

I. ANNEX A: PROCEDURAL HISTORY

A. Brief procedural background prior to the impugned decision

1. On 14 March 2012, Trial Chamber I issued its ‘Judgment pursuant to Article 74 of the Statute’¹ (confirmed, on 1 December 2014, by a majority of the Appeals Chamber²), convicting Mr Lubanga of the crimes of conscripting and enlisting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities, under articles 8(2)(e)(vii) and 25(3)(a) of the Statute. On 10 July 2012, Trial Chamber I sentenced Mr Lubanga to fourteen years’ imprisonment³ (also confirmed, on 1 December 2014, by a majority of the Appeals Chamber⁴). Since its decision confirming this sentence, the Appeals Chamber has carried out two reviews concerning reduction of sentence,⁵ as required under article 110 of the Statute, in both cases finding no reason to reduce Mr Lubanga’s sentence.⁶ Mr Lubanga’s release is currently scheduled for 15 March 2020.⁷

2. On 7 August 2012, Trial Chamber I issued the *Lubanga* Reparations Decision.⁸ Victims V01, Victims V02, the OPCV and Mr Lubanga filed appeals against that decision. On 14 December 2012, the Appeals Chamber issued a decision in relation to the admissibility of those appeals⁹ finding them to be largely admissible. On 3 March 2015, the Appeals Chamber rendered a judgment in relation to these appeals.¹⁰ It amended the *Lubanga* Reparations Decision and issued the *Lubanga* Amended Reparations Order. It required the TFV to submit a draft implementation plan to a newly constituted Trial Chamber within six months¹¹ and also found it ‘appropriate to exceptionally seek the Trust Fund’s assistance in requesting that it provide, in the draft implementation plan, the anticipated monetary amount that it

¹ [Lubanga Conviction Decision](#).

² [Lubanga Appeal Judgment on Conviction](#), para. 529.

³ ‘[Decision on Sentence pursuant to Article 76 of the Statute](#)’, 10 July 2012, ICC-01/04-01/06-2901, para. 107.

⁴ [Lubanga Appeal Judgment on Sentence](#), para. 119.

⁵ [First Decision on Review](#); [Second Decision on Review](#).

⁶ [First Decision on Review](#), para. 77; [Second Decision on Review](#), paras 92-94.

⁷ See [Second Decision on Review](#), para. 95.

⁸ [Lubanga Reparations Decision](#).

⁹ [Lubanga Appeal Decision on Admissibility](#), p. 3.

¹⁰ [Lubanga Appeal Judgment on Reparations](#) and [Lubanga Amended Reparations Order](#).

¹¹ [Lubanga Amended Reparations Order](#), para. 75.

considers necessary to remedy the harms by the crimes for which Mr Lubanga was convicted, based on information gathered during the consultation period leading up to the submission of the draft implementation plan'.¹² It stated that the trial chamber's decision on the amount of Mr Lubanga's liability for reparations would be appealable.¹³

3. On 17 March 2015, the case was referred to the Trial Chamber.¹⁴

4. On 9 February 2016, the Trial Chamber, having received the TFV's draft implementation plan and observations thereto, found that the plan was incomplete.¹⁵ It instructed the TFV to 'begin the process of locating and identifying victims potentially eligible to benefit from the reparations and transmit the results of this process to the Chamber'.¹⁶ In its subsequent submissions, the TFV expressed reservations with respect to the Trial Chamber's approach requiring the identification of victims.¹⁷

5. In its orders issued in the course of 2016, the Trial Chamber instructed the Registry to provide all the necessary assistance to the TFV and legal representatives of victims for the purpose of identifying victims potentially eligible for reparations,¹⁸ and authorised the OPCV to participate in the ongoing identification process.¹⁹ Several batches of requests for reparations were transmitted to the Trial Chamber, amounting to a total of 473 individual requests.²⁰ Other procedural developments

¹² [Lubanga Appeal Judgment on Reparations](#), para. 240.

¹³ [Lubanga Appeal Judgment on Reparations](#), para. 242.

