

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **French**

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

Date: **7 February 2019**

**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**

**Decision Approving the Proposals of the Trust Fund for Victims on the Process for  
Locating New Applicants and Determining their Eligibility for Reparations**

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

**Legal Representatives of V01 Victims**

Mr Luc Walley

Mr Franck Mulenda

**Counsel for Thomas Lubanga Dyilo**

Ms Catherine Mabil

Mr Jean-Marie Biju-Duval

**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

**Trust Fund for Victims**

Mr Pieter de Baan

**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

**TRIAL CHAMBER II** ("Chamber") of the International Criminal Court hereby decides the following.

## **I. Procedural history**

1. On 15 December 2017, the Chamber handed down its "Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable" ("Decision of 15 December 2017").<sup>1</sup> In its decision, the Chamber analysed applications from 473 persons alleging to be victims of the crimes of which Thomas Lubanga Dyilo ("Mr Lubanga") was convicted, which had been transmitted to it by the Trust Fund for Victims ("Trust Fund"), working with the Legal Representatives of the V01 and V02 groups of victims ("Legal Representatives of V01 and V02 Victims") and the Office of Public Counsel for Victims ("OPCV").<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 awarded them collective reparations approved by the Chamber in the case ("425 beneficiaries").<sup>4</sup> The Chamber found, however, 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").<sup>5</sup> Lastly, the Chamber recalled that the Trust Fund would, at the implementation stage of the reparations, screen for eligibility for the reparations

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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. This 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. 111 and in particular, paras. 232-244.

those persons who had not had the opportunity to submit an application for reparations.<sup>6</sup>

2. On 15 January 2018, the Trust Fund submitted to the Chamber its observations on the process for locating new applicants and determining their eligibility for reparations, and reported on its preliminary discussions with the OPCV and the Legal Representatives of V01 and V02 Victims (“Trust Fund Observations of 15 January 2018”).<sup>7</sup>

3. On 25 January 2018, the Chamber directed the Trust Fund to provide by 12 February 2018 further information on the process for locating new applicants and determining their eligibility for reparations.<sup>8</sup>

4. On 16 March 2018, the Chamber instructed the Trust Fund to file the documents requested by the Chamber on the process for locating new applicants and determining their eligibility for reparations, on the possibility of earmarking additional funds for the reparations and on the status of the implementation of the reparations.<sup>9</sup>

5. On 21 March 2018, pursuant to the Chamber’s orders and after receiving several extensions of time,<sup>10</sup> the Trust Fund filed additional information on the process for locating new applicants and determining their eligibility for reparations (“Trust Fund Observations of 21 March 2018”).<sup>11</sup>

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<sup>6</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>7</sup> “Observations in relation to locating and identifying additional victims pursuant to the Trial Chamber’s decision of 15 December 2017”, 15 January 2018, ICC-01/04-01/06-3386.

<sup>8</sup> “Order Directing Further Information from the Trust Fund for Victims on the Procedure for Determining Victim Status at the Implementation Stage of Reparations”, 25 January 2018, ICC-01/04-01/06-3391-tENG.

<sup>9</sup> “Order Instructing the Trust Fund for Victims to File the Documents Requested by the Chamber on the Process of Screening New Victims, the Progress of Discussions with the Stakeholders Involved in Locating and Identifying New Victims, the Possibility of Earmarking an Additional Amount for Reparations and the Progress of the Implementation of Reparations”, 16 March 2018, ICC-01/04-01/06-3395-tENG (“Order of 16 March 2018”).

<sup>10</sup> See Order of 16 March 2018, paras. 5-7.

<sup>11</sup> “Observations in relation to the victim identification and screening process pursuant to the Trial Chamber’s order of 25 January 2018”, 21 March 2018, ICC-01/04-01/06-3398.

