



Original: English

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

Date: 20 April 2012

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

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

Public

Decision granting leave to make representations in the reparations proceedings

Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Other

Ms Brigid Inder, Women's Initiatives for Gender Justice
Mr David Tolbert, International Center for Transitional Justice
Ms Sandra Baffoe-Bonni, UNICEF
Mr André Marie Kito Masimango, Fondation Congolaise pour la Promotion des Droits humains et la Paix
Mr Jean-Phillippe Kot, Avocats sans frontières

Trial Chamber I (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (“Lubanga case”), issues the following Decision granting leave to make representations in the reparations proceedings:

I. Background and Submissions

1. On 14 March 2012, the Chamber issued a “Scheduling order concerning timetable for sentencing and reparations” (“Scheduling order”), in which it, *inter alia*, invited “other individuals or interested parties” to apply in writing for leave to file submissions on the principles to be applied by the Chamber with regard to reparations and the procedure to be followed by the Chamber by 16.00 on 28 March 2012.¹

2. On 28 March 2012 the Women’s Initiatives for Gender Justice (“Women’s Initiatives”) requested leave to participate in the reparations proceedings.² Women’s Initiatives “seeks to assist the Court by providing observations on the gender dimensions” on collective and individual reparations, the identification of those individuals and bodies to whom reparations are to be directed, the assessment of harm and the criteria to be applied to the awards.³ Women’s Initiatives particularly wishes to make submissions on the consequences of sexual violence as a component of the harm suffered by child soldiers,⁴ the design of the reparations programmes so as to include a response to gender-based crimes, the value of combining individual and collective reparations and the possibility of ordering symbolic reparations.⁵

¹ Scheduling order concerning timetable for sentencing and reparations, 14 March 2012, ICC-01/04-01/06-2844, paragraphs 8-10.

² Women’s Initiatives for Gender Justice request for leave to participate in reparations proceedings, 28 March 2012 (notified on 29 March 2012), ICC-01/04-01/06-2853.

³ ICC-01/04-01/06-2853, paragraphs 4 and 35-36.

⁴ ICC-01/04-01/06-2853, paragraphs 17 and 26.

⁵ ICC-01/04-01/06-2853, paragraphs 27-28 and 33.

Women's Initiatives also seeks leave to address the security issues that will be faced by the beneficiaries of reparations,⁶ and it seeks to make submissions on the importance of a consultation process with victims that takes the views of women and girls into consideration.⁷ Women's Initiatives has referred to its extensive work in relation to the ICC and particularly in the present case and in the Democratic Republic of Congo ("DRC"), and it submits that it has a unique perspective and expertise in advancing gender justice through the ICC. It submits that consequently it is uniquely well placed to assist the Chamber in the present matter.⁸

3. On the same day, the International Center for Transitional Justice ("ICTJ") requested leave to file submissions on the principles and procedure with regard to reparations.⁹ The ICTJ indicates that it has offices and representatives in the DRC, and it submits it is a pioneering and leading organisation that has worked in the field of transitional justice for over ten years.¹⁰ Consequently, it submits that, if granted leave to make observations, it will draw upon its work in this field, including its work in the DRC.¹¹

4. On 29 March 2012 the Registry transmitted to the Chamber three communications received from the United Nations Children's Fund ("UNICEF"), *Avocats sans frontières* ("ASF") (with four other organisations) and the *Fondation Congolaise pour la Promotion des Droits humains et la Paix* ("FOCDP").¹²

⁶ ICC-01/04-01/06-2853, paragraphs 31-32.

⁷ ICC-01/04-01/06-2853, paragraph 34.

⁸ ICC-01/04-01/06-2853, paragraphs 37-41.

⁹ Request for leave to file submission on reparation issues, 28 March 2012 (notified on 29 March 2012), ICC-01/04-01/06-2854, paragraph 2.

¹⁰ ICC-01/04-01/06-2854, paragraphs 3-4.

¹¹ ICC-01/04-01/06-2854, paragraph 5.

¹² Registry transmission of communications received in the context of reparations proceedings, 29 March 2012, (notified on 30 March 2012) ICC-01/04-01/06-2855 with public Annexes 1-3.

