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Date: **9 February 2016**

TRIAL CHAMBER II

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

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

URGENT

Public Document

**Order instructing the Trust Fund for Victims to supplement the draft
implementation plan**

Order to be notified in accordance with regulation 31 of the Regulations of the Court to:

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TRIAL CHAMBER II (“the Chamber”) of the International Criminal Court, acting pursuant to article 75 of the Rome Statute, orders the following.

I. Procedural background

1. On 3 March 2015, the Appeals Chamber delivered its Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations”¹ (“the Judgment”) with the annex “Order for Reparations (amended)”² (“the Order for Reparations”), directing the Trust Fund for Victims (“the TFV”) to submit a draft implementation plan, applying the principles and procedures adopted in the Order (“the Draft Implementation Plan”), within six months, i.e. by 3 September 2015.³

2. On 14 August 2015, in response to the TFV’s request, the Chamber granted an extension of time to submit the Draft Implementation Plan on 3 November 2015⁴ (“the Decision of 14 August 2015”).

3. On 3 November 2015, the TFV submitted its Draft Implementation Plan (“the Proposed Plan”).⁵

4. On 12 November 2015, the Chamber issued an order instructing interested persons or States, including the Prosecution, as well as the Legal Representatives of Victims V01 and V02 (“Legal Representatives V01” and “Legal Representatives V02”), the Office of Public Counsel for Victims (“the OPCV”) and the Defence team for Thomas Lubanga Dyilo (“the Defence” and

¹ “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2”, 3 March 2015, ICC-01/04-01/06-3129.

² Order for Reparations, 3 March 2015, ICC-01/04-01/06-3129-AnxA.

³ *Ibid.*, para. 75.

⁴ “Decision on the ‘Request for extension of time to submit the draft implementation plan on reparations’”, 14 August 2015, ICC-01/04-01/06-3161-tENG.

⁵ “Filing on Reparations and Draft Implementation Plan”, 3 November 2015, ICC-01/04-01/06-3177-Red (“the Document relating to the Proposed Plan”), and its two annexes (“the Proposed Plan”, ICC-01/04-01/06-3177-AnxA, and “Annex I”, ICC-01/04-01/06-3177-Conf-Exp-AnxI).

“Mr Lubanga”, respectively), to submit observations on the Proposed Plan by 11 December 2015 and 11 January 2016, respectively.⁶

5. On 20 November 2015, in response to the Prosecution’s request,⁷ the Chamber extended the deadline for the filing of observations to 18 December 2015 for the Prosecution and any interested person or State, and to 18 January 2016 for Legal Representatives V01 and V02, the OPCV and the Defence.⁸

6. On 18 December 2015, the *Ligue pour la Paix, les Droits de l’Homme et la Justice*⁹ and the Prosecution¹⁰ filed their respective observations on the Proposed Plan (“the Observations of 18 December 2015”).

7. On 13 January 2016, in response to the request of Legal Representatives V02,¹¹ the Chamber extended the deadline for the filing of observations on both the Proposed Plan and the Observations of 18 December 2015, to 1 February 2016 for Legal Representatives V01 and V02, the OPCV and the Defence.¹²

8. On 1 February 2016, Legal Representatives V01 and V02, the OPCV and the Defence filed their observations on the Proposed Plan.¹³

⁶ “Order fixing the schedule for the submission of observations on the draft implementation plan submitted by the Trust Fund for Victims”, 12 November 2015, ICC-01/04-01/06-3179-tENG. On 11 November 2015, the Office of Public Counsel for Victims requested an extension of time to file observations on the Plan (“*Demande de prorogation de délai aux fins de répondre à la soumission déposée par le Fonds au profit des victimes le 3 novembre 2015*”, 11 November 2015, ICC-01/04-01/06-3178).

⁷ Prosecution’s request for extension of time to file observations on the Trust Fund for Victims’ Reparations and Draft Implementation Plan, 13 November 2015, ICC-01/04-01/06-3180.

⁸ “*Décision relative à la requête du Procureur aux fins de prorogation du délai pour le dépôt d’observations*”, 20 November 2015, ICC-01/04-01/06-3183.

⁹ “*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*”, dated 17 December 2015 and registered on 18 December 2015, ICC-01/04-01/06-3187.

