

1 International Criminal Court  
2 Appeals Chamber - Courtroom 1  
3 Situation: Democratic Republic of the Congo  
4 In the case of The Prosecutor v. Thomas Lubanga Dyilo - ICC-01/04-01/06  
5 Presiding Judge Erkki Kourula, Judge Sang-Hyun Song,  
6 Judge Sanji Mmasenono Monageng, Judge Anita Ušacka and  
7 Judge Ekaterina Trendafilova  
8 Appeals Hearing for Delivery of a Judgment  
9 Tuesday, 3 March 2015  
10 (The hearing starts in open session at 11.28 a.m.)  
11 THE COURT USHER: All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE KOURULA: Good morning.  
15 The Court is in session.  
16 Would the court officer please call the case.  
17 THE COURT OFFICER: Good morning. Situation in the Democratic Republic of  
18 the Congo, in the case of The Prosecutor versus Thomas Lubanga Dyilo, case  
19 reference ICC-01/04-01/06.  
20 And for the record we are in open session.  
21 PRESIDING JUDGE KOURULA: Thank you very much.  
22 May I ask the parties to introduce themselves for the record, starting with the Defence  
23 of Mr Lubanga, please.  
24 MS MABILLE: (Interpretation) Mr President, Mr Lubanga's Defence is represented  
25 by Jean-Marie Biju-Duval, Maître Caroline Buteau and myself, Catherine Mabilille.

1 PRESIDING JUDGE KOURULA: (Interpretation) Thank you, madame.  
2 (Speaks English) Could I then invite the legal representatives. First of all I  
3 understand the Legal Representatives for Victims V01 are represented by the OPCV,  
4 so please go ahead.

5 MS MASSIDDA: Good morning, Mr President, your Honours. Victims in these  
6 proceedings are represented by three different legal group of legal representatives.

7 I am appearing today for the Office of Public Counsel for Victims. I am  
8 Paolina Massidda, principal counsel. Appearing with me today, Mrs Sarah Pellet,  
9 counsel, and Mr Dmytro Suprun, counsel.

10 I am also appearing today on behalf of a group of V01 by virtue of a power of  
11 attorney filed this morning in the record of the case. For the group of victims V01 is  
12 also present with me today in courtroom Ms Evelyne Ombeni, case manager.

13 Thank you.

14 PRESIDING JUDGE KOURULA: Thank you very much.

15 Duly noted.

16 And Legal Representatives of Victims group 2, please could you introduce yourself?

17 MR KETA: (Interpretation) Thank you very much, your Honour.

18 My name is Joseph Keta and I represent the V02 team and the case manager is  
19 Sylviane Glodjinon.

20 Thank you, your Honour.

21 PRESIDING JUDGE KOURULA: Thank you very much.

22 And Trust Fund for Victims? Sorry.

23 MS STUDZINSKY: Good morning, Mr President, your Honours. My name is  
24 Silke Studzinsky. I am the legal adviser and I come on behalf of the Trust Fund.

25 PRESIDING JUDGE KOURULA: Thank you very much.

1 I am Erkki Kourula, Presiding Judge in the final appeals proceedings in the case of  
2 Prosecutor versus Thomas Lubanga Dyilo. Seated directly to my right is Judge Song  
3 and then Judge Monageng and to my direct left Judge Ušacka and then next  
4 Judge Trendafilova.

5 Let me begin by saying that during today's summary I will refer to the group of  
6 victims represented by the OPCV on behalf of Monsieur Walley and  
7 Monsieur Mulenda as the Legal Representatives of Victims V01 and the other group  
8 represented by Ms Bapita and her colleagues as the "Legal Representatives for  
9 Victims V02."

10 I will refer to the Office of Public Counsel for Victims as the "OPCV" and Mr Thomas  
11 Lubanga Dyilo as "Mr Lubanga."

