

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-01/06**
Date: **22 February 2023**

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***

Public

**with Confidential *ex parte* Annex A, only available to the TFV and the LRV01
Eleventh Decision on the TFV'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:

Legal Representatives of Victims V01

Mr Luc Walley
Mr Franck Mulenda

Counsel for the Defence

Ms Catherine Mabil
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims V02

Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta Orwinyo

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Ms Sarah Pellet
Ms Bibiane Bakento
Ms Adeline Bedoucha

**The Office of Public Counsel for the
Defence**

Amicus Curiae

States' Representatives

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Ms Franziska Eckelmans

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, issues this Eleventh 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 issued the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’ (‘Decision on the Size of the Reparations Award’) wherein it, *inter alia*, set out the conditions of eligibility for the purposes of reparations and 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 (‘Decision on New Applicants’),² and directing the Trust Fund for Victims (‘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 (i) instructed the TFV to transmit 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 (‘Board of Directors’) to take administrative decisions on the victims’ eligibility, to be submitted to the Chamber for a final decision on the approval of new applicants;⁴ and (ii) set in place a process enabling the LRVs to challenge negative eligibility decisions taken by the Board of Directors before the Chamber, within 30 days from their notification.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](#), (‘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](#), paras 11, 65-190.

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 Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), paras 36-38.

3. 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

4. On 17 June 2022, the Chamber issued a decision, *inter alia*, directing (i) the VPRS to finalise, as soon as practicable, the processing of all applications submitted before 1 October 2021; and (ii) the TFV to issue administrative decisions in relation to all applications no later than 1 October 2022.⁷

5. On 31 October 2022, following the TFV's Eighteenth Progress Report⁸ and the Notification of 832 administrative decisions from the Board of Directors ('Final Notification'),⁹ the Chamber issued a decision ('Tenth Decision'),¹⁰ *inter alia*, approving the final administrative decisions taken by the Board of Directors with regard to 909 new applicants.

6. On 25 November 2022, the TFV submitted its Nineteenth progress report on the implementation of collective reparations ('Nineteenth Progress Report'),¹¹ providing information on, *inter alia*, administrative decisions and developments in the implementation of the service-based collective reparations.

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 Ninth Decision on the TFV's administrative decisions on applications for reparations and additional matters, 17 June 2022, ICC-01/04-01/06-3536-Conf (reclassified as public on 22 September 2022) [ICC-01/04-01/06-3536-Red](#), para. 11.

⁸ Eighteenth 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, 4 August 2022 (public redacted version filed on the same date, and corrected version filed on 15 September 2022), [ICC-01/04-01/06-3537-Red](#).

⁹ Notification of 832 administrative decisions from the Trust Fund for Victim's Board of Directors pursuant to Trial Chamber II's "Ninth Decision on the TFV's administrative decisions on applications for reparations and additional matters", 17 June 2022, ICC-01/04-01/06-3536-Red (with Confidential ex parte Annex A only available to the LRV01, the TFV and the VPRS; Confidential ex parte Annex B only available to the OPCV, the TFV and the VPRS; and Confidential ex parte Annex C only available to the LRV02, the TFV and the VPRS) ('Final Notification'), 3 October 2022, [ICC-01/04-01/06-3542](#).

¹⁰ Tenth Decision on the TFV's administrative decisions on applications for reparations and additional matters ('Tenth Decision'), 31 October 2022, ICC-01/04-01/06-3543-Conf, disposition.

¹¹ Nineteenth 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 ('Nineteenth Progress Report'), 25 November 2022 (public redacted version filed on the same date, and corrected version filed on 28 November 2022), [ICC-01/04-01/06-3544-Red](#) (with Confidential Ex Parte Annex A, ICC-01/04-01/06-3544-Conf-Exp-AnxA and Annex B, ICC-01/04-01/06-3544-Conf-Exp-AnxB).

7. On 9 and 12 December 2022, the Legal Representative for Victims V01 ('LRV01'),¹² the Legal Representative for Victims V02 ('LRV02'),¹³ and the OPCV¹⁴ submitted their responses to the Nineteenth Progress Report (collectively 'Responses').