6. On 13 April 2018, the Trust Fund filed, *inter alia*, further information on the process for locating new applicants and determining their eligibility for reparations ("Trust Fund Submissions of 13 April 2018").<sup>12</sup> The Trust Fund also informed the Chamber of the decision taken by its Board of Directors to make up the entire shortfall to cover the full award for which Mr Lubanga is liable pursuant to the Decision of 15 December 2017.<sup>13</sup>

7. That day, the Trust Fund filed the fourth report on the progress of the implementation of the reparations ("Trust Fund's Fourth Report").<sup>14</sup>

8. On 25 and 26 April 2018, with the leave of the Chamber,<sup>15</sup> the Defence ("Defence Response"),<sup>16</sup> the OPCV ("OPCV Response"),<sup>17</sup> and the Legal Representatives of V01 and V02 Victims ("LRV V01 and V02 Response")<sup>18</sup> filed their respective responses to the Trust Fund submissions of 21 March and 13 April 2018.

9. On 2 October 2018, pursuant to the Chamber's order<sup>19</sup> and after receiving an extension of time,<sup>20</sup> the Trust Fund filed the fifth report on the implementation of the

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<sup>12</sup> "Further information on the reparations proceedings in compliance with the Trial Chamber's order of 16 March 2018", 13 April 2018, ICC-01/04-01/06-3399-Conf. A public redacted version was filed on 4 December 2018.

<sup>13</sup> Trust Fund Submissions of 13 April 2018, para. 42.

<sup>14</sup> "Fourth progress report on the implementation of collective reparations as per Trial Chamber II's orders of 21 October 2016 and 6 April 2017", 13 April 2018, ICC-01/04-01/06-3400 and two confidential *ex parte* annexes.

<sup>15</sup> Email sent by the Chamber on 23 March 2018 at 10.41.

<sup>16</sup> "Réponse consolidée de la Défense aux Observations du Fonds au profit des victimes communiquées les 21 mars et 13 avril 2018", dated 24 April 2018 and registered on 25 April 2018, ICC-01/04-01/06-3401.

<sup>17</sup> "Réponse aux observations du Fonds au profit des victimes sur le processus d'identification et de sélection des autres victimes potentiellement éligibles aux réparations ainsi que sur les prochaines étapes de la mise en œuvre des réparations", 26 April 2018, ICC-01/04-01/06-3403-Conf.

<sup>18</sup> "Réponse consolidée aux 'Observations in relation to the victim identification and screening process pursuant to the Trial Chamber's order of 25 January 2018' of 23 March 2018 et au 'Fourth progress report on the implementation of collective reparations as per Trial Chamber's II's orders of 21 October 2016 and 6 April 2017' avec annexes du 13 Avril 2018", 26 April 2018, ICC-01/04-01/06-3402-Conf and one confidential annex.

<sup>19</sup> "Order Directing the Trust Fund for Victims to File the Fifth Progress Report on the Implementation of Reparations", 20 September 2018, ICC-01/04-01/06-3418-Conf-tENG.

<sup>20</sup> Email from the Chamber to the Trust Fund on 28 September 2018 at 12.48. Email from the Trust Fund to the Chamber on 28 September 2018 at 8.00.

collective reparations ("Trust Fund's Fifth Report").<sup>21</sup> In that report, the Trust Fund stated that it would appreciate receiving any appropriate guidance on the process for locating new applicants and determining their eligibility for reparations.<sup>22</sup>

10. That day, the Trust Fund notified the Chamber of its Board of Directors' decision to earmark a further complement of EUR 2,500,000 on top of the original EUR 1,000,000 allocated to complement the reparations awarded in the instant case.<sup>23</sup>

11. On 12 December 2018, the Trust Fund informed the Chamber that the Government of the Netherlands had pledged a voluntary contribution of EUR 350,000 to the reparations ordered in the case.<sup>24</sup>

## II. Analysis

### A. Introduction

12. The Chamber notes the information from the Trust Fund on the additional funds raised in response to the Decision of 15 December 2017, bringing to EUR 3,850,000 the total figure earmarked to complement the reparations award in the instant case. The Chamber is pleased to note that that figure will allow a significant part of the reparations to be delivered.

