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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***

Public

**Observations of the *Ligue pour la Paix, les Droits de l'Homme et la Justice*
(LIPADHOJ) on the draft implementation plan filed by the Trust Fund
for Victims on 3 November 2015**

Source: LIPADHOJ

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

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I. FACTUAL 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” of 7 August 2012 and its annex “Order for Reparations (amended)”, directing the Trust Fund for Victims (“the TFV”) to submit a draft implementation plan, applying the principles and procedures adopted (“the Draft”).

2. The TFV filed the Draft on 3 November 2015.

3. The Chamber welcomed the submission of observations on the Draft by interested parties.¹

II. REASONS FOR INTERVENING AND SUBJECT MATTER OF LIPADHOJ’S OBSERVATIONS

4. For over a decade, the *Ligue pour la Paix, les Droits de l’Homme et la Justice* (LIPADHOJ) has been working to raise victims’ awareness of the importance of participating in Court proceedings and has supported them accordingly. Now that Thomas Lubanga has been convicted, the victims hope that, during the reparations stage, full account will be taken of their concerns regarding the harm they have suffered. Since the Lubanga case has not yet been brought to a definitive conclusion, LIPADHOJ continues to feel bound by the obligation to give victims an account of the conduct of the proceedings and to put forward, on their behalf, the views that safeguard all their legitimate interests.

5. After making some observations on the basic approach taken by the TFV in drawing up the Draft, LIPADHOJ will go on to examine the following points: the fact that the former child soldiers are now adults, the incomplete nature of the list of victims’ ethnic groups, the case of relocated victims, vulnerability in relation to psychological harm and the need to shed light on conflicts of interest.

¹ ICC-01/04-01/06-3183.

III. OBSERVATIONS OF LIPADHOJ

6. First and foremost, before addressing the questions set out by the TFV in the Draft, we would like to emphasise that, to a certain extent, many persons and institutions supported the creation of the International Criminal Court because of its ability to achieve reparative justice for victims, who trust it not to disappoint them in the reparations process. This process must not be seen as a mere formality and must have the victims' concerns at its heart. Now that the time has come to assuage the victims' moral and physical suffering, the same material, human and financial resources used to punish the accused, if not more, must be made available to them.

We therefore believe that the main focus of the budgeting of the Draft must initially be on reparations activities that will benefit the victims directly rather than indirectly. In other words, the implementation of a reparations programme whose funds are largely devoted to running the programme and paying its staff will be less satisfying for victims if nothing is done (a) to inform them of the reparations, (b) to ensure that they play a specific role in the process and (c) to ensure that they genuinely benefit from the service implemented to redress the harm they have suffered. In our view, the TFV is more concerned with setting up the service, which is commendable, than with ensuring that all victims benefit fully from it, which is a pity. If it could review its approach by focusing, first and foremost, on the beneficiaries' needs with regard to the service, rather than vice versa, it would be praised for showing greater concern for the victims. This is the approach used by domestic courts when there is a need to redress harm. In a great many of its proposals, instead of adapting the service to the harm that has been suffered and that must be redressed, the TFV asks victims to adapt the reparation of their harm to the service that will be offered to them.

7. Attention must now be drawn to the fact that the victims were child soldiers who are now adults. This nuance does not appear to be addressed by the Draft. We have the impression that the TFV gives greater weight to the psychological aspects of the harm by developing a range of related programmes that risks swallowing up all the available funds without satisfying the victims. Although we acknowledge that they have a need for programmes offering psychological support, this need is not as great as it was a few years back, when they were twelve years younger. Many of them now have various responsibilities, the greatest of which is that of parenthood, which entails the need to support dependants. They engage in various activities to earn a living or to make up for lost opportunities. Subjecting them to lengthy therapy sessions spread out over a long period of time will discourage some of them from taking part in the process and will not encourage others to take it up, in particular if these sessions amount to a loss of income essential to the daily upkeep of their households and the satisfaction of their needs. If this occurs, there is a risk that they will give precedence to their money-making occupations. For this reason, we suggest that they be paid a sort of *per diem* for participating in the activities. This *per diem* will be fully justified as it will be compensatory rather than remuneratory. In our view, this will be an important factor in persuading a large number of victims to engage successfully in the psychological part of the reparations. Moreover, it will be a component of the socio-economic support set out in the Draft (paragraphs 160 to 172 of Annex A).

8. In paragraph 21 of the Draft (Annex A), the TFV refers only to the Hema and Alur ethnic groups. However, children belonging to the Nyali and Bira ethnic groups were also recruited in the UPC/FPLC camp. Unless these groups have been omitted by the TFV because an investigation concluded that there are no former child soldiers belonging to these groups, it is important to consider these communities so that they do not feel frustrated at being excluded.

9. In paragraph 26 of the Draft (Annex A), the TFV states that, following the restrictions imposed on the financial means available, some relocated victims will unfortunately not receive assistance. It must be stressed that there are two kinds of relocated victims: those who relocated of their own accord and those who did so by means of a protection procedure (through the ICC and MONUSCO). If funds have been raised to allow victims to participate in the procedure by protecting them with a view to curbing the crime committed by Lubanga, there is no justification, in our view, for doing nothing to ensure that the victims receive reparations. We would not wish to conclude that victims have been used simply to punish Lubanga and that they will fail to receive reparations for the harm that they have suffered and continue to suffer.

For this reason we suggest that when the reparations plan is implemented (a) an information and awareness-raising campaign be organised and (b) the TFV ensure that victims who are a long way from Ituri can return there if they so desire. Their return will be supported by the provision of the material means needed to repatriate and take care of them in the place where they will benefit from the activities comprising the Plan.

10. The TFV's reasoning is hard to follow as, on the one hand, it states that every experience of being a child soldier results in psychological harm (paragraph 98) and, on the other, it suggests that only the most vulnerable victims should benefit from reparations (paragraphs 29, 31 and 56, *inter alia*). Opting for the former line of reasoning, we suggest that every victim who expresses a need for the psycho-social activities that form part of the reparations plan should be treated. We make this suggestion because we fear that the criterion of "vulnerability" will lead to subjective judgments being made, not only by the selectors but also the victims who are not selected and who may feel unfairly excluded from the process.

With regard to bodily harm, we believe that the vulnerability criterion should be taken into account when existing medical structures cannot cope with the harm suffered by victims or when the reparations plan appears to leave a certain number of victims presenting similar sequelae (disabilities, unremoved bullets, etc.) without medical care. In such cases, we suggest that the reparations plan be dynamic rather than static and that it should be flexible when there are grounds justified by, *inter alia*, the relatively high number of victims concerned.

11. Paragraph 184 of the Draft (Annex A) mainly addresses the question of conflicts of interest. In this regard, we would like the TFV to clarify its position. Will intermediaries who no longer have ties with the organs or sections of the Court when their submissions are made be eligible? And will those who still maintain such ties be able to opt for the reparations implementation plan if their submissions are accepted? We would like the TFV to take into account the experience acquired by certain partners in Ituri, in particular in identifying, locating and raising the awareness of victims, since – provided, of course, that there are no conflicts of interest – such experience can still serve to benefit the victim reparation process.

12. With regard to the above, we respectfully request the Chamber to receive our observations and to ask the TFV to consider them, where possible, if and when the Draft is to be amended.

And justice will be done.

For the NGO LIPADHOJ

[signed]

Mr NENGOWE AMUNDALA

Associate Coordinator

Done at Bunia on 17 December 2015