8. On 22 December 2022, the LRV01 submitted a challenge requesting the Chamber to review one negative administrative decision by the Board of Directors ('Challenge').¹⁵

II. ANALYSIS

A. Administrative Decisions

Positive Decisions

9. In its Nineteenth Progress Report, the TFV informs the Chamber that, out of the eight applications provisionally approved, as detailed in its Final Notification,¹⁶ the LRV01 provided the missing information in relation to three applicants.¹⁷ Having reviewed the information provided by the TFV and the VPRS, the Chamber is satisfied that victim a/41007/21¹⁸ have provided the required documentation to be considered eligible as a victim in the case. Noting that no objections to the Board of Directors' assessment of this application has been raised, the Chamber hereby issues its final decision endorsing the Board of Directors' positive administrative decision and approving victim a/41007/21 as a new beneficiary of reparations in the case.

10. The Chamber however notes that, having assessed the information provided by the TFV and the VPRS, it has not been able to establish the details of the additional information or documentation that may have allowed the Board of Directors to confirm their assessment and

¹² Réponse des Représentants légaux des victimes V01 au dix-neuvième Rapport sur le progrès de la mise en oeuvre des réparations collectives déposé par le Fonds au Profit des victimes le 4 août 2022, 25 Novembre 2022 ('LRV01 Response'), 9 December 2022 (public version filed on 28 December 2022), [ICC-01/04-01/06-3545](#).

¹³ Réponse des Représentants légaux des victimes du groupe V02 au Dix-neuvième rapport sur le progrès de la mise en oeuvre des réparations collectives déposé par le Fonds au profit des victimes le 25 novembre 2022 (ICC-01/04-01/06-3544-Conf avec annexes) ('LRV02 Response'), 9 December 2022 (public version filed on 16 December 2022), [ICC-01/04-01/06-3546](#).

¹⁴ Réponse du BPCV au Dix-neuvième rapport de progrès sur la mise en oeuvre des réparations collectives déposé par le Fonds au profit des victimes le 25 Novembre 2022 ('OPCV Response'), 12 December 2022, [ICC-01/04-01/06-3547](#).

¹⁵ Recours des Représentants légaux des victimes V01 contre la décision administrative TFV:LUB:2022-a:40760:21 du Fonds au profit des victimes le 25 novembre 2022 ('LRV01 Challenge'), 22 December 2022, ICC-01/04-01/06-3548-Conf-Exp (with confidential ex parte Annex A, ICC-01/04-01/06-3548-Conf-Exp-AnxA, and Annex B, ICC-01/04-01/06-3548-Conf-Exp-AnxB).

¹⁶ Final Notification, [ICC-01/04-01/06-3542](#), para. 6.

¹⁷ Nineteenth Progress Report, [ICC-01/04-01/06-3544-Red](#), para. 16 and footnote 20, referring to applicants a/41007/21, a/41347/21 and a/41363/21.

¹⁸ Final Notification Annex A, ICC-01/04-01/06-3542-Conf-Exp-AnxA, page 27 line 1; and *Lubanga Formulaire de reparations* RDC a/41007/21-VPRS-HQ 01/10/2021, page 11 with updated identity document, registered on 05/08/2022, as transmitted to the Chamber by VPRS via email of 07 October 2022 at 14.30 hrs.

reach a final positive decision in relation to victims a/41347/21¹⁹ and a/41363/21.²⁰ The Chamber further notes that the TFV informs that, for the remaining five applicants provisionally approved, it is still waiting for the submission of relevant information by the LRV02.²¹ Noting the Chamber's previous instructions for the TFV to reach its final decisions on the victims' eligibility by 1 October 2022 at the latest, the Chamber hereby instructs the TFV to provide in its next report its final decisions and supporting documents in relation to these seven applicants.