12 The Trust Fund for Victims will be referred as the "Trust Fund."

13 Today the Appeals Chamber is delivering its judgment on the appeals filed by  
14 Mr Lubanga, the Legal Representatives of Victims V01 and the Legal Representatives  
15 of Victims V02 jointly with the OPCV against the decision of Trial Chamber 1 entitled  
16 "Decision establishing the principles and procedures to be applied to reparations."

17 In this summary I will refer to this decision as the Impugned Decision.

18 Please note that only the written judgment is authoritative. It will be notified to the  
19 parties shortly after this hearing.

20 On 7 August 2012 Trial Chamber I delivered the Impugned Decision. Four appeals  
21 against the Impugned Decision were filed, three pursuant to Article 82(4) of the  
22 Statute and one pursuant to Article 82(1)(d) of the Statute.

23 On 14 December 2012 the Appeals Chamber rendered its decision on the admissibility  
24 of the appeals. The Appeals Chamber concluded that the appeals filed pursuant to  
25 Article 82(4) of the Statute were admissible, whereas the appeal filed pursuant to

1 Article 82(1)(d) of the Statute was inadmissible.

2 In that same decision the Appeals Chamber granted the request for suspensive effect  
3 of the Impugned Decision partly due to the fact that Mr Lubanga's appeal against his  
4 conviction was still pending at the time.

5 On 5 February 2013 Mr Lubanga, the Legal Representatives of Victims V01 and the  
6 Legal Representatives of Victims V02 jointly with the OPCV submitted their  
7 respective documents in support of their appeals against the Impugned Decision.  
8 Responses to the documents in support of the appeals were filed by the parties on 7  
9 and 8 April 2013.

10 On 8 April 2013, the same year, the Trust Fund, having been invited by the Appeals  
11 Chamber filed observations on the appeals.

12 Last year on 1 December 2014 the Appeals Chamber confirmed the conviction  
13 decision and sentencing decision in the Lubanga case, Judge Ušacka dissenting and  
14 Judge Song partly dissenting both decisions.

15 The Legal Representatives of Victims V01, the OPCV jointly with the Legal  
16 Representatives of Victims V02 and Mr Lubanga allege that the Impugned Decision is  
17 tainted by various errors.

18 The Appeals Chamber recalls that in the admissibility decision it held that for the  
19 purposes of admissibility and without prejudice to a decision on the merits the  
20 Impugned Decision could be appealed as an order for reparations under Article 75 of  
21 the Statute.

22 The Appeals Chamber did not find in that decision that the Impugned Decision was  
23 an order for reparations under Article of the Statute based on its content and  
24 substance.

25 In this respect, while the Court's legal texts do not provide a definition as such of an

1 "order for reparations," the Appeals Chamber considers that when read together the  
2 Court's legal texts provide a clear framework as to the minimum elements required  
3 for a decision to be an order for reparations pursuant to Article 75 of the Statute.

4 The Appeals Chamber considers that these elements, which I will elaborate upon  
5 shortly, are not only vital to the proper implementation of the order, but also ensure  
6 that in all cases when reparations are awarded the Court shall respect the rights of the  
7 victims and the convicted person as provided for in Rule 97(3) of the Rules of  
8 Procedure and Evidence.

9 The Appeals Chamber has previewed the Impugned Decision in order to determine  
10 whether in its content and substance it contains an order for reparations within the  
11 meaning of Article 75 in light of the five minimum required elements.

12 The Appeals Chamber recalls that Rule 153(1) provides that the Appeals Chamber  
13 may confirm, reverse and amend a reparations order made under Article 75.

14 Having reviewed the Impugned Decision, the Appeals Chamber considers that its  
15 content and substance do not comply with the required minimum elements of an  
16 order for reparations. However, in the view of the Appeals Chamber, these  
17 deficiencies can be corrected pursuant to its amendment power under Article 153(1).

18 Accordingly, the Appeals Chamber holds that the Impugned Decision contains  
19 sufficient elements to be an order for reparations within the meaning of Article 75 of  
20 the Statute subject to the amendments detailed in the judgment that will soon be  
21 notified.

22 I will now briefly address each element. Within each element, I will also address the  
23 grounds of appeal raised by the parties.

