

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

No.: ICC-01/04-01/06
Date: 3 February 2021

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

**Fourth Decision on Administrative Decisions of the Trust Fund for Victims
regarding New Applications for Reparations and Application a/30213/20**

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 Mabile

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, decides the following.

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 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 Mr Lubanga was convicted.³ Accordingly, the Chamber awarded them the collective reparations ordered by it in the case *sub judice*.⁴ The Chamber also found that those 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 In this connection 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 and the Legal Representatives of the V01 (“V01 Legal Representatives”) and V02 groups of victims, before the implementing partners were selected and before the Chamber approved 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’”, 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.

collective reparations.⁶ The Chamber also recalled that it would fall to the Trust Fund to screen new applicants for eligibility for the 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 be awarded the reparations only upon a final decision of 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

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 and Reparations Section ("VPRS") was 31 December 2020 and ordered that the last complete applications for reparations be forwarded to VPRS by that date.¹²

5. On 30 April 2020, the Chamber directed the Trust Fund and VPRS to afford it access to the new applicants' complete dossiers in order to assist it in assessing the

⁶ Decision of 15 December 2017, para. 296, p. 112.

⁷ 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.

⁸ "Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations" ("Decision of 7 February 2019"), 7 February 2019, ICC-01/04-01/06-3440-Conf-tENG. A public redacted version of this decision was filed on 4 March 2019.

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

¹⁰ Decision of 7 February 2019, paras. 30, 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, with two public annexes. A public version of the judgment was filed on the same day.

¹² "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.

information submitted by the Trust Fund for the purpose of issuing final decisions on the eligibility for reparations of those new applicants.¹³

6. On 20 May 2020, the Chamber approved the administrative decisions of the Board of Directors on 271 new applications for reparations.¹⁴ On the same occasion, the Chamber directed the Trust Fund and VPRS to afford it access to the full dossiers of all new applicants in respect of whom an administrative decision is handed down by the Board of Directors.¹⁵

7. On 11 September 2020, the Chamber approved 159 of the 162 administrative decisions of the Board of Directors on new applications for reparations.¹⁶ Furthermore it directed the Trust Fund to complete applications for reparations a/30314/19, a/30077/20 and a/30103/20 and to submit them to the Chamber for reassessment.¹⁷ On the same occasion, the Chamber amended the Decision of 20 May 2020: the Chamber determined that 272 applicants had shown on a balance of probabilities that they had suffered harm as a result of the crimes of which Mr Lubanga was convicted and are, therefore, to be accorded the collective reparations ordered in the case *sub judice*.¹⁸

8. On 1 December 2020, the Chamber approved 74 of the 76 further applications for reparations, along with applications a/30314/19, a/30077/20 and a/30103/20 ("Decision of 1 December 2020").¹⁹ It also directed the Trust Fund to enter into the record legible versions of the copies of the identity documents appended to applications for reparations a/30156/20 and a/30213/20, and to submit those

¹³ "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.

¹⁴ "Decision concerning the First and Second Transmissions of Administrative Decisions on New Applications for Reparations Taken by the Trust Fund for Victims" ("Decision of 20 May 2020"), 20 May 2020, ICC-01/04-01/06-3476-Conf-tENG.

¹⁵ Decision of 20 May 2020, para. 16.

¹⁶ "Second Decision on the Administrative Decisions of the Trust Fund for Victims Regarding New Applications for Reparations", 11 September 2020, ICC-01/04-01/06-3479-Conf-tENG.

¹⁷ Decision of 11 September 2020, paras. 17 and 19.

¹⁸ Decision of 11 September 2020, para. 12.

¹⁹ "Troisième décision sur les décisions administratives du Fonds au profit des victimes portant sur de nouvelles demandes en réparation ainsi que les demandes a/30314/19, a/30077/20 et a/30103/20", 1 December 2020, ICC-01/04-01/06-3494-Conf.

applications and the administrative decisions of the Trust Fund concerning them to it for reassessment.²⁰

9. On 14 December 2020, the Chamber extended to 16.00 on 31 March 2021 the time in which to submit to VPRS the last complete applications for reparations.²¹

10. On 21 January 2021, the Trust Fund, acting on behalf of the Board of Directors, submitted for the Chamber's approval the administrative decisions taken in respect of 92 new applications for reparations,²² along with Applicant a/30213/20's recompiled application for reassessment by the Chamber.

