

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **French**

No.: ICC-01/04-01/06  
Date: **11 September 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**

**Second Decision on the Administrative Decisions of the Trust Fund for Victims  
Regarding New Applications for Reparations**

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

**Office of the Prosecutor**

**Counsel for Thomas Lubanga Dyilo**

Ms Catherine Mabilile

Mr Jean-Marie Biju-Duval

**Legal Representatives of V01 Victims**

Mr Luc Walleyen

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**

**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, issues the following decision.

## **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").<sup>1</sup> 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.<sup>2</sup> The Chamber was satisfied that 425 of those 473 persons had shown on a balance of probabilities that they had suffered harm as a result of the crimes of which Mr Lubanga was convicted.<sup>3</sup> Accordingly, the Chamber determined that they were entitled to the collective reparations ordered by the Chamber 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 were also affected by his crimes<sup>5</sup> ("New Applicants"). The Chamber therefore directed the Trust Fund for Victims ("Trust Fund") to file observations 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 ("Legal Representatives of V01 victims") and V02 groups of victims before the implementing partners were selected and the Chamber approved the second phase of the implementation of the collective reparations.<sup>6</sup> The Chamber also stated

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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.

<sup>6</sup> Decision of 15 December 2017, para. 296, p. 114.

that it would be for the Trust Fund to screen new applicants for eligibility at the implementation stage of the reparations.<sup>7</sup>

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 ("Decision of 7 February 2019").<sup>8</sup> 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,<sup>9</sup> adding, however, that it would only be upon a final decision of the Chamber that the New Applicants would become beneficiaries of the reparations.<sup>10</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>11</sup> The Appeals Chamber confirmed the impugned decision subject to one amendment, namely that the victims whom the Trial Chamber found ineligible to receive reparations, and who considered that their failure to sufficiently substantiate their allegations, including by supporting documentation, resulted from insufficient notice of the requirements for eligibility, would be able to seek a new assessment of their eligibility by the Trust Fund, together with other victims who may come forward in the course of the implementation stage.<sup>12</sup>

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

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<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. A public redacted version of that decision was filed on 4 March 2019.

<sup>9</sup> Decision of 7 February 2019, paras 16, 19, 29.

<sup>10</sup> Decision of 7 February 2019, paras 30, 47.

<sup>11</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 ("Judgment of 18 July 2019"), with two public annexes. A public version of the Judgment was filed the same day.

<sup>12</sup> Judgment of 18 July 2019, para. 332.

complete applications for reparations be forwarded to VPRS no later than 31 December 2020.<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup>

7. On 30 April 2020, the Chamber ordered the Trust Fund and the VPRS to allow the Chamber access to the complete files of 271 New Applicants to assist it in assessing the information presented by the Trust Fund with a view to making a final decision on the eligibility for reparations of the New Applicants.<sup>16</sup>

8. On 20 May 2020, the Chamber approved the administrative decisions of the Board of Directors on 271 new applications for reparations<sup>17</sup> ("Decision of 20 May 2020").

9. On 21 July 2020, on behalf of the Board of Directors, the Trust Fund submitted administrative decisions on 162 new applications for reparations to the Chamber for approval.<sup>18</sup>

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<sup>13</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>14</sup> "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 annex *ex parte* (ICC-01/04-01/06-3473-Conf-Exp-Anx).

<sup>15</sup> "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, with 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, ICC-01/04-01/06-3474-Conf-Exp-AnxD.

<sup>16</sup> "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.

<sup>17</sup> "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.

## II. Analysis

### **A. Preliminary consideration: the exact number of applications for reparations approved by the Decision of 20 May 2020**

10. The Chamber recalls that in the Decision of 20 May 2020 it confirmed the Board of Directors' administrative decisions on 271 new applications for reparations. The Chamber notes that after the decision was issued, the Trust Fund noticed that the number of decisions transmitted to the Chamber on 25 February and 21 April 2020 was 272 rather than the 271 mentioned in its earlier filings.

11. The Chamber considers that the error relating to the number of administrative decisions that the Chamber considered in the Decision of 20 May 2020 does not affect its conclusions as the Chamber's Decision confirmed all administrative decisions that the Trust Fund had submitted up to that date. The Chamber considers, however, that the Decision must be amended to reflect the exact number of newly admitted applicants to be entered into the record of the case.

12. The Chamber therefore amends the Decision of 20 May 2020 in that it considers that 272 New Applicants have shown on a balance of probabilities that they have 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 this case.

### **B. The Chamber's determination on the Board of Directors' new administrative decisions**

13. The Chamber is currently in possession of 162 new administrative decisions that the Trust Fund, acting on behalf of the Board of Directors, submitted on 21 July 2020 for its approval.