5. The FOCDP, which is represented by its president and national coordinator for the Coalition for the ICC in the DRC, requests leave to intervene in the reparations proceedings, particularly on the principles and procedures relevant to reparations. The FOCDP indicates that it has worked as an intermediary and researcher in the present case.¹³

6. *Avocats sans frontières*, along with four other non-governmental organisations (“NGOs”), Justice Plus, *Terre des Enfants*, Centre Pelican – Training for Peace and Justice, *Journalistes en action pour la Paix*, and *Fédération des Jeunes pour la Paix Mondiale*, request leave to participate in the reparations proceedings as *amicus curiae* pursuant to Rule 103 of the Rules of Procedure and Evidence (“Rules”). These organisations intend to submit written observations on the principles and procedure relevant to reparations.¹⁴ The NGOs who present this request submit that they operate in the DRC and particularly in Ituri. It is argued that these organisations have worked, *inter alia*, with children who have been involved in armed conflict and the victims of sexual violence, and they have assisted victims participating in proceedings before the ICC.¹⁵ The NGOs request leave to make observations on the social context in which victims live, and it is submitted these should include the perspective of the victims, the affected communities and other stakeholders in Ituri.¹⁶ The NGOs wish to make submissions on individual and collective reparations, particularly focussing on the effect reparations may have on earlier rehabilitation measures.¹⁷ The NGOs also request permission to present observations on the scope and extent of any damage, loss or injury, pursuant to Rule 97 of the Rules.¹⁸

¹³ ICC-01/04-01/06-2855-Anx1, page 4.

¹⁴ ICC-01/04-01/06-2855-Anx2, paragraphs 1-2.

¹⁵ ICC-01/04-01/06-2855-Anx2, paragraphs 8-12.

¹⁶ ICC-01/04-01/06-2855-Anx2, paragraphs 14-15.

¹⁷ ICC-01/04-01/06-2855-Anx2, paragraphs 16-17.

¹⁸ ICC-01/04-01/06-2855-Anx2, paragraphs 18-19.

7. UNICEF requests leave to participate in the reparations proceedings in order to advance written submissions on the issues identified in the Chamber's Scheduling Order. UNICEF submits that its experience working with children and communities affected by armed conflict may assist the Court in its consideration of reparations.¹⁹
8. On 30 March 2012, the Chamber instructed the parties and participants in the proceedings to submit any responses to these requests by 16.00 on 16 April 2012.²⁰
9. On 16 April 2012 the defence filed its submissions.²¹
10. The defence submits that all the requests were submitted outside the deadline and as a result they are inadmissible.²²
11. The defence further submits that participation by these organisations is not provided for in Rule 96 of the Rules and that their intervention is only possible under Rule 103 of the Rules.²³ The defence suggests that Rule 103 should only be used exceptionally, in order to provide the Court with expert opinion on matters of law that relate to the proceedings. The defence submits that an *amicus curiae* should not directly address factual issues, and instead submissions of this kind should be provided to one of the parties or they should be introduced by an expert witness.²⁴ The defence contends that none of the organisations have established that they have expertise as regards the

¹⁹ ICC-01/04-01/06-2855-Anx3, page 2.

²⁰ Email communication from a Legal Officer for the Trial Chamber to the parties and participants on 30 March 2012 at 17:37.

²¹ Réponse de la Défense aux demandes de participation à la procédure portant les numéros ICC-01/04-01/06-2853, ICC-01/04-01/06-2854, and ICC-01/04-01/06-2855, 16 April 2012, ICC-01/04-01/06-2862-Conf. A public redacted version was filed the same day, ICC-01/04-01/06-2862-Red.

²² ICC-01/04-01/06-2862-Red, paragraph 10.

²³ ICC-01/04-01/06-2862-Red, paragraph 11.