13. The Chamber recalls in that connection the time frames envisaged by the Trust Fund to begin the implementation of the reparations<sup>25</sup> and is greatly concerned over the Trust Fund's lateness in defining the collective reparations projects and in recruiting the partner organizations that are to bring the projects to fruition, and over

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<sup>21</sup> "Fifth progress report on the implementation of collective reparations as per Trial Chamber II's orders of 21 October 2016 and 6 April 2017", 2 October 2018, ICC-01/04-01/06-3421, with one confidential annex *ex parte* available to the Registrar, Legal Representatives and OPCV.

<sup>22</sup> Trust Fund's Fifth Report, pp. 4-5.

<sup>23</sup> "Notification of the Board of Directors' decision on the Trial Chamber's supplementary complement request pursuant to regulation 56 of the Regulations of the Trust Fund for Victims", 2 October 2018, ICC-01/04-01/06-3422.

<sup>24</sup> "Notification d'un complément additionnel en vertu de la règle 56 du Règlement du Fonds au profit des victimes", 12 December 2018, ICC-01/04-01/06-3432.

<sup>25</sup> Trust Fund Submissions of 13 April 2018, para. 41.

the lack of information on the implementation schedule in the Trust Fund's Fifth Report.

14. Furthermore, the Chamber considers that the additional funds raised by the Trust Fund make it necessary to proceed, without further delay, to locate new applicants. To that end, it hereby renders the following decision on the Trust Fund's proposals on the process for locating new applicants and determining their eligibility for reparations (part B). The Chamber will then turn to the matter of remedies (part C) and that of the cut-off date by which new applicants must make themselves known in order to be considered for the reparations in the instant case (part D).

## **B. Location of new applicants and determination of their eligibility for reparations**

### **(1) Proposals by the Trust Fund and responses by the parties**

15. The Trust Fund asserts that its collaboration with the Legal Representatives of V01 and V02 Victims, the OPCV and the Victims Participation and Reparations Section ("VPRS") is desirable for the due discharge of the task assigned to it by the Chamber.<sup>26</sup>

16. The Trust Fund thus proposes a two-phase process: an initial phase to locate new applicants and a second phase to verify their eligibility for reparations.<sup>27</sup> During the first phase, experts (statement takers) reporting to the Trust Fund Secretariat would conduct field interviews of new applicants,<sup>28</sup> who would be identified with the assistance of VPRS and the Legal Representatives of Victims.<sup>29</sup> In the second phase of the process, the Trust Fund suggests that an interview report and supporting documentation be forwarded to VPRS for a preliminary analysis of the applications for reparations on the basis of the eligibility criteria established by the Chamber. VPRS would thereby arrive at a recommendation as to the eligibility of the

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<sup>26</sup> Trust Fund Observations of 15 January 2018, para. 6.

<sup>27</sup> Trust Fund Observations of 21 March 2018, para. 13.

<sup>28</sup> Trust Fund Observations of 21 March 2018, paras. 14 and 16.

<sup>29</sup> Trust Fund Observations of 21 March 2018, para. 15.

application for reparations and put it forward to the Trust Fund Secretariat. The Trust Fund Secretariat would then review the recommendation and forward the application for reparations to its Board of Directors, with whom a final decision on each individual case would rest.<sup>30</sup>

17. The Defence, relying on the submissions it made to the Appeals Chamber on 15 March 2018 in relation to the instant case,<sup>31</sup> contends that the process for locating new applicants and determining their eligibility for reparations “[TRANSLATION] cannot be delegated to the Trust Fund”.<sup>32</sup> The Defence submits that the decision on eligibility for reparations falls exclusively within the remit of this Chamber, and so excludes the Trust Fund having any part in the decision. The Defence also argues that “[TRANSLATION] Mr Lubanga must be afforded the opportunity to participate in an effective manner in the entire reparations process”.<sup>33</sup>

18. The Legal Representatives of V01 and V02 Victims fear that the VPRS recommendation would become a de facto decision on eligibility.<sup>34</sup> They therefore suggest a new, simplified procedure, whereby the Trust Fund would locate new applicants and determine their eligibility for reparations, in the field.<sup>35</sup> The Legal Representatives of V01 and V02 Victims submit that they could play a role, such as by taking part in the interviews or by providing input on the decisions being considered by the Trust Fund.<sup>36</sup>

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<sup>30</sup> Trust Fund Observations of 21 March 2018, para. 16.

