



Original: French

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

Date: 19 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**

***EX PARTE* Legal Representatives of the V01 and V02 Groups of Victims, Office of  
Public Counsel for Victims, Victims Participation and Reparations Section,  
Victims and Witnesses Section and Trust Fund for Victims**

**Order relating to the Decision of 14 December 2020 and the Twelfth Report of the  
Trust Fund for Victims on the Implementation of Reparations**

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**

**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**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Section**

Mr Nigel Verrill

**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, orders 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”).<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Accordingly, the Chamber determined that they were to be awarded the collective reparations it had ordered in the case.<sup>4</sup> The Chamber also found 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 had also been affected by his crimes (“new applicants”).<sup>5</sup> In that respect, 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 (“V01 Legal Representatives”) and V02 groups of victims (“Legal Representatives”, collectively), before the final selection of the implementing partners and before approval by the Chamber of the second phase of implementation of the

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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, 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.

<sup>2</sup> Decision of 15 December 2017, paras. 35-191.

<sup>3</sup> Decision of 15 December 2017, para. 190.

<sup>4</sup> Decision of 15 December 2017, para. 194.

<sup>5</sup> Decision of 15 December 2017, p. 112 and, in particular, paras. 232-244.

collective reparations.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

3. On 18 July 2019, the Appeals Chamber handed down a unanimous judgment on two appeals brought against the Decision of 15 December 2017.<sup>9</sup>

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”) is 31 December 2020 and ordered that the last complete applications for reparations be forwarded to the VPRS no later than that date.<sup>10</sup>

5. On 20 May 2020, the Chamber approved the administrative decisions of the Trust Fund Board of Directors (“Board of Directors”) on 271 new applications for reparations (“Decision of 20 May 2020”).<sup>11</sup>

6. On 11 September 2020, the Chamber approved the administrative decisions of the Board of Directors on 159 new applications for reparations.<sup>12</sup> On the same occasion,

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<sup>6</sup> Decision of 15 December 2017, p. 296, p. 113.

<sup>7</sup> 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.

<sup>8</sup> “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.

<sup>9</sup> 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 the same day.

<sup>10</sup> “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.

<sup>11</sup> “Decision concerning the First and Second Transmissions of Administrative Decisions on New Applications for Reparations Taken by the Trust Fund for Victims”, 20 May 2020, ICC-01/04-01/06-3476-Conf-tENG.

<sup>12</sup> “Deuxième décision sur les décisions administratives du Fonds au profit des victimes portant sur de nouvelles demandes en réparation”, 11 September 2020, ICC-01/04-01/06-3479-Conf (“Decision of 11 September 2020”).

the Chamber amended the Decision of 20 May 2020 in that it 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 must therefore be considered eligible for the collective reparations ordered in the case.<sup>13</sup>

7. On 14 December 2020, the Chamber granted the Trust Fund's request of 21 September 2020,<sup>14</sup> approving, subject to a number of modifications, the implementation of the programme proposed by the Trust Fund and its implementing partner for service-based collective reparations ("Decision Approving Implementation of the Collective Reparations").<sup>15</sup>

8. The same day, the Chamber issued a decision by which it extended until 16.00 on 31 March 2021 the time limit for submitting the last complete applications for reparations to the VPRS and authorized the Trust Fund to disclose certain information to potential donors.<sup>16</sup>

9. On 21 January 2021, the Trust Fund filed the twelfth report on the implementation of the reparations ("Trust Fund's Twelfth Report").<sup>17</sup>

10. On 1 February 2021, the OPCV filed observations in response to the Trust Fund's Twelfth Report.<sup>18</sup>

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<sup>13</sup> Decision of 11 September 2020, para. 12.

<sup>14</sup> "Requête d'approbation des résultats de l'invitation à soumissionner concernant les réparations collectives basées sur les services apportés aux victimes", 21 September 2020, ICC-01/04-01/06-3480-Conf, with one confidential *ex parte* annex.

<sup>15</sup> "Décision faisant droit à la requête du Fonds au profit des victimes du 21 Septembre 2020 et approuvant la mise en œuvre des réparations collectives prenant la forme de prestations de services", 14 December 2020, ICC-01/04-01/06-3495-Conf-Exp.

<sup>16</sup> "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.

<sup>17</sup> "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)'" , ICC-01/04-01/06-3497-Conf-Exp-AnxA, its accompanying document, ICC-01/04-01/06-3497, and three confidential *ex parte* annexes.

<sup>18</sup> "Réponse du BCPV au Douzième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 21 janvier 2021", 1 February 2021, ICC-01/04-01/06-3498-Conf-Exp ("OPCV Response").

