

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **20 May 2020**

PRE-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

**Decision concerning the First and Second Transmissions of Administrative
Decisions on New Applications for Reparations Taken by the Trust Fund for
Victims**

Decision 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 Mabilile

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

PRE-TRIAL CHAMBER II ("Chamber") of the International Criminal Court, acting pursuant to article 75 of the Rome Statute, decides as follows.

I. Procedural history

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 The Chamber analysed the applications for reparations of 473 persons claiming to be victims of the crimes of which Thomas Lubanga Dyilo ("Mr Lubanga") was convicted.² The Chamber found that, of those 473 individuals, 425 had shown on a balance of probabilities that they had suffered harm as a consequence of the crimes of which Mr Lubanga was convicted.³ Accordingly, the Chamber ruled that they were entitled to the collective reparations it had awarded in the case at bar.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, in fact, hundreds and possibly thousands of other victims had also been affected by his crimes ("new applicants").⁵ The Chamber directed the Trust Fund for Victims ("Trust Fund") to file submissions on the possibility of continuing to seek and identify new applicants with the assistance of the Office of Public Counsel for Victims ("OPCV") and the Legal Representatives of the V01 and V02 groups of victims, before final selection of the implementing partners and before approval by the Chamber of the second phase of implementation of the

¹ "Corrected version of the 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'", 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. The 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. 112 and, in particular, paras. 232-244.

collective reparations.⁶ The Chamber also recalled that it would fall to the Trust Fund to screen the new applicants for eligibility for reparations at the implementation stage.⁷

2. On 7 February 2019, the Chamber approved the proposals submitted by the Trust Fund on the process for locating new applicants and determining their eligibility for reparations at the implementation stage.⁸ The Chamber adopted the Trust Fund's proposal that the Board of Directors of the Trust Fund ("Board of Directors") issue an administrative decision on each new application for reparations,⁹ but added that the new applicants would become beneficiaries of the reparations only upon a final decision by the Chamber.¹⁰

3. On 18 July 2019, the Appeals Chamber unanimously delivered its judgment on two appeals brought against the Decision of 15 December 2017.¹¹ The Appeals Chamber confirmed the impugned decision subject to one amendment: the victims whom the Trial Chamber found ineligible to receive reparations, and who consider that their failure to sufficiently substantiate their allegations, including by supporting documentation, resulted from insufficient notice of the requirements for eligibility, may 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.¹²

4. On 8 November 2019, the Chamber issued an order in which it clarified that the cut-off date for forwarding applications for reparations to the Victims Participation

⁶ Decision of 15 December 2017, para. 296, p. 113.

⁷ 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.

⁸ "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 ("Decision of 7 February 2019"). A public redacted version of the decision was filed on 4 March 2019.

⁹ Decision of 7 February 2019, paras. 16, 19 and 29.

¹⁰ Decision of 7 February 2019, paras. 30 and 47.

¹¹ 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 the judgment was filed the same day.

¹² Judgment of 18 July 2019, para. 332.

and Reparations Section (“VPRS”) was 31 December 2020 and ordered that the last complete applications for reparations be forwarded to VPRS no later than that date.¹³

5. On 25 February 2020, the Trust Fund, on behalf of its Board of Directors, submitted 104 administrative decisions on new applications for reparations to the Chamber for approval.¹⁴

6. On 21 April 2020, the Trust Fund, on behalf of its Board of Directors, submitted 167 administrative decisions on new applications for reparations to the Chamber for approval.¹⁵

7. On 30 April 2020, the Chamber directed the Trust Fund and the VPRS to provide the Chamber with access to the complete dossiers of the 271 new applicants to assist it in assessing the information submitted by the Trust Fund so that it could deliver final decisions on the eligibility for reparations of those new applicants.¹⁶

II. Analysis

8. Before issuing its decision on the eligibility for reparations of the 271 new applicants, the Chamber wishes to call to mind a number of points decided in its earlier decisions.

9. The Chamber recalls first of all that it set the size of the reparations award for which Mr Lubanga is liable after examining a sample of 473 applications for

¹³ “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”, 8 November 2019, ICC-01/04-01/06-3469-Conf-tENG.

¹⁴ “Addendum au Huitième 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-01/04-01/06-3440-Red)”, 25 February 2020, ICC-01/04-01/06-3473, with one confidential, *ex parte* annex (ICC-01/04-01/06-3473-Conf-Exp-Anx).

¹⁵ “Annex A to the ‘Neuvième 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-01/04-01/06-3440-Red)”, 21 April 2020, ICC-01/04-01/06-3474-Conf-Exp-AnxA.

¹⁶ “Ordonnance enjoignant au Fonds au profit des victimes et à la Section de la participation des victimes et des réparations de donner accès à la Chambre aux nouvelles demandes en réparation”, 30 April 2020, ICC-01/04-01/06-3475-Conf.

reparations and other information, on the basis of which it concluded that hundreds and possibly thousands of other victims had also been affected by the crimes committed by Mr Lubanga.¹⁷ In respect of those *other* victims, the Chamber notes that it determined that the Trust Fund should be delegated to perform the process of locating those new applicants and screening them for eligibility *at the implementation stage of the reparations*.¹⁸

10. The Chamber also points out that, by its Decision of 7 February 2019, it approved the proposals submitted by the Trust Fund in relation to that process. In that decision, it instructed the Trust Fund to inform it of the administrative decisions taken by its Board of Directors on the new applicants' eligibility for reparations – whether or not they were found eligible – by including in its quarterly report a list of the names of the persons concerned and their particulars.¹⁹ The Chamber made it clear that it would issue a final decision on the approval of the list of new applicants determined to be eligible by the Board of Directors on a rolling basis as it received that information,²⁰ and that the new applicants would become beneficiaries of the reparations only once that decision was delivered.²¹

11. Pointing out in that regard that the process in question would have no bearing on Mr Lubanga's liability for reparations or on the size of the award that the Chamber set in its Decision of 15 December 2017, the Chamber determined that the process should be conducted without Mr Lubanga's involvement.²² The Chamber underscored that Mr Lubanga's rights and interests are safeguarded in that the Trust Fund was directed to apply the method used to verify the 473 applications for reparations in the sample, as set out by the Chamber in its Decision of 15 December 2017 and in that,

¹⁷ See, above, para. 1.