²⁴ ICC-01/04-01/06-2862-Red, paragraphs 12-13.

matters identified by the Chamber in the Scheduling Order.²⁵ The defence argues that the Chamber should not permit an *amicus curiae* to use – for its own purposes – a procedure that affects the rights of the defence. It is suggested the Chamber should determine the relevance of the proposed intervention by the *amicus curiae*, and it should identify their particular interest in the case.²⁶ The defence finally contends that the proceedings should not be used by these organisations to disseminate their objectives and views, particularly since it would be difficult for the defence to respond to these observations, in addition to the observations of the other participants in the procedure.²⁷

12. As regards the specific organisations, the defence observes that the Women's Initiatives has earlier requested leave to participate as *amicus curiae* in the present case, in order – it is suggested – to criticise the absence of charges for crimes of sexual violence and it notes that these requests were rejected. The defence suggests that this organisation wishes to publicise its own views and objectives instead of assisting the Court on issues relating to reparations.²⁸

13. As regards the FOCDP and National Coordinator for the ICC Coalition in the DRC, the defence argues that the president has identified himself as an intermediary in the present case, although it is suggested his identity was never disclosed and that consequently the exact nature of his collaboration with the ICC is unknown. The defence contends that it would be inappropriate to allow militant organisations to make submissions.²⁹

²⁵ ICC-01/04-01/06-2862-Red, paragraph 14.

²⁶ ICC-01/04-01/06-2862-Red, paragraphs 15-16.

²⁷ ICC-01/04-01/06-2862-Red, paragraphs 17-18.

²⁸ ICC-01/04-01/06-2862-Red, paragraphs 20-23.

²⁹ ICC-01/04-01/06-2862-Red, paragraphs 24-25.

14. The defence argues that the ASF and the organisations it represents have been involved with this case. The defence suggests it would be highly inappropriate for them to act as *amicus curiae*.³⁰

II. Analysis and Conclusions

15. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Trial Chamber has considered Article 75 of the Statute, and Rules 97 and 103 of the Rules.

16. At the outset the Chamber observes that although the requests by these five organisations were notified on 29 March 2012, they were received by the Registry on 28 March 2012. Consequently, the Chamber has evaluated the merits of these applications, as they were filed in accordance with the Scheduling Order and they were not out of time, as submitted by the defence.

17. The central matter to be determined on this application is whether the Chamber will be assisted in its proper determination of the issues identified in the Scheduling Order by receiving submissions from the five organisations.

18. The Chamber notes that all five organisations have worked in the field, and particularly in the DRC, in relation to issues that are relevant to the present case. They have cooperated closely with the ICC, including in the DRC, and in some instances in judicial proceedings (as is the case with *Avocats sans Frontières*).

19. The Chamber is of the view that these organisations are in a position to supply information and assistance that will be of direct relevance to issues

³⁰ ICC-01/04-01/06-2862-Conf, paragraphs 26-29.

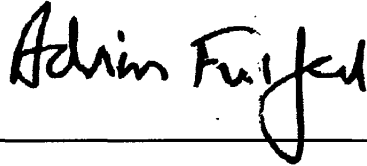
related to reparations that otherwise will not be available to the Court, or would be costly and time consuming to secure.

20. The Chamber does not accept the defence argument that the organisations seeking leave to participate in the proceedings may do so only pursuant to Rule 103 of the Rules as *amicus curiae*. The proceedings set out in Article 75(3) of the Statute are distinct from those provided for in Rule 103(2) and (3) of the Rules. Pursuant to Article 75(3), the Court “shall take into account” the representations that it has received. This is not specifically provided for in regards to *amicus curiae* observations.
21. The Chamber considers that although some of these organisations have already undertaken work in the context of this case, this factor does not act as an automatic bar to them making observations which are of a general nature, particularly as regards the principles and procedure to be applied to reparations. Once the Chamber has received their observations, it will disregard any part of them which are inconsistent with the Court’s obligation to ensure fairness for the convicted person and the victims and beneficiaries of any potential reparations.
22. Accordingly, the Chamber grants the Women’s Initiatives for Gender Justice, the International Center for Transitional Justice, UNICEF, the *Fondation Congolaise pour la Promotion des Droits humains et la Paix* and *Avocats sans frontières* (along with the NGOs it represents), leave to make written representations in accordance with paragraph 8 of the Scheduling order,³¹ no later than 16.00 on 10 May 2012.

³¹ ICC-01/04-01/06-2844, paragraph 8.

23. The Chamber invites the parties and participants to file any responses, not to exceed 25 pages, to all observations made on reparations (including those of the five organisations addressed in this Decision) no later than 25 May 2011.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 20 April 2012

At The Hague, The Netherlands