11. On 3 February 2021, the V01 Legal Representatives likewise filed observations in response to the Trust Fund's Twelfth Report.<sup>19</sup>

12. The same day, the Chamber approved the administrative decisions taken by the Board of Directors on 91 new applications for reparations and the application for reparations of a/30213/20.<sup>20</sup> It also directed the Trust Fund to provide an explanation for the absence of a signature on the identity document attached to the application for reparations of a/30240/20 and/or to provide a new copy of the identity document.<sup>21</sup>

## II. Analysis

### A. Introductory remarks

13. The Chamber takes note of the Trust Fund's observations on the project to locate missing victims;<sup>22</sup> on the progress of the symbolic reparations programme;<sup>23</sup> and on the launch date of the service-based collective reparations programme, set at 1 March 2021, bearing in mind the health and security situation.<sup>24</sup>

### B. Public redacted version of the Decision Approving Implementation of the Collective Reparations

14. The Chamber recalls that it rendered the Decision Approving Implementation of the Collective Reparations with the classification "confidential", *ex parte* legal representatives of the V01 and V02 groups of victims, Office of Public Counsel for Victims, Victims Participation and Reparations Section and Trust Fund for Victims, in

<sup>19</sup> "Réponse au Douzième rapport du Fonds au profit des victimes sur la mise en œuvre des réparations collectives (ICC-01/04-01/06-3497) avec annexes du 21 janvier 2021", 3 February 2021, ICC-01/04-01/06-3500-Conf-Exp ("V01 Legal Representatives Response").

<sup>20</sup> "Quatrième décision sur les décisions administratives du Fonds au profit des victimes portant sur de nouvelles demandes en réparation ainsi que la demande a/30213/20", 3 February 2021, ICC-01/04-01/06-3499-Conf ("Decision of 3 February 2021").

<sup>21</sup> Decision of 3 February 2021, p. 10.

<sup>22</sup> Trust Fund's Twelfth Report, paras. 31-36. See also OPCV Response, paras. 20-22.

<sup>23</sup> Trust Fund's Twelfth Report, paras. 37-39.

<sup>24</sup> Trust Fund's Twelfth Report, para. 29. See also OPCV Response, para. 10.

accordance with regulation 23 *bis*(2) of the Regulations of the Court, as it makes reference to submissions filed with the same confidentiality level.

15. Given the importance of the Decision Approving Implementation of the Collective Reparations and having regard to the principle of publicity of reparations proceedings,<sup>25</sup> the Chamber considers it appropriate to look into the possibility of issuing a public redacted version of that decision to inform the public of the progress made during the implementation phase of the reparations.

16. The Chamber nonetheless recalls that, under article 68(1) of the Statute, “[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims [...]” In that connection, the Chamber recalls that it ordered certain victim protection measures in *Lubanga*.<sup>26</sup>

17. Moreover, the Chamber draws attention to the fact that the security situation in Ituri, Democratic Republic of the Congo, has deteriorated significantly.<sup>27</sup>

18. In the light of the foregoing, the Chamber directs the Trust Fund, the V01 and V02 Legal Representatives and the OPCV to file, by 16.00 on 26 February 2021, observations on the following points:

- (i) the appropriateness of issuing a public redacted version of the Decision Approving Implementation of the Collective Reparations at the present time;
- (ii) the steps to be taken to prepare the public redacted version of the Decision Approving Implementation of the Collective Reparations:
  - (a) filing in the record of the case public redacted versions, where applicable, of all relevant submissions referred to in the Decision Approving Implementation of the Collective Reparations; and/or

<sup>25</sup> Rule 96 of the Rules of Procedure and Evidence; Appeals Chamber, “Amended Order for Reparations”, ICC-01/04-01/06-3129-AnxA, paras. 51-52; Decision of 15 December 2017, para. 302.

<sup>26</sup> See “Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team for Thomas Lubanga Dyilo”, 22 February 2017, ICC-01/04-01/06-3275-tENG; “Decision on the Application of the Defence for Thomas Lubanga Dyilo of 24 April 2017 concerning Redactions in some of the Files of Potentially Eligible Victims”, 5 June 2017, ICC-01/04-01/06-3328-tENG. See also Decision of 15 December 2017, para. 59.

<sup>27</sup> See Annex D to the Trust Fund’s Twelfth Report, ICC-01/04-01/06-3497-Conf-Exp-AnxD.

- (b) proposing to the Chamber the redactions to apply to the Decision Approving Implementation of the Collective Reparations.

**C. Request of the OPCV and the V01 Legal Representatives to receive assistance from the Victims and Witnesses Section**

19. In its response to the Trust Fund’s Twelfth Report, the OPCV asks that the Victims and Witnesses Section, “[TRANSLATION] pursuant to an order from the Chamber if necessary, urgently [allocate] [...] resources for the reparations phase, which requires even more sensitive interviews with the victims”.<sup>28</sup>

20. In their response to the Trust Fund’s Twelfth Report, the V01 Legal Representatives also seek the assistance of the Victims and Witnesses Section in order to offer psychological support to some of the victims during the periods in which remote interviews are conducted to compile the applications for reparations.<sup>29</sup> The V01 Legal Representatives suggest that a psychologist be present in the interview rooms or, failing that, that the Victims and Witnesses Section refer the victims to the services of a psychologist after those interviews.<sup>30</sup>

21. In its Twelfth Report, the Trust Fund explains that after discussions with the Legal Representatives with a view to preparing for the interviews to compile applications for reparations in November 2020, it had requested the support of the Victims and Witnesses Section to help some of the victims during those interviews.<sup>31</sup> The Trust Fund adds that the Victims and Witnesses Section replied that such support would not be feasible “[TRANSLATION] for reasons related to the remit and availability of the staff”, but that it “[TRANSLATION] had offered to provide training to the least experienced interviewers and/or answer questions that the interviewers might have on good practices that may be adopted”.<sup>32</sup>

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<sup>28</sup> OPCV Response, para. 19.

