

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06
Date: 8 December 2016

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***

URGENT

Public

**Order instructing the Trust Fund for Victims to Submit Information regarding
Collective Reparations**

Order to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims V01

Mr Luc Walley

Mr Franck Mulenda

Legal Representatives of Applicants

Legal Representatives of Victims V02

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Isabelle Guibal

Others

Trial Chamber II of the International Criminal Court (“the Chamber”), acting pursuant to article 75 of the Rome Statute and rule 98 of the Rules of Procedure and Evidence, issues this order instructing the Trust Fund for Victims (the “TFV”) to submit information regarding collective reparations.¹

I. Procedural History

1. On 3 March 2015, the Appeals Chamber issued, by majority, its judgment concerning the “Decision establishing the principles and procedures to be applied to reparations”² (the “3 March 2015 Reparations Judgment”), together with the “Amended order for reparations” (the “3 March 2015 Reparations Order”) appended as an annex thereto,³ in which, *inter alia*, the TFV was “directed to prepare the draft implementation plan and submit it to the [...] Trial Chamber within six months of the issuance of the [3 March 2015 Reparations] [O]rder”,⁴ namely on 3 September 2015. The Appeals Chamber, in its 3 March 2015 Reparations Order, also mandated the relevant trial chamber to “monitor and oversee the implementation stage of the order, including having the authority to approve the draft implementation plan submitted by the [TFV]”.⁵

2. On 3 November 2015, having previously granted a request for an extension of time submitted by the TFV, the Chamber received the “Filing on Reparations and Draft Implementation Plan” (the “Draft Implementation Plan”),⁶ in which the TFV addressed, *inter alia*, the different modalities of reparations as envisaged by the Appeals Chamber in the 3 March 2015 Reparations Judgment.⁷

¹ Judge Olga Herrera Carbuccion reiterates her opinion of 15 July 2016 (ICC-01/04-01/06-3217- Anx), and 21 October 2016 ((ICC-01/04-01/06-3252- Anx). However, bearing in mind the submissions made by the TFV during the hearing of 11-13 October 2016, she agrees to receive the further information offered by the TFV.

² ICC-01/04-01/06-3129 and its annexes.

³ ICC-01/04-01/06-3129-AnxA.

⁴ ICC-01/04-01/06-3129-AnxA, para. 75.

⁵ ICC-01/04-01/06-3129-AnxA, para. 76.

⁶ ICC-01/04-01/06-3177-Red.

⁷ ICC-01/04-01/06-3177-Red, paras 181-212.

3. On 18 December 2015, the Chamber received observations on the Draft Implementation Plan from the *Ligue pour la Paix, les Droits de l'Homme et la Justice*⁸ as well as the Prosecutor.⁹

4. On 1 February 2016, the Legal Representatives of Victims V01¹⁰ and V02,¹¹ the Office of Public Counsel for victims (the "OPCV")¹² and the Defence filed their observations on the Draft Implementation Plan.¹³

5. On 9 February 2016, the Chamber issued the "Order instructing the Trust Fund for Victims to supplement the draft implementation plan" (the "9 February 2016 Order"),¹⁴ in which the Chamber, *inter alia*, considered that the TFV's proposals submitted in the Draft Implementation Plan were "in line with the modalities of reparations ordered by the Appeals Chamber".¹⁵ However, lacking concrete information regarding the particularities of the proposed programmes, the Chamber instructed the TFV, *inter alia*, to "propose [...] a set of collective reparation programmes as ordered by the Appeals Chamber".¹⁶ The Chamber also expressed its willingness "to examine any programmes the TFV deems useful to present to it".¹⁷

⁸ "Observations de la Ligue pour la Paix, les Droits de l'Homme et la Justice (LIPADHOJ) sur le projet de plan mise en œuvre déposé par le Fonds au profit des victimes en date du 3 novembre 2015," 17 December 2015 and registered in the record of the case on 18 December 2015, ICC-01/04-01/06-3187.

⁹ "Prosecution's observations on the Trust for Victims' Filing on Reparations and Draft Implementation Plan", 18 December 2015, ICC-01/04-01/06-3186.

¹⁰ "Observations du groupe de victimes V01 sur le projet de plan de mis en œuvre des réparations déposé par le Fonds au profit des victimes ICC-01/04-01/06-3177", 1 February 2016, ICC-01/04-01/06-3194.

¹¹ "Observations de l'équipe V02 sur le projet de plan de mise en œuvre de réparations déposé par le Fonds au profit des victimes (TFV) le 03 novembre 2015 devant la Chambre d'instance II", 1 February 2016, ICC-01/04-01/06-3195.

¹² "Observations sur le Projet de mise en œuvre des réparations déposé par le Fonds au profit des victimes le 3 novembre 2015", 1 February 2016, ICC-01/04-01/06-3193.

¹³ Version publique expurgée des « Observations de la Défense de M. Thomas Lubanga relatives au « Filing on Reparations and Draft Implementation Plan », Lubanga relatives au « Filing on Reparations and Draft Implementation Plan », 2 February 2016, ICC-01/04-01/06-3196-Red2.

¹⁴ ICC-01/04-01/06-3198-tENG.

