

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **26 March 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***

***Confidential ex parte***

**Only available to the Legal Representatives of Victims V01 and V02, the Office of Public Counsel for Victims, the Victims Participation and Reparations Section, the Victims and Witnesses Unit, and the Trust Fund for Victims**

**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**

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

**The Office of the Prosecutor**

**Counsel for the Defence**

**Legal Representatives of Victims V01**

Mr Luc Walley  
Mr Franck Mulenda

**Legal Representatives of Applicants**

**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**

Mr Nigel Verrill

**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 regulation 35(2) of the Regulations of the Court (‘Regulations’), issues this Decision on the submissions by the Legal Representatives 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 (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, in its prior composition, issued a decision approving the process for locating new applicants and determining their eligibility for reparations.<sup>2</sup> The Chamber directed 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 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> As to the cut-off date by which persons wishing to apply for reparations must make themselves known in order to be considered for reparations, the Chamber set ‘31 December of the year which follows the issuance of the Appeal Chamber’s judgment on the appeals brought against the Decision of 15 December 2017’.<sup>5</sup>

3. On 8 November 2019, the Chamber, in its prior composition, issued an order in which it, *inter alia*, (i) clarified that the cut-off date ‘for forwarding applications for reparations to

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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” (‘Decision on the Size of the Reparations Award’), 21 December 2017, ICC-01/04-01/06-3379-Conf-Corr-tENG, 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, ICC-01/04-01/06-3440-Conf-tENG.

<sup>3</sup> Decision on New Applicants, ICC-01/04-01/06-3440-Conf-tENG, para. 21.

<sup>4</sup> Decision on New Applicants, ICC-01/04-01/06-3440-Conf-tENG, paras 29-30.

<sup>5</sup> Decision on New Applicants, ICC-01/04-01/06-3440-Conf-tENG, para. 42.

VPRS' was 31 December 2020; and (ii) ordered that the last complete applications for reparations be forwarded to the VPRS no later than 31 December 2020.<sup>6</sup>

4. On 14 December 2020, the Chamber, in its prior composition, issued a decision on the TFV's request for an extension of the 31 December 2020 deadline, submitted in light of the travel restrictions imposed by the COVID-19 pandemic that have prevented the TFV and the LRVs to conduct field activities to identify new potential beneficiaries of reparations.<sup>7</sup> Accordingly, the Chamber extended the deadline for the TFV to transmit the applications to the VPRS to 31 March 2021.<sup>8</sup>

5. On 3 February 2021, the Legal Representative for Victims V01 ('LRV01') submitted a response to the TFV's Twelfth Report of the Trust Fund for Victims on the implementation of collective reparations (the 'Submission'), in which, *inter alia*, it suggests that the extension of the cut-off date for the submissions of applications for reparations remains open.<sup>9</sup>

6. On 19 February 2021, the Chamber, in its previous composition, issued an order directing the TFV, the Legal Representative for Victims V02 ('LRV02'), the Victims and Witnesses Unit ('VWU'), and the OPCV to submit observations on the Submission.<sup>10</sup>

7. On 5 March 2021, the TFV, the LRV01, the LRV02, the VWU, and the OPCV submitted their observations on the Submission ('Joint Observations'),<sup>11</sup> supporting the suggested extension of the cut-off date, noting that it would be indeed impossible to ensure the transmission of the dossiers of all identified victims by the deadline of 31 March 2021.<sup>12</sup>

## II. SUBMISSIONS

8. In the Submission, the LRV01 refers to the difficulties, in terms of the security situation in Ituri and the restrictions and consequent challenges imposed by the COVID-19 pandemic,

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<sup>6</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, p. 7.

<sup>7</sup> Décision sur la requête du Fonds au profit des victimes du 21 octobre 2020 ('Decision on Extension'), 14 December 2020, ICC-01/04-01/06-3496-Conf-Exp, paras 11-14.

<sup>8</sup> Decision on Extension, ICC-01/04-01/06-3496-Conf-Exp, para. 18.

<sup>9</sup> Réponse au Douzième rapport du Fonds au profit des victimes sur la mise en oeuvre des réparations collectives (ICC-01/04-01/06-3497) avec annexes du 21 janvier 2021 ('Submission'), 3 February 2021, ICC-01/04-01/06-3500-Conf-Exp.

<sup>10</sup> Ordonnance relative à la décision du 14 décembre 2020 et au douzième rapport du Fonds au profit des victimes sur la mise en oeuvre des réparations, 19 February 2021, ICC-01/04-01/06-3501-Conf-Exp, p. 9.

<sup>11</sup> Observations conjointes sur l'état d'avancement des échanges concernant le besoin de soutien psychologique pour certaines victimes lors des entretiens menés à distance ainsi que le délai aux fins de déposer les demandes en réparation et les propositions des Représentants légaux V01 ('Joint Observations'), 5 March 2021, ICC-01/04-01/06-3505-Conf-Exp.