24 The first required element of an order for reparations under the Statute is that it must  
25 be directly against the convicted person. The Appeals Chamber considers that the

1 Trial Chamber erred in interpreting the words "through the Trust Fund" as replacing,  
2 and I quote, "against the convicted person", unquote.

3 The Appeals Chamber now holds that an order for reparations must always be  
4 against the convicted person and may, in addition, be made through the Trust Fund.

5 The Appeals Chamber accordingly amends the Impugned Decision so that the order  
6 for reparations is against Mr Lubanga.

7 As a result of this amendment, the different standards of causation and proof  
8 established by the Trial Chamber, depending on whether the order was made against  
9 Mr Lubanga or through the Trust Fund, are also amended by removing the standards  
10 the Trial Chamber established for orders for reparations made solely "through the  
11 Trust Fund."

12 Further, having amended the order so that it is against Mr Lubanga, the arguments  
13 related to the status of Mr Lubanga and the Prosecutor as "parties" are dismissed as  
14 moot.

15 The second element relates to the grounds of appeal regarding whether Mr Lubanga  
16 should be held liable for any reparations awarded.

17 The Appeals Chamber considers that an order for reparations must establish and  
18 inform the convicted person of his or her liability with respect to the reparations  
19 awarded in the order. In other words, the convicted person is the individual liable  
20 for any reparations awarded.

21 Therefore, the Appeals Chamber considers that the Trial Chamber erred in  
22 considering that the circumstances of this case, specifically Mr Lubanga's present state  
23 of indigence, meant that he is not personally liable for reparations ordered in this case.  
24 The Trial Chamber also erred in assuming control over the Trust Fund's other  
25 resources in order to fund the reparation awards.

1 The Trial Chamber amends the Impugned Decision in line with the following holding:

2 When a convicted person is unable to immediately comply with an order for

3 reparations for reasons of indigence, the Trust Fund may advance its "other

4 resources," but such intervention does not exonerate the convicted person from

5 liability. The convicted person remains liable and must reimburse the Trust Fund.

6 Furthermore, the determination of whether to allocate the Trust Fund's "other

7 resources" for purposes of complementing the resources available for the awards for

8 reparations falls solely within the discretion of the Trust Fund's board of directors.

9 The Appeals Chamber will address the consequences of imposing liability on

10 Mr Lubanga at this stage of the proceedings later in this summary.

11 Finally, the Appeals Chamber rejects Mr Lubanga's arguments regarding the standard

12 of "proximate cause" and the "but/for" relationship as the applicable standard of

13 causation between the crimes for which Mr Lubanga was convicted and the harm

14 suffered by victims.

15 The Appeals Chamber considers that the third required element for an order for

16 reparations under the Statute is that it must specify and provide reasons for the type

17 of reparations ordered, either collective, individual or both, pursuant to Rules 97(1)

18 and 98 of the Rules of Procedure and Evidence.

19 The Appeals Chamber considers that the Trial Chamber ordered reparations only on

20 a collective basis pursuant to Rule 98(3).

21 Furthermore, the Chamber considers that it was not an error not to award reparations

22 on a collective and individual basis.

23 In this respect, the Appeals Chamber notes that the number of victims is an important

24 factor in determining that reparations on a collective basis are more appropriate and

25 that the Trial Chamber did consider this factor in arriving at its determination.

1 The Appeals Chamber considers that, when only collective reparations are awarded  
2 pursuant to Rule 98(3), a Trial Chamber is not required to rule on the merits of the  
3 individual requests for reparations.

4 Rather, the Appeals Chamber holds that a determination that it is more appropriate to  
5 award collective reparations operates as a decision denying, as a category, reparations  
6 awards on an individual basis.

7 The Appeals Chamber notes in this context, however, that a decision not to award  
8 reparations on an individual basis does not prejudice the individuals who filed  
9 individual reparations requests with respect to their eligibility to participate in any  
10 collective reparations programme.