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<sup>18</sup> Annex A to the "Dixième 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 July 2020, ICC-01/04-01/06-3478-Conf-Exp-AnxA.

14. The Chamber notes that the 162 new applications for reparations were, like the applications which were the subject of the Decision of 20 May 2020, produced by the Trust Fund with the assistance of the Legal Representatives of Victims;<sup>19</sup> the VPRS made an initial assessment of the applications;<sup>20</sup> and the Trust Fund applied the methodology used to verify the 473 sample applications for reparations established by the Chamber in the Decision of 15 December 2017.<sup>21</sup> The Chamber also notes that, according to the Board of Directors, the 162 new applications for reparations meet all the eligibility criteria for the purposes of reparations.

15. Apart from the matters referred to below, the Chamber identified nothing that could call into question the Trust Fund's assessment of the applications for reparations made with the assistance of the Legal Representatives of Victims and the VPRS, or the conclusions reached by the Board of Directors.

*1. Minor inaccuracies*

16. Upon examination of the information presented by the Trust Fund, and upon its own examination of some of the applications for reparation, the Chamber noted minor inaccuracies which, in its view, do not affect the applicants' eligibility for reparations: some applicants' names were spelled slightly differently on the reparations application form and on the copy of the identification document.<sup>22</sup>

*2. Applicant a/30103/20: no identification document*

17. The Chamber notes that no identification document was attached to Application a/30103/20. Noting that, in order to make a claim for reparations, applicants must be

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<sup>19</sup> ICC-01/04-01/06-3478-Conf-Exp-AnxB (OPCV); ICC-01/04-01/06-3478-Conf-Exp-AnxC (Representative of V01 victims).

<sup>20</sup> "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 [...]" dated 19 July 2019 and public redacted version filed on 14 August 2019 ("Sixth Report of the Trust Fund"), ICC-01/04-01/06-3467-AnxA-Red as well as annexes I, K and L to Sixth Report of the Trust Fund (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).

<sup>21</sup> Annex E to the Sixth Report of the Trust Fund (ICC-01/04-01/06-3467-Conf-Exp-AnxE).

<sup>22</sup> See for example, Applications a/30291/19; a/30019/20; a/30045/20; a/30017/20; a/30024/20; a/30061/20; and a/30067/20.



able to establish their identity,<sup>23</sup> and that the age of the victim is a key factor in determining child-soldier status within the meaning of the Rome Statute,<sup>24</sup> the Chamber is not in a position to confirm the Board of Directors' administrative decision concerning Applicant a/30103/20. The Trust Fund is therefore requested to explain to the Chamber why no identification document has been provided or, in the event of an omission,<sup>25</sup> to complete the Application in respect of a/30103/20, to re-submit it for assessment by the Board of Directors, and to submit the new administrative decision made by the Board of Directors to the Chamber for approval.<sup>26</sup>

3. *Different dates of birth on the application form and on the copy of the identification document*

18. The Chamber noted that, in the case of some applicants, the date of birth on the form and the date of birth on the copy of the identification document are different. In some cases, the discrepancy was a matter of days or a matter of months.<sup>27</sup> In the case of a/30005/20, while the Chamber notes that the discrepancy between the two dates provided is greater, it considers that the applicant's explanation for the difference is reasonable. In any event, the Chamber notes that in none of the cases does the discrepancy found affect the eligibility criteria set out in the Chamber's Decision of 15 December 2017: the different dates of birth provided establish on a balance of probabilities that the victims were in any case under the age of 15 years when they were enlisted or conscripted into the armed wing of the *Union des patriotes congolais/Forces Patriotiques pour la libération du Congo* [Union of Congolese Patriots /Patriotic Forces for the Liberation of the Congo] ("UPC/FPLC") or when

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<sup>23</sup> Decision of 15 December 2017, para. 65.

<sup>24</sup> Decision of 15 December 2017, paras 78, 84-88. The Chamber notes that a flexible approach was adopted. It allows the presentation of a range of documents for the purpose of establishing, to the requisite standard, proof of identity and the date of birth of the victim concerned (Decision of 15 December 2017, paras 74, 83).

<sup>25</sup> The Chamber notes that on page 9 of the Application Form for Reparations, the type of identification document, a "voter's card", is listed as a supporting document attached to the form.

<sup>26</sup> In view of this omission, the Chamber examined all the applications for reparations submitted for its approval on 21 July 2020 to make sure that the said applications, which form the basis of the Board of Directors' administrative decisions, were complete.

<sup>27</sup> a/30019/20; a/30045/20; a/30048/20; a/30048/20; a/30104/20; a/30064/20.



Mr Lubanga used them to participate actively in hostilities in a non-international armed conflict between 1 September 2002 and 13 August 2003 ("Material Period").