11. The TFV further informs that regarding the fifteen applicants previously considered as non-eligible, a new assessment has been done in relation to four of them.²² The TFV indicates that three applicants are now considered eligible, upon receiving additional supporting documents, already transmitted to the Chamber by VPRS.²³ In addition, the TFV informs that one more applicant is now assessed a beneficiary, as their statement was corroborated by another beneficiary's application.²⁴ Having reviewed the information provided by the TFV and the VPRS, the Chamber is satisfied that victims a/30084/20,²⁵ a/30094/20,²⁶ a/30235/19,²⁷ and a/40876/21²⁸ have provided the required information and documentation to be considered eligible as victims in the case. Noting that no objections to the Board of Directors' assessment

¹⁹ Final Notification Annex A, ICC-01/04-01/06-3542-Conf-Exp-AnxA, page 69 line 5; and *Lubanga Formulaire de reparations* RDC a/41347/21-VPRS-HQ 16/12/2021, as transmitted to the Chamber by VPRS via email of 07 October 2022 at 14.30 hrs, which contains no additional information than that detailed by the TFV in the annex above referred.

²⁰ Final Notification Annex A, ICC-01/04-01/06-3542-Conf-Exp-AnxA, page 71 line 6; and *Lubanga Formulaire de reparations* RDC a/41363/21-VPRS-HQ 17/12/2021, as transmitted to the Chamber by VPRS via email of 07 October 2022 at 14.30 hrs, which contains no additional information than that detailed by the TFV in the annex above referred.

²¹ Nineteenth Progress Report, [ICC-01/04-01/06-3544-Red](#), para. 16.

²² Nineteenth Progress Report, [ICC-01/04-01/06-3544-Red](#), para. 15.

²³ Nineteenth Progress Report, [ICC-01/04-01/06-3544-Red](#), para. 15 and footnote 17, referring to applicants a/30084/20 and a/30094/20 and repeating the victim code for the last one. The Chamber has determined that the TFV meant to refer to victim a/30235/19 and assessed it accordingly.

²⁴ Nineteenth Progress Report, [ICC-01/04-01/06-3544-Red](#), para. 15; footnotes 18, 19, referring to applicant a/40876/21 whose statement would have been corroborated by victim a/0246/06.

²⁵ Final Notification Annex A, ICC-01/04-01/06-3542-Conf-Exp-AnxA, page 75 line 4; and *Lubanga Formulaire de reparations* RDC a/30084/20-VPRS-HQ 17/01/2020, pages 11-13 with updated information and documentation, registered on 16/09/2022, as transmitted to the Chamber by VPRS via email of 07 October 2022 at 14.30 hrs.

²⁶ Final Notification Annex A, ICC-01/04-01/06-3542-Conf-Exp-AnxA, page 75 line 5; and *Lubanga Formulaire de reparations* RDC a/30094/20-VPRS-HQ 17/01/2020, pages 13-15 with updated information and documentation, registered on 16/09/2022, as transmitted to the Chamber by VPRS via email of 07 October 2022 at 14.30 hrs.

²⁷ Final Notification Annex A, ICC-01/04-01/06-3542-Conf-Exp-AnxA, page 75 line 8; and *Lubanga Formulaire de reparations* RDC a/30235/19-VPRS-HQ 03/09/2019, pages 11-13 with updated information and documentation, registered on 16/09/2022, as transmitted to the Chamber by VPRS via email of 07 October 2022 at 14.30 hrs.

²⁸ Final Notification Annex C, ICC-01/04-01/06-3542-Conf-Exp-AnxC, page 8 line 8; and *Lubanga Formulaire de reparations* RDC a/40876/21-VPRS-HQ 01/10/2021, as transmitted to the Chamber by VPRS via email of 07 October 2022 at 14.30 hrs, corroborated by the narrative of a/0246/06, ICC-01/04-01/06-1275-Conf-Exp-Anx61.

of these applications have been raised, the Chamber hereby issues its final decision endorsing the Board of Directors' positive administrative decisions and approving victims a/30084/20, a/30094/20, a/30235/19, and a/40876/21 as new beneficiaries of reparations in the case.

Negative Decisions

12. The Chamber notes that the TFV provides as Annexes A and B to its Nineteenth Progress Report, eleven negative decisions on victims applications for collective reparations rendered by the Board of Directors.²⁹ In accordance with the procedure established in the Decision on New Applicants, ten of these negative eligibility decision, as detailed in Annex B to the Nineteenth Progress Report, have become final.