¹⁰ “Prosecution’s observations on the Trust Fund for Victims’ Filing on Reparations and Draft Implementation Plan”, 18 December 2015, ICC-01/04-01/06-3186.

¹¹ “*Demande de prorogation de délai aux fins de répondre à la soumission déposée par le Fonds au Profit des Victimes le 03 novembre 2015 (+ 3 annexes confidentielles)*”, dated 26 November 2015 and registered 27 November 2015, ICC-01/04-01/06-3184-Conf.

¹² “*Décision relative à la requête du Bureau du conseil public pour les victimes et à la requête des Représentants légaux des victims V02*”, 13 January 2016, ICC-01/04-01/06-3190.

¹³ “*Observations du groupe de victims 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; “*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;

II. Analysis

9. The Chamber recalls that, in accordance with the instructions of the Appeals Chamber, this Chamber is responsible for monitoring and overseeing the implementation of a plan once the Chamber has approved it.¹⁴ It must ensure this procedure is carried out properly, and it is responsible for determining the monetary amount of Mr Lubanga's liability in order to complete the Order for Reparations.¹⁵ The Chamber also recalls that in its Decision of 14 August 2015 it specified that the Draft Implementation Plan was to include the following elements:

1. A list of the victims potentially eligible to benefit from the reparations, including the requests for reparations and the supporting material;
2. An evaluation of the extent of the harm caused to the victims;
3. Proposals for the modalities and forms of reparations;
4. The anticipated monetary amount [of Mr Lubanga's liability]; and
5. The monetary amount which could potentially be advanced [by the TFV].¹⁶

10. Having examined the Proposed Plan, the Chamber notes that it is incomplete and therefore does not comply with the instructions of the Chamber and the Appeals Chamber. This Chamber is thus unable to rule on the Proposed Plan, and defers its approval.

11. The Chamber will examine the aforementioned elements below.

"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; *"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 1 février 2016 (ICC-01/04-01/06-3196-Conf)"*, ICC-01/04-01/06-3196-Red2 ("the Observations of the Defence").

¹⁴ Order for Reparations, para. 76.

¹⁵ *Ibid.*, para. 81.

¹⁶ Decision of 14 August 2015, p. 6.

(a) A list of the victims potentially eligible to benefit from the reparations

12. The Chamber notes that the TFV has not identified any potential victims.

13. The Chamber is aware of the difficulties associated with identifying victims potentially eligible to benefit from the reparations, including logistics, costs and demands on time.¹⁷ It is also aware of the repercussions for the potential victims, who, more than 10 years after the events in question, are obliged to recall the trauma they have suffered.¹⁸ The Chamber further notes the efforts the Victims Participation and Reparations Section (“VPRS”) has made in attempting to locate the victims.¹⁹

14. However, the Chamber will not be able to rule on the monetary amount of Mr Lubanga’s liability until the potential victims have been identified and it has examined both their status as victims eligible to benefit from the reparations and the extent of the harm they have suffered. In this context, the Chamber recalls that it is responsible for deciding on the status of eligible victims once the Defence has had the opportunity to submit its observations on the eligibility of each victim.²⁰

15. In the light of the foregoing, the Chamber instructs the TFV to begin the process of locating and identifying victims potentially eligible to benefit from the reparations²¹ and transmit the results of this process to the Chamber in accordance with the instructions below.

¹⁷ Document relating to the Proposed Plan, pp. 69-70.

¹⁸ *Ibid.*, pp. 68-69.

¹⁹ Annex I.

²⁰ See for example, *The Prosecutor v. Germain Katanga*, “Decision on the ‘*Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve*’ and future stages of the proceedings”, 8 May 2015, ICC-01/04-01/07-3546-tENG, para. 21.

²¹ Judgment, para. 205.

16. The Chamber notes that the TFV plans to evaluate the eligibility of the victims through a screening process,²² which will include, *inter alia*, interviews conducted with the use of the eligibility screening tool²³ (“the interviews”). The Chamber considers it important to remind the TFV that victim status must be evaluated in accordance with the principles established by the Appeals Chamber.²⁴ The Chamber also recalls that the TFV may request the assistance of the VPRS, the Legal Representatives of Victims V01 and V02, and the OPCV in locating and identifying potential victims.²⁵ The Chamber further recalls that the consent of potential victims who have previously submitted requests for reparations²⁶ is required in order for them to be taken into consideration at this stage of the procedure.²⁷

17. The Chamber instructs the TFV to prepare a file for each potential victim, with a copy of the identification documents or other means of identification presented,²⁸ the interviews²⁹ and the TFV’s conclusions with regard to the victim’s status and the extent of the harm he or she has suffered, as well as any other relevant information the TFV has taken into account in reaching its conclusions.³⁰ To that end, the TFV must seek to obtain the potential victims’ written consent to transmit this information

²² Proposed Plan, paras. 41-64.

