

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **8 November 2019**

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 concerning the “Decision Approving the Proposals of the Trust Fund for
Victims on the Process for Locating New Applicants and Determining their
Eligibility for Reparations” of 7 February 2019**

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 Walleyen

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

PRE-TRIAL CHAMBER II ("Chamber") of the International Criminal Court, acting pursuant to article 75 of the Rome Statute hereby orders the following.

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"¹ ("Decision of 15 December 2017"). In its decision, the Chamber analysed the dossiers of 473 persons alleging that they were victims of the crimes of which Thomas Lubanga Dyilo ("Mr Lubanga") was convicted, which had been submitted to it² by the Trust Fund for Victims ("Trust Fund"), working with the Legal Representatives of the V01 and V02 groups of victims ("Legal Representatives of V01 and V02 Victims") and the Office of Public Counsel for Victims ("OPCV"). 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 Mr Lubanga was convicted.³ Accordingly, the Chamber found that they should be awarded the collective reparations approved by the Chamber in this case⁴ (the "425 beneficiaries"). 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 crimes⁵ ("new applicants"). Lastly, the Chamber recalled that the Trust Fund would, at the implementation stage of the

¹ "Corrected version of the 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'", 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, 21 December 2017, ICC-01/04-01/06-3379-Red-Corr-tENG. That 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.

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, subject to a number of amendments, the proposals submitted by the Trust Fund on the process for locating new applicants and determining their eligibility for reparations⁷ ("Decision of 7 February 2019"). It directed the Trust Fund to proceed, without further delay, to locate new applicants and to promptly forward the applications for reparations collected in that way to the Victims Participation and Reparations Section⁸ ("VPRS"). In paragraph 42 of the Decision of 7 February 2019, the Chamber set

31 December of the year which follows the issuance of the Appeal Chamber's judgment on the appeals brought against the Decision of 15 December 2017 as the cut-off date by which all new applicants must make themselves known in order to be considered for reparations in the instant case.⁹

3. On 18 July 2019, the Appeals Chamber unanimously delivered its judgment on two appeals brought against the Decision of 15 December 2017.¹⁰ The Appeals Chamber confirmed the impugned decision subject to one amendment: the victims whom the Trial Chamber had found ineligible to receive reparations, and who considered that their failure to sufficiently substantiate their allegations, including by supporting documentation, resulted from insufficient notice of the requirements for eligibility, would be able to seek a new assessment of their eligibility by the Trust Fund at the same time as other victims who may come forward in the course of the implementation stage of the reparations.¹¹ The Appeals Chamber also ordered that any recommendations by the Trust Fund as to

⁶ Decision of 15 December 2017, para. 293, citing 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.

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. Judge Eboe-Osuji and Judge Ibáñez Carranza each appended a separate opinion.

⁸ Decision of 7 February 2019, paras. 14 and 22 and p. 17.

⁹ Decision of 7 February 2019, para. 42 and p. 17.

¹⁰ 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.

¹¹ Judgment of 18 July 2019, para. 332.

the victims' eligibility for reparations be subject to the approval of the Trial Chamber.¹²

4. On 19 July 2019, the Trust Fund filed its sixth progress report on the implementation of reparations¹³ ("Trust Fund's Sixth Report").

5. On 13 October 2019, referring to paragraph 42 of the Decision of 7 February 2019, the Trust Fund, the Legal Representatives of V01 and V02 Victims and the OPCV emailed the Chamber seeking clarifications with regard to the cut-off date by which new applicants could approach the Trust Fund with a view to qualifying for reparations and about the information on those applicants to be provided to VPRS by that date.¹⁴ Specifically, they wished to know whether the cut-off date was 31 December 2019 or 31 December 2020.¹⁵

6. On 21 October 2019, the Trust Fund filed its seventh progress report on the implementation of reparations.¹⁶

7. The Chamber notes that the process of locating new applicants is under way: the Trust Fund, the Legal Representatives of V01 and V02 Victims and the OPCV, with the assistance of the Registry, have conducted missions in the field, to the extent possible given the precarious security and health situation, in the course of which they have located tens of new applicants for reparations and have compiled their applications for reparations; they have already forwarded 193 applications to the Trust Fund, which have undergone an initial substantive analysis by VPRS; on the basis of that preliminary analysis, the Trust Fund Secretariat has carried out its own

¹² Judgment of 18 July 2019, para. 332.