¹⁴ '[Decision referring the case of *The Prosecutor v. Thomas Lubanga Dyilo to Trial Chamber II*](#)', 17 March 2015, ICC-01/04-01/06-3131, p. 3.

¹⁵ [Order of 9 February 2016](#), paras 3-10.

¹⁶ [Order of 9 February 2016](#), para. 15.

¹⁷ [First Submission of Victim Dossiers](#), paras 38-42, 43-77. See also [Additional Programme Information Filing](#), paras 94-97; [TFV's Request for Leave to Appeal](#).

¹⁸ [Order of 15 July 2016](#), para. 8, p. 7; [Order of 21 October 2016](#), paras 18-21, p. 10.

¹⁹ [Order of 21 October 2016](#), paras 18-21, p. 10.

²⁰ [First Submission of Victim Dossiers](#); [Second Submission of Victim Dossiers](#); [Third Submission of Victim Dossiers](#); [Registry's First Transmission of Dossiers](#); [Registry's Second Transmission of Dossiers](#); [Registry's Third Transmission of Dossiers](#); [Registry's Fourth Transmission of Dossiers](#); [Registry's Fifth Transmission of Dossiers](#); [Registry's Sixth Transmission of Dossiers](#); [Registry's Seventh Transmission of Dossiers](#). The Appeals Chamber notes that the Impugned Decision consistently refers to the number of applicants as 473 (e.g., pages 3, 21, 23, 30, 70, and 111, and paragraphs 14, 27, 36, 44, 190, 239, and 279), and there are 473 applicants recorded in Table A of the confidential Annex II to the Impugned Decision. However, [Annex III to the Impugned Decision](#), footnotes 45 and 47, refers to 476 applicants and 427 found to be eligible. The Appeals Chamber has

included a hearing on 11 and 13 October 2016²¹ while on 13 July 2017, the Trial Chamber instructed the parties to provide it ‘with an estimate of the current monetary value of the harms alleged by the direct and indirect victims, and to explain the methodology behind that estimate’.²² It requested that they provide it with ‘an estimate of the total number of direct and indirect victims, along with an explanation of the methodology behind that estimate’.²³ Submissions on this issue were received on 8 and 29 September 2017.²⁴

6. On 15 December 2017, the Trial Chamber issued the first version of the Impugned Decision, with the corrected version issued on 21 December 2017. The Impugned Decision contained three annexes. The Trial Chamber held Mr Lubanga liable for reparations to the sum of USD 10,000,000 ‘which consists of his liability in respect of the 425 victims in the sample, amounting to USD 3,400,000, and his liability in respect of any other victims who may be identified, amounting to USD 6,600,000’; in respect of the latter, it found that the ‘425 victims are only a sample of the potentially eligible victims and that hundreds and possibly thousands more victims suffered harm as a consequence of the crimes of which Mr Lubanga was convicted’.²⁵ Mr Lubanga was determined to be indigent at the time of the decision.²⁶ The Trial Chamber directed the TFV to file ‘submissions on the possibility of continuing to seek and identify victims with the assistance of the OPCV and the Legal Representatives of V01 and V02 Victims’ and stated that it would ‘[decide] in due course as to how the implementation of collective reparations is subsequently to proceed’.²⁷

referred to the total number of applicants as 473, and the total number found to be eligible as 425, throughout the judgment.

²¹ [‘Order on the conduct of the hearing to be held on 11 and 13 October 2016’](#), 6 October 2016, ICC-01/04-01/06-3245-tENG, pp. 6-8.

²² [Order on Submissions on Evidence](#), para. 10 (footnotes omitted).

²³ [Order on Submissions on Evidence](#), para. 11.

²⁴ [OPCV’s Submissions on Evidence](#); [Victims V01’s Submissions on Evidence](#); [Victims V02’s Submissions on Evidence](#); [Mr Lubanga’s Submissions on Evidence](#).

²⁵ [Impugned Decision](#), p. 111.

²⁶ [Impugned Decision](#), p. 111.

²⁷ [Impugned Decision](#), p. 112.