<sup>31</sup> “Public Redacted Version of the ‘Appeal Brief of the Defence for Mr Thomas Lubanga Dyilo against the “*Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu*” handed down by Trial Chamber II on 15 December 2017 and Amended by the Decisions of 20 and 21 December 2017’ Filed on 15 March 2018”, 15 March 2018, ICC-01/04-01/06-3394-Red-tENG, paras. 11-48.

<sup>32</sup> Defence Response, para. 15.

<sup>33</sup> Defence Response, para. 21.

<sup>34</sup> LRV V01 and V02 Response, para. 16.

<sup>35</sup> LRV V01 and V02 Response, para. 17.

<sup>36</sup> LRV V01 and V02 Response, para. 18.



## **(2) Determination of the Chamber**

19. The Chamber determines that the Trust Fund's proposals on the process for locating new applicants and determining their eligibility for reparations are appropriate and, accordingly, approves them.

### **(a) The location phase**

20. The Chamber is satisfied with the multiparty approach advanced by the Trust Fund, which in particular draws on the expertise developed by VPRS and the OPCV in matters of reparations and their assistance in the process of locating new applicants, which is both feasible and desirable.

21. The Chamber moreover considers that the Legal Representatives of V01 and V02 Victims and the OPCV<sup>37</sup> may be of great help in facilitating contact between the Trust Fund and the new applicants, selecting venues for meetings and interviews, training those who have been tasked with collecting the new applications for reparations, and providing support and assistance during the location process.

22. In the light of the foregoing, the Chamber instructs the Trust Fund to proceed, without further delay, to locate new applicants according to the proposed multiparty approach.

### **(b) Phase of verification of the eligibility of new applicants for reparations**

23. The Chamber sees fit to proceed in the manner proposed by the Trust Fund. On that point, it underlines that VPRS, which has been duly charged with processing applications for participation and reparations in several cases before the Court, possesses a wealth of expertise and is a crucial source of support to the completion of the process entrusted to the Trust Fund within a reasonable time frame and in an efficient manner in the interests of the victims.

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<sup>37</sup> The OPCV makes the point that it is possible for the Trust Fund henceforth to start "[TRANSLATION] concretely planning the preliminary stages necessary for interviews of the potential new applicants". The OPCV therefore submits that the Trust Fund should provide more information on where it intends to hold the interviews and on the arrangements for screening potential new applicants (OPCV Response, paras. 27, 30).

24. The Chamber further instructs the Trust Fund, when verifying new applications for reparations, to apply the eligibility criteria which the Chamber laid down and the method it set out in its Decision of 15 December 2017 for the purposes of its review of the dossiers submitted by the 473 applicants for reparations.<sup>38</sup>

25. As to the role of the Defence, the Chamber recalls that, in the proceedings which culminated in the setting of the size of the reparations award for which Mr Lubanga is liable, it ruled on the eligibility of the 473 persons who had submitted an application for reparations through their legal representatives, after giving the Defence the opportunity to file submissions on those applications.<sup>39</sup>

26. During those proceedings, the Chamber's aim was to gather all the evidence that could help it to determine Mr Lubanga's liability in respect of reparations and to set the size of the award for which he was liable. Since the use of the applications for reparations for that purpose would affect Mr Lubanga's rights and interests, the Chamber considered that a judicial decision was necessary and that Mr Lubanga should be given the opportunity to impugn the evidence adduced against him. In that respect, the Chamber recalls that it found that the evidence put before it established, on a balance of probabilities, that "hundreds and possibly thousands more victims"<sup>40</sup> had suffered harm as a consequence of the crimes of which Mr Lubanga was convicted.

