

**Cour
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**International
Criminal
Court**



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

Date: 15 July 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***

Public

**Request Concerning the Feasibility of Applying Symbolic Collective
Reparations**

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

The Office of the Prosecutor

Counsel for the Defence

Ms Catherine Mabilile

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims V01

Legal Representatives of Applicants

Mr Luc Walley

Mr Franck Mulenda

Legal Representatives of Victims V02

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

The Office of Public Counsel for Victims

Trust Fund for Victims

Mr Pieter de Baan

Ms Paolina Massidda

REGISTRY

Registrar

Counsel Support Section

Mr Herman von Hebel

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Ms Isabelle Guibal

Trial Chamber II of the International Criminal Court (“the Chamber”), acting pursuant to article 75 of the Rome Statute (“the statute”) and rule 98 of the Rules of Procedure and Evidence (“the rules”), issues, by majority, this interim request concerning the feasibility of applying symbolic 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 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”,⁴ namely 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 This request is without prejudice to the pending requests for reconsideration (31 May and 7 June 2016 respectively) which will be decided by the Chamber in due course.

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 Prosecution.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.

II. Analysis

8. The Chamber notes that in the 7 June 2016 Additional Information Submission, the TFV argued that the “Trial Chamber thus far has not addressed, its position regarding symbolic interventions and programs aimed at promoting reconciliation and non-repetition”.²³ The TFV further stated that since the Chamber’s approach appears to be limited to reparation awards that result in individual benefits, “[it] invites the Trial Chamber to consider whether and to what extent it considers that such inherently collective activities should form part of the overall reparations program”.²⁴

9. The Chamber also recalls that in Annex A of the Draft Implementation Plan, the TFV touched upon the envisaged modalities of reparation including memorialization as well as symbolic initiatives.²⁵ With respect to the latter, the TFV correctly pointed out, that “symbolic reparation initiatives are part and parcel of

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-01/04-01/06-3209, para. 65.

²⁴ ICC-01/04-01/06-3209, para. 66.

²⁵ ICC-01/04-01/06-3177-AnxA, pp. 50-51.

initiatives such as reconciliation, integration, and psychological recovery”.²⁶ The TFV also stated that “symbolic reparations are part of an integrated reparation process that is directed by the responses and interest of the victims through to participatory process. The TFV will support and undertake symbolic initiatives that have wider popular within the discussion group and cultural resonance in the context.”²⁷

10. Nevertheless, the TFV refrained from providing the Chamber with concrete information about particular projects concerning symbolic reparations. In this respect, the Chamber wishes to point out that nowhere in its 9 February 2016 Order did the Chamber rule out the possibility of approving symbolic reparations. To the contrary, the Chamber explicitly stated that it “consider[ed] that the TFV’s proposals are in line with the modalities of reparations ordered by the Appeals Chamber.”²⁸ The only remark made in this context was that the TFV “ha[d] presented only a summary description of the prospective programmes”.²⁹ To the extent that symbolic reparations are concerned, the Chamber considers that the information provided in Annex A of the Draft Implementation Plan remains unclear.

11. Since the TFV raised the question of “symbolic interventions and programs aimed at promoting reconciliation and non-repetition” in the 7 June 2016 Additional Information Submission, and correctly pointed out that such initiatives form “a key component of reparation awards”,³⁰ the Chamber considers it appropriate to act in this direction. In this regard, the Chamber agrees with the suggestion made by the OPCV that symbolic activities may be developed in parallel to other projects for victims, and be directed at affected communities.³¹ Such projects do not require previous identification of beneficiaries.

²⁶ ICC-01/04-01/06-3177-AnxA, p. 51.

²⁷ ICC-01/04-01/06-3177-AnxA, p. 51.

²⁸ ICC-01/04-01/06-3198-tENG, para. 20.

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

³⁰ ICC-01/04-01/06-3209, para. 65.

³¹ ICC-01/04-01/06-3212, para. 37.

12. In order to expedite the process of reparations, and in view of the security and other practical concerns outlined by the TFV in its submissions of 31 May³² and 7 June 2016³³ respectively, the Chamber requests the TFV to study the feasibility of developing a concrete project aiming at providing prompt symbolic reparations. This may take the form of, *inter alia*, a commemoration and/or building a statue for child soldiers who have suffered from the events. In this regard, the Chamber deems it 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.


³² ICC-01/04-01/06-3208.

³³ ICC-01/04-01/06-3209.

FOR THE FOREGOING REASONS, THE CHAMBER, BY MAJORITY, HEREBY REQUESTS the TFV to act in accordance with paragraphs 9-12 of the present decision and submit a report to the Chamber no later than **Friday, 16 September 2016**.

Judge Olga Herrera Carbuccion will file a dissenting opinion in due course.

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 Friday, 15 July 2016

At The Hague, The Netherlands