II. Analysis

A. Preliminary matter: the application for reparations not approved in the Decision of 1 December 2020

11. It is to be recalled that, in the Decision of 1 December 2020, the Chamber directed from the Trust Fund a legible version of the copy of the identity document appended to application a/30213/20.

12. The Chamber sees that application a/30213/20 has now been made complete with a legible copy of an identity document. The Chamber notes, however, that the age entered on the application form for reparations concerning Applicant a/30213/20 does not accord with the date of birth recorded on the identity document appended to the application. Nevertheless, the Chamber is of the view that this discrepancy does not affect the eligibility criteria laid down by it in the Decision of 15 December 2017,

²⁰ Decision of 1 December 2020, pp. 10-11.

²¹ "Décision sur la requête du Fonds au profit des victimes du 21 octobre 2020", 14 December 2020, ICC-01/04-01/06-3496-Conf-Exp.

²² "Annexe A au Douzième 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 January 2021, ICC-01/04-01/06-3497-Conf-Exp-AnxA, with a covering document (ICC-01/04-01/06-3497), a confidential annex *ex parte* OPCV, VPRS and Trust Fund (ICC-01/04-01/06-3474-Conf-Exp-AnxB), a confidential annex *ex parte* V01 Legal Representatives, VPRS and Trust Fund (ICC-01/04-01/06-3474-Conf-Exp-AnxC) and a confidential annex *ex parte* V01 and V02 Legal Representatives, OPCV, VPRS and Trust Fund (ICC-01/04-01/06-3474-Conf-Exp-AnxD).

since, in any case, both dates of birth provided show on a balance of probabilities that the victim was under the age of 15 years when enlisted or conscripted into the armed wing of the *Union des patriotes congolais / Forces Patriotiques pour la libération du Congo* (“UPC/FPLC”) or when used by Mr Lubanga to participate actively in hostilities in a non-international armed conflict between 1 September 2002 and 13 August 2003 (“material period”).

13. Upon reassessment of the aforementioned application, the Chamber finds, as the Board of Directors did, that Applicant a/30213/20’s application for reparations satisfies the conditions of eligibility for the reparations and that the applicant is, therefore, to be accorded the collective reparations ordered in the case.

B. Determination of the Chamber on the new administrative decisions of the Board of Directors

14. The Chamber is now in possession of 92 new administrative decisions submitted for its approval by the Trust Fund on 21 January 2021 on behalf of the Board of Directors.

15. The Chamber notes that the 92 new applications for reparations were prepared by the Trust Fund with the assistance of the Legal Representatives of Victims;²³ VPRS carried out an initial verification of the applications;²⁴ and the Trust Fund applied the method set out by the Chamber in its Decision of 15 December 2017 for the verification of the 473 applications for reparations in the sample.²⁵ It also notes that the Board of Directors has taken the view that the 92 new applications for reparations satisfy the conditions of eligibility for the reparations.

²³ ICC-01/04-01/06-3497-Conf-Exp-AnxB (OPCV); ICC-01/04-01/06-3497-Conf-Exp-AnxC (V01 Legal Representatives).

²⁴ 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*”, dated 19 July 2019, the public redacted version filed on 14 August 2019 (“Sixth Report of the Trust Fund”), ICC-01/04-01/06-3467-AnxA-Red, and Annexes I, K and L to the Sixth Report of the Trust Fund (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).

²⁵ See Annex E to the Sixth Report of the Trust Fund (ICC-01/04-01/06-3467-Conf-Exp-AnxE).

16. In reviewing the particulars submitted by the Trust Fund and examining certain applications itself, the Chamber did not identify any considerations, save the points highlighted at II.B.4, that might cast doubt on the assessment of the applications for reparations carried out by the Trust Fund with the assistance of the Legal Representatives of Victims and VPRS, or on the conclusions arrived at by the Board of Directors. Nonetheless, the Chamber considers that the findings and conclusions of its review are worth setting out briefly in the paragraphs that follow.