27. The Chamber notes that the process for locating *new applicants* and determining their eligibility for reparations will now have no bearing on Mr Lubanga's liability for reparations or on the size of the award that the Chamber set in its Decision of 15 December 2017. Accordingly, the Chamber determines that the decision on the eligibility of new applicants is delegated to the Trust Fund, subject to the following,<sup>41</sup> and shall be taken without the Defence's involvement.

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<sup>38</sup> Decision of 15 December 2017, paras. 37, 40-43, 60-189.

<sup>39</sup> Decision of 15 December 2017, para. 59.

<sup>40</sup> Decision of 15 December 2017, para. 212.

<sup>41</sup> See, below, para. 30.

28. The Chamber nevertheless underscores that Mr Lubanga's rights and interests are safeguarded in that the Trust Fund is directed to apply 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 and in that, consonant with the Appeals Chamber's instructions, the Defence had the opportunity to file submissions on the process for locating new applicants and determining their eligibility that the Trust Fund is contemplating putting in place.<sup>42</sup>

29. In the light of the foregoing, the Chamber directs the Trust Fund to promptly forward to VPRS the new applications for reparations, once they have been collected, to enable VPRS to verify them and make recommendations to the Trust Fund Secretariat so that its Board of Directors can take an administrative decision on the eligibility of the new applicants for reparations.

30. The Trust Fund is also directed to keep the Chamber abreast of the administrative decisions taken by its Board of Directors on the new applicants' eligibility for reparations – whether or not they are found eligible – by including in its quarterly report a list of the names of the persons concerned and their particulars. As the Chamber receives that information, it will issue a final decision on the approval of that list of new applicants determined to be eligible by the Trust Fund's Board of Directors. The Chamber also makes clear that only upon such a decision will the new applicants become beneficiaries of the reparations.

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<sup>42</sup> "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2", 3 March 2015, ICC-01/04-01/06-3129 ("Appeal Judgment on Reparations"), para. 167. The Chamber must nonetheless emphasize the Appeals Chamber's holding that when only collective reparations have been awarded under rule 98(3) of the Rules of Procedure and Evidence, a Trial Chamber is not duty-bound to rule on the merits of the requests for reparations (Appeal Judgment on Reparations, para. 152).

## C. Remedies

### (1) Proposals by the Trust Fund and responses by the parties

31. The Trust Fund proposes that it be open to every new applicant to challenge a decision by its Board of Directors to find him or her ineligible for reparations. In order to compile, analyse and decide on the challenges entered, the Trust Fund suggests that an independent administrative review board be established.<sup>43</sup>

32. The OPCV expresses its support for the Trust Fund's initiative regarding "[TRANSLATION] the introduction of a system for the review of the Trust Fund's decisions on the eligibility of new applicants". It nevertheless points out the importance of ensuring that such a procedure is transparent and expeditious, and of promptly defining "[TRANSLATION] the method, and everyone's roles" and states that the Trust Fund should put to the Chamber a proposal on a procedure for challenging the decisions which meets those criteria.<sup>44</sup>

33. The Legal Representatives of Victims are likewise of the opinion that "[TRANSLATION] [i]n the event of rejection, there must be an opportunity to enter a challenge before a panel to be established by the Trust Fund",<sup>45</sup> and that they could also play a role in preparing new applicants' challenges.<sup>46</sup> Additionally, to avoid discrimination, they suggest extending this review procedure to persons "[TRANSLATION] whose [applications for reparations] were initially accepted by the Trust Fund, but later rejected by the Chamber in its [D]ecision of 15 December 2017".<sup>47</sup>

### (2) Determination of the Chamber

34. The Chamber sees fit to make provision for new applicants whose applications have been rejected to challenge their exclusion from the reparations.

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<sup>43</sup> Trust Fund Observations of 21 March 2018, paras. 20-22.

<sup>44</sup> OPCV Response, paras. 29-30.

<sup>45</sup> LRV V01 and V02 Response, para. 17.

<sup>46</sup> LRV V01 and V02 Response, para. 18.

<sup>47</sup> LRV V01 and V02 Response, para. 20.

