



Original: French

No.: ICC-01/04-01/06
Date: 14 December 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

***Ex parte* Legal Representatives of V01 and V02 Groups of Victims, Office of Public
Counsel for Victims, Victims Participation and Reparations Section and Trust
Fund for Victims**

Decision on the Request Made by the Trust Fund for Victims on 21 October 2020

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

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

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 and regulation 35(2) of the Regulations of the Court, decides as follows.

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”).¹ The Chamber analysed the applications for reparations of 473 persons claiming to be victims of the crimes of which Thomas Lubanga Dyilo (“Mr Lubanga”) was convicted.² The Chamber found that, of those 473 individuals, 425 had shown on a balance of probabilities that they had suffered harm as a consequence of the crimes of which Mr Lubanga was convicted.³ Accordingly, the Chamber ruled that they were entitled to the collective reparations it had awarded in the case at bar.⁴ 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, in fact, hundreds and possibly thousands of other victims had also been affected by his crimes (“new applicants”).⁵ The Chamber directed the Trust Fund for Victims (“Trust Fund”) to file submissions 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 V01”) and V02 groups of victims (together the “Legal Representatives”) before final selection of the implementing partners and before approval by the Chamber of the second phase of implementation of the collective

¹ “Corrected version of the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’”, 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.

² Decision of 15 December 2017, paras. 35-191.

³ Decision of 15 December 2017, para. 190.

⁴ Decision of 15 December 2017, para. 194.

⁵ Decision of 15 December 2017, p. 112 and, in particular, paras. 232-244.

reparations.⁶ The Chamber also recalled that it would fall to the Trust Fund to screen the new applicants for eligibility for reparations at the implementation stage.⁷

2. On 7 February 2019, the Chamber approved the proposals submitted by the Trust Fund on the process for locating new applicants and determining their eligibility for reparations at the implementation stage.⁸ The Chamber adopted the Trust Fund's proposal that the Board of Directors of the Trust Fund ("Board of Directors") issue an administrative decision on each new application for reparations,⁹ but added that the new applicants would become beneficiaries of the reparations only upon a final decision by the Chamber.¹⁰

3. On 18 July 2019, the Appeals Chamber unanimously delivered its judgment on two appeals brought against the Decision of 15 December 2017.¹¹ The Appeals Chamber also ordered that any recommendation made by the Trust Fund concerning the eligibility of victims for reparations be submitted to that Chamber for approval.¹²

4. On 8 November 2019, the Chamber issued an order in which it clarified that the cut-off date for forwarding applications for reparations to the Victims Participation

⁶ Decision of 15 December 2017, para. 296, p. 113.

⁷ Decision of 15 December 2017, para. 293, citing 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.

⁸ "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 ("Decision of 7 February 2019"). A public redacted version of the decision was filed on 4 March 2019.

⁹ Decision of 7 February 2019, paras. 16, 19 and 29.

¹⁰ Decision of 7 February 2019, paras. 30 and 47.

¹¹ "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 on the same day.

¹² Judgment of 18 July 2019, para. 332.

and Reparations Section (“VPRS”) was 31 December 2020 and ordered that the last complete applications for reparations be forwarded to VPRS no later than that date.¹³

5. On 20 May 2020, the Chamber approved the Board of Directors’ administrative decisions concerning 271 new applications for reparations (Decision of 20 May 2020).¹⁴

6. On 11 September 2020, the Chamber approved 159 administrative decisions of the Trust Fund on new applications for reparations.¹⁵ In that decision, the Chamber amended the Decision of 20 May 2020 as it found that 272 applicants had demonstrated on a balance of probabilities that they had 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 the case.¹⁶

7. On 21 September 2020, the Trust Fund filed a request (“Trust Fund Request of 21 September 2020”)¹⁷ for the Chamber’s approval of the results of the invitation to tender concerning service-based collective reparations (“Proposed Service-based Collective Reparations Programme”).¹⁸

8. On 21 October 2020, the Trust Fund filed the eleventh progress report on the implementation of collective reparations (“Trust Fund’s Eleventh Report”).¹⁹ In the

¹³ “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.

¹⁴ “Decision concerning the First and Second Transmissions of Administrative Decisions on New Applications for Reparations Taken by the Trust Fund for Victims”, 20 May 2020, ICC-01/04-01/06-3476-Conf-tENG.

¹⁵ “Deuxième décision sur les décisions administratives du Fonds au profit des victimes portant sur de nouvelles demandes en réparation”, 11 September 2020, ICC-01/04-01/06-3479-Conf.

¹⁶ Decision of 11 September 2020, para. 12.

¹⁷ “Requête d’approbation des résultats de l’invitation à soumissionner concernant les réparations collectives basées sur les services apportés aux victimes”, 21 September 2020, ICC-01/04-01/06-3480-Conf.

