

Informal Q & A

Decision setting out the Reparations Principles in the case against Thomas Lubanga

On 7 August 2012, the International Criminal Court (ICC) issued its first ever decision on the principles for victims' reparations – a groundbreaking aspect of the Rome Statute, its founding treaty. In the case against Thomas Lubanga, the ICC's first case, the judges of Trial Chamber I decided that that the Trust Fund for Victims (TFV) will collect reparations proposals from victims, which will then be approved by the Chamber. On 10 July 2012, Thomas Lubanga was sentenced to 14 years imprisonment after having been found guilty of the war crimes of enlisting, conscripting and using children as soldiers in a conflict in Ituri, eastern DRC, in 2002-2003.

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Why are reparations awarded in ICC criminal proceedings?

With the adoption of the Rome Statute, a unique and progressive system of international criminal justice was established where victim's rights and interests play a central role. The inclusion of far reaching rights of victim's participation, protection and reparations as key elements of the Court's procedures is an acknowledgment that justice for genocide, crimes against humanity, war crimes and aggression need to be met with not only retribution, but also restoration. Reparation awards have restorative value as it obliges those responsible for serious crimes to repair the harm they caused to victims, and they enable the International Criminal Court's (ICC) judges to ensure that offenders account for their acts.¹ The ICC is the first international criminal institution to grant reparations to victims of crimes under its jurisdiction.²

What is the basis for awarding reparations to victims of crimes committed by Lubanga?

In the *7 August decision setting out the Reparations Principles in the case against Thomas Lubanga*, (henceforth the 'Reparation Principles Decision') Trial Chamber I set out that reparations in the case against Lubanga must achieve the following:

1. relieve the suffering caused by Lubanga's crimes;
2. afford justice to the victims by alleviating the consequences of the crimes;
3. deter future violations;
4. contribute to the effective reintegration of former child soldiers;
5. assist in promoting reconciliation between the convicted person, the victims of the crimes and the affected communities.

¹ Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, ICC-01/04-01/06, para. 179.

² Rome Statute of the International Criminal Court, art. 75(2).

What are the Principles on Reparations in the Lubanga case?

Pursuant to Article 75(1) of the Rome Statute, "[t]he Court shall establish principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation". The Chamber has thus set out, in the Reparation Principles Decision, what the basis would be for the reparations award, as well as what the process would look like to come to the actual award. The Chamber established the following principles and procedures to be applied to reparations:

1. The applicable law when deciding on reparations
2. Dignity, non-discrimination and non-stigmatisation of the reparations
3. The beneficiaries of reparations
4. Accessibility and consultation with victims to determine reparations
5. How to take into account victims of sexual violence
6. How to take into account child victims
7. The scope of reparations (reparations to individuals and reparations to groups)
8. Modalities of reparations (such as restitution, compensation, rehabilitation; symbolic, preventative or transformative reparations)
9. Proportionality and adequacy of the reparations
10. Causation between the harm suffered and the reparations
11. Standard and burden of proof
12. Rights of the defence in the reparations process
13. Obligation of states and other stakeholders to cooperate
14. Publicity of the Reparations Principles

The established principles and the approach to be taken in their implementation are only for the Lubanga trial. Other principles may be established in the other trials before the Court.

Who are the beneficiaries of an order for reparations?

A 'victim' for the purpose of reparations is a person who directly or indirectly suffered harm following the crimes of enlisting, conscripting and using children under the age of 15 in Ituri in the DRC, from 1 September 2002 to 13 August 2003. Indirect victims are the family members of direct victims, along with individuals who intervened to help the victims or to prevent the commission of these crimes. Reparations may also be awarded to legal entities, such as NGO's, school, hospitals and companies.³

How will child victims and victims of sexual violence be taken into account?

All victims are to be treated fairly and equally as regards reparations. However, particular attention will be given to children, the elderly, those with disabilities and the victims of sexual or gender violence. As Lubanga was convicted for the war crimes of enlisting and conscripting children, age-related harm will be taken into account when assessing appropriate reparations.

