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No.: **ICC-01/04-01/06**
Date: **1 December 2020**

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

**Third Decision on the Administrative Decisions of the Trust Fund for Victims on
New Applications for Reparations and Applications a/30314/19, a/30077/20 and
a/30103/20**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

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REGISTRY

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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 as follows.

I. Procedural history

1. On 15 December 2017, the Chamber handed down the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable” (“Decision of 15 December 2017”).¹ The Chamber analysed applications for reparations from 473 persons alleging to be victims of the crimes of which Thomas Lubanga Dyilo (“Mr Lubanga”) was convicted.² The Chamber found that 425 of those 473 persons 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 to receive the collective reparations it was awarding in the case.⁴ 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 were also affected by his crimes (“New Applicants”).⁵ The Chamber therefore 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 group of victims (“V01 Legal Representatives”) and of the V02 group of victims before the implementing partners are selected and the Chamber

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. The decision, with annexes, was handed down 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.

approves the second phase of the implementation of the collective reparations.⁶ The Chamber also underscored that it would fall to the Trust Fund to screen new applicants for eligibility for reparations during the implementation of the reparations.⁷

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

3. On 18 July 2019, the Appeals Chamber handed down a unanimous judgment on two appeals brought against the Decision of 15 December 2017.¹¹

4. On 8 November 2019, the Chamber issued an order clarifying that the cut-off date for forwarding applications for reparations to the Victims Participation and Reparations Section ("VPRS") was 31 December 2020 and ordering that the last complete applications for reparations be forwarded to VPRS by then.¹²

⁶ Decision of 15 December 2017, para. 296, p. 114.

⁷ Decision of 15 December 2017, 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.

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 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 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-tENG.

5. On 25 February 2020, on behalf of the Board of Directors, the Trust Fund submitted administrative decisions on 104 new applications for reparations to the Chamber for approval.¹³
6. On 21 April 2020, on behalf of the Board of Directors, the Trust Fund submitted administrative decisions on 167 new applications for reparations to the Chamber for approval.¹⁴
7. On 30 April 2020, the Chamber directed the Trust Fund and VPRS to provide the Chamber access to the complete dossiers of the 271 new applicants to assist it in assessing the information submitted by the Trust Fund with a view to issuing a final decision on the new applicants' eligibility for reparations.¹⁵
8. On 20 May 2020, the Chamber approved the Board of Directors' administrative decisions on 271 new applications for reparations.¹⁶ On that occasion, the Chamber directed the Trust Fund and VPRS to provide the Chamber access to the full dossiers of all new applicants in respect of whom an administrative decision was to be made by the Board of Directors.¹⁷
9. On 11 September 2020, the Chamber approved 159 of the 162 administrative decisions of the Board of Directors on new applications for reparations ("Decision of

¹³ "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).

¹⁴ "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, and confidential annexes A-D, ICC-01/04-01/06-3474-Conf-Exp-AnxA, ICC-01/04-01/06-3474-Conf-Exp-AnxB, ICC-01/04-01/06-3474-Conf-Exp-AnxC and ICC-01/04-01/06-3474-Conf-Exp-AnxD.

¹⁵ "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.

¹⁶ "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.

¹⁷ Decision of 20 May 2020, para. 16.

11 September 2020").¹⁸ It also instructed the Trust Fund to complete applications for reparations a/30314/19, a/30077/20 and a/30103/20 and submit them for reassessment by the Chamber.¹⁹ In the same decision, the Chamber amended the Decision of 20 May 2020 as it found that 272 applicants had shown on a balance of probabilities that they had suffered harm as a consequence of the crimes of which Mr Lubanga was convicted and must, therefore, be considered eligible for the collective reparations awarded in the case.²⁰

10. On 22 September 2020, the Trust Fund provided information to the Chamber concerning the three applications that were not approved in the Decision of 11 September 2020,²¹ together with identification for application a/30103/20.²²

11. On 21 October 2020, the Trust Fund, on behalf of the Board of Directors, submitted administrative decisions on 76 new applications for reparations for the Chamber's approval and on applications a/30314/19, a/30077/20 and a/30103/20 for reassessment by the Chamber.²³

¹⁸ "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-tENG.

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

²⁰ Decision of 11 September 2020, para. 12.

