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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 Document
Observations of the V02 Team in Compliance with Order
No. ICC-01/04-01/06-3345**

Source: Team of Legal Representatives of V02 victims

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

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Observations of the V02 team in compliance with the Chamber's Order

No. ICC-01/04-01/06-3345

I. Introduction: Procedural history

1. In a number of successive decisions, Trial Chamber I accorded participating victim status in *The Prosecutor v. Thomas Lubanga* to around 150 victims, some 140 of whom are represented by the V02 team.

2. In its decision of 9 February 2016, Trial Chamber II expanded the list of victims to include (potential) indirect victims.¹ The V02 team is, in fact, in possession of a comprehensive list which is the outcome of work carried out jointly with the VPRS concerning these potential victims.

3. At paragraph 13 of its decision of 13 July 2017,² Trial Chamber II authorized the V01 and V02 teams and the OPCV to continue to submit victims' files to the Trust Fund for Victims ("Trust Fund"). In the same decision, the Chamber requested the V01 and V02 teams and the OPCV to assess the harm suffered by the victims and to state the monetary amount of the proposed compensation.

4. The Registry has successively submitted to Trial Chamber II the files of a number of victims, including several dozen represented by the V02 team.³

5. The V02 team is continuing to prepare the files of about the same number of participating victims and around one hundred potential victims to be submitted to the Trust Fund during the course of its reparations implementation programme.

6. On 13 July 2017, the Chamber issued an order instructing the parties to file submissions on the evidence admitted into the proceedings for the determination of Mr Lubanga's liability for reparations.⁴

¹ ICC-01/04-01/06-3198-tENG, including paras. 15, 17 and 18.

² ICC-01/04-01/06-3338-tENG.

³ See, *inter alia*, ICC-01/04-01/06-3268 with annexes; ICC-01/04-01/06-3323 with annexes; ICC-01/04-01/06-3329 with annexes.

⁴ ICC-01/04-01/06-3339-tENG.

7. On 21 July 2017, the Chamber issued a decision⁵ on the applications of the Legal Representatives of Victims for an extension of time.⁶

II Methodology

8. The V02 team of Legal Representatives of Victims considers that the harm must be assessed in respect of two main categories of victims: direct victims and indirect victims (the latter including institutional victims and the local communities of direct victims).

9. Direct victims are former child soldiers who were forcibly recruited into the FPLC/UPC armed group and who, consequently, had to participate in hostilities. These victims are identified according to their place of work and occupation at the time of their recruitment:

-) school: pupils;
-) market: traders;
-) fields: farmers; and
-) public highway: motorcycle taxi drivers, masons, carpenters, etc.

10. These victims suffered material and emotional harm.

11. Indirect victims are:

-) relatives of former child soldiers (loss of a child, disrupted schooling, aggressive behaviour in a child, etc.)
-) institutional victims and local communities that suffered material harm – in respect of which reparations will be symbolic: rehabilitation of schools, churches and other buildings destroyed in the hostilities, including the construction of memorials to strengthen the reconciliation between the communities.

⁵ ICC-01/04-01/06-3345-tENG.

⁶ ICC-01/04-01/06-3341 and ICC-01/04-01/06-3342.

III Legal bases for assessing the harm suffered by victims

12. For direct and indirect victims alike:

-) Articles 68 and 75 of the Statute
-) Rules 85(a) and 94 of the Rules of Procedure and Evidence
-) Regulation 88 of the Regulations of the Court.

13. For institutional victims: Rule 85(b) of the Rules of Procedure and Evidence.

14. Relevant case law:

-) *The Prosecutor v. Germain Katanga*
-) *The Prosecutor v. Al Mahdi*

IV Submission: assessment of harm and scale of compensation

15. At paragraph 9 of its decision of 13 July 2017, Trial Chamber II stated that:

the purpose of this process is to collect a sample of files representative of **all potentially eligible victims, on which the Defence will have had the opportunity to make submissions**, to inform its decision as to the share of reparations to be borne by Mr Lubanga and enable a decision as to the monetary amount thereof.⁷

A Assessment in respect of direct victims, according to category

16. A sample of two victims – a/0187/07 and a/0173/07 – has been used for the pupils category.

- ❖ a/0187/07: the victim presented an IPM card [minimum personal tax card].
 - Reparation for material harm: in addition to the loss of the family home (fire) and the destruction of the family's cattle, the victim states: "[TRANSLATION] ... I would like to return to school, the boarding school, where there would be more structure. I would like to **study mechanics**". (ICC-01/04-01/06-3216-Conf-Anx3-Red, 8 March 2017, 11/14 RHT).
 - Reparation for emotional harm: the victim has been suffering from psychological disorders requiring treatment at specialized centres. In addition, he should be awarded a lump sum of USD 2,000.
 - This victim requires vocational training in addition to compensation for all harm suffered.
- ❖ a/0173/07: the victim presented a voter's card and a pupil identity card.

⁷ ICC-01/04-01/06-3338-tENG, para. 9.

