

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 4 March 2021

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 the V01 and V02 Groups of Victims, Office of
Public Counsel for Victims, Trust Fund for Victims and Registry**

Second Order relating to the Decision of 14 December 2020

Order 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 Walleyrn

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, issues the following order.

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 determined that they were also to be awarded the collective reparations it had ordered in the case.⁴ The Chamber also found 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 had also been affected by his crimes.⁵

2. On 18 July 2019, the Appeals Chamber handed down a unanimous judgment on two appeals brought against the Decision of 15 December 2017,⁶ confirming the impugned decision subject to one amendment.⁷

¹ “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. 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.

⁶ Appeals Chamber, “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 the same day.

⁷ Judgment of 18 July 2019, ICC-01/04-01/06-3466-Red, para. 332.

3. On 14 December 2020, the Chamber granted the request of the Trust Fund for Victims (“Trust Fund”) of 21 September 2020,⁸ approving, subject to a number of modifications, the implementation of the programme proposed by the Trust Fund and its implementing partner for service-based collective reparations (“Decision of 14 December 2020”).⁹

4. On 26 February 2021, in accordance with the Chamber’s instructions,¹⁰ the Office of Public Counsel for Victims (“OPCV”), the legal representatives of the V01 (“V01 Legal Representatives”) and V02 groups of victims (“V01 Legal Representatives” and collectively, “Legal Representatives”)¹¹ and the Trust Fund¹² filed their respective observations on the appropriateness of issuing a public redacted version of the Decision of 14 December 2020 and on the steps to be taken to prepare the public redacted version of that decision.

II. Analysis

5. The Chamber notes that both the Legal Representatives and the Trust Fund consider it appropriate for the Chamber to issue a public redacted version of the Decision of 14 December 2020.¹³ The Chamber draws particular attention to the Legal Representatives’ view that

⁸ “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, with one confidential *ex parte* annex.

⁹ “Décision faisant droit à la requête du Fonds au profit des victimes du 21 septembre 2020 et approuvant la mise en œuvre des réparations collectives prenant la forme de prestations de services”, 14 December 2020, ICC-01/04-01/06-3495-Conf-Exp.

¹⁰ “Order relating to the Decision of 14 December 2020 and the Twelfth Report of the Trust Fund for Victims on the Implementation of Reparations”, 19 February 2021, ICC-01/04-01/06-3501-Conf-Exp-tENG.

¹¹ “Observations conjointes des Représentants légaux sur le caractère approprié de déposer une version publique expurgée de la Décision approuvant la mise en œuvre des réparations collectives”, 26 February 2021, ICC-01/04-01/06-3502-Conf-Exp, with one confidential *ex parte* annex (“Observations of the Legal Representatives”).

¹² “Observations sur le caractère approprié de déposer une version publique expurgée de la Décision du 14 décembre 2020 (ICC-01/04-01/06-3495-Conf-Exp)”, 26 February 2021, ICC-01/04-01/06-3503-Conf-Exp with one confidential *ex parte* annex (“Observations of the Trust Fund”).

¹³ Observations of the Legal Representatives, para. 11; Observations of the Trust Fund, para. 11.

[TRANSLATION] access to this decision will send a sign of hope to the victims and the communities, enabling them to appreciate the recent progress made in the reparations proceedings, and will contribute to reassuring them as to the concrete and imminent nature of the reparations they will be receiving.¹⁴

The Chamber also notes the Trust Fund's opinion that publicity of the Decision of 14 December 2020

[TRANSLATION] will enable better provision of information to the communities, including the victims [and] will likewise facilitate the Trust Fund's fundraising efforts to cover the full costs of the contemplated reparations programmes and to respond to various solicitations in connection with the progress made in the implementation of the reparations in *Lubanga*.¹⁵

6. The Chamber further notes that the redactions to the Decision of 14 December 2020 suggested by the Legal Representatives and the Trust Fund concern information about programmatic and financial aspects.¹⁶ On that point, the Trust Fund states that some information must remain confidential "[TRANSLATION] to avoid raising any expectations among the victims but also to ensure that they are not exposed to the envy of ill-willed third parties."¹⁷ The Legal Representatives submit that the proposed redactions are intended "[TRANSLATION] to avoid creating specific expectations among the affected victims and communities on the basis of figures and estimates which are, at this stage, purely programmatic [and which] could change depending on the resources available at a later time."¹⁸

7. Last, the Chamber notes that the Legal Representatives and the Trust Fund undertake to file public redacted versions of their respective submissions which are referred to in the Decision of 14 December 2020.¹⁹

8. In the light of the foregoing and having regard to the importance of the Decision of 14 December 2020 and to the principle of publicity of reparations proceedings,²⁰ the

¹⁴ Observations of the Legal Representatives, para. 11.

¹⁵ Observations of the Trust Fund, para. 11.

¹⁶ ICC-01/04-01/06-3502-Conf-Exp-Anx; ICC-01/04-01/06-3503-Conf-Exp-Anx.

¹⁷ Observations of the Trust Fund, para. 15.

¹⁸ Observations of the Legal Representatives, para. 12.

¹⁹ Observations of the Legal Representatives, para. 13; Observations of the Trust Fund, para. 17.

²⁰ Rule 96 of the Rules of Procedure and Evidence; Appeals Chamber, "Amended Order for Reparations", ICC-01/04-01/06-3129-AnxA, paras. 51-52; Decision of 15 December 2017, para. 302.

Chamber is of the view that a public redacted version of that decision should be issued to inform the public of the latest progress made in this case. The Chamber likewise considers that publishing that decision, redacted as necessary, would not affect “the safety, physical and psychological well-being, dignity and privacy of the victims [...]” and would respect the discretion required in the implementation of reparations. The Chamber therefore accepts the redactions suggested by the Legal Representatives and the Trust Fund.²¹

9. The Chamber moreover considers that once the public redacted version of the Decision of 14 December 2020 is published, the public redacted versions of the submissions of the Legal Representatives, the Trust Fund and the Registry, along with the decisions of the Chamber referred to in that decision, should be filed into the case record. In so doing, the Chamber satisfies itself that the documents on which it relied to hand down the Decision of 14 December 2020 are also available to the public.²²

²¹ Observations of the Legal Representatives, para. 12; Observations of the Trust Fund, para. 15.

²² This instruction of the Chamber does not, however, apply to internal documents submitted to the Chamber which are not intended for the public on account of their nature.

FOR THESE REASONS, the Chamber

DIRECTS the V01 and V02 Legal Representatives, the OPCV, the Trust Fund and the Registry to file public redacted versions of the submissions referred to in the Decision of 14 December 2020 or to request, under regulation 23 *bis*(3) of the Regulations of the Court, that the submissions not requiring redactions be reclassified as “public”, within one month as of the notification of this order.

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

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 4 March 2021

At The Hague, Netherlands