¹⁸ “Annexe A de la Requête d’approbation des résultats de l’invitation à soumissionner concernant les réparations collectives basées sur les services apportés aux victimes”, 21 September 2020, ICC-01/04-01/06-3480-Conf-Exp-AnxA.

¹⁹ “Annexe A au Onzième 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 October 2020, ICC-01/04-01/06-3491-Conf-Exp-AnxA (confidential *ex parte* Legal Representatives, VPRS and Trust Fund), the accompanying document – ICC-01/04-01/06-3491; one confidential annex *ex parte* Legal Representatives V01, VPRS and Trust Fund (ICC-01/04-01/06-3491-Conf-Exp-AnxB), and one

report, the Trust Fund made two requests: one for an extension of deadline (“Request for Extension of Deadline”)²⁰ and the other for communication of information in connection with its fundraising (“Request for Communication of Information”).²¹

9. On 2 November 2020, the OPCV filed a response to the Trust Fund’s Eleventh Report (“OPCV’s Response to the Trust Fund’s Eleventh Report”).²²

10. On 14 December 2020, the Chamber granted the Trust Fund’s Request of 21 September 2020, approving, subject to a number of amendments, the implementation of the proposed programme for service-based collective reparations.²³

II. Analysis

A. Request for extension of deadline

i. Purpose of the request and the Trust Fund’s arguments in support

11. The Trust Fund requests an extension of the deadline of 31 December 2020 set by the Chamber for the transmission to the VPRS of completed applications submitted by all new victims seeking to be found eligible for collective reparations in the instant case.²⁴

12. The Trust Fund moves the Chamber to extend the deadline by a period equal to the period during which it is impossible for the Trust Fund and the Legal Representatives to continue to identify and interview new victims in the field.²⁵ It goes on to state that in its next quarterly report, due on 21 January 2021, it will indicate the

confidential annex *ex parte* Legal Representatives, VPRS and Trust Fund ((ICC-01/04-01/06-3491-Conf-Exp-AnxC).

²⁰ Trust Fund’s Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 2

²¹ Trust Fund’s Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, paras. 17-18.

²² “Réponse du BCPV au Onzième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 21 Octobre 2020”, 2 November 2020, ICC-01/04-01/06-3492-Conf-Exp.

²³ “Decision Granting the Trust Fund for Victims’ Request of 21 September 2020 and Approving the Implementation of Service-based Collective Reparations”, 14 December 2020, ICC-01/04-01/06-3495-Conf-Exp.

²⁴ Trust Fund’s Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 4.

²⁵ Trust Fund’s Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, paras. 4-5.

date of resumption of field activities so as to enable the Chamber to set a more specific deadline.²⁶

13. In support of the request, the Trust Fund argues that the impact of travel restrictions since March 2020 and the impossibility of carrying out field operations because of the Covid-19 pandemic, which is a situation of force majeure, constitute good cause, within the meaning of regulation 35(2) of the Regulations of the Court, for the Chamber to extend the deadline of 31 December 2020 set for transmitting completed applications for reparations to the VPRS.²⁷

14. Furthermore, the Trust Fund is examining the possibility of conducting remote video interviews and liaising with the Legal Representatives in this connection.²⁸

ii. OPCV's response to the Trust Fund's Eleventh Report

15. The OPCV supports the request for extension of time for finalization of the identification process and for preparation of applications for reparations from persons who may be eligible for reparations.²⁹ The OPCV notes that direct contact with the victims is laborious owing to the health situation relating to the COVID-19 pandemic and the quarantine measures required upon arrival in the Democratic Republic of the Congo.³⁰ The OPCV also points out that, owing to the security situation in Bunia, travel in and around Bunia is complicated and even impossible outside the city.³¹

16. Secondly, the OPCV points out that for the time being, it is not advisable to hold remote interviews with victims because of the limited number of locations at its disposal due to the health and security situation, and suggests that new locations for

²⁶ Trust Fund's Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 5.

²⁷ Trust Fund's Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 5.

²⁸ Trust Fund's Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 6.

²⁹ OPCV's Response to the Trust Fund's Eleventh Report, ICC-01/04-01/06-3492-Conf-Exp, para. 9.

³⁰ OPCV's Response to the Trust Fund's Eleventh Report, ICC-01/04-01/06-3492-Conf-Exp, para. 7.