13. The Chamber notes that only the Board of Directors' negative decision in relation to victim a/40760/21, as detailed in Annex A to the Nineteenth Progress Report, has been challenged by LRV01.³⁰ Having assessed the Board of Directors' decision and the Challenge, as detailed in Annex A to the present Decision, the Chamber hereby reverses the TFV negative decision on application for reparations of victim a/40760/21, as it considers the victim to be eligible as beneficiary of reparations in the case. In light of the above, the Chamber hereby issues a final decision approving the application of victim a/40760/21 as new beneficiary of reparations in the case.

B. Implementation of service-based collective reparations

14. In the Nineteenth Progress Report and in the Responses, the TFV, the LRVs, and the OPCV inform the Chamber of the various developments and challenges arising in the implementation of the service-based collective reparations. The Chamber welcomes and commends the developments reported, as well as the increased cooperation between the LRVs, the OPCV, the TFV and its implementing partners in addressing the diverse challenges that have arisen during the implementation of the various services included in the reparations programme.

15. Notwithstanding the above, the Chamber notes that in its Tenth Decision, in attention to the *do not harm* and *victim-centred approach* principles, the Chamber instructed the TFV and the implementing partner to develop a better communication strategy which would ensure

²⁹ Nineteenth Progress Report, [ICC-01/04-01/06-3544-Red](#), para. 15.

³⁰ Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), paras 36-38; LRV01 Challenge, 22 December 2022, ICC-01/04-01/06-3548-Conf-Exp.

that victims receive clear, sufficient and prompt information concerning the steps to follow after integration into the programme.³¹

16. In the Nineteenth Progress Report, the TFV informs the Chamber about some of the actions taken to address the continuous challenges relating to communication. In particular, a document jointly elaborated by TFV and the LRVs, explaining victims about the service packages and the calendar for newly admitted victims will soon enter in effect.³² Furthermore, the TFV recommended the implementing partner to develop an information and permanent communication mechanism with the beneficiaries, which is currently operating in a pilot phase.³³

17. The LRV01³⁴ and OPCV³⁵ however inform the Chamber that communication remains a challenge, as they are informed about services, calendars, and practices of the implementing partner by the beneficiaries and not directly by the TFV. Moreover, the communication between the implementing partner and the beneficiaries remains difficult.³⁶

18. In light of the above, while commending the initial steps taken towards enhancing communication,³⁷ the Chamber reiterates the need for the TFV and its implementing partners to continue strengthening communication, putting in place a consistent strategy that will ensure that the beneficiaries and their representatives are properly and timely informed of the services to be received and their calendar.

³¹ Tenth Decision, ICC-01/04-01/06-3543-Conf, para. 20 and disposition.

³² Nineteenth Progress Report, [ICC-01/04-01/06-3544-Red](#), paras 31-34.

³³ Nineteenth Progress Report, [ICC-01/04-01/06-3544-Red](#), para. 33.

³⁴ LRV01 Response, [ICC-01/04-01/06-3545](#), para. 21.

³⁵ OPCV Response, [ICC-01/04-01/06-3547](#), para. 14.

³⁶ LRV01 Response, [ICC-01/04-01/06-3545](#), para. 22; Annex A of the LRV02 Response, ICC-01/04-01/06-3546-Conf-Exp-AnxA, para. 5.

³⁷ Nineteenth Progress Report, [ICC-01/04-01/06-3544-Red](#), paras 31-34.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

ENDORSES the Board of Directors' administrative decisions on applicants a/41007/21, a/30084/20, a/30094/20, a/30235/19, and a/40876/21, who should be considered new beneficiaries of reparations in the case;

INSTRUCTS the TFV to provide in its next report its final decisions and supporting documents in relation to the seven applicants provisionally approved as detailed in its Final Notification;

REVERSES the Board of Directors' negative decision regarding victim a/40760/21;

DECIDES that applicant a/40760/21 has shown on a balance of probabilities that have suffered harm as a consequence of the crimes of which Mr Thomas Lubanga was convicted and therefore is recognised as new beneficiary of reparations in the case; and

REITERATES the need for the TFV and its implementing partners to continue strengthening communication, putting in place a consistent strategy that will ensure that the beneficiaries and their representatives are properly and timely informed of the services to be received and their calendar.

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 Wednesday, 22 February 2023

At The Hague, The Netherlands