the *Lubanga* case who might potentially qualify for reparations in the *Ntaganda* case; and (b) the codes linked to the name of each victim entitled to reparations in the *Lubanga* case.

8. In the light of the foregoing, to enable the VPRS to answer the question put to it in paragraph 9 of the Order of 5 December 2019 in the *Ntaganda* case, the Chamber instructs the VPRS to share with Trial Chamber VI the confidential information contained in the VPRS database on the victims entitled to reparations in the *Lubanga* case. That information will relate to (a) the total number of victims entitled to reparations in the *Lubanga* case who might potentially qualify for reparations in the *Ntaganda* case; and (b) the codes linked to the name of each victim entitled to reparations in the *Lubanga* case.

9. The Chamber is of the view that this instruction applies also to confidential information relating to any new victim who may qualify for reparations in the process adopted in its Decision of 7 February 2019 for locating new applicants and determining their eligibility for reparations.¹⁶

¹⁵ *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, "Judgment pursuant to Article 74 of the Statute", 14 March 2012, ICC-01/04-01/06-2842, p. 648, and *The Prosecutor v. Bosco Ntaganda*, Trial Chamber VI, "Judgment", 8 July 2019, p. 538.

¹⁶ New applicants have until 31 December 2020 to file their dossiers with VPRS ("*Ordonnance relative à la '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' du 7 février 2019*", 8 November 2019, ICC-01/04-01/06-3469-Conf).

FOR THESE REASONS, the Chamber

INSTRUCTS the VPRS to share with Trial Chamber VI the confidential information in the VPRS database on the victims entitled to reparations in the *Lubanga* case, as set out in paragraphs 8 and 9 of this order.

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

[signed]

Judge Marc Perrin de Brichambaut

Presiding Judge

[signed]

[signed]

Judge Olga Herrera Carbuccion

Judge Péter Kovács

Dated this 4 February 2020

At The Hague, Netherlands