³¹ OPCV's Response to the Trust Fund's Eleventh Report, ICC-01/04-01/06-3492-Conf-Exp, para. 7.

conducting the interviews be sought at a later date.³² Lastly, it looks at the psychological impact that remote interviews could have on victims.³³

iii. Determination of the Chamber

17. The Chamber finds that in conformity with regulation 35(2) of the Regulations of the Court, the Trust Fund has shown good cause for extension of the deadline for transmitting the last completed applications for reparations to the VPRS, initially set as 31 December 2020. The Chamber considers that in view of the circumstances mentioned by the Trust Fund and the observations of the OPCV, the deadline should be extended to 31 March 2021 at 16.00.

18. Accordingly, the Chamber grants in part the Request for Extension of Deadline by deferring the date for the transmission of the last completed applications for reparations to the VPRS to 31 March 2021 at 16.00.³⁴

A. Request for communication of information

i. Purpose of the request and the Trust Fund's arguments

19. The Trust Fund requests the Chamber's authorization to provide certain pertinent information about the *Lubanga* case to potential donors, in connection with its drive for voluntary contributions to raise the funds needed for the implementation of reparations in the instant case.³⁵

20. To that end, the Trust Fund would like to refer to the following four pieces of information: (a) the fact that a single holistic and integrated programme has been selected for service-based collective reparations, (b) the general description of the various components of the programme addressing the harm to be repaired, (c) the

³² OPCV's Response to the Trust Fund's Eleventh Report, ICC-01/04-01/06-3492-Conf-Exp, para. 8.

³³ OPCV's Response to the Trust Fund's Eleventh Report, ICC-01/04-01/06-3492-Conf-Exp, para. 8.

³⁴ Trust Fund's Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, paras. 4-5.

³⁵ Trust Fund's Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 17.

variety of measures to be put in place, and (d) the estimated number of beneficiaries and their dependents.³⁶

21. The Trust Fund states that the communication of that information is important for its drive for voluntary contributions.³⁷ In that regard, the Trust Fund submits that the abovementioned information is not confidential, but appears in documents classified as such because of the presence of other information.³⁸

22. The OPCV and the Legal Representatives did not file a response to the Request for Communication of Information.

ii. Determination of the Chamber

23. The Chamber begins by noting that in its Order of 2 January 2020, it emphasized the fact that the Trust Fund must seek the Chamber's authorization before communicating any confidential information about beneficiaries of reparations to third parties,³⁹ which the Trust Fund rightly did.

24. As to the merits of the request, the Chamber notes first that the information the Trust Fund wishes to disclose reveals no personal or specific information about the beneficiaries of reparations, the anticipated dates of implementation or the locations where the reparations will be rolled out. The Chamber further notes that the Trust Fund wishes to disclose certain information for the purpose of raising the funds needed for the implementation of collective reparations in the instant case. The Chamber notes last that the Trust Fund intends to communicate the information to a limited group, namely potential donors.

25. Consequently, the Chamber grants the Request for Communication of Information and authorizes the Trust Fund to disclose the following information to

³⁶ Trust Fund's Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 18.

³⁷ Trust Fund's Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 17.

³⁸ Trust Fund's Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 19.

³⁹ "Ordonnance relative aux rapports du Fonds au profit des victimes du 19 juillet 2019 et du 21 octobre 2019 sur la mise en œuvre des réparations collectives", 2 January 2020, ICC-01/04-01/06-3470-Conf, para. 13.

potential donors for the sole purpose of raising the funds needed to roll out collective reparations: (a) the fact that a single holistic and integrated programme has been selected for service-based collective reparations, (b) the general description of the various components of the proposed service-based collective reparations programme, (c) the variety of measures to be put in place, and (d) the estimated number of beneficiaries and their dependents.⁴⁰

26. The Chamber considers, lastly, that it must be impressed upon the Trust Fund and its intermediaries that the information must be handled with care and discretion, and shared only if necessary. The Chamber also draws the Trust Fund's attention to the duty to keep confidential any information not included in this list, having regard to the volatile security situation in Ituri.

FOR THESE REASONS, The Chamber:

GRANTS IN PART the Request for Extension of Deadline;

DEFERS the date for submitting the last completed applications for reparations to the VPRS to 31 March 2021 at 16.00;

GRANTS the Request for Communication of Information;

⁴⁰ Trust Fund's Eleventh Report, ICC-01/04-01/06-3491-Conf-Exp-AnxA, para. 18.

AUTHORIZES the Trust Fund to disclose the information listed in paragraph 25 above to potential donors, for the purpose of raising the funds needed to roll out collective reparations;

IMPRESSES on the Trust Fund and its intermediaries the need to handle such information with care and confidentially, and to share it only when necessary; and

DRAWS the attention of the Trust Fund to the duty to keep confidential any information not included in the said list, having regard to the volatile security situation in Ituri.

Done in both English and French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut

Presiding Judge

[signed]

Judge Olga Herrera Carbuccia

[signed]

Judge Péter Kovács

Dated this 14 December 2020

At The Hague, Netherlands