11 Further, the Appeals Chamber notes that all of the individuals who filed individual  
12 reparations requests also submitted their views and proposals regarding potential  
13 awards and programmes for collective reparations.

14 Accordingly, the Appeals Chamber considers it appropriate to instruct the Trust Fund  
15 to take these submissions into account when designing the collective awards for  
16 reparations.

17 With respect to the transfer to the Trust Fund of the individual reparations requests  
18 filed pursuant to Rule 94, the Appeals Chamber finds that the Trial Chamber's  
19 instructions in this regard are erroneous in that they do not respect the principle that  
20 "reparations are entirely voluntary," and also violates the victims' right not to have  
21 confidential personal information given to other entities without the informed  
22 consent of the victims having been obtained beforehand.

23 Finally, the Appeals Chamber rejects Mr Lubanga's arguments that the procedures of  
24 Rule 98 violate his right to challenge and make submissions in relation to the  
25 beneficiaries of an award for reparations. The Appeals Chamber amends the



1 Impugned Decision to include the instruction that Mr Lubanga shall have the  
2 opportunity to review the screening process of victims at the implementation stage,  
3 subject to any protective measures.

4 Under the fourth element, the Appeals Chamber considers that there are two distinct  
5 aspects: (1) identifying the harm caused to direct and indirect victims as a result of  
6 the crimes for which the person was convicted; and (2) identifying the modalities of  
7 reparations.

8 With respect to both of these aspects, Mr Lubanga argues that the Trial Chamber  
9 erred in not making a determination itself in the Impugned Decision and instead  
10 delegated these determinations to the Trust Fund.

11 The Appeals Chamber finds that both of these aspects must be determined by the  
12 Trial Chamber in the order for reparations.

13 Thus, the Appeals Chamber agrees with Mr Lubanga and finds that the Trial  
14 Chamber erred in delegating the task of identifying the harm caused to direct and  
15 indirect victims as a result of the crimes for which Mr Lubanga was convicted.

16 In so holding, however, the Appeals Chamber highlights the critical distinction  
17 between identifying the harms caused to direct and indirect victims as a result of the  
18 crimes for which the person was convicted, which must be done by the Trial Chamber,  
19 and assessing the extent of that harm for purposes of determining the nature and the  
20 size of reparations awards, which may be done by the Trust Fund once it is seized of  
21 an order for reparations.

22 The Trial Chamber therefore amends the Impugned Decision by identifying the  
23 harms caused to direct and indirect victims as a result of the crimes for which  
24 Mr Lubanga was convicted.

25 In amending the Impugned Decision, the Appeals Chamber limits itself to the

1 circumstances of this case where no additional findings relevant to harms for  
2 purposes of reparations were made by the Trial Chamber. Accordingly, the  
3 identified harms are limited to harms identified by the Trial Chamber in the context  
4 of the criminal proceedings against Mr Lubanga.

5 The Appeals Chamber has identified these harms by reviewing the relevant findings  
6 in the Conviction Decision, the Sentencing Decision and decisions related to victim  
7 participation insofar as they relate to defining the harm caused to direct and indirect  
8 victims.

9 As a result of this amendment and in the circumstances of this case, particularly in  
10 light of the findings of the Sentencing Decision, the Appeals Chamber considers that  
11 sexual and gender-based violence cannot be defined as a harm resulting from the  
12 crimes for which Mr Lubanga was convicted. The Appeals Chamber therefore finds  
13 that the Trial Chamber erred in holding that reparations awards should be formulated  
14 and implemented to include victims of sexual and gender-based violence and amends  
15 the Impugned Decision in this respect.

16 However, the Appeals Chamber considers that it is appropriate for the Board of  
17 Directors of the Trust Fund to consider in its discretion the possibility of including  
18 victims of sexual and gender-based violence in the assistance activities to be  
19 undertaken according to its mandate under Regulation 50(a) of the Regulations of the  
20 Trust Fund for Victims.