<sup>29</sup> V01 Legal Representatives Response, paras. 19-21.

<sup>30</sup> V01 Legal Representatives Response, paras. 19-21.

<sup>31</sup> Trust Fund’s Twelfth Report, para. 9.

<sup>32</sup> Trust Fund’s Twelfth Report, para. 9.



22. The Trust Fund then points out that, in response to a series of questions addressed to the Legal Representatives regarding the conduct of the interviews, the V01 Legal Representatives remarked that it was important for the remote interviews to be able to take place with a person physically present in the interview room to provide psychological support to the victims if need be, and regretted that the Victims and Witnesses Section could not provide that assistance.<sup>33</sup>

23. Last, the Trust Fund states that the Legal Representatives jointly requested a solution to this problem during a meeting with the Trust Fund on 19 January 2021 and that it thereafter turned anew to the Victims and Witnesses Section.<sup>34</sup>

24. In the light of the foregoing, the Chamber directs the Trust Fund, the V01 and V02 Legal Representatives, the OPCV and the Victims and Witnesses Section to file observations by 16.00 on 5 March 2021 on the status of their discussions on the issue raised by the Legal Representatives and the Trust Fund of the need for psychological support for some of the victims during the remote interviews conducted to compile applications for reparations.

**D. Issue relating to the 31 March 2021 time limit for submitting the last complete applications for reparations to the VPRS**

25. In their response to the Trust Fund's Twelfth Report, the V01 Legal Representatives submit that they still have several hundreds of direct and indirect victims to meet with and put forth suggestions as to the time limit for submitting the remaining applications for reparations to the VPRS, given the current health and security situation prevailing in Ituri.<sup>35</sup>

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<sup>33</sup> Trust Fund's Twelfth Report, para. 12.

<sup>34</sup> Trust Fund's Twelfth Report, para. 12.

<sup>35</sup> V01 Legal Representatives Response, paras. 12-18.

26. The V01 Legal Representatives “[TRANSLATION] suggest”:
- that the time limit for submitting applications for reparations remain open-ended for as long as insecurity and/or the health situation prevents the team from meeting with all the direct and indirect victims already identified; [...]
  - that the indirect victims be authorized to submit an application for reparations for up to six months after a family member has been recognized by the [C]hamber as being a direct victim, or at least up to six months after the time limit set for direct victims has expired;
  - that it be considered that an indirect victim has complied with the time limit set by the Chamber where the Legal Representatives have confirmed that the victim is, or has been, pre-identified and in contact with them but that the team has been unable to put together a complete application file on account of circumstances beyond the victim’s control.<sup>36</sup>

27. Before ruling on the suggestions of the V01 Legal Representatives, the Chamber sees fit to receive the observations of the Trust Fund, the V02 Legal Representatives and OPCV on the issue of the time limit for submitting the last complete applications for reparations to the VPRS as well as on the proposals of the V01 Legal Representatives on that issue, summarized above.

28. Accordingly, the Chamber directs the Trust Fund, the V02 Legal Representatives and the OPCV to file their observations by 16.00 on 5 March 2021.

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<sup>36</sup> V01 Legal Representatives Response, para. 18.

**FOR THESE REASONS, the Chamber**

**DIRECTS** the Trust Fund, the V01 and V02 Legal Representatives and the OPCV to file observations by 16.00 on 26 February 2021 on the issues set out at paragraph 18 of the present order;

**DIRECTS** the Trust Fund, the V01 and V02 Legal Representatives, the OPCV and the Victims and Witnesses Section to file observations by 16.00 on 5 March 2021 on the status of their discussions on the issue raised by the Legal Representatives and the Trust Fund of the need for psychological support for some of the victims during the remote interviews conducted to compile applications for reparations; and

**DIRECTS** the Trust Fund, the V02 Legal Representatives and the OPCV to file observations by 16.00 on 5 March 2021 on the issue of the time limit for submitting the last complete applications for reparations to the VPRS as well as on the proposals of the V01 Legal Representatives on that issue.

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

[signed]

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**Judge Marc Perrin de Brichambaut**

**Presiding Judge**

[signed]

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**Judge Olga Herrera Carbuccia**

[signed]

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**Judge Péter Kovács**

Dated this 19 February 2021

At The Hague, Netherlands