35. However, considering that an independent review panel is unnecessary and would cause delays, the Chamber decides that one need not be established for the present proceedings, but points out that the parties may refer any contested issue to the Chamber. With regard to remedies concerning individual reparations, the Chamber sees that the Appeals Chamber in *The Prosecutor v. Ahmad Al Faqi Al Mahdi*

[found] that it is for the Trial Chamber, in the exercise of its judicial functions, to make final determinations on individual victim applications where administrative decisions of the TVF are contested or *proprio motu*. Therefore, victim applicants, who are not found eligible for individual reparations, are entitled to request that the Trial Chamber review any such decision.<sup>48</sup>

36. The Chamber is of the opinion that, although collective reparations were awarded in the case *sub judice*, that same procedure should be followed here. In that connection, the Chamber underlines that the definition of reparations which it has adopted imparts an individual aspect to the service-based collective reparations and that, moreover, new applicants should be guaranteed the same procedural rights as those afforded to persons whose applications the Chamber entertained in the proceedings which culminated in the setting of the size of the reparations award for which Mr Lubanga is liable – in other words, the right to a decision<sup>49</sup> and to challenge the decision before the Court. It remains thus incumbent on the Chamber to receive, assess and adjudicate challenges brought by new applicants whose applications have been rejected.

37. For that purpose, where the Trust Fund's Board of Directors refuses an application, the new applicant shall be informed of his or her rights in a decision, which shall also be notified to the Chamber. Notification shall include all the relevant considerations which led to the refusal. The refusal and the considerations shall be appended to the quarterly report.<sup>50</sup>

38. In the event of a refusal, the new applicant shall be entitled to have that decision reviewed by this Chamber. To that end, the applicant shall file, through his

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<sup>48</sup> *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Appeals Chamber, "Judgment on the appeal of the victims against the 'Reparations Order'", dated 8 March and [French] translation registered on 3 May 2018, ICC-01/12-01/15-259-Red2, para. 72.

<sup>49</sup> See, above, para. 30.

<sup>50</sup> See also, above, para. 30.

or her legal representative, and within 30 days of being notified of the refusal, a request for the Chamber to review the Trust Fund's decision. The request shall set out the reasons why the Trust Fund is considered to have erred in determining that the applicant is not eligible for reparations. Where several applications are rejected for the same reasons, the legal representatives shall be invited to file a consolidated request for review, where possible. Accordingly, it is for the legal representatives to act diligently and promptly.

**D. Cut-off date by which new victims must make themselves known in order to be considered for reparations in the instant case**

**(1) Proposals by the Trust Fund and responses of the parties**

39. The Trust Fund submits that a cut-off date should be determined only once implementation of the reparations programme is nearing its end.<sup>51</sup>

40. The OPCV is of the view that, while it is commendable of the Trust Fund to want to ensure that all new applicants have the opportunity to make themselves known to it, the process for locating new applicants and determining their eligibility for reparations must be restricted to a clear time frame. That notwithstanding, exceptions could be permitted on an individual basis to allow the Trust Fund, depending on the reasons specific to that particular case, to accept an application for reparations from a person who has not made themselves known by the cut-off date.<sup>52</sup>

**(2) Determination of the Chamber**

41. The Chamber sees fit to establish a cut-off date by which persons wishing to apply for reparations must report to the Trust Fund. The Chamber recalls that the reparations programme which it has approved is time-bound.<sup>53</sup> Furthermore, it is of the opinion that the process of locating new applicants must not continue indefinitely, not least because its expeditiousness will dictate the availability of the

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<sup>51</sup> Trust Fund Observations of 21 March 2018, para. 24.

<sup>52</sup> OPCV Response, para. 28.

<sup>53</sup> See, for example, "Information regarding Collective Reparations", 13 February 2017, ICC-01/04-01/06-3273, para. 80.

data necessary to determine which projects need to be implemented to deliver effective reparation.

42. The Chamber hereby sets 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 as the cut-off date by which all new applicants must make themselves known in order to be considered for reparations in the instant case.