²¹ "Information concernant les demandes a/30103/20, a/30314/19 et a/30077/20 conformément à la Décision du 11 septembre 2020 (ICC-01/04-01/06-3479-Conf)", 22 September 2020, ICC-01/04-01/06-3481-Conf.

²² Confidential Annex A to the information about applications a/30103/20, a/30314/19 and a/30077/20, *ex parte* Legal Representatives of the V01 group of victims, Trust Fund for Victims and VPRS, 22 September 2020, ICC-01/04-01/06-3481-Conf-Exp-AnxA.

²³ "Annexe A au Onzième 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 October 2020, ICC-01/04-01/06-3491-Conf-Exp-AnxA.

II. Analysis

A. Preliminary matter: the applications for reparations not approved in the Decision of 11 September 2020

12. In the Decision of 11 September 2020, the Chamber directed the Trust Fund to explain why no identification had been appended to application for reparations a/30103/20, or to complete the application, submit it for reassessment by the Board of Directors and submit the Board of Directors' new administrative decision to the Chamber for approval.²⁴ The Chamber also directed the Trust Fund to submit legible copies of the identification appended to applications for reparations a/30314/19 and a/30077/20.²⁵

13. The Chamber notes that the Trust Fund has provided it with a copy of Applicant a/30103/20's identification along with the supplementary information provided on 22 September 2020.²⁶

14. The Chamber also notes that applications for reparations a/30314/19 and a/30077/20 were made complete with identification that it considers legible. Regarding application a/30077/20, the Chamber notes a discrepancy between the date of birth stated on the reparations form and the identification provided. Nonetheless, it considers that the explanation given for the discrepancy is plausible and does not affect the application's credibility and reliability.

15. After reviewing the above-mentioned applications, the Chamber finds that the copies of identification for applicants a/30314/19, a/30077/20 and a/30103/20 show on a balance of probabilities that the applicants were under the age of 15 years when they were enlisted or conscripted into the armed wing of the *Union des patriotes*

²⁴ Decision of 11 September 2020, para. 17.

²⁵ Decision of 11 September 2020, para. 19.

²⁶ Confidential Annex A to the information about applications a/30103/20, a/30314/19 and a/30077/20 *ex parte* Legal Representatives of the V01 group of victims, Trust Fund for Victims and VPRS, 22 September 2020, ICC-01/04-01/06-3481-Conf-Exp-AnxA.

congolais/Forces patriotiques pour la libération du Congo [Union of Congolese Patriots/Patriotic Forces for the Liberation of the Congo] (UPC/FPLC) or that Mr Lubanga used them to participate actively in hostilities within a non-international armed conflict between 1 September 2002 and 13 August 2003 (“material time”). The Chamber accordingly rules that Applicants a/30314/19, a/30077/20 and a/30103/20 meet the eligibility criteria for reparations and qualify for the collective reparations awarded in the case.

B. Determination of the Chamber on the Board of Director’s new administrative decisions

16. The Chamber currently has before it 76 new administrative decisions that the Trust Fund, on behalf of the Board of Directors, submitted to the Chamber for approval on 21 October 2020.

17. The Chamber notes that the Trust Fund has prepared the 76 new applications for reparations with the assistance of the Legal Representatives of Victims;²⁷ VPRS has carried out an initial verification of the applications;²⁸ and the Trust Fund has 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 2017.²⁹ The Chamber also notes that, according to the Board of Directors, the 76 new applications for reparations meet the criteria for eligibility for reparations.

18. Upon analysis of the information presented by the Trust Fund and upon its own examination of some of the applications for reparations, and notwithstanding the points noted under sub-section II.B.6., the Chamber did not identify anything to

²⁷ ICC-01/04-01/06-3491-Conf-Exp-AnxB (V01 Legal Representatives).

²⁸ 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, 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).

²⁹ See Annex E to the Trust Fund’s Sixth Report (ICC-01/04-01/06-3467-Conf-Exp-AnxE).

call into question the assessment of the applications for reparations made by the Trust Fund with the assistance of the Legal Representatives of Victims and VPRS or the conclusions reached by the Board of Directors. However, the Chamber sees fit to present briefly its observations and conclusions derived from its analysis.

