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**International
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Court**



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

Date: **10 March 2022**

TRIAL CHAMBER II

Before: Judge Chang-ho Chung, Presiding Judge
Judge Péter Kovács
Judge María del Socorro Flores Liera

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Confidential

**Eighth Decision on the TFCV's administrative decisions on applications for
reparations and additional matters**

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

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Trial Chamber II of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the ‘Lubanga case’), having regard to article 75 of the Rome Statute and Regulation 58 of the Regulations of the Trust Fund for Victims (‘TFV’), issues its Eighth Decision on the TFV’s administrative decisions on applications for reparations and additional matters (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 15 December 2017, the Chamber, in its prior composition, issued the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’ wherein it, *inter alia*, reiterated that victims who had not been in a position to submit a dossier by 31 March 2017 would be screened by the TFV for eligibility at the implementation stage.¹

2. On 7 February 2019, the Chamber issued a decision approving the process for locating new applicants,² and directing the TFV to collect applications, with the support of the Legal Representatives of Victims (‘LRVs’) and the Office of the Public Counsel for Victims (‘OPCV’).³ The Chamber also instructed the TFV to forward the applications to the Registry’s Victims Participation and Reparations Section (‘VPRS’) for verifications and recommendations, in order to allow the TFV’s Board of Directors to take administrative decisions on the victims’ eligibility, to be submitted to the Chamber for a final decision.⁴

3. On 14 December 2020, the Chamber issued a decision approving the programme proposed by the TFV for the implementation of the service-based collective reparations, subject to certain modifications and guarantees to be integrated by the TFV and the implementing partner (‘14 December 2020 Decision’).⁵

¹ Corrected Version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, 21 December 2017 (public redacted version filed on 5 July 2018), [ICC-01/04-01/06-3379-Red-Corr-tENG](#), (‘Lubanga Decision on the Size of Reparations Award’), para. 293, referring to Decision on the Motion of the Office of Public Counsel for Victims for Reconsideration of the Decision of 6 April 2017, 13 July 2017, [ICC-01/04-01/06-3338-tENG](#), para. 11.

² Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations (‘Decision on New Applicants’), 7 February 2019 (reclassified as public on 13 April 2021), [ICC-01/04-01/06-3440-tENG](#).

³ Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), para. 21.

⁴ Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), paras 29-30.

⁵ Rectificatif de la Décision faisant droit à la requête du Fonds au profit des victimes du 21 septembre 2020 et approuvant la mise en oeuvre des réparations collectives prenant la forme de prestations de services (‘14 December 2020 Decision’), 14 December 2020 (public redacted version filed on 4 March 2021 and correction filed on 5 March 2021), [ICC-01/04-01/06-3495-Red-Corr](#), para. 120.

4. On 26 March 2021, the Chamber issued a decision, *inter alia*, extending the deadline and setting the final cut-off date for the submission of the last complete dossiers to the VPRS on 1 October 2021.⁶

5. On 4 February 2022, the TFCV submitted its Sixteenth progress report on the implementation of collective reparations ('Sixteenth Progress Report'), providing information, *inter alia*, on the status of admissibility decisions, the implementation of the service-based collective reparations, the progress on symbolic reparations, and submitting a proposal in relation to deceased beneficiaries.⁷

6. On 18 February 2022, the OPCV and the LRVs submitted a Joint Response to the Sixteenth Progress Report ('Joint Response').⁸

II. ANALYSIS

A. Administrative Decisions

7. In its Sixteenth Progress Report, the TFCV informs that during the reporting period the VPRS transmitted three batches of victims' applications, consisting of 336 applications in total, and submits for the Chamber's final approval 100 positive administrative decisions adopted by the Board of Directors.⁹ The administrative decisions were taken following the TFCV's Board of Directors verification and assessment of eligibility of direct victims of the crimes for which Mr Lubanga was convicted, as detailed in the Annex to the Sixteenth Progress Report.¹⁰ The TFCV further informs the Chamber that, out of the 1491 files received so far from the VPRS, 450 still await further processing by the TFCV.¹¹

8. The Chamber recalls that in rendering its administrative decisions on the eligibility of new applications, the TFCV's Board of Directors is assisted by the initial verification of the applications and the recommendations provided by the VPRS.¹² In addition, the Chamber notes

⁶ Decision on the submissions by the Legal Representative of Victims V01 in its Response to the Twelfth Report of the Trust Fund for Victims on the implementation of collective reparations, filing ICC-01/04-01/06-3500-Conf-Exp, 26 March 2021 (reclassified as public on 13 April 2021), [ICC-01/04-01/06-3508](#).