### **E. Monitoring and oversight of the process for locating new applicants and determining their eligibility for reparations**

#### **(1) Proposals by the Trust Fund**

43. The Trust Fund proposes providing in its quarterly report information on the process of locating new applicants, which it is to undertake with VPRS, including the sites of the interviews and the number of persons met, for example. The Trust Fund further proposes providing in this report information on the process of determining new applicants' eligibility for reparations, which it is to undertake with VPRS, including the number of persons whose applications for reparations were the subject of a recommendation from VPRS (to grant or to refuse the application) and/or a decision (grant or refusal) by its Board of Directors.<sup>54</sup>

44. In addition, the Trust Fund proposes the introduction of a verification system in the form of an annex to its quarterly report, giving a random sample of new applications for reparations – be they successful or unsuccessful – so that the Chamber may check that the Trust Fund is properly applying the eligibility criteria that the Chamber itself set.<sup>55</sup>

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<sup>54</sup> Trust Fund Observations of 21 March 2018, para. 27.

<sup>55</sup> Trust Fund Observations of 21 March 2018, para. 28.



## (2) Determination of the Chamber

45. It is worth recalling that the reparations proceedings remain before the Chamber so that it may perform the necessary monitoring and oversight functions.<sup>56</sup> The Chamber further recalls that, when it approved the Trust Fund's proposed plan for symbolic collective reparations, it instructed the Trust Fund to submit to it, every three months, a progress report on the implementation of symbolic collective reparations, detailing the concrete progress it has achieved.<sup>57</sup>

46. The Chamber hereby directs the Trust Fund to include in such report any relevant information on the process for locating new applicants and determining their eligibility for reparations, so that the Chamber can satisfy itself that that process is following its proper course and in accordance with the Chamber's instructions.

47. The Chamber also reiterates that, as aforementioned, the Trust Fund must inform the Chamber of the decisions taken by its Board of Directors on new applicants for reparations – whether it finds them eligible or not – by including in the quarterly report a list of the names of the persons concerned and their particulars.<sup>58</sup> The Chamber will then issue, on a rolling basis, a final decision on the approval of that list of new applicants determined to be eligible by the Trust Fund's Board of Directors. The Chamber underlines that only upon the Chamber's decision will the new applicants become beneficiaries of the reparations. The Chamber also recalls, as said above, that the refusals shall be appended to the quarterly report and that it remains for the Chamber to receive, assess and adjudicate challenges brought by new applicants whose applications are rejected.<sup>59</sup>

48. The Chamber, however, dismisses the Trust Fund's proposal to provide it with a sample of new applications for reparations as an annex to its quarterly report.

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<sup>56</sup> Appeals Chamber, "Order for Reparations (Amended)", ICC-01/04-01/06-3129-AnxA, para. 76.

<sup>57</sup> "Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations", 21 October 2016, ICC-01/04-01/06-3251, para. 17.

<sup>58</sup> See, above, para. 30.

<sup>59</sup> See, above, paras. 30, 34-38.



**FOR THESE REASONS, the Chamber**

**APPROVES**, *mutatis mutandis*, the proposals submitted by the Trust Fund on the process for locating new applicants and determining their eligibility for reparations;

**DIRECTS** the Trust Fund to proceed, without further delay, to locate new applicants, and to promptly forward the applications for reparations to VPRS, as specified at paragraphs 14, 22 and 29-30 of this decision;

**DIRECTS** the Trust Fund to adopt the procedure concerning remedies, as described at paragraphs 34-38;

**SETS** 31 December of the year following the issuance of the judgment by the Appeals Chamber on the appeals filed against the Decision of 15 December 2017 as the cut-off date by which all new applicants must make themselves known in order to be considered for reparations in the case; and

**DIRECTS** the Trust Fund to include in its future quarterly reports on the progress of the implementation of the collective reparations any relevant information on the process for locating new applicants and determining their eligibility for reparations, in particular the information required at paragraphs 30, 37 and 46-47.

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 7 February 2019,  
At The Hague, Netherlands