

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 April 2017

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccia
Judge Péter Kovács

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

Public

Order approving the proposed programmatic framework for collective service-based reparations submitted by the Trust Fund for Victims

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

The Office of the Prosecutor

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Mr James Stewart

Counsel for the Defence

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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

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

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 the following order.

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”¹ (the “3 March 2015 Reparations Judgment”), together with the “Amended order for reparations” (the “3 March 2015 Reparations Order”) appended as an annex thereto,² in which, *inter alia*, the Trust Fund for Victims (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”,³ 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]”.⁴

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”⁵ together with the “Draft Implementation Plan” appended as an annex thereto,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 ICC-01/04-01/06-3129.

² Annex A to 3 March 2015 Reparations Judgment, ICC-01/04-01/06-3129-AnxA.

³ ICC-01/04-01/06-3129-AnxA, para. 75.

⁴ ICC-01/04-01/06-3129-AnxA, para. 76.

⁵ ICC-01/04-01/06-3177-Conf (A Public redacted version was filed on the same day).

⁶ ICC-01/04-01/06-3177-AnxA.

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

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

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 mise 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 », daté du 3 novembre 2015 », déposées le 1er février 2016 (ICC-01/04-01/06-3196-Conf)*, 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.

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, by majority, 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

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.²⁷

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. 12.

²⁵ ICC-01/04-01/06-3219, para. 12.

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).

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.

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

12. On 8 December 2016, the Chamber issued the “Order instructing the Trust Fund for Victims to Submit Information regarding Collective Reparations” (the “Order on collective reparations”).²⁹

13. On 13 February 2017, complying with the Chamber’s Order, the TFV submitted “Information regarding Collective Reparations”³⁰ (the “13 February 2017 Submission”), together with 5 annexes appended thereto.³¹

II. Analysis

14. In the Order on collective reparations, the Chamber noted its willingness “to consider ‘the two-stage approval process for collective reparations awards’ proposed by the TFV in the course of the Hearings, subject to receiving further information [...]”.³² Accordingly, the Chamber instructed the TFV “to file written submissions concerning the first stage proposed”.³³ The Chamber particularly requested “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”.³⁴ Moreover, the Chamber requested “a more thorough description of the contents and potential timing of the

²⁸ ICC-01/04-01/06-3251.

²⁹ ICC-01/04-01/06-3262.

³⁰ ICC-01/04-01/06-3273.

³¹ ICC-01/04-01/06-3273-AnxA ; ICC-01/04-01/06-3273-AnxB; ICC-01/04-01/06-3273-AnxC ; ICC-01/04-01/06-3273-Conf-AnxD1 (also a public redacted version of Annex D1 has been filed in the record of the case, ICC-01/04-01/06-3273-D1-Red) ; ICC-01/04-01/06-3273-Conf-AnxD2.

³² ICC-01/04-01/06-3262, para. 13.

³³ ICC-01/04-01/06-3262, para. 13.

³⁴ ICC-01/04-01/06-3262, para. 13.

entire process, namely the two-stage process for collective reparations mentioned by the Executive Director of the TFV in the course of the Hearings”.³⁵

15. In this respect, the Chamber has carefully studied the 13 February 2017 Submission, together with the 5 annexes appended thereto.³⁶ In particular, the Chamber noted the approach and method proposed by the TFV to develop the proposed programmatic framework, and its integral components as well as the method of integration of service-based and symbolic reparations. The Chamber took note of what the TFV considered as “the prevailing programmatic uncertainties”, “the related assumptions, risks and mitigation measures [...] guiding [...] the detailed project framework”.³⁷ The Chamber also noted in detail the guiding “draft Scope of Work” set out in annex A appended to the submission, which sets out the programmatic framework and the expected reparation programme outcomes.³⁸ The Chamber moreover studied the proposed duration for implementation of the proposed projects, the locations for their implementation, the proposed plans for monitoring and evaluation of project implementation as well as the overall programme budget.³⁹

16. On the basis of its assessment of the overall programmatic framework presented and the description of the envisaged method of implementation, the Chamber finds that the information provided therein sufficiently lays down the concrete parameters of the proposed future projects envisaged as well as the different steps to be undertaken by the TFV. As such, the Chamber considers that the information provided so far in relation to the first stage of the programmatic framework for collective service-based reparations is sufficient to justify the approval of the proposed programmatic framework.

³⁵ ICC-01/04-01/06-3262, para. 13.

³⁶ ICC-01/04-01/06-3273-AnxA ; ICC-01/04-01/06-3273-AnxB; ICC-01/04-01/06-3273-AnxC ; ICC-01/04-01/06-3273-Conf-AnxD1(a public redacted version of Anx D1 has been filed in the record, ICC-01/04-01/06-3273-D1-Red) ; ICC-01/04-01/06-3273-Conf-AnxD2.

³⁷ ICC-01/04-01/06-3273, para. 22.

³⁸ ICC-01/04-01/06-3273-AnxA, pp. 2-18.

³⁹ ICC-01/04-01/06-3273-AnxA, pp. 19-20, 23-26.

17. Therefore, the Chamber directs the TFV to commence forthwith with the selection of implementing partners via the international competitive bidding outlined in the 13 February 2017 Submission⁴⁰. Nevertheless, the Chamber wishes to emphasize that the implementation stage is subject to the ongoing process of identification of victims and the assessment of the extent of the harm they suffered – a process which is essential for determining M. Lubanga’s liability⁴¹ and which may permit to identify, in greater detail, the specific needs of the victims and thus further inform the implementation of the proposed reparations.⁴² In this context, the Chamber recalls that reparations to the victims should be meaningful.⁴³ Accordingly, the TFV is instructed to report to the Chamber before finalising the contracts with the selected implementing partner, at which point, the Chamber may approve the second stage of the implementation process, after having determined Mr Lubanga’s liability for reparations.

⁴⁰ ICC-01/04-01/06-3273, pages 50-52.

⁴¹ In this regard, Judge Olga Herrera Carbuca reiterates her opinion of 15 July 2016 (ICC-01/04-01/06-3217-Anx) and of 21 October 2016 (ICC-01/04-01/06-3252-Anx).

⁴² ICC-01/04-01/06-3198-tENG, paras 14, 21, 23 and 25; ICC-01/04-01/06-3129, paras 237-242. See in this regard, ICC-01/04-01/06-3273, paras 30-41 and 140.

⁴³ ICC-01/04-01/06-3198-tENG, para. 23. See also *Le Procureur c. Germain Katanga, Ordonnance de réparation en vertu de l’article 75 du Statut*, 24 March 2017, ICC-01/04-01/07-3728, para. 15.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

APPROVES the first stage of the programmatic framework for collective service-based reparations as proposed by the TFV;

DIRECTS the TFV to start the selection of implementing partners, subject to paragraph 17 of the present order; and

INSTRUCTS the TFV to report to the Chamber before finalising the contracts with the selected implementing partners.

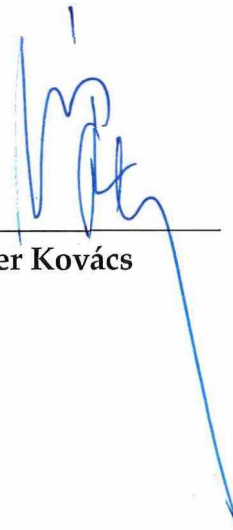
Done in both English and French, the English version being authoritative.



Judge Marc Perrin de Brichambaut
Presiding Judge



Judge Olga Herrera Carbuccion



Judge Péter Kovács

Dated this 6 April 2017

At The Hague, The Netherlands