¹³ "Sixième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 (ICC-01/04-01/06-3251) et 6 avril 2017 (ICC-01/04-01/06-3289) et la Décision du 7 février 2019", 19 July 2019, ICC-01/04-01/06-3467, with confidential Annexes A-L *ex parte* Legal Representatives of V01 and V02 Victims, OPCV, VPRS and Trust Fund and confidential Annexes N, P and Q *ex parte* Legal Representatives of V01 and V02 Victims, OPCV and Trust Fund, and confidential Annexes M and O *ex parte* Trust Fund.

¹⁴ Email sent to the Chamber on 13 October 2019 at 21.34.

¹⁵ Email sent to the Chamber on 13 October 2019 at 21.34.

¹⁶ "Septième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 (ICC-01/04-01/06-3251) et 6 avril 2017 (ICC-01/04-01/06-3289) et la Décision du 7 février 2019", ICC-01/04-01/06-3468, with confidential Annex A *ex parte* Legal Representatives of V01 and V02 Victims, OPCV, VPRS and Trust Fund.

substantive assessment and is about to make some fifty recommendations to its Board of Directors so that administrative decisions can be taken on those applications.¹⁷

8. Paragraph 42 of the Decision of 7 February 2019 must be understood as setting 31 December 2020 as the time limit for forwarding the *last complete* applications for reparations to VPRS, given that the Appeals Chamber delivered its judgment on 18 July 2019. This means that locating new applicants, compiling their applications for reparations, submitting those applications to VPRS for a preliminary substantive analysis and subsequently to the Trust Fund Secretariat to assess the outcome of that analysis and make recommendations, forwarding the Secretariat's recommendations to its Board of Directors, the administrative decisions by the Trust Fund Board of Directors on whether those applicants qualify for reparations and, lastly, the Chamber's final decision approving the list of new applicants determined to be eligible by the Trust Fund's Board of Directors must take place *on a rolling basis* up to that date, in the interests of ensuring the best possible allocation of financial and human resources and the efficient and expeditious implementation of the service-based reparations projects.

9. The Chamber points out that this time limit also applies to victims whose eligibility for reparations may be re-assessed by the Trust Fund as ordered by the Appeals Chamber in its Judgment of 18 July 2019.¹⁸

10. The Chamber also notes with satisfaction the progress achieved in recent months by the Trust Fund, the Legal Representatives of V01 and V02 Victims, the OPCV and VPRS, with the assistance of the Registry¹⁹ and enjoins them to redouble their efforts and to continue to work closely together, in particular as regards organizing their agendas, so that the implementation of reparations can begin from the first quarter of 2020.

¹⁷ Annex A to the Trust Fund's Sixth Report, ICC-01/04-01/06-3467-Conf-Exp-AnxA, paras. 27-43; Annex A to the Trust Fund's Seventh Report, ICC-01/04-01/06-3468-Conf-Exp-AnxA, paras. 9-19.

¹⁸ Judgment of 18 July 2019, para. 332.

¹⁹ Trust Fund's Sixth Report, Trust Fund's Seventh Report.

FOR THESE REASONS, the Chamber

CLARIFIES that the cut-off date for forwarding applications for reparations to VPRS is 31 December 2020; and

ORDERS that the last complete applications for reparations be forwarded to VPRS no later than 31 December 2020.

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

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 8 November 2019

At The Hague, Netherlands