⁷ Sixteenth progress report on the implementation of collective reparations as per Trial Chamber II's decisions of 21 October 2016, 6 April 2017 and 7 February 2019 ('Sixteenth progress report'), 4 February 2022, ICC-01/04-01/06-3530-Conf.

⁸ Réponse commune des Représentants légaux des victimes au Seizième Rapport sur le progrès de la mise en oeuvre des réparations collectives déposé par le Fonds au profit des victimes le 4 février 2022 ('Joint Response'), 18 February 2022, ICC-01/04-01/06-3531-Conf.

⁹ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, paras 13-14.

¹⁰ Confidential ex parte Annex A only available to the LRV01, the Trust Fund for Victims, and the VPRS ('Annex A'), 4 February 2022, ICC-01/04-01/06-3530-Conf-Exp-AnxA.

¹¹ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, para. 15.

¹² Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), paras 29-30.

that no objections to the Board of Directors' assessment have been raised by the LRVs or the OPCV.

9. In light of the above and after having reviewed the assessment carried out by the VPRS¹³ and the TFV's Board of Directors,¹⁴ the Chamber hereby issues its final decision, endorsing the TFV's Board of Directors' administrative decisions and approving the 100 new applications for reparations as detailed in Annex A of the Sixteenth Progress Report.

B. Implementation of service-based collective reparations

10. In the Sixteenth Progress Report and in the Joint Response, the TFV, the LRVs, and the OPCV inform the Chamber of the various developments and challenges arising in the implementation of the services-based collective reparations.¹⁵ As to developments, the Chamber notes the TFV's information that 183 victims are currently benefiting from the various components of the service-based collective reparations, while other beneficiaries are expected to be included into the programme 'without delay'.¹⁶ Taking into account the information provided as to the volatile security situation in Ituri, and the impact it is having,¹⁷ the Chamber directs the TFV to provide in its next progress report concrete information as to the steps and timeline planned for the integration of the remaining beneficiaries into the programme and any possible mitigation strategies devised for beneficiaries who may become displaced or unreachable.¹⁸

11. As to the challenges, the Chamber notes the information regarding outstanding complaints by the victims, *inter alia*, in relation to: i) the amount allocated to victims for Income Generating Activities ('IGAs'); ii) support and amount for tuition fees for the victims' dependants, and for professional and/or academic support; iii) support for the return to school for certain beneficiaries; and iv) costs of transport and subsistence during vocational training.¹⁹

¹³ Transmitted to the Chamber by the VPRS via e-mail on 8 February 2022 at 16:23, as requested by the Chamber pursuant to *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](#), para. 16.

¹⁴ Annex A, ICC-01/04-01/06-3530-Conf-Exp-AnxA.

¹⁵ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, paras 16-53; Joint Response, ICC-01/04-01/06-3531-Conf, paras 7-27.

¹⁶ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, para. 21.

¹⁷ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, paras 9, 21; Joint Response, ICC-01/04-01/06-3531-Conf, para. 5.

¹⁸ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, paras 21-22; Joint Response, ICC-01/04-01/06-3531-Conf, para. 5.

¹⁹ Joint Response, ICC-01/04-01/06-3531-Conf, paras 11-26.

12. At the same time, the Chamber welcomes the ongoing efforts undertaken by the TFV and its implementing partner to take into account and to address the victims' complaints. In particular, the Chamber notes the establishment and functioning of the complaint mechanism which led to the adjustment of costs of transport and subsistence during vocational training,²⁰ and has resulted in further sensitisation efforts as to certain services offered by the implementing partner, solutions for physical rehabilitation of certain cases, and discussions for the re-evaluation of the amount allocated to the IGAs.²¹

13. The Chamber also welcomes the various meetings between the LRVs, the OPCV, the TFV, and the implementing partner whereby they have exchanged information of concern for the victims and agreed on the importance of common messages to be delivered to the victims and the need for closer communication and collaboration between all the parties involved.²²

14. The Chamber commends all the efforts undertaken by the TFV, its implementing partner, the OPCV, and the LRVs and considers them to be within the spirit of its previous directions for continued cooperation.²³ The Chamber further encourages them to continue engaging in collaborative discussions and continue sharing the necessary information, exchanging views and concerns, and supporting each other to address the victims' concerns and to ensure the successful implementation of the reparations in the case. The Chamber also encourages the LRVs and the OPCV to continue managing the victims' expectations²⁴ and to help victims channel their justified complaints through the established mechanisms.