II. PROCEEDINGS BEFORE THE APPEALS CHAMBER

7. On 15 January 2018, Victims V01 and Mr Lubanga filed notices of appeal against the Impugned Decision.²⁸ Mr Lubanga filed his appeal brief on 15 March 2018²⁹ and Victims V01 filed their appeal brief on 19 March 2018.³⁰

8. On 9 May 2018, Victims V02 filed a consolidated response to both appeals.³¹ On 15 May 2018, Victims V01 filed their response to Mr Lubanga's appeal.³² On 18 May 2018, Mr Lubanga filed his response to Victims V01's appeal³³ and, on the same day, the OPCV filed a consolidated response to both appeals.³⁴

9. On 17 August 2018³⁵ and 20 August 2018,³⁶ Mr Lubanga and Victims V01 filed their respective replies to the responses to the appeal briefs, after the Appeals Chamber had granted³⁷ their requests³⁸ to do so.

10. On 21 September 2018, the Appeals Chamber scheduled a hearing on the appeals for 17 October 2018 and stated that the TFV could submit written observations on issues arising from the appeals by 11 October 2019, with responses thereto to be heard during the hearing.³⁹

²⁸ [Notice of Appeal against Trial Chamber II's "Décision fixant le montant des réparations auxquelles Thomas Lubanga est tenu" of 15 December 2017](#), dated 15 January 2018 and registered on 16 January 2018, ICC-01/04-01/06-3387-tENG; [Notice of Appeal by the Defence for Mr Thomas Lubanga Dyilo against the "Décision fixant le montant des réparations auxquelles Thomas Lubanga est tenu" Handed Down by Trial Chamber II on 15 December 2017 and Amended by way of the Decisions of 20 and 21 December 2017](#), dated 15 January 2018 and registered on 16 January 2018, ICC-01/04-01/06-3388-tENG.

²⁹ [Mr Lubanga's Appeal Brief](#).

³⁰ [Victims V01's Appeal Brief](#).

³¹ [Victims V02's Consolidated Response to the Appeal Briefs](#).

³² [Victims V01's Response to Mr Lubanga's Appeal](#).

³³ [Mr Lubanga's Response to Victims V01's Appeal](#).

³⁴ [OPCV's Consolidated Response to the Appeal Briefs](#).

³⁵ [Mr Lubanga's Reply](#).

³⁶ [Victims V01's Reply](#).

³⁷ [Decision on requests for leave to reply](#), 26 July 2018, ICC-01/04-01/06-3412, p. 3.

³⁸ [Application for Leave to Reply to the "Consolidated Response to the Appeal Briefs of the Defence and the Legal Representatives of V01 Victims against the Trial Chamber II Decision of 15 December 2017" filed on 18 May 2018 by the Office of Public Counsel for Victims](#), 22 May 2018, ICC-01/04-01/06-3408-tENG, reclassified as public on 20 August 2018; [Defence Application for Leave to File a Consolidated Reply to the Responses of the Legal Representatives of the V01 Group of Victims and the Office of Public Counsel for Victims Respectively Filed on 15 and 18 May 2018](#), 24 May 2018, ICC-01/04-01/06-3410-tENG, reclassified as public on 5 October 2018.

³⁹ [Scheduling order for a hearing before the Appeals Chamber and invitation to the Trust Fund for Victims to submit observations](#), 21 September 2018, ICC-01/04-01/06-3419, para. 3.

11. On 5 October 2018, the Appeals Chamber invited requests for leave to submit observations under rule 103 of the Rules.⁴⁰ No such requests were filed within the time limit set.

12. On 15 November 2018, following the Appeals Chamber's decision⁴¹ granting the TFV's request⁴² for an extension of time, the TFV filed its observations.⁴³

13. Having issued an order postponing the oral hearing to December 2018,⁴⁴ the Appeals Chamber, on 6 November 2018, issued another scheduling order setting out, *inter alia*, questions for the parties and the TFV, and fixing the hearing for 11 and 12 December 2018.⁴⁵ The hearing was again postponed⁴⁶ and a subsequent order fixed it for 7 and 8 February 2019.⁴⁷ Victims V01 filed a request to reschedule this hearing⁴⁸ and the Appeals Chamber, on 2 January 2019, cancelled the hearing and ordered the filing of written submissions on the issues identified in the Scheduling Order of 6 November 2018 and including any responses to the TFV's Submissions, by 31 January 2019.⁴⁹ On 30 and 31 January 2019, the parties filed their submissions.⁵⁰

⁴⁰ [‘Order on observations pursuant to rule 103 of the Rules of Procedure and Evidence’](#), 5 October 2018, ICC-01/04-01/06-3424, p. 3.