1. Inaccuracies in the spelling of some names

19. The Chamber has noticed that some applicants' names are spelled slightly differently in the application form for reparations than in the copy of the identification.³⁰ In the Chamber's view, such minor inaccuracies do not however affect the applicants' eligibility for reparations.

2. Different sex in the application form for reparations and in the copy of identification

20. The Chamber has noticed a difference between the sex stated in application form for reparations a/30205/20 and that stated in the copy of the supporting identification submitted. Nonetheless, the Chamber considers that the difference does not undermine the credibility and reliability of the application.

3. Issues pertaining to the period of enlistment

21. The Chamber has noticed that some applicants state that they were recruited before the material time and that they were active in the UPC/FPLC until September 2002.³¹ The Chamber considers that the period of those applicants' enlistment therefore falls within the time frame of the charges as it ends in September 2002, i.e. after 1 September 2002.

22. The Chamber sees that the application form for reparations states that the period of applicant a/30211/20's enlistment lasted from June to March 2002. The

³⁰ See, for example, applications for reparations a/30175/20, a/30208/20, a/30213/20.

³¹ See applications for reparations a/30144/20, a/30187/20.

However, the Chamber considers this an error and that the enlistment period was more likely to have been from June 2002 to March 2003.

4. Different dates of birth on the application form for reparations and on the copy of the identification

23. The Chamber sees that the date of birth stated on the form and on copy of the identification is different for Applicant a/30177/20. The Chamber observes, however, that the discrepancy noted amounts to a few days and is therefore of no consequence to the eligibility criteria laid down by the Chamber in the Decision of 15 December 2017

5. Age stated does not tally with the date of birth

24. The Chamber sees that the age stated on the application form for reparations of Applicant a/30192/20 does not tally with the date of birth entered. The Chamber notes, however, that the date of birth stated in the form and the copy of the identification are the same. The Chamber therefore considers that application a/30192/20 meets the criteria for eligibility for reparations.

6. Applicants a/30156/20 and a/30213/20: illegible dates of birth on the copies of identification

25. The Chamber is unable to read the dates of birth on the copies of the identification provided in support of applications for reparations a/30156/20 and a/30213/20. The Chamber recalls that, in the Decision of 20 May 2020, it drew the Trust Fund's attention to the need to ensure that the documents or copies of documents collected and appended to the new applications for reparations are of suitable quality,³² and that, in its Decision of 11 September 2020, it could not accept the applications from the two applicants because some identification was not

³² Decision of 20 May 2020, para. 15.

legible.³³ The Chamber therefore sees fit to direct the Trust Fund to submit to the Chamber legible copies of identification for Applicant a/30156/20 and Applicant a/30213/20 to enable the Chamber to approve the Board of Directors' administrative decisions on those applicants.

7. Conclusion

26. In view of the foregoing, the Chamber approves all the Board of Directors' administrative decisions concerning the new applications for reparations submitted to the Chamber for approval on 21 October 2020, except for application a/30156/20 and application a/30213/20. The Chamber considers that, apart from these two applicants, all the new applicants have shown to the requisite standard that they suffered harm as a consequence of the crimes of which Mr Lubanga was convicted and must therefore qualify for the collective reparations awarded in the case at bar.

FOR THESE REASONS, the Chamber

CONSIDERS that Applicants a/30314/19, a/30077/20 and a/30103/20 have shown on a balance of probabilities that they suffered harm as a consequence of the crimes of which Mr Thomas Lubanga was convicted;

APPROVES the administrative decisions of the Board of Directors concerning applications a/30314/19, a/30077/20 and a/30103/20; and

CONSIDERS that 74 of the 76 new applicants have shown on a balance of probabilities that they suffered harm as a consequence of the crimes of which Mr Lubanga was convicted;

³³ Decision of 11 September 2020, para. 19.

APPROVES the administrative decisions of the Board of Directors on all the above-mentioned applications for reparations except for applications a/30156/20 and a/30213/20;

DECIDES, accordingly, to award the applicants, except Applicant a/30156/20 and Applicant a/30213/20, the collective reparations ordered in the case; and

INSTRUCTS the Trust Fund to submit to the Chamber legible copies of the identification appended to applications for reparations a/30156/20 and a/30213/20.

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 1 December 2020

At The Hague, Netherlands