21 The Appeals Chamber further considers that it is also appropriate for the Trust Fund's  
22 draft implementation plan to include a referral process to other competent NGOs in  
23 the affected area that offers services to victims of sexual and gender-based violence.  
24 Regarding Mr Lubanga's arguments relevant to the alleged delegation of identifying  
25 the appropriate modalities of reparations, the Appeals Chamber considers that

1 Mr Lubanga has misinterpreted the Impugned Decision. In the Appeals Chamber's  
2 view, the Trial Chamber did identify the appropriate modalities of reparations based  
3 upon which the Trust Fund will design collective awards for reparations. However,  
4 the Appeals Chamber amends the Impugned Decision insofar as these determinations  
5 are not clear in the way they are presented in the Impugned Decision.

6 Finally, the Appeals Chamber considers that the final required element of an order for  
7 reparations is that it must identify the victims eligible to benefit from the awards for  
8 reparations or set out the criteria of eligibility. In this regard, the Trial Chamber  
9 made these determinations in the Impugned Decision, which Mr Lubanga challenges  
10 as being erroneous.

11 With respect to inclusion of broader communities, the Appeals Chamber amends the  
12 Impugned Decision to clarify that only members of the community who qualify as a  
13 victim under Rule 85 may claim reparations against Mr Lubanga.

14 Regarding the inclusion of localities not mentioned in the Conviction Decision, the  
15 Appeals Chamber considers that the Trial Chamber did not intend to extend the  
16 scope of localities beyond those specifically mentioned either in the Conviction  
17 Decision or in the testimony of the witnesses listed in paragraph 915 of the Conviction  
18 Decision. The Appeals Chamber understands the statement regarding the inclusion  
19 of localities not mentioned in the Conviction Decision to refer to localities mentioned  
20 in the evidence of the witnesses who were relied upon for the conclusion in  
21 paragraph 915 of the Conviction Decision.

22 Accordingly, the Appeals Chamber finds that the Trial Chamber did not err in this  
23 regard.

24 With respect to matters relevant to the implementation stage, the Appeals Chamber  
25 finds that it is not an error for a newly composed Chamber to oversee the

1 implementation of the amended order for reparations and dismisses the parties'  
2 arguments in this regard.

3 With respect to setting the amount of Mr Lubanga's liability for reparations, the  
4 Appeals Chamber amends the Impugned Decision to exceptionally provide for this to  
5 be established by the newly composed Chamber. This procedure is detailed in the  
6 judgment.

7 In this respect, the Appeals Chamber wishes to stress the exceptional nature of this  
8 procedure and underscores that the imposition of liability on a convicted person,  
9 including the precise scope of that liability, should be done by the Trial Chamber in  
10 the order for reparations.

11 This is particularly in order to give effect to the right provided in the Statute of the  
12 convicted person and victims to appeal an order for reparations.

13 Accordingly, the Appeals Chamber holds that the Trial Chamber's determination of  
14 the amount of Mr Lubanga's liability for the award for reparation constitutes a part of  
15 the order for reparations within the meaning of Article 75(2) of the Statute and is  
16 therefore appealable by Mr Lubanga and the victims, pursuant to Article 82(4) of  
17 Statute.

18 In sum, the Appeals Chamber amends the Impugned Decision and attaches the  
19 judgment for the purposes -- for purposes of clarity, an amended order for  
20 reparations.

21 In her dissent to the Lubanga Conviction Judgment, Judge Anita Ušacka dissented  
22 with respect to the majority decision to confirm Mr Lubanga's conviction and  
23 accordingly dissents with respect to this judgment.

24 This concludes my summary of the judgment. It only remains for me to thank the  
25 parties and participants, the interpreters and the court officers, court reporters as well

- 1 as the Registry staff for having facilitated this hearing. And not only this hearing, as  
2 in view of the fact that four of us, for four of us this will be the last hearing, I would  
3 like to thank my colleagues, the parties and participants and all the staff for excellent  
4 cooperation and assistance all through these years.  
5 Thank you very much. This session is closed.  
6 THE COURT USHER: All rise.  
7 (The hearing ends in open session at 12.01 p.m.)