

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **23 August 2021**

**TRIAL CHAMBER II**

**Before:** Judge Chang-ho Chung, Presiding Judge  
Judge Péter Kovács  
Judge María del Socorro Flores Liera

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Public**

**Sixth Decision on the TFV's administrative decisions on applications for reparations  
and other related matters**

**To be notified, in accordance with regulation 31 of the Regulations of the Court, to:**

**Legal Representatives of Victims V01**

Mr Luc Walley  
Mr Franck Mulenda

**Counsel for the Defence**

Ms Catherine Mabil  
Mr Jean-Marie Biju-Duval

**Legal Representatives of Victims V02**

Ms Carine Bapita Buyangandu  
Mr Paul Kabongo Tshibangu  
Mr Joseph Keta Orwinyo

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Trust Fund for Victims**

Mr Pieter de Baan

**Trial Chamber II** of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the ‘Lubanga case’), having regard to article 75 of the Rome Statute and regulations 28(2) and 35(2) of the Regulations of the Court (‘Regulations’), issues its Sixth Decision on the TFFV’s administrative decisions on applications for reparations and other related matters (the ‘Decision’).

## **I. PROCEDURAL HISTORY**

1. On 15 December 2017, the Chamber, in its prior composition, issued the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’ wherein it, *inter alia*, reiterated that victims who had not been in a position to submit a dossier by 31 March 2017 would be screened by the Trust Fund for Victims (‘TFV’) for eligibility at the implementation stage.<sup>1</sup>

2. On 7 February 2019, the Chamber issued a decision approving the process for locating new applicants,<sup>2</sup> directing the TFV to collect applications, with the support of the Legal Representatives of Victims (‘LRVs’) and the Office of the Public Counsel for Victims (‘OPCV’).<sup>3</sup> The Chamber also instructed the TFV to forward the applications to the Registry’s Victims Participation and Reparations Section (‘VPRS’) for verifications and recommendations, in order to allow the TFV’s Board of Directors to take administrative decisions on the victims’ eligibility, to be submitted to the Chamber for a final decision.<sup>4</sup>

3. On 26 March 2021, the Chamber issued a Decision, *inter alia*, extending the deadline and setting the final cut-off date for the submissions of the last complete dossiers to the VPRS on 1 October 2021.<sup>5</sup>

4. On 21 July 2021, the TFV submitted its Fourteenth progress report on the implementation of collective reparations (‘Fourteenth Progress Report’), providing

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<sup>1</sup> Corrected Version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, 21 December 2017 (public redacted version filed on 5 July 2018), [ICC-01/04-01/06-3379-Red-Corr-tENG](#), (‘Lubanga Decision on the Size of Reparations Award’), para. 293, referring to 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.

<sup>2</sup> Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations (‘Decision on New Applicants’), 7 February 2019 (reclassified as public on 13 April 2021), [ICC-01/04-01/06-3440-tENG](#).

<sup>3</sup> Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), para. 21.

<sup>4</sup> Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), paras 29-30.

<sup>5</sup> Decision on the submissions by the Legal Representative of Victims V01 in its Response to the Twelfth Report of the Trust Fund for Victims on the implementation of collective reparations, filing ICC-01/04-01/06-3500-Conf-Exp, 26 March 2021 (reclassified as public on 13 April 2021), [ICC-01/04-01/06-3508](#).

information, *inter alia*, on the implementation of the collective reparations awards, on the identification of new applicants, and on the status of admissibility decisions.<sup>6</sup>

5. On 2, 3, and 4 August 2021, the Legal Representative of Victims V01 ('LRV01'),<sup>7</sup> the OPCV,<sup>8</sup> and the Legal Representative of Victims V02 ('LRV02'),<sup>9</sup> respectively, submitted their responses to the Fourteenth Progress Report.

## II. ANALYSIS

### A. Administrative Decisions

6. In its Fourteenth Progress Report, the TFV informs the Chamber that, during the reporting period, the VPRS transmitted two batches of 100 new applications for reparations each and submits for the Chamber's final approval 160 positive administrative decisions adopted by the Board of Directors.<sup>10</sup> The administrative decisions were taken following the TFV's Board of Directors verification and assessment of eligibility of direct and indirect victims of the crimes for which Mr Lubanga was convicted, as detailed in the annexes to the Fourteenth Progress Report.<sup>11</sup> The TFV further informs the Chamber that, out of the 963 files received so far from the VPRS, 119 still await further processing by the TFV.<sup>12</sup>

7. The Chamber recalls that in rendering its administrative decisions on the eligibility of new applications, the TFV's Board of Directors is assisted by the initial verification of the applications and the recommendations provided by the VPRS.<sup>13</sup> In addition, the Chamber notes that no objections to the Board of Directors' assessment have been raised by the LRVs or the OPCV.