C. Symbolic Reparations

15. The Chamber welcomes the progress reported by the TFV in relation to symbolic reparations and the preparatory groundwork carried out by the selected implementing partner to understand the context of the areas of intervention and liaise with the local organisations to gather support in the course of the implementation.²⁵ In line with TFV's submissions,²⁶ the

²⁰ See, *for instance*, Sixteenth progress report, ICC-01/04-01/06-3530-Conf, paras 24-26, 31; Joint Response, ICC-01/04-01/06-3531-Conf, paras 9, 22.

²¹ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, paras 29, 32.

²² See, *for instance*, Sixteenth progress report, ICC-01/04-01/06-3530-Conf, paras 33-34, 41-43, 49-50, 53; Joint Response, ICC-01/04-01/06-3531-Conf, paras 10, 27.

²³ Seventh Decision on the TFV's administrative decisions on applications for reparations and additional matters, 23 November 2021, [ICC-01/04-01/06-3528](#), para. 22.

²⁴ Joint Response, ICC-01/04-01/06-3531-Conf, para. 14.

²⁵ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, para. 55.

²⁶ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, para. 57; *see also* Annexe A au Neuvième rapport sur le progrès de la mise en oeuvre 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-Conf-Exp-AnxA, para. 33; Annexe A au Dixième rapport sur le progrès de la mise en oeuvre des réparations collectives

previous orders in the case,²⁷ and as indicated by the LRVs and the OPCV,²⁸ the beneficiaries should also be consulted on all aspects of the upcoming symbolic reparations, to ensure that they are still relevant and well received by the victims.

D. Deceased beneficiaries

16. In its Sixteenth progress report, the TFV submits a proposal regarding deceased beneficiaries, indicating that for judicial economy and efficiency reasons, the succession procedure would be handled by the TFV and LRVs, as applicable.²⁹ The LRVs and the OPCV support the proposal.³⁰

17. The Chamber recalls that, in accordance with previous jurisprudence,³¹ the right to reparations awarded to deceased beneficiaries may be transferred to persons appointed as successors to the action. To become entitled to the reparations awarded, the successors must establish the death of the beneficiary, his or her family relationship with the beneficiary, and his or her appointment by family members granting him or her authority to act on behalf of the deceased beneficiary.³² Consequently, the Chamber hereby authorises the TFV and the LRVs, as applicable, to receive the relevant documents and to review and accept the proposed succession, in accordance with the applicable legal framework set forth above.

E. Publicity of the proceedings

18. Finally, in line with its previous instructions,³³ the Chamber directs the TFV, the LRVs, and the OPCV to review their submissions underlying this decision and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 17 March 2022.

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, para. 20.

²⁷ See, *inter alia*, Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Annex A, Order for Reparations (amended), 3 March 2015, [ICC-01/04-01/06-3129-AnxA](#), paras 29-32.

²⁸ Joint Response, ICC-01/04-01/06-3531-Conf, para. 28.

²⁹ Sixteenth progress report, ICC-01/04-01/06-3530-Conf, para. 58.

³⁰ Joint Response, ICC-01/04-01/06-3531-Conf, para. 29.

³¹ See, *for instance*, *Prosecutor v. Germain Katanga*, Decision on the Application for Resumption of Action brought by family members of deceased Victim a/0217/09 ('18 October 201 Decision'), 18 October 2021, [ICC-01/04-01/07-3892](#), para. 5; Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on the Request of the Legal Representative of Victims for Resumption of Action for Deceased Victims a/11180/21 and a/11182/21, 21 December 2021, [ICC-01/12-01/15-437](#), para. 9.

³² 18 October 201 Decision, [ICC-01/04-01/07-3892](#), para. 5.

³³ Order on the reclassification of documents, 13 April 2021, [ICC-01/04-01/06-3511](#), Para. 4.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

ENDORSES the TFV's Board of Directors' administrative decisions;

APPROVES the administrative decisions taken by the TFV's Board of Directors with regard to 100 new applicants who shall become beneficiaries of reparations;

DIRECTS the TFV to provide in its next progress report concrete information as to the steps and timeline planned for the integration of the remaining beneficiaries into the programme and any possible mitigation strategies devised for beneficiaries who may become displaced or unreachable;

ENCOURAGES the TFV, the LRVs, and the OPCV to continue engaging in collaborative discussions and to continue sharing the necessary information, exchanging views and concerns, and supporting each other for the successful implementation of the reparations in the case;

ENCOURAGES the LRVs to continue to manage the victims' expectations and to help victims channel their justified complaints through the established mechanisms;

DIRECTS the TFV, the LRVs, and the OPCV to review their submissions underlying this decision and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 17 March 2022.

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



Judge Chang-ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated this Thursday, 10 March 2022

At The Hague, The Netherlands