<sup>12</sup> Joint Observations, ICC-01/04-01/06-3505-Conf-Exp, paras 25-30.

that have delayed the process of identification and completion of dossiers of potential beneficiaries of reparations. In particular, regarding direct victims, the LRV01 notes that, although it had planned to collect 150 victims' dossiers in Bunia in a mission conducted in December 2020, the mission started four days later than expected and it was only able to collect 65 dossiers, the remaining were in the process of being completed. However, the LRV01 notes that there are at least 300 more potential direct beneficiaries residing in Bunia, who have been pre-identified by the assistants in the field, whose dossiers still needed to be completed. In addition, the LRV01 indicates that there are at least other 300 pre-identified direct victims residing outside Bunia, for which it has not been possible to prepare dossiers yet, in light of the volatile security situation in Ituri.<sup>13</sup>

9. Regarding indirect victims, the LRV01 indicates that, in most cases, these victims would come forward only after a first contact with the direct victim has been established, and reiterates that contacts have been limited by the sanitary restrictions. It further notes that, although 67 dossiers have been already transmitted, based on the information obtained from the direct victims, the LRV01 estimates that there might be still between 700 and 1,000 potential indirect victims to be contacted. The LRV01 notes that, in light of the extension previously granted by the Chamber, it has focused on collecting dossiers of direct victims only, taking into account as well that the programs for indirect victims were not planned to commence at the same time that those for direct victims.<sup>14</sup>

10. Consequently, in order to avoid discrimination between the victims located in Bunia and those residing outside the city and between direct and indirect victims, the LRV01 respectfully suggests the Chamber (i) that the extension of the cut-off date to submit the victims' dossiers remains open, until the security and sanitary situation would allow the LRVs' teams to meet with the direct and indirect victims already identified; (ii) that new victims could join programs already in progress; (iii) that indirect victims would be allowed to submit a request for reparations up to six months after the recognition by the Chamber of a family member as a direct victim, or up to six months after the expiration of the deadline imposed on the direct victims; and (iv) that it is considered that an indirect victim has complied with the deadline, as long as the LRVs confirms that the person has been previously identified and the

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<sup>13</sup> Submission, ICC-01/04-01/06-3500-Conf-Exp, paras 5-11.

<sup>14</sup> Submission, ICC-01/04-01/06-3500-Conf-Exp, paras 12-17.

LRVs' teams have not been able to collect the dossier for reasons independent from the victims' will.<sup>15</sup>

11. In addition, the LRV01 highlights the need for urgent psychological assistance in the field, reiterating a request for the VWU to provide psychological assistance to the victims during and after the interviews. According to the LRV01, due to their vulnerability, recounting their traumatic experiences either during face-to-face or online interviews is exhausting for certain victims, who have exhibited behavioural problems and anxiety attacks during interviews and run the risk of depression.<sup>16</sup>

12. In their Joint Observations, the TFV, the LRV01, the LRV02, the VWU, and the OPCV, supported the suggested postponement of the 31 March 2021 cut-off date, in light of the number of victims for which dossiers still need to be completed, the security situation, the logistical difficulties to get to Bunia, and the format of the meetings they have been able to conduct (online).<sup>17</sup> Regarding the number of victims whose dossiers are yet to be compiled, the Chamber notes that in the Joint Observations it is indicated that: the OPCV expects to meet with approximately 20 new applicants by the end of March 2021; the LRV02 plans to meet with more than 400 victims, most of which reside outside Bunia; and the LRV01 expects to meet with more than 500 direct victims and between 700 to 1,000 indirect victims.<sup>18</sup>

13. Regarding the issue of psychological assistance in the field to assist victims during and after the interviews, the signatories of the Joint Observations elaborate on their exchange and the solutions they have agreed on to address the issue.<sup>19</sup> Specifically, for the interviews conducted between January and February 2021, the TFV ensured the physical presence of a person in the room where the interviews took place, with the help of an interpreter.<sup>20</sup> For the interviews conducted in March 2021, the TFV selected, with the assistance of the VWU, a psychologist from Bunia who would be present and ready to intervene if necessary.<sup>21</sup> For the future, it was agreed that the TFV would discuss with its implementing partner the possibility of working with the psychologists involved in the psychological support activities of the service-based collective reparations.<sup>22</sup>

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<sup>15</sup> Submission, ICC-01/04-01/06-3500-Conf-Exp, para. 18.

<sup>16</sup> Submission, ICC-01/04-01/06-3500-Conf-Exp, paras 19-21.

<sup>17</sup> Joint Observations, ICC-01/04-01/06-3505-Conf-Exp, paras 25-30.

<sup>18</sup> Joint Observations, ICC-01/04-01/06-3505-Conf-Exp, para. 26.

<sup>19</sup> Joint Observations, ICC-01/04-01/06-3505-Conf-Exp, paras 3-4, 15-24.

<sup>20</sup> Joint Observations, ICC-01/04-01/06-3505-Conf-Exp, para. 17.

<sup>21</sup> Joint Observations, ICC-01/04-01/06-3505-Conf-Exp, paras 18-21.

<sup>22</sup> Joint Observations, ICC-01/04-01/06-3505-Conf-Exp, paras 20, 24.