The Chamber ordered that reparations should be appropriate for the victims of sexual and gender-based violence (SGBV). This means that when the Court will decide on the award of reparations, it will reflect the fact that the consequences of SGBV are complicated and they require a specialist, integrated and multidisciplinary approach. Also, the Court shall implement gender-sensitive measures to meet the obstacles faced by women and girls when seeking reparations.⁴ The Court should enable women and girls in this respect to participate in a significant and equal way in the design and implementation of any reparations orders.

The Court should avoid further stigmatisation of the victims and discrimination by their families and communities.

³ As set out in Rule 85 of the Rules of Procedure and Evidence.

⁴ ICC-01/04-01/06, Paras. 207-209

How many victims could potentially benefit from these reparations?

According to the Trial Chamber, reparations should benefit the greatest amount of victims possible, even victims who have yet to be identified. Reparations will therefore not be limited to the small group of victims who participated in the proceedings (some 129 persons), nor to the victims who formally applied for reparations (85 persons).

What is the difference between individual and collective reparations?

Reparations may be awarded to: individual victims; or groups of victims, if in either case they suffered harm which does not necessarily need to have been direct, but at least personal to the victim.⁵ In order to benefit the greatest amount of victims possible, and as such a limited amount of victims have to date applied for reparations, the Court will ensure there is a collective approach that ensures reparations also reach those victims who are currently unidentified. This doesn't mean that there is no room for individual reparations to individual victims. However, the Trust Fund for Victims believes that given its limited funds, collective reparations will be more beneficial as it will reach a greater group of affected victims.

What forms of reparations could be ordered?

Restitution, compensation and rehabilitation⁶ could be appropriate, as well as forms of reparations with a symbolic, preventative or transformative value.⁷ The Chamber has stated that the reparations are to be applied in a broad and flexible manner, allowing for flexibility in addressing the consequences of the crimes committed by Lubanga.⁸

Who will pay for the reparations?

Lubanga has been declared indigent meaning that no assets or property of his have been identified that could be used for the purpose of reparations. Therefore the Court will need to draw on the logistical and financial resources of the Trust Fund for Victims in implementing reparations. The Fund's current reserve for reparations that may result from all cases pending before the Court amounts to € 1.2 million. In order for the reparations award to be meaningful, the Chamber has underlined that the Trust Fund will need to receive additional contributions.⁹ The Trust Fund is dependant on voluntary contributions from external actors, such as governments, charitable foundations and other donors and so can only work within its means.

What are the next steps?

1. First, the TFV, the Registry, the OPCV and experts, will establish which localities ought to be involved in the reparations process;
2. Second, there should be a process of consultation with the victims in the localities that are identified;
3. Third, an assessment of harm should be carried out during this consultation phase by the team of experts (led by the TFV);
4. Fourth, public debates should be held in each locality in order to explain the reparations principles and procedures, and to address the victims' expectations;
5. The final step is the collection of proposals for collective reparations that are to be developed in each locality, which are then to be presented to the Chamber for its approval.

The Chamber (a newly composed TC I) will then decide whether and how the proposals for reparations by the TFV will be implemented. The implementation of the reparations award will be done by the TFV.

⁵ Pursuant to Rule 97(1) of the Rules and in accordance with Article 21(3) of the Statute and Rule 85 of the Rules. ICC-01/04-01/06 para. 217 and para. 228.

⁶ Article 75 Rome Statute.

⁷ ICC-01/04-01/06 Para. 222.

⁸ ICC-01/04-01/06 Para 180.

⁹ ICC-01/04-01/06 Paras. 269 - 275.

What is the Trust Fund for Victims?

The Trust Fund for Victims has been established by the Statute of the ICC to work alongside the Court's reparative function to benefit victims of crimes within the jurisdiction of the Court and their families, by fulfilling two mandates. The first is to implement Court-ordered reparations awards against a convicted person when directed by the Court to do so. The second is the general assistance mandate, where voluntary contributions from donors are used to provide victims and their families in situations where the Court is active with physical rehabilitation, material support, and/or psychological rehabilitation. For more information on the Trust Fund please visit www.trustfundforvictims.org and <http://www.coalitionfortheicc.org/?mod=trustfund>.