

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 April 2012

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

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

Public

Decision on the OPCV's request to participate in the reparations proceedings

Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

Mr Paul Kabongo Tshibangu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Victims and Witnesses Unit

**Victims Participation and Reparations
Section**

Defence Support Section

Detention Section

Other

Trial Chamber I (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (“Lubanga case”), issues the following Decision on the OPCV’s request to participate in the reparations proceedings:

I. Background and Submissions

1. On 14 March 2012, the Chamber issued a “Scheduling order concerning timetable for sentencing and reparations” (“Scheduling order”), in which it, *inter alia*, invited “other individuals or “interested parties” to apply in writing for leave to file submissions on the principles to be applied by the Chamber with regard to reparations and the procedure to be followed by the Chamber by 16.00 on 28 March 2012.¹ The Chamber also instructed the Registry to send the current applications for reparations to the Chamber, together with a report thereon by the same deadline.²

2. On 28 March 2012, the Office of Public Counsel for Victims (“OPCV”) requested leave to appear before the Chamber on issues relating to the reparations proceedings (“OPCV’s request”).³ The OPCV submits that in the past they have requested, and have been granted leave, to appear on particular issues of general interest to victims, as well as on specific issues that concern the victims’ general interests.⁴ In these circumstances, the OPCV requests permission to appear before the Chamber in order i) to assist those victims who have an interest in the reparations proceedings but who are unrepresented, and ii) to represent the general interest of victims as regards the reparations proceedings, by way of written observations on the issues identified by the Chamber in its Scheduling Order.⁵

¹ Scheduling order concerning timetable for sentencing and reparations, 14 March 2012, ICC-01/04-01/06-2844, paragraphs 8-10.

² ICC-01/04-01/06-2844, paragraph 7.

³ Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to reparations proceedings, 28 March 2012, ICC-01/04-01/06-2848.

⁴ ICC-01/04-01/06-2848, page 4.

⁵ ICC-01/04-01/06-2848, pages 6-7.

3. Additionally on 28 March 2012, the Registry submitted its "First Report to the Trial Chamber on applications for reparations",⁶ in which it informed the Chamber that it has received 85 applications for reparations.⁷ The Registry suggests that the Chamber may consider it "appropriate to appoint a legal representative to represent the interests of other victims who have not submitted applications for reparations but who, as noted, may still be considered by the Chamber within the scope of any reparations award".⁸ The Registry recommends that "the OPCV be appointed to represent the unrepresented applicants for reparations and any new applicant that may apply for reparations following the notification under Rule 96" of the Rules.⁹

4. On 29 March 2012, the Chamber instructed the parties and participants in the proceedings to submit any responses to the OPCV's request by 16.00 on Wednesday, 4 April 2012.¹⁰

5. On 4 April 2012 the defence submitted its observations in which it opposes the OPCV's request.¹¹ It does not accept that the OPCV represents unrepresented applicants, given the limited numbers involved (it is suggested there are only two individuals in this category). The defence submits that the OPCV's role as the legal representative of certain dual status victims in the present case was exceptional.¹² The defence suggests the OPCV should not represent the general interests of victims as regards reparations, given the Chamber has already received substantive observations from the Registry and the Trust Fund for Victims. The defence therefore argues that additional

⁶ First Report to the Trial Chamber on applications for reparations, 28 March 2012, ICC-01/04-01/06-2847.

⁷ ICC-01/04-01/06-2847, paragraph 4.

⁸ ICC-01/04-01/06-2847, paragraph 19.

⁹ ICC-01/04-01/06-2847, paragraphs 20 and 27.

¹⁰ E-mail Communications of the Legal Officer to the Trial Chamber on 29 March 2012.

¹¹ Réponse de la Défense à la « Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to reparations proceedings », datée du 28 mars 2012, 4 April 2012, ICC-01/04-01/06-2857.

¹² ICC-01/04-01/06-2857, paragraphs 7-11.

observations from the OPCV would be unwarranted. In addition, given the Chamber is due to receive the observations from the legal representatives of victims who are currently participating in the proceedings, the defence submits that the OPCV can provide its observations on reparations to these legal representatives for possible inclusion in their submissions.¹³

II. Analysis and Conclusions

6. In accordance with Article 21(1) of the Statute, the Trial Chamber has considered Article 75 of the Statute, Rules 90, 97 and 98 of the Rules of Procedure and Evidence (“Rules”) and Regulations 79, 80, and 81 of the Regulations of the Court (“Regulations”).
7. The OPCV may fulfil a wide variety of functions during the trial, including the reparations phase. However, the role of the OPCV must be delineated by the Chamber in order to ensure the fair and expeditious conduct of proceedings.¹⁴
8. During the trial the OPCV represented victims who had applied to participate in the proceedings, and on occasion it acted on their behalf until the Registrar arranged a legal representative.¹⁵ The Registry has informed the Chamber that of the 85 applications for reparations received thus far, 4 applicants are currently represented by the OPCV and 35 are unrepresented. As stated above, the Registry recommends that the OPCV is appointed as representative of these applicants and any additional applicants who apply.¹⁶

¹³ ICC-01/04-01/06-2857, paragraphs 12-15.

¹⁴ Decision on the role of the Office of Public Counsel for Victims and its request for access to documents, 6 March 2008, ICC-01/04-01/06-1211, paragraphs 30-31.

¹⁵ ICC-01/04-01/06-1211, paragraph 41(1).

¹⁶ ICC-01/04-01/06-2847, paragraphs 18-20.

9. The Registry also recommends that a legal representative is appointed to represent “the interests of other victims who have not submitted applications for reparation but, who, as noted, may still be considered by the Chamber within the scope of any reparations award”.¹⁷ The OPCV applies to introduce written submissions “to represent the general interest of victims, on the issues related to reparations proceedings”.¹⁸
10. Pursuant to Rule 97(1) of the Rules, the Court may award reparations on an individual or collective basis. Furthermore, in accordance with Rule 98 (3) of the Rules, the Court may order that a collective award for reparations is made through the Trust Fund for Victims. Consequently, victims who may benefit from an award for collective reparations will not necessarily participate in the proceedings, either in person or through their legal representatives.
11. The Chamber considers that the expertise of the OPCV will be useful, particularly in order to safeguard the rights of these potential beneficiaries of an award for collective reparations.
12. In all the circumstances, the OPCV may:
- a. act as the legal representative of unrepresented applicants for reparations until their status is determined or until the Registrar arranges a legal representative to act on their behalf; and
 - b. represent the interests of victims who have not submitted applications but who may benefit from an award for collective reparations, pursuant to Rules 97 and 98 of the Rules.
13. Accordingly, the Chamber:

¹⁷ ICC-01/04-01/06-2847, paragraph 19.

¹⁸ ICC-01/04-01/06-2848, page 7.

- a. Instructs the Registry to appoint the OPCV as the legal representative for any unrepresented applicants and to provide the OPCV with the applications for reparations that have been received thus far, as well as any future applications from unrepresented victims; and
- b. Instructs the OPCV to file submissions on the principles to be applied by the Chamber with regard to reparations and the procedure to be followed by the Chamber on behalf of those victims who have not submitted applications but who may fall within the scope of an order for collective reparations, by 16.00 on 18 April 2012.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 5 April 2012

At The Hague, The Netherlands