

## Statement on the first Reparations Decision by the ICC *The Prosecutor v. Thomas Lubanga Dyilo*

10 August 2012

On 7 August 2012, Trial Chamber I of the International Criminal Court (ICC) issued the Court's first decision on reparations, in the case of Thomas Lubanga Dyilo (Lubanga).<sup>1</sup> Lubanga was convicted on 14 March 2012 for the war crimes of conscripting, enlisting and using children under the age of 15 to participate actively in hostilities from 1 September 2002 to 13 August 2003.<sup>2</sup> On 10 July 2012, Trial Chamber I sentenced Lubanga to 14 years imprisonment.<sup>3</sup> Lubanga, the first person to stand trial before the ICC, is the founder and former President of the *Union des patriotes congolais* (UPC), and former Commander-in-Chief of the *Forces patriotiques pour la libération du Congo* (FPLC), a militia group operating in the Ituri region of the eastern Democratic Republic of the Congo (DRC).

"This decision recognises that reparations is a key feature of the Rome Statute and therefore of the mandate of the ICC. Reparations is possibly the most tangible representation of the justice process for victims, especially for those who have had little access to or information about the formal legal proceedings," said Brigid Inder, Executive Director of the Women's Initiatives for Gender Justice.

"The Trial Chamber has recognised this significance by approving the widest possible reparative remedies with an emphasis on the principles of gender-inclusiveness, flexibility, responsiveness to the diverse needs of the victims and the recognition of victim/survivor agency in the identification and design of reparations programmes. This is very encouraging," said Inder.

On 10 May 2012 the Women's Initiatives filed [observations](#) from a gender perspective on questions of reparations.<sup>4</sup> The observations emphasised key reparations principles including a gender-inclusive approach; non-discrimination; the importance of effective consultation with victims/survivors including women and girls; a broad concept of harm; and the transformative function of reparations.

The Chamber applied a broad approach to the potential beneficiaries of reparations in this case, asserting that, pursuant to Rule 85 of the Rules of Procedure and Evidence<sup>5</sup> and established jurisprudence,<sup>6</sup> both direct

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<sup>1</sup> ICC-01/04-01/06-2904.

<sup>2</sup> ICC-01/04-01/06-2842.

<sup>3</sup> The Chamber also ordered that the six years already spent in detention since his surrender to the ICC in March 2006 are to be deducted from his sentence. ICC-01/04-01/06-2901. See [Press Statement](#) by the Women's Initiatives for Gender Justice on the first sentencing judgement by the ICC, 11 July 2012.

<sup>4</sup> The Women's Initiatives submitted observations on principles and procedure to be applied to reparations, in particular the following issues: (i) whether reparations should be awarded on a collective or an individual basis; (ii) to whom reparations are to be directed, how harm is to be assessed and the criteria to be applied to the awards; (iii) whether it is possible or appropriate to make a reparations order against the convicted person pursuant to Article 75(2); and (iv) whether it would be appropriate to make an order for an award for reparations through the Trust Fund for Victims pursuant to Article 75(2).

<sup>5</sup> Rule 85 of the Rules of Procedure and Evidence provides that: 'For the purposes of the Statute and the Rules of Procedure and Evidence: (a) 'Victims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.'

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and indirect victims are to be included. According to the Trial Chamber, an indirect victim is to be determined based on a close personal relationship with the direct victim.<sup>7</sup> Electing not to define an indirect victim in an alternative manner for the reparations phase, the Chamber retained the definition of an indirect victim as determined by earlier Trial and Appeals Chamber decisions for the purposes of participation in the judicial process.

“It is clear that the Chamber intends this definition to be applied in the broadest possible sense and as such reparations programmes can justifiably address a range of victims. This would include family members of direct victims, applying a culturally appropriate and socially relevant concept of ‘family’, those who were harmed as a result of assisting or intervening on behalf of direct victims, organisations such as public schools, hospitals and institutions, as well as individuals who attempted to prevent the commission of one or more crimes under consideration. The intended application of reparations as outlined by the Chamber is extremely positive,” said Inder.

In accordance with Article 75(1) of the Rome Statute, the Chamber also set out a series of principles relating to reparations and the approach that ought to be taken with respect to their implementation. Importantly, the Chamber recognised that a gender-inclusive approach should guide the design of the principles to be applied to reparations, and held that gender parity must be present in all aspects of the reparations proceedings. The differential impact of crimes on women and men, and on girls and boys, should be taken into account.

The Chamber emphasised that any reparations award must account for victims of sexual and gender-based violence.<sup>8</sup> It explicitly recognised that a reparations order may need to give priority to victims who are in a particularly vulnerable situation or who require urgent assistance and held that it may adopt measures that constitute affirmative action in order to guarantee equal access to reparations for vulnerable victims.<sup>9</sup>

“Women and girls will have the opportunity to participate in the reparations programme and potentially to benefit from a justice process that until now has not formally recognised their experience. This decision creates room for the ICC to address through reparations some of the gender issues inherent in this case including the impact of gender-based violence as raised by the Office of the Prosecutor during the trial,” Inder said.

“Our interest is in seeing not only equal access for girls and women to the reparations process, but also ensuring equal outcomes for these groups. In taking such an approach, the ICC’s reparations programme will necessarily address some of the underlying injustices and inequalities and may contribute, even if in some small way, to transforming communal and gender relations. This is highly significant,” Inder added.

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<sup>6</sup> The Chamber referred specifically to the Judgement on the Appeal of The Prosecutor and the Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, ICC-01/04-01/06-1432. See also ICC-01/04-01/06-1119; ICC-01/04-01/06-1813.