<sup>6</sup> Fourteenth progress report on the implementation of collective reparations as per Trial Chamber II's decisions of 21 October 2016, 6 April 2017 and 7 February 2019 ('Fourteenth progress report'), 21 July 2021 (public redacted version filed on 29 July 2021), [ICC-01/04-01/06-3519-Red](#).

<sup>7</sup> Réponse au Fourteenth progress report on the implementation of collective reparations (ICC-01/04-01/06-3519) avec annexes du 21 juillet 2021 ('LRV01 Response'), 2 August 2021 (public redacted version filed on the same date), [ICC-01/04-01/06-3520-Red](#).

<sup>8</sup> Réponse du BCPV au Quatorzième Rapport sur le progrès de la mise en oeuvre des réparations collectives déposé par le Fonds au profit des victimes le 21 juillet 2021 ('OPCV Response'), 3 August 2021, ICC-01/04-01/06-3521-Conf-Exp.

<sup>9</sup> Réponse de l'équipe V02 au Quatorzième Rapport sur le progrès de la mise en oeuvre des réparations collectives déposé par le Fonds au profit des victimes le 21 juillet 2021 (ICC-01/04-01/06-3519 avec annexes) ('LRV02 Response'), 4 August 2021, ICC-01/04-01/06-3522-Conf-Exp.

<sup>10</sup> Fourteenth progress report, [ICC-01/04-01/06-3519-Red](#), paras 28-29.

<sup>11</sup> Confidential *ex parte* Annex A only available to the LRV01, the Trust Fund for Victims and the VPRS ('Annex A'), 21 July 2021, ICC-01/04-01/06-3519-Conf-Exp-AnxA; Confidential *ex parte* Annex B only available to the OPCV, the Trust Fund for Victims and the VPRS ('Annex B'), 21 July 2021, ICC-01/04-01/06-3519-Conf-Exp-AnxB; Confidential *ex parte* Annex C only available to the LRV02, the Trust Fund for Victims and the VPRS ('Annex C'), 21 July 2021, ICC-01/04-01/06-3519-Conf-Exp-AnxC.

<sup>12</sup> Fourteenth progress report, [ICC-01/04-01/06-3519-Red](#), para. 30.

<sup>13</sup> Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), paras 29-30.

8. In light of the above and after having reviewed the assessment carried out by the VPRS<sup>14</sup> and the TFV's Board of Directors,<sup>15</sup> the Chamber hereby issues its final decision, endorsing the TFV's Board of Directors' administrative decisions and approving the 160 new applications for reparations as detailed in Annexes A, B, and C of the Fourteenth Progress Report.

## **B. Extension of time for the completion of dossiers**

9. The Chamber notes that both legal representatives submit that, despite some progress,<sup>16</sup> the identification of new applicants remains hindered by the security and health situation in Ituri and, thus, the completion of dossiers before the final cut-off date does not appear possible,<sup>17</sup> or it would be difficult to be respected.<sup>18</sup> Consequently, the LRV01 requests an additional extension of the cut-off date, particularly regarding the victims residing outside Bunia and the indirect victims.<sup>19</sup>

10. The Chamber notes that, pursuant to the first sentence of regulation 35(2) of the Regulations, it may extend a time limit if good cause is shown. In the present case, the Chamber reiterates its previously articulated approach as to the need to expedite the reparations proceedings, recalling that the process of locating and identifying potential beneficiaries by the TFV, with the assistance of the LRVs and OPCV, is already ongoing since at least early 2016 and must not continue indefinitely.<sup>20</sup> At the same time, although deadlines may be extended due to security and/or health situations,<sup>21</sup> the Chamber recalls that it has already extended the final deadline twice,<sup>22</sup> for reasons similar to those invoked by the legal representatives in their responses. In addition, the Chamber notes that, in spite of the challenges, as reported by the

<sup>14</sup> Transmitted to the Chamber by the VPRS via e-mail on 22 July 2021 at 17:15, as requested by the Chamber pursuant to *Décision relative à la première et à la deuxième transmission des décisions administratives du Fonds au profit des victimes portant sur des nouvelles demandes en réparation*, 20 May 2020, ICC-01/04-01/06-3476-Conf, para. 16.

<sup>15</sup> Annex A, ICC-01/04-01/06-3519-Conf-Exp-AnxA; Annex B, ICC-01/04-01/06-3519-Conf-Exp-AnxB; Annex C, ICC-01/04-01/06-3519-Conf-Exp-AnxC.

<sup>16</sup> LRV01 Response, [ICC-01/04-01/06-3520-Red](#), para. 10.