¹⁸ 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.

¹⁹ Decision of 7 February 2019, paras. 30 and 47.

²⁰ Decision of 7 February 2019, paras. 30 and 47. See also Judgment of 18 July 2019, para. 163.

²¹ Decision of 7 February 2019, paras. 30 and 47.

²² Decision of 7 February 2019, paras. 25-27.

consonant with the Appeals Chamber's instructions, Mr Lubanga had the opportunity to file submissions on that process.²³

12. The Chamber is currently in possession of 271 administrative decisions submitted to it for approval by the Trust Fund on behalf of its Board of Directors. It has carefully examined the tables prepared by the Trust Fund containing the names of the 271 new applicants and their particulars in order to determine whether those applicants are eligible for reparations, and also the administrative decisions by the Board of Directors on those applications for reparations in which the applicants were found to be eligible.²⁴ The Chamber notes that the Trust Fund prepared the 271 new applications for reparations with the assistance of the Legal Representatives of Victims;²⁵ the VPRS carried out an initial verification of those applications;²⁶ and the Trust Fund followed the method used to verify the 473 applications for reparations in the sample, as set out by the Chamber in its Decision of 15 December 2017.²⁷ The Chamber also notes that, according to the Board of Directors, the 271 new applications for reparations satisfy all the requirements to be eligible for reparations.

13. During both its review of the particulars submitted by the Trust Fund and its own examination of certain applications for reparations, although it found some minor inaccuracies,²⁸ the Chamber identified nothing such as to cast doubt on the assessment of the applications for reparations carried out by the Trust Fund with the assistance of

²³ Decision of 7 February 2019, para. 28 and cited references.

²⁴ ICC-01/04-01/06-3473-Conf-Exp-Anx, ICC-01/04-01/06-3474-Conf-Exp-AnxB and ICC-01/04-01/06-3474-Conf-Exp-AnxC.

²⁵ ICC-01/04-01/06-3474-Conf-Exp-AnxB (OPCV) and ICC-01/04-01/06-3473-Conf-Exp-Anx and ICC-01/04-01/06-3474-Conf-Exp-AnxC (Legal Representatives of V01 groups of victims).

²⁶ See "*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 (ICC-01/04-01/06-3440-Red)*", 19 July 2019, and public redacted version filed on 14 August 2019 ("Trust Fund's Sixth Report"), ICC-01/04-01/06-3467-AnxA-Red and Annexes I, K and L to the Trust Fund's Sixth Report (ICC-01/04-01/06-3467-Conf-Exp-AnxI, ICC-01/04-01/06-3467-Conf-Exp-AnxK and ICC-01/04-01/06-3467-Conf-Exp-AnxL).

²⁷ Annex E to the Trust Fund's Sixth Report (ICC-01/04-01/06-3467-Conf-Exp-AnxE).

²⁸ The Chamber cites the following inaccuracies by way of example: there is no reply to question 2(A)(4) in the application form for Applicant a/30140/19; the name of Applicant a/30155/19 is spelled slightly differently in the application form and on the copy identity document.

the Legal Representatives of Victims and the VPRS or the conclusions arrived at by the Board of Directors.²⁹

14. In the light of the foregoing, the Chamber approves the 271 administrative decisions by the Board of Directors on the new applications for reparations. The Chamber finds that the 271 new applicants have demonstrated on a balance of probabilities that they suffered harm as a result of the crimes of which Mr Lubanga was convicted and are, therefore, entitled to the collective reparations ordered in this case.

15. The Chamber would nevertheless draw the Trust Fund's attention to the need to be mindful of the quality of the relevant documents or copy documents collected and attached to the new applications for reparations.³⁰

16. Lastly, the Chamber directs the Trust Fund and the VPRS to afford it access routinely to the full dossiers of all new applicants in respect of whom an administrative decision is handed down by the Board of Directors.

²⁹ The Chamber notes that the application form for Applicant a/30196/19 shows that the direct victim was recruited by the *Union des patriotes congolais* ("UPC") before the period in question but contains no information about the date or period when the direct victim left that group. The Chamber notes however that in the light of the other information provided, that is to say, the names of the training camps mentioned by the applicant, it is more likely than not that the direct victim was still a member of the UPC during the relevant period.

³⁰ The Chamber points out for example that some of the information in Applicant a/30152/19's copy identity document is illegible because of its poor quality. The Chamber has nevertheless decided on this occasion not to question the validity of the administrative decision issued by the Board of Directors.

FOR THESE REASONS, the Chamber

APPROVES the administrative decisions of the Board of Directors on the 271 new applications for reparations;

FINDS that the 271 new applicants have demonstrated on a balance of probabilities that they suffered harm as a result of the crimes of which Mr Lubanga was convicted;

DECIDES, accordingly, that those 271 new applicants are entitled to the collective reparations ordered in this case; and

DIRECTS the Trust Fund and the VPRS to afford the Chamber access to the full dossiers of all new applicants in respect of whom an administrative decision is handed down by the Board of Directors.

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 20 May 2020

At The Hague, Netherlands