⁴¹ [‘Decision on Trust Fund for Victims’ request for time extension’](#), 10 October 2018, ICC-01/04-01/06-3428, p. 3.

⁴² [‘Request for an Extension of Time’](#), dated 9 October 2018 and registered on 10 October 2018, ICC-01/04-01/06-3426, paras 1, 5.

⁴³ [TFV’s Submissions](#).

⁴⁴ [‘Order regarding the hearing scheduled by the Appeals Chamber’](#), 4 October 2018, ICC-01/04-01/06-3423, p. 3.

⁴⁵ [Scheduling Order of 6 November 2018](#), p. 3.

⁴⁶ [‘Order regarding the hearing scheduled for 11 and 12 December 2018’](#), 5 December 2018, ICC-01/04-01/06-3431, p. 3.

⁴⁷ [‘Scheduling order for a hearing before the Appeals Chamber’](#), 20 December 2018, ICC-01/04-01/06-3433, p. 3.

⁴⁸ [‘Demande des Représentants légaux des victimes de reconsidérer le « Scheduling order for hearing before the Appeals Chamber », ICC-01/04-01/06-3433 A7 A8’](#), dated 26 December 2018 and registered on 27 December 2018, ICC-01/04-01/06-3434-Red, para. 6. A public redacted version was registered on 4 January 2019.

⁴⁹ [Order on Conduct of Proceedings](#), p. 3.

⁵⁰ [Victims V01’s Submissions Following the Appeals Chamber’s Questions; Mr Lubanga’s Submissions Following the Appeals Chamber’s Questions; Victims V02’s Submissions Following the Appeals Chamber’s Questions; OPCV’s Submissions Following the Appeals Chamber’s Questions](#).

14. On 20 March 2019, Mr Lubanga filed a request⁵¹ for suspension of the Trial Chamber's Decision of 7 February 2019. On 25, 26 and 27 March 2019, Victims V01,⁵² the OPCV⁵³ and Victims V02⁵⁴, respectively, responded to that request.

15. On 28 June 2019, the Appeals Chamber issued a scheduling order for delivery of the judgment on the appeals.

⁵¹ [Request to Suspend the Decision of 7 February 2019](#).

⁵² [Response of the Legal Representatives of V01 Victims to the Defence Application for Suspension of the "Décision approuvant les propositions du Fonds au profit des victimes portant sur la procédure visant à localiser et décider de l'admissibilité aux réparations des nouveaux demandeurs" Issued on 7 February 2019](#), 25 March 2019, ICC-01/04-01/06-3448-Red, a public redacted version was registered on 1 July 2019.

⁵³ [OPCV Response to the "Requête de la Défense aux fins de suspension de la « Décision approuvant les propositions du Fonds au profit des victimes portant sur la procédure visant à localiser et décider de l'admissibilité aux réparations des nouveaux demandeurs » rendue le 7 février 2019 par la Chambre de première instance II"](#), 26 March 2019, ICC-01/04-01/06-3449-Red, a public redacted version was registered on 1 July 2019.

⁵⁴ [Corrected version of Response of the Legal Representatives of the V02 Group of Victims to the Defence Application for Suspension of the "Décision approuvant les propositions du Fonds au profit des victimes portant sur la procédure visant à localiser et décider de l'admissibilité aux réparations des nouveaux demandeurs" Issued on 7 February 2019 by Trial Chamber II \(ICC-01/04-01/06-3447-Conf\) \(ICC-01/04-01/06-3450-Conf\)](#), 27 March 2019, ICC-01/04-01/06-3450-Corr-tENG.