<sup>17</sup> LRV01 Response, [ICC-01/04-01/06-3520-Red](#), para. 12; LRV02 Response, ICC-01/04-01/06-3522-Conf-Exp, para. 13.

<sup>18</sup> LRV02 Response, ICC-01/04-01/06-3522-Conf-Exp, para. 13.

<sup>19</sup> LRV01 Response, [ICC-01/04-01/06-3520-Red](#), para. 13.

<sup>20</sup> See Decision on the submissions by the Legal Representative of Victims V01 in its Response to the Twelfth Report of the Trust Fund for Victims on the implementation of collective reparations, filing ICC-01/04-01/06-3500-Conf-Exp ('26 March 2021 Decision'), 26 March 2021, [ICC-01/04-01/06-3508](#), paras 15-17.

<sup>21</sup> See Trial Chamber IX, *Prosecutor v. Dominic Ongwen*, Decision on requests for extension of time, 19 July 2021, [ICC-02/04-01/15-1865](#), para. 9; Trial Chamber II, *Prosecutor v. Bosco Ntaganda*, Decision on the Trust Fund for Victims' Request to Vary the Time Limit to Submit Draft Implementation Plan, 23 July 2021, ICC-01/04-02/06-2697, para. 10.

<sup>22</sup> See *Décision sur la requête du Fonds au profit des victimes* du 21 octobre 2020, 14 December 2020, [ICC-01/04-01/06-3496](#), para. 17; 26 March 2021 Decision, [ICC-01/04-01/06-3508](#), para. 17.

TFV, 351 applications have been collected during the reporting period<sup>23</sup> – approximately an extra third of the victims currently admitted to benefit from reparations. Similarly, during the reporting period the LRV01 team was able to conduct two missions and complete 199 dossiers of direct victims.<sup>24</sup> In light of the above, the Chamber is of the view that the LRV01's request shall be rejected.

11. Notwithstanding the above, mindful of the substantial overlap regarding the direct and indirect victims eligible to receive reparations in both the *Lubanga* and the *Ntaganda* cases,<sup>25</sup> the Chamber notes that the reparations proceedings in the *Ntaganda* case are at the very early stages and further deadlines will be set for victims to benefit from reparations in that case.<sup>26</sup>

### **C. Implementation of service-based collective reparations**

12. In its Fourteenth Report, the TFV includes some information on the progress of the service-based collective reparations, including the steps taken regarding psychological, physical, and socio-economic rehabilitation.<sup>27</sup> The TFV also reports that, on 1 July 2021, it transmitted to the implementing partner the list of 425 beneficiaries recognised by the Chamber in December 2017,<sup>28</sup> who should be integrated into the reparations programme in the first year, as the number corresponds to the approximate maximum number of beneficiaries the implementing partner has the capacity to integrate in the programme in year one.<sup>29</sup> The TFV also informs that the implementing partner is currently contacting those beneficiaries for an initial intake, in order to proceed to the first provision of reparations.<sup>30</sup>

13. In their responses, both LRVs make submissions as to their role during the implementation phase. While welcoming the commencement of the implementation of the service-based collective reparations, the LRV01 submits that the victims are afraid to communicate directly with the implementing partner and, considering that only victims whose full information has been communicated will be contacted,<sup>31</sup> indicates that it would be desirable

<sup>23</sup> Fourteenth progress report, [ICC-01/04-01/06-3519-Red](#), para. 24.

<sup>24</sup> LRV01 Response, [ICC-01/04-01/06-3520-Red](#), para. 10.

<sup>25</sup> For the eligible child soldiers victims in the *Ntaganda* case, see Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#), para. 118, for the eligible victims in the *Lubanga* case see *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 66, 78.

<sup>26</sup> The Chamber recalls Trial Chamber VI's previous finding as to the broader scope of the *Ntaganda* case compared to the *Lubanga* case, see Reparations Order, [ICC-01/04-02/06-2659](#), para. 222.

<sup>27</sup> Fourteenth progress report, [ICC-01/04-01/06-3519-Red](#), paras 32-34.

<sup>28</sup> *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#).

<sup>29</sup> Fourteenth progress report, [ICC-01/04-01/06-3519-Red](#), para. 35.

<sup>30</sup> Fourteenth progress report, [ICC-01/04-01/06-3519-Red](#), paras 35-36.