<sup>7</sup> The Chamber relied specifically on jurisprudence from the Inter-American Court of Human Rights, see ICC-01/04-01/06-2904, para 195, fn 386.

<sup>8</sup> ICC-01/04-01/06-2904, paras 189, 202, 207-209.

<sup>9</sup> ICC-01/04-01/06-2904, para 200.

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Citing the “uncertainty as to the number of victims of the crimes in this case – save that a considerable number of people were affected”, the Chamber held that reparations should not be limited to the relatively small number of victims that participated in the trial and that a collective approach should be adopted to ensure that reparations reach those individuals who remain unidentified.<sup>10</sup> The Chamber also stated that collective reparations may be awarded concurrently with individual reparations and that such approaches are not mutually exclusive.<sup>11</sup> The Chamber provided examples of different types of reparations, specifying that each should be approached on a gender-inclusive basis and conceptualised in a way that does not perpetuate existing structural inequalities.

“We are pleased with the approach taken by the Chamber seeking to address the harm and consequences of the crimes committed by Mr Lubanga, and the scope of reparations with an emphasis on both collective and individual,” said Brigid Inder.

The Chamber ordered that the reparations proceedings in this case will be dealt with principally by the Trust Fund for Victims (TFV or Trust Fund), which is to be overseen and monitored by a differently composed Chamber.<sup>12</sup> The TFV is the independent body of the Court which is charged with implementing Court-ordered reparations and with providing physical and psychosocial rehabilitation and material support to victims of crimes within the jurisdiction of the ICC. The Chamber endorsed the five-step implementation plan put forth by the TFV, and to be implemented by the TFV, together with the Registry, the Office of Public Counsel for Victims and a multidisciplinary team of experts, including experts on child soldiers, violence against boys and girls, and gender issues.<sup>13</sup>

“The decision outlines some immediate priorities for the ICC Trust Fund including fundraising to support reparations, the establishment of a multidisciplinary team of experts and developing an operational plan to identify the appropriate locations and process for consultations with potential victims,” Inder said. “We are encouraging states, private donors, foundations and individuals to become partners in this unprecedented opportunity to support reparations for victim/survivor communities,” said Brigid Inder.

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<sup>10</sup> ICC-01/04-01/06-2904, para 219.

<sup>11</sup> ICC-01/04-01/06-2904, para 220.

<sup>12</sup> The Chamber held that, while the Rome Statute does not specify which body is to supervise and monitor the reparations proceedings, pursuant to Article 64(2) and (3)(a), these tasks fall within the functions of the Judiciary. Any questions or contested issues that may arise during the implementation process of the reparations order out of the work or decisions of the TFV are to be dealt with by the Chamber. ICC-01/04-01/06-2904, paras 260-262.

<sup>13</sup> ICC-01/04-01/06-2904, para 282. The five point plan calls for the TFV, Registry, Office of Public Counsel for Victims, and experts to establish which localities ought to be involved in the proceedings, to conduct a consultation process in the different localities, to carry out an assessment of harm, to hold public debates in the localities with the victim communities, and to collect proposals for collective reparations, which will then be presented to the Chamber for approval.

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The Women's Initiatives, together with our partners, has been working on the Lubanga case since 2006. Our involvement includes a filing to the Judges regarding the exclusion of sexual violence charges, girl soldiers and the impact of the limited charges on victims participation issues, and more recently on gender and reparations; the submission of a dossier to the Office of the Prosecutor in 2006 including interviews with victims/survivors of gender-based crimes allegedly committed by Lubanga's UPC militia group; medical and psychosocial support for victims/survivors of sexual and gender-based violence; the relocation of women's human rights defenders in Ituri due to threats to their safety as a result of their local advocacy for victims and accountability; and support for victim participants and their legal representatives to ensure the gender dimensions and experiences of former girl soldiers were recognised in the public record of this case.

For more information about this case please see:

- Read the [press statement](#) by the Women's Initiatives on the sentencing judgement
- Read the [press statement](#) by the Women's Initiatives on the 14 March trial judgement
- For a detailed analysis of the 14 March trial Judgement, see the Special Issues of *Legal Eye on the ICC*, available [here](#)
- Read the Women's Initiatives for Gender Justice's observations on reparations submitted to Trial Chamber I on 10 May 2012, available [here](#)
- *Gender Report Card 2011*, available [here](#); *Gender Report Card 2010*, available [here](#); *Gender Report Card 2009*, available [here](#); *Gender Report Card 2008*, available [here](#);
- For an analysis of the gender aspects of this case, see 'The ICC, child soldiers and gender justice', *Brigid Inder*, 21 November 2011, available [here](#);
- In May and July 2006, the Women's Initiatives conducted two documentation missions in Ituri, eastern DRC, and interviewed victims/survivors of gender-based violence, committed by a range of militias, including the UPC. We produced a dossier, which we subsequently shared with the Office of the Prosecutor, detailing 51 individual interviews with predominantly women victims/survivors of rape and other forms of sexual violence. Of these, 31 interviewees were victims/survivors specifically of acts of rape and sexual slavery allegedly committed by the UPC. On 16 August 2006, the Women's Initiatives submitted the confidential report and a letter to the Office of the Prosecutor describing our grave concerns that gender-based crimes have not been adequately investigated in the case against Thomas Lubanga and providing information about the commission of these crimes by the UPC. A redacted version of this confidential letter submitted to the Office of the Prosecutor is available [here](#);
- For a detailed description of closing arguments in this case, see Women's Initiatives for Gender Justice, 'Summary of the closing statements in *The Prosecutor v. Thomas Lubanga Dyilo*', *Legal Eye on the ICC e-letter*, October 2011, available [here](#). See also *Gender Report Card 2011*, p 203-218, available at [here](#).

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