1. Inconsistencies in the spelling of certain names

17. The Chamber noted that some applicants' names are spelled slightly differently on the application form for reparations than on the copy of the identity document.²⁶ These minor inconsistencies do not, however, in the Chamber's view, affect the applicants' eligibility for the reparations.

2. Issues relating to the time frame of enlistment

18. As regards Applicant a/30259/20, the Chamber notes that the application form for reparations states that the applicant was enlisted in the UPC/FPLC from September 2003 to February/March 2003. However, the particulars contained in the narrative part of the form concerning the time frame of the applicant's enlistment lead the Chamber to conclude that "September 2003" is a typographical error.

19. As regards Applicant a/30254/20, the Chamber notes that the application form for reparations states that the applicant was enlisted in the UPC/FPLC from October 2002 to June 2002. However, looking at the particulars contained in the narrative part of the form concerning the time frame of the applicant's enlistment, the Chamber is satisfied that "June 2002" is, likewise, a typographical error.

20. As regards Applicant a/30314/20, the Chamber notes that the application form for reparations states that the applicant was enlisted in the UPC/FPLC from July 2002 until the end of September 2002, whereas elsewhere on the form it says that the

²⁶ See applications for reparations a/30308/2, a/30259/20, a/30249/20 and a/30265/20.

applicant remained enlisted for two years. The Chamber takes the view that this discrepancy does not affect the reliability of Applicant a/30314/20's statements and finds that the applicant has established to the requisite standard of proof that he was enlisted by the UPC/FPLC during the material period, when he was under the age of 15 years, and remained enlisted until the end of September 2002 at least.

3. *Different dates of birth on the application forms for reparations and on the copies of the identity documents appended to the applications*

21. The Chamber sees that the dates of birth stated on the forms and on the copies of the identity documents appended to the applications for reparations of Applicants a/30218/20 and a/30273/20 are different. However, it notes that the discrepancies observed are of the order of a few days or months and are likely a matter of typographical error; the Chamber is of the view that they do not affect the eligibility criteria laid down by it in the Decision of 15 December 2017 insofar as both dates of birth provided show on a balance of probabilities that the victim was under the age of 15 years when enlisted or conscripted into the UPC/FPLC or when used by Mr Lubanga to participate actively in hostilities in a non-international armed conflict during the material period.

4. *Issue relating to the identity document appended to application for reparations a/30240/20*

22. The Chamber sees that the copy of the identity document appended to the application for reparations of Applicant a/30240/20 is not signed by the competent local authority and that, in place of the signature, the word "copy" appears; nor does the application for reparations state why this is the case. Before the Chamber can approve the administrative decision of the Board of Directors concerning this applicant, the Trust Fund is directed to explain why there is no signature on the identity document appended to application a/30240/20 and/or to provide a new copy of the identity document in question.

5. Conclusion

23. Having regard to the foregoing, the Chamber approves all the administrative decisions of the Board of Directors on the new applications for reparations put to it for approval on 21 January 2021, with the exception of the application for reparations of Applicant a/30240/20. The Chamber finds that, with the exception of that applicant, all the new applicants have established to the requisite standard that they suffered harm as a result of the crimes of which Mr Lubanga was convicted and are, therefore, to be accorded the collective reparations ordered in the case *sub judice*.

FOR THESE REASONS, the Chamber

FINDS that Applicant a/30213/20 has established on a balance of probabilities that he suffered harm as a result of the crimes of which Mr Lubanga was convicted;

APPROVES the administrative decision of the Board of Directors regarding the application for reparations of Applicant a/30213/20;

FINDS that 91 of the 92 new applicants have established on a balance of probabilities that they suffered harm as a result of the crimes of which Mr Lubanga was convicted;

APPROVES the administrative decisions of the Board of Directors on all of the aforementioned applications for reparations, with the exception of that of Applicant a/30240/20;

DECIDES, accordingly, to award those applicants, with the exception of Applicant a/30240/20, the collective reparations ordered in the case *sub judice*; and

DIRECTS the Trust Fund to explain why there is no signature on the identity document appended to application a/30240/20 and/or to provide a new copy of the identity document.

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 3 February 2021

At The Hague, Netherlands