²³ *Ibid.*, pp. 75-80.

²⁴ The existence of harm and the causal link between the harm and the crimes for which Mr Lubanga was convicted must be proved on a balance of probabilities (Order for Reparations, paras. 58-59 and 65).

²⁵ In *The Prosecutor v. Germain Katanga*, the Legal Representative of Victims received extensive assistance from the VPRS to locate and identify the victims. In this regard, see *The Prosecutor v. Germain Katanga*, “Order instructing the Registry to report on applications for reparations”, 27 August 2014, ICC-01/04-01/07-3508; *The Prosecutor v. Germain Katanga*, “Decision on the ‘Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve’ and future stages of the proceedings”, 8 May 2015, ICC-01/04-01/07-3546-tENG.

²⁶ See in this regard, “Decision establishing the principles and procedures to be applied to reparations”, 7 August 2012, ICC-01/04-01/06-2904, para. 284; “Transmission to the Trust Fund for Victims of applications for reparations”, 16 August 2012, ICC-01/04-01/06-2906.

²⁷ Judgment, para. 162; Order for Reparations, paras. 73 and 74.

²⁸ Proposed Plan, para. 47; Order for Reparations, para. 57.

²⁹ Proposed Plan, pp. 75-80.

³⁰ *Ibid.*, paras. 49-51.

to the Defence, i.e. their identity, their status as direct or indirect victims and the description of the factual allegations, including the harm suffered.³¹

18. The Chamber instructs the TFV to provide it with the first batch of files of potential victims, via the Registry if necessary, by 31 March 2016, the second batch by 15 July 2016 and the third batch by 31 December 2016 (“the three Batches”). In this context, the Chamber will issue decisions regarding the status of the victims eligible to benefit from the reparations based on the batches of files received and the observations of the Defence.

(b) Proposals for the modalities and forms of reparations

19. The Chamber notes the considerations presented by the TFV following its research concerning the desired content of the modalities and forms of collective reparations for the victims of Mr Lubanga. The Chamber notes that the TFV proposes to develop reparation programmes, separate from the programmes under the assistance mandate, aimed at reintegrating former child soldiers into their communities, in particular through vocational training and accelerated literacy courses.³² It notes that the TFV also proposes to include training that encourages the resolution of disputes and conflicts between the victims, their families and their communities, as well as gender-sensitive training.³³ The Chamber further notes that the TFV plans to develop a programme of targeted psychological support and

³¹ In this context, the Chamber considers that the modalities of redaction ordered in *The Prosecutor v. Germain Katanga* also apply to this case. To ensure its compliance, the TFV may contact the VPRS before transmitting files to the Defence (*The Prosecutor v. Germain Katanga*, “Decision on the ‘Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications’”, 1 September 2015, ICC-01/04-01/07-3583-tENG).

³² Proposed Plan, para. 69.

³³ *Idem*. The Chamber recalls that the Appeals Chamber has determined that “sexual and gender-based violence [cannot] be defined as a *harm* resulting from the crimes for which Mr Lubanga was convicted” and that, therefore, victims who have suffered harm resulting from sexual and gender-based violence could, at the TFV’s discretion, be included under its assistance mandate (Judgment, paras. 196-199; Order for Reparations, para. 64).

treatment aimed at strengthening community ties and promoting healing and acceptance.³⁴

20. The Chamber generally considers that the TFV's proposals are in line with the modalities of reparations ordered by the Appeals Chamber.³⁵ The Chamber is of the view, however, that the TFV has presented only a summary description of the prospective programmes and how they will be developed and managed.³⁶ This information is insufficient for the Chamber to approve the implementation of the Proposed Plan.