4. *Applicants a/30314/19 and a/30077/20: the dates of birth on the copies of the identification documents are illegible*

19. The Chamber is unable to read the dates of birth on the copies of the identification documents provided in support of Applications a/30314/19 and a/30077/20. The Chamber recalls that, in the Decision of 20 May 2020, it drew the Trust Fund's attention to the need to ensure the quality of the documents or copies of documents collected and attached to the new applications for reparations.<sup>28</sup> The Chamber therefore considers it appropriate to instruct the Trust Fund to submit to it legible versions of copies of the identification documents of Applicants a/30314/19 and a/30077/20 to enable the Chamber to approve the Board of Directors' administrative decision in respect of those applicants.

5. *Applicants a/30298/19 and a/30316/19: were these applicants recruited during the Material Period?*

20. The Chamber notes that Applicants a/30298/19 and a/30316/19 claim that the direct victims had been recruited by the UPC/FPLC before the Material Period, but they provide no information on when or during what period the direct victims left the group. The Chamber notes, however, that in the light of all the information provided by these applicants, such as the names of the training camps mentioned, it is more likely than not that the victims in question were still part of the UPC/FPLC during the Material Period.

6. *Applicant a/30056/20: was she conscripted into the armed wing of the UPC/FPLC?*

21. The Chamber notes the following concerning Applicant a/30056/20: she states that armed members of the UPC/FPLC arrested her and took her to two residences of a UPC/FPLC commander, not located in a military camp, to perform household

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<sup>28</sup> Decision of 20 May 2020, para. 15.

chores; she subsequently performed similar tasks in the home of another UPC/FPLC commander; she states that she was never given military training, did not transport or clean any weapon or ammunition and never entered a military camp; she states further that she was “not a soldier”. The Chamber considers that this application nonetheless meets the eligibility criteria for the purpose of reparations for the following reasons: (a) the applicant was under 15 years of age when she was conscripted by members of the UPC/FPLC and the conscription took place during the Material Period; (b) the applicant was conscripted into the armed wing of the UPC/FPLC: (i) she served, against her will, two UPC/FPLC commanders whom she names and (ii) although the residences of the two commanders were not located in a military camp and a/30056/20’s tasks were limited to household chores, the applicant did serve the UPC/FPLC in that she was working against her will for two high-ranking representatives of the group;<sup>29</sup> and (c) the harm alleged was caused by the ill-treatment she suffered while she was in the service of the UPC/FPLC.<sup>30</sup>

## 7. Conclusion

22. In the light of the foregoing, the Chamber approves all the Board of Directors’ administrative decisions on the new applications for reparations submitted on 21 July 2020 for the Chamber’s approval, with the exception of Applications a/30103/20, a/30314/19 and a/30077/20. The Chamber considers that, with the exception of Applicants a/30103/20, a/30314/19 and a/30077/20, all the New Applicants have established to the requisite standard that they suffered harm as a result of the crimes of which Mr Lubanga was convicted and must therefore be considered to qualify for the collective reparations ordered in this case.

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<sup>29</sup> The Chamber notes that the support thus provided exposed this applicant to danger by making her a potential target (see Trial Chamber I, *The Prosecutor v. Thomas Lubanga*, Judgment, dated 18 March 2012 and French version registered on 31 August 2012, ICC-01/04-01/06-2842, para. 882).

<sup>30</sup> For the eligibility criteria for the purpose of reparations, see Decision of 15 December 2017, paras 40-43, 65 and following.

**FOR THESE REASONS, the Chamber**

**AMENDS** the Decision of 20 May 2020 in so far as it considers that 272 applicants have established on a balance of probabilities that they suffered harm as a result of the crimes of which Mr Lubanga was convicted, and must therefore be considered to qualify for the collective reparations ordered in this case;

**CONSIDERS** that 159 of the 162 New Applicants have established on a balance of probabilities that they suffered harm as a result of the crimes of which Mr Lubanga was convicted;

**APPROVES** the Board of Directors' administrative decisions on all the new applications for reparations submitted on 21 July 2020 for the Chamber's approval, with the exception of Applications a/30103/20, a/30314/19 and a/30077/20; and

**DECIDES**, accordingly, that the New Applicants must be awarded the collective reparations ordered in the present case;

**INSTRUCTS** the Trust Fund to explain to the Chamber why no identification document is attached to Application a/30103/20 or, in the event that it is an omission, to complete Application a/30103/20, re-submit it for assessment by the Board of Directors, and submit the Board of Directors' new administrative decision to the Chamber for approval; and

**INSTRUCTS** the Trust Fund to submit legible versions of copies of the identification documents of Applicants a/30314/19 and a/30077/20.

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 Carbuccion**

[signed]

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**Judge Péter Kovács**

Dated this 11 September 2020,

At The Hague, Netherlands