### III. ANALYSIS

14. The Chamber notes the difficulties encountered by the TFV, LRVs, and OPCV in identifying new potential beneficiaries of reparations and submitting their dossiers to the VPRS by the established deadline of 31 March 2021, in light of the recent challenges imposed by the security situation in Ituri and the COVID-19 pandemic. In addition, the Chamber notes the large number of victims whose dossiers are yet to be compiled, according to the information provided in the Joint Observations.

15. At the same time, the Chamber recalls that the process of locating and identifying victims potentially eligible to benefit from reparations by the TFV, with the assistance of the LRVs and OPCV, was established at least since early 2016.<sup>23</sup> In addition, the Chamber notes that it has already asserted that the identification process must not continue indefinitely, as the reparation programmes it has approved are time-bound.<sup>24</sup> The Chamber further recalls that the final deadline for submitting applications was already extended once,<sup>25</sup> for reasons similar to those invoked in the Submission and in the Joint Observations.

16. The Chamber notes that, according to the first sentence of regulation 35(2) of the Regulations, a Chamber may extend a time limit if good cause is shown. In the instant case, in light of the reasons advanced by the LRV01, the TFV, the LRV02, the VWU, and the OPCV, the Chamber considers that there is a good cause to extend the time limit for submitting the last complete applications for reparations to the VPRS.

17. As to the length of the extension, the Chamber notes the principle whereby reparations must be prompt,<sup>26</sup> which requires the reparations process, including the implementation stage, to be as expeditious as possible, especially when a considerable number of years have elapsed since the commission of the crime(s).<sup>27</sup> In light of the above, balancing the various interests at stake, the Chamber considers it reasonable to extend the cut-off date for the TFV, with the assistance of the LRVs and OPCV, to finalise and collect the dossiers of potentially eligible

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<sup>23</sup> See, *inter alia*, Order instructing the Trust Fund for Victims to supplement the draft implementation plan, 9 February 2016, ICC-01/04-01/06-3198-tENG, paras 15-16.

<sup>24</sup> Decision on New Applicants, ICC-01/04-01/06-3440-Conf-tENG, para. 41.

<sup>25</sup> Decision on Extension, ICC-01/04-01/06-3496-Conf-Exp, paras 11-14.

<sup>26</sup> Annex A, Order for Reparations (amended) ('Order for Reparations'), 3 March 2015, [ICC-01/04-01/06-3129-AnxA](#), para. 44.

<sup>27</sup> Appeals Chamber, *Prosecutor v. Germain Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", 8 March 2018, [ICC-01/04-01/07-3778-Red](#), para. 64; Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Reparations Order ('Ntaganda Reparations Order'), 8 March 2021, [ICC-01/04-02/06-2659](#), para. 89.

direct and indirect victims, residing both within and outside of Bunia, and submit them to the VPRS on a rolling basis, for an additional and final six-month period.

18. The Chamber further notes the principle of publicity of the reparation proceedings,<sup>28</sup> and the importance to have the present decision as well as the underlying submissions and observations on the public record. It therefore directs the TFV, the LRVs, the OPCV, and the VPRS, by 10 April 2021 at the latest, to file public redacted versions of their underlying filings and to submit observations to the Chamber as to the appropriateness of making the final cut-off date for the transmissions of applications public, in order to encourage that as many victims as possible come forward before the final deadline.

19. As to the need for psychological assistance for the victims during interviews, the Chamber commends the proactive approach of all involved parties to find a suitable solution, both on the short and the longer term. Having regard to the 'do no harm' principle,<sup>29</sup> the Chamber endorses the TFV's initiative to liaise with its implementing partner with the view of engaging the psychologists involved in the psychological support activities of the service-based collective reparations as early as possible during their interaction with victims, including during the victim identification and eligibility screening and especially during the interviews involving recounting traumatic experiences.<sup>30</sup>

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<sup>28</sup> Order for Reparations, [ICC-01/04-01/06-3129-AnxA](#), para. 51.

<sup>29</sup> Observations on Reparations in Response to the Scheduling Order of 14 March 2012, [ICC-01/04-01/06-2872](#), 25 April 2012, paras 65-68; Ntaganda Reparations Order, [ICC-01/04-02/06-2659](#), paras 50-52.

<sup>30</sup> Réponse au Douzième rapport du Fonds, ICC-01/04-01/06-3500-Conf-Exp, para. 19.

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

**SETS** the cut-off date for the submissions of the last complete dossiers for reparations to VPRS on 1 October 2021;

**DIRECTS** the LRVs, the TFV, the OPCV, and the VPRS to file public redacted versions of their underlying filings and to submit observations to the Chamber as to the appropriateness of making the final cut-off date for the transmissions of applications public, by 10 April 2021, at the latest; and

**ENDORSES** the TFV's initiative to liaise with its implementing partner with the view of engaging the psychologists involved in the psychological support activities of the service-based collective reparations as early as possible during their interaction with victims.

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 Friday, 26 March 2021

At The Hague, The Netherlands