21. Accordingly, the Chamber instructs the TFV to propose, by 7 May 2016, a set of collective reparation programmes as ordered by the Appeals Chamber,³⁷ based on the principles presented in the Proposed Plan,³⁸ the broad outlines of which the Chamber accepts. These programmes must be geared towards the direct and indirect victims of the crimes of which Mr Lubanga has been convicted. They must place particular emphasis on the gender-specific consequences of the crimes, as the TFV has suggested.³⁹ The Chamber is also of the opinion that these programmes must be designed so that as many victims as possible may participate.

22. The Chamber instructs the TFV to present to it the specific terms of reference of each programme for which it is considering issuing a request for proposals or directly negotiating a contract. Each programme must include a precise evaluation of its cost, as well as provisions that allow the Chamber to fulfil the duty of monitoring assigned to it by the Appeals Chamber.⁴⁰ The time limits for the implementation of

³⁴ Proposed Plan, paras. 68 and 112.

³⁵ Order for Reparations, paras. 67-72.

³⁶ Proposed Plan, paras. 179-195.

³⁷ Order for Reparations, paras. 69-70.

³⁸ These programmes may focus on specific actions or have several objectives in the aim of addressing the needs of victims, e.g. the potential participation of Mr Lubanga (Proposed Plan, paras. 65-172).

³⁹ Proposed Plan, paras. 32-39.

⁴⁰ Order for Reparations, para. 76.

each programme must be mentioned. Lastly, the Chamber is willing to examine any programmes the TFV deems useful to present to it.

23. The Chamber will examine the programmes presented by the TFV once it has considered the first batch of files. The Chamber reserves the right to approve, with such modifications as it may deem useful, the programmes submitted by the TFV that best match (in terms of appropriateness and balance) the needs expressed by the victims in connection with the harm they have suffered. The Chamber will ask the TFV to implement these programmes as quickly as possible so as to offer the victims meaningful redress. The Chamber reserves the right to supplement this order to satisfy the requirements of the Appeals Chamber's Judgment and Order for Reparations.

24. Once the first batch and the detailed programmes have been received, the Chamber will determine the modalities regarding consultation of the parties.

(c) The evaluation of the extent of the harm caused to the victims, the anticipated amount and the monetary amount which could potentially be advanced by the TFV

25. The Chamber recalls that the TFV must also propose an evaluation of the extent of the harm caused to the victims, the anticipated amount Mr Lubanga's liability, and the monetary amount which could potentially be advanced by the TFV.⁴¹ The Chamber acknowledges that the TFV will not be able to evaluate the overall harm caused to the victims until all of the potential victims have been identified, i.e. not until 31 December 2016. The amount of the evaluation corresponds to the aggregate harm suffered by the potential victims. The Chamber should thus have received by that date the TFV's proposals concerning the anticipated monetary amount of Mr Lubanga's liability and the monetary amount the TFV deems necessary

⁴¹ Decision of 14 August 2015, p. 6.

and intends to advance in order to remedy the damage caused by the crimes of which Mr Lubanga was convicted.

26. In accordance with the provisions of the Order for Reparations, the Chamber will invite the parties to submit their opinions on the extent of Mr Lubanga's overall liability before it determines the monetary amount of that liability.⁴² In view of these proposals and the observations that it receives, the Chamber will determine the amount of liability for reparations, which will form an integral part of the Order for Reparations, and will thus conclude the implementation of the Draft Implementation Plan assigned to this Chamber by the Appeals Chamber.

⁴² Order for Reparations, para. 80.

FOR THESE REASONS, the Chamber

DEFERS the approval of the Draft Implementation Plan;

INSTRUCTS the TFV to submit the three Batches to the Chamber by 31 March, 15 July and 31 December 2016, respectively;

INSTRUCTS the TFV to continue developing the complete details of the initial group of programmes forming an integral part of the Draft Implementation Plan, as indicated in paragraphs 21 and 22, and transmit them to the Chamber on 7 May 2016; and

INSTRUCTS the TFV to transmit to the Chamber, on 31 December 2016, the overall evaluation of the extent of the harm caused to the victims, the anticipated amount of Mr Lubanga's liability and, if necessary, the revised monetary amount that the TFV intends to advance in order to execute the Draft Implementation Plan.

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

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera-Carbuccia

[signed]

Judge Péter Kovács

Dated this 9 February 2016

At The Hague, the Netherlands