¹⁵ ICC-01/04-01/06-3198-tENG, para. 20.

¹⁶ ICC-01/04-01/06-3198-tENG, paras 20-21.

¹⁷ ICC-01/04-01/06-3198-tENG, para. 22.

6. Having considered a request for extending the initial deadline for receiving submissions from the TFV on “developing the complete details of the initial group of programmes”, the Chamber received these additional information on 7 June 2016 (the “7 June 2016 Additional Information Submission”).¹⁸

7. On 1 July 2016 and in accordance with the Chamber’s decision issued on 14 June 2016¹⁹, the OPCV²⁰, the legal representatives for victims²¹ and the Defence²² presented their responses, *inter alia*, to the 7 June 2016 Additional Information Submission.

8. On 15 July 2016, the Chamber issued the “Request Concerning the Feasibility of Applying Symbolic Collective Reparations”,²³ in which it requested the TFV to “study the feasibility of developing a concrete project aiming at providing prompt symbolic reparations”.²⁴ The Chamber also deemed significant to receive concrete information regarding: “a) the estimated costs of such a project; b) the time frame for its completion; and c) any concrete proposal(s) related to this matter”.²⁵

9. On 19 September 2016, the Chamber received the “Filing regarding symbolic collective reparations projects with Confidential Annex: Draft Request for Proposals, ICC-01/04-01/06-3223-Conf” (the “19 September 2016 Filing”).²⁶

¹⁸ “Additional Programme Information Filing”, ICC-01/04-01/06-3209.

¹⁹ ICC-01/04-01/06-3210.

²⁰ ICC-01/04-01/06-3212.

²¹ ICC-01/04-01/06-3213 (team V01) and ICC-01/04-01/06-3214 (team V02).

²² ICC-01/04-01/06-3211-Corr.

²³ ICC-01/04-01/06-3219.

²⁴ ICC-01/04-01/06-3219, para.

²⁵ ICC-01/04-01/06-3219, para.

²⁶ ICC-01/04-01/06-3223-Conf and its confidential annex (ICC-01/04-01/06-3223-Conf-Anx); a Public redacted version has also been filed in the record of the case: (ICC-01/04-01/06-3223-Red) and its confidential annex (ICC-01/04-01/06-3223-Conf-Anx).

10. On 11 and 13 October 2016, the Chamber convened a set of public hearings in the presence of the parties, the TFV and a number of non-governmental organizations (the “Hearings”).²⁷

11. On 21 October 2016, the Chamber issued the “Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations”.²⁸

II. Analysis

12. The Chamber recalls that what prevented it from approving the Draft Implementation Plan so far is the lack of sufficient and concrete information regarding the envisaged reparation projects.²⁹ In this respect, the Chamber notes the TFV’s statements in the course of the Hearings that it “is actually aware of the Trial Chamber’s desire to have a more detailed understanding of the specific projects that the Trust Fund will implement as collective reparations in this case”,³⁰ and that in “recognition of this [desire on the part of the Chamber], [it] will propose a way forward [in order to] permit the current proceedings to move [...] towards the realisation of reparations awards for the victims of Mr Lubanga”³¹.

13. The Chamber has also taken note of the explanations provided by the TFV throughout the Hearings regarding the “scope, [...] purpose and the anticipated outcomes of the proposed collective reparations programme”.³² The Chamber is willing to consider the “two-stage approval process for collective reparations awards” proposed by the TFV in the course of the Hearings,³³ subject to receiving further information as described below. Thus, in order to conduct a proper assessment, and for the sake of carrying out its mandate effectively and in an

²⁷ “Order on the conduct of the hearing to be held on 11 and 13 October 2016”, 6 October 2016, ICC-01/04-01/06-3245-tENG.

²⁸ ICC-01/04-01/06-3251.

²⁹ ICC-01/04-01/06-3198-tENG, paras 20-21.

³⁰ ICC-01/04-01/06-T-368-Red-ENG WT, p. 2, lines 7-9.

³¹ ICC-01/04-01/06-T-368-Red-ENG WT, p. 2, lines 9-12.

³² ICC-01/04-01/06-T-368-Red-ENG WT, pp. 14-28.

³³ ICC-01/04-01/06-T-368-Red-ENG WT, p. 27, lines 11-23.

expeditious manner, the Chamber instructs the TFV to file written submissions concerning the first stage proposed. In particular, the Chamber requests concrete and sufficient information on the projects for collective reparations envisaged by the TFV in terms of time frame, project components, method of implementation, draft proposals, similar in structure and level of detail to the 19 September 2016 Filing concerning symbolic reparations. Furthermore, the Chamber requests a more thorough description of the contents and potential timing of the entire process, namely the two-stage process for collective reparations mentioned by the Executive Director of the TFV in the course of the Hearings.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

INSTRUCTS the TFV to submit to the Chamber the information sought in paragraphs 12 and 13 of the present order, by no later than **Monday, 13 February 2017**.

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

Judge Marc Perrin de Brichambaut
Presiding Judge

Judge Olga Herrera Carbuccion

Judge Péter Kovács

Dated this Thursday, 8 December 2016

At The Hague, The Netherlands