- Reparation for material harm: on page 2, the victim states: [“TRANSLATION] I lost three years of schooling...” and further states on page 12: “[TRANSLATION]... I did not continue in education beyond year 6 (primary school) **as I lacked financial means**”.
- Former pupils will find it hard to return to primary school, the cost of which should be around USD 250 a year for the last two years of primary education – a total of USD 500. Furthermore, an assessment in respect of secondary school education will have to be made instead – approximately USD 350 per year for six years, amounting to USD 2,100 per person.
- Reparation for emotional harm: the victim has suffered psychological harm and will require treatment at a specialist facility; the victim should also be awarded a lump sum of USD 2,000.
- To conclude, if provided with the means, the victim will be able to continue in education in the form of vocational training (ICC-01/04-01/06-3216).

17. In the traders or other category, V02 represents, in particular, individuals who did not yet have an occupation.

Regarding the category showing an interest in vocational training, it would cost USD 350 per year for three years, or USD 1,050 per person. An additional USD 1,000 at least would be needed for their business start-up kit.

18. In general, reparation for emotional harm caused by abduction could amount to USD 2,000 per person (see case law in *Katanga*).

B Assessment in respect of indirect victims

19. The V02 team has also used a sample of two victims – a/0257/07 and a/0256/07 – for the indirect victims (close relatives of direct victims) category.

- ❖ a/0257/07: the victim presented a certificate of family reunification and a certificate of separation from an armed group.
 - Reparation for the emotional harm caused to her close relatives, in this case her parents, who were affected by the abduction of their minor daughter, to be used by the militiamen as a sex slave. The daughter now suffers from mental disorders. Appropriate care in a specialist hospital could relieve the suffering of her close relatives. This support is assessed at a lump sum of USD 2,000.

- ❖ a/0256/07: the victim, a pupil when recruited, presented a voters card, a certificate of family reunification and a certificate of separation from an armed group.
 - Reparation for the emotional harm caused to the victim's relatives, in this case the parents, who were affected by the sudden disruption of their minor child's schooling. The suffering they have endured to date might be relieved were the child to resume his or her schooling. The cost of attending a local school is assessed at a flat rate of USD 2,000.

20. We have proposed a flat rate of compensation of USD 4,000 per indirect victim.

21. Concerning institutional victims (schools, churches, or other buildings destroyed during the hostilities in Ituri), it should be noted that the FPLC/UPC is not the only armed group in Ituri responsible for all the property damage. Other armed groups were active in Ituri at the time. The assessment of material damage and the cost of rehabilitation will be made on the basis of quotes from partners recruited by the Trust Fund.

22. Reference may be made to the comments of a number of NGOs in this regard.⁸

C Symbolic reparations

23. As part of a process to reconcile various communities in Ituri, monuments and cultural centres will have to be built for those communities that have been victims of the hostilities. In addition, reconciliation ceremonies will have to be organized for the convicted person to seek the forgiveness of all the victims. The Trust Fund will make a lump sum estimate in respect of symbolic reparations after consulting the various communities.

D Case law and legal theory

24. *The Prosecutor v. Germain Katanga*: the Chamber took into account the emotional harm caused not only to close family relatives (spouse, parents and siblings), but also to more distant relatives (Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, paragraphs 227-232); in *The Prosecutor v. Thomas Lubanga*, the V02 team recommends that only close family members be taken into account. The Chamber has agreed that, on account of the harm suffered,

⁸ ICC-01/04-01/06-3240.

children should be monitored and afforded special attention (ICC-01/04-01/07-3728-tENG, paragraphs 132-133).

25. *The Prosecutor v. Al Mahdi*: the Court found that the destruction of certain cultural assets caused harm not only to the people of Timbuktu, but also to the Malian nation and to all humankind (ICC-01/12-01/15-236, paragraph 53); the decision to be handed down should take into account the extent of the social harm caused by the crimes for which the conviction was made and not be limited to the harm suffered by the direct victims.
26. In *The Prosecutor v. Thomas Lubanga*, the destruction of schools and other buildings constitutes harm to local communities, and reparations should extend beyond merely the harm suffered by the direct victims.
27. **In Congolese law**: reparations for international crimes vary from one military jurisdiction to another. For example, the report by the NGO *Avocats sans frontières* [Lawyers without Borders]: *La réparation des crimes internationaux en Droit congolais*, December 2014, <http://www.asf.be> might serve as a model.

V Conclusion

28. Were it to rely on Judge Herrera's dissenting opinion, Trial Chamber II could, in the instant case, adopt a comprehensive rather than partial approach to the reparations process, and not restrict itself to the symbolic aspect of reparations. In short, collective reparations with individual impact are required.⁹
29. The figure of three thousand (3,000) potential victims in these proceedings advanced by the Trust Fund might be excessive. The Legal Representatives of Victims arrived at an agreed estimate of 1,000 victims, and believe that a total amount of USD 6,000,000 will be sufficient to repair all the harm.
30. Considering the convicted person's indigence, it would be fitting for the Trust Fund to state the amount it will be able to assume in the reparations process.

⁹ ICC-01/04-01/06-3252-tENG.

FOR THESE REASONS

May it please Trial Chamber II to take note of these observations made by the V02 team.

Dated this 8 September 2017

At Kinshasa, Democratic Republic of the Congo, and Paris, France

[signed]

[signed]

[signed]

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Joseph Keta Orwinyo

Paul Kabongo Tshibangu

Legal Representatives of Victims