<sup>31</sup> Fourteenth progress report, [ICC-01/04-01/06-3519-Red](#), para. 36.

to receive a list of the victims who have been contacted by the implementing partner and those whose information is incomplete, in order to inform them of the upcoming contact and to ensure follow-up.<sup>32</sup> The LRV01 also requests to be informed by the TFV as to the planned interviews with victims and to participate in some of the interviews during field missions, especially in the start-up period of the reparations programme.<sup>33</sup> The LRV01 further highlights the need for information campaigns and awareness-raising within the victims' communities in order to inform them of the gradual integration into the reparations programme and to manage their expectations.<sup>34</sup>

14. The LRV02 submits that it would be desirable to establish an interaction between the legal representatives and the implementing partner, to allow for a follow-up in the execution of reparations programs. In particular, it suggests the LRVs' involvement in monitoring the victims suffering from psychological problems, as well as their participation in the joint activities between the Government of the Democratic Republic of the Congo and the TFV, on the publicity and sensitisation regarding the execution of reparations programmes.<sup>35</sup>

15. The Chamber recalls that, at this stage of the proceedings, the TFV and the implementing partner are in charge of conducting the implementation of the service-based collective reparations, as approved by the Chamber, taking into account the observations and concerns put forward by the legal representatives.<sup>36</sup> As the Chamber already indicated, the role of the LRVs and the OPCV during this stage of the reparations proceedings consists of submitting their observations on the TFV's quarterly reports, in order to ensure that the beneficiaries' concerns and wishes are taken into account.<sup>37</sup> While the LRVs and the OPCV should be afforded the possibility to raise concerns arising during the implementation process, the Chamber does not consider it necessary that they be involved in every step taken by the implementing partner during the implementation of reparations or the related activities carried out by the TFV.<sup>38</sup> Consequently, the Chamber rejects the LRVs' requests. Notwithstanding the

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<sup>32</sup> LRV01 Response, [ICC-01/04-01/06-3520-Red](#), paras 14-15.

<sup>33</sup> LRV01 Response, [ICC-01/04-01/06-3520-Red](#), para. 17.

<sup>34</sup> LRV01 Response, [ICC-01/04-01/06-3520-Red](#), para. 16.

<sup>35</sup> LRV02 Response, ICC-01/04-01/06-3522-Conf-Exp, para. 13.

<sup>36</sup> See Rectificatif de la Version publique expurgée de la Décision faisant droit à la requête du Fonds au profit des victimes du 21 septembre 2020 et approuvant la mise en oeuvre des réparations collectives prenant la forme de prestations de services ('Decision approving service-based collective reparations'), 5 March 2021, [ICC-01/04-01/06-3495-Red-Corr](#), paras 119-153.

<sup>37</sup> Decision approving service-based collective reparations, [ICC-01/04-01/06-3495-Red-Corr](#), para. 164.

<sup>38</sup> For a similar approach, see, Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on the Updated Implementation Plan from the Trust Fund for Victims, 4 March 2019, [ICC-01/12-01/15-324-Red](#), para. 82.

above, the Chamber commends the continued cooperation between the TFV, the LRVs, and the OPCV and encourages them to continue sharing the necessary information and supporting the successful implementation of the reparations in the case.

16. The Chamber however finds justified the LRV01's submissions on the need to conduct information and awareness-raising campaigns within the victims' communities, explaining the approach of the gradual integration of beneficiaries into the reparations programme by the implementing partner. To this end, the Chamber instructs the TFV, together with the implementing partner, to disseminate relevant information and/or carry out appropriate awareness-raising campaigns within the victims' communities as to the gradual integration of beneficiaries into the reparations programme, in order to manage their expectations and avoid frustrations and/or potential jealousy between victims.<sup>39</sup>

#### **D. Additional matters raised by the OPCV**

17. In relation to the additional matters raised by the OPCV, including that the Fourteenth Progress Report does not include (i) a calendar as to the actual starting date of implementation of service-based collective reparations; (ii) detailed and concrete information on the locations where the current activities by the implementing partner are carried out; (iii) the appropriate timing for the implementation of the symbolic reparations for victims; and (iv) the status of the search of the disappeared victims, pursuant to regulation 28(2) of the Regulations, the Chamber hereby directs the TFV to include the requested information in its next quarterly report.

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<sup>39</sup> For a similar approach, *see*, Trial Chamber II, *Prosecutor v. Bosco Ntaganda*, Decision on the TFV's initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#), para. 43.



**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,**

**ENDORSES** the TFV's Board of Directors' administrative decisions;

**APPROVES** the administrative decisions taken by the TFV's Board of Directors with regard to 160 new applicants who shall become beneficiaries of reparations;

**REJECTS** the LRV01's request for an extension of the cut-off date;

**INSTRUCTS** the TFV, together with the implementing partner, to disseminate relevant information and/or carry out appropriate awareness-raising campaigns as detailed above;

**DIRECTS** TFV to include in its next quarterly report the information requested by the OPCV in its response.

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



**Judge Chang-ho Chung, Presiding Judge**



**Judge Péter Kovács**



**Judge María del Socorro Flores Liera**

Dated this Monday, 23 August 2021

At The Hague, The Netherlands