



Original: **French**

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

Date: **16 March 2018**

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

Order Instructing the Trust Fund for Victims to File the Documents Requested by the Chamber on the Process of Screening New Victims, the Progress of Discussions with the Stakeholders Involved in Locating and Identifying New Victims, the Possibility of Earmarking an Additional Amount for Reparations and the Progress of the Implementation of Reparations

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

Office of the Prosecutor

**Defence Counsel for Thomas Lubanga
Dyilo**

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of V01 Victims

Mr Luc Walley

Mr Franck Mulenda

Legal Representatives of V02 Victims

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

Office of Public Counsel for Victims

Ms Paolina Massidda

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Trust Fund for Victims

Mr Pieter de Baan

TRIAL CHAMBER II (“Chamber”) of the International Criminal Court orders as follows:

1. On 15 December 2017, the Chamber handed down the “*Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu*” (“Decision of 15 December 2017”).¹ In the decision, it undertook an analysis of 473 dossiers of persons claiming to be victims of the crimes of which Thomas Lubanga Dyilo (“Mr Lubanga”) was convicted, and which had been put before the Chamber² by the Trust Fund for Victims (“Trust Fund”), working with the Legal Representatives of the V01 and V02 groups of victims (“Legal Representatives of V01 and V02 Victims”) and the Office of Public Counsel for Victims (“OPCV”).

2. The Chamber found that, of the 473 persons, 425 had established on a balance of probabilities that they had suffered harm as a result of the crimes of which Thomas Lubanga was convicted.³ Accordingly, the Chamber determined that said persons were to be awarded collective reparations in the case at bar.⁴ The Chamber, however, found that the 425 persons did not form the entirety of the victims, and that hundreds and possibly thousands more victims had also suffered harm as a consequence of the crimes of which Mr Lubanga was convicted.⁵ Lastly, the Chamber pointed out that at the implementation stage of reparations, the Trust Fund was to examine the eligibility for reparations of those persons who had not as yet been in a position to file a dossier.⁶ To that end, the Chamber directed from the Trust Fund

¹ Corrigendum to the “*Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu*”, 21 December 2017, ICC-01/04-01/06-3379-Red-Corr, with two public annexes (Annex I and Annex III) and one confidential annex, *ex parte* Registry, Trust Fund for Victims, Legal Representatives of V01 and V02 groups of victims and Office of Public Counsel for Victims (Annex II) and confidential redacted version of Annex II. The decision and annexes were issued on 15 December 2017 and the corrigenda were filed on 21 December 2017.

² Decision of 15 December 2017, paras. 35-191.

³ Decision of 15 December 2017, para. 190.

⁴ Decision of 15 December 2017, para. 194.

⁵ Decision of 15 December 2017, p. 123 and, in particular, paras. 232-244.

⁶ Decision of 15 December 2017, para. 293, referring to the “Decision on the Motion of the Office of Public Counsel for Victims for Reconsideration of the Decision of 6 April 2017”, 13 July 2017, ICC-01/04-01/06-3338-tENG, para. 11.

submissions by 15 January 2018 on the possibility of continuing to locate and identify further persons who may qualify for reparations, with the assistance of the OPCV and the Legal Representatives of V01 and V02 Victims.⁷ In addition, the Chamber instructed the Board of Directors of the Trust Fund to advise the Bench by 15 February 2018 whether it would be able to earmark an additional amount for the implementation of the collective reparations in the present case, in accordance with the provisions of regulation 56 of the Regulations of the Trust Fund, or to continue its efforts to raise additional funds.⁸

3. On 15 January 2018, the Trust Fund filed observations in which it underscored that the assistance of the Legal Representatives of V01 and V02 Victims, the OPCV and the Victims Participation and Reparations Section (“VPRS”) would be of great benefit in locating and identifying the victims in the case.⁹ On that subject the Trust Fund also said that it had already embarked on preliminary discussions with the Legal Representatives of V01 and V02 Victims, the OPCV and the VPRS, and that it was in the process of arranging follow-up meetings with all the relevant stakeholders to determine how they would work together and how the tasks would be shared and to draw up a work schedule at soon as possible.¹⁰ The Trust Fund stated that it would provide the Chamber with any new information in this regard as it became available.¹¹

4. On 25 January 2018, the Chamber pointed out that the Trust Fund was to examine the eligibility for reparations of those persons who had not as yet been in a position to file a dossier, and therefore directed from the Trust Fund further information, by 12 February 2018, on the procedure for determining at the

⁷ Decision of 15 December 2017, para. 296 and p. 124.

⁸ Decision of 15 December 2017, para. 283 and p. 124.

⁹ “Observations in relation to locating and identifying additional victims pursuant to the Trial Chamber’s decision of 15 December 2017”, 15 January 2018, ICC-01/04-01/06-3386, para. 6 (“Trust Fund Observations of 15 January 2018”).

¹⁰ Trust Fund Observations of 15 January 2018, paras. 7 and 9.

¹¹ Trust Fund Observations of 15 January 2018, para. 9.

implementation stage of reparations the status of victim for the purpose of reparations.¹²

5. On 9 February 2018, the Trust Fund filed a request for an extension of the time limit by three days.¹³ On 12 February 2018, the Chamber granted the Trust Fund request and authorized an extension until 15 February 2018.¹⁴

6. On 15 February 2018, the Trust Fund requested another extension of the time limit until 23 February 2018.¹⁵ The Chamber granted the requested extension on the same day.¹⁶

7. On 23 February 2018, the Trust Fund requested a third extension of the time limit until 9 March 2018, which the Chamber granted by decision on the same day.¹⁷

8. The Chamber remarks that, one week after the expiry of the given time limit and after three extensions of the deadline originally set, the Trust Fund has yet to file the information on the procedure for determining at the implementation stage of reparations the status of victim for the purpose of reparations.

9. The Chamber also notes that the Trust Fund has not informed it of the progress of discussions with the Legal Representatives of V01 and V02 Victims, the OPCV and the other stakeholders involved in the location and identification of new victims.

10. Moreover, the Chamber recalls that, further to the third report on the progress of the implementation of the symbolic and service-based collective reparations filed by the Trust Fund on 15 November 2017,¹⁸ a fourth report was expected on

¹² “Order Directing Further Information from the Trust Fund for Victims on the Procedure for Determining Victim Status at the Implementation Stage of Reparations”, 25 January 2018, ICC-01/04-01/06-3391-tENG.

¹³ “Request for an extension of the time limit”, 9 February 2018, ICC-01/04-01/06-3393 (“Request of 9 February 2018”).

¹⁴ Email from the Chamber, sent on 12 February 2018 at 14.25.

¹⁵ Email from the Trust Fund to the Chamber, sent on 15 February 2018 at 10.57.

¹⁶ Email from the Chamber to the Trust Fund, sent on 15 February 2018 at 12.33.

¹⁷ Email from the Chamber to the Trust Fund, sent on 23 February 2018 at 14.45.

¹⁸ “Third progress report on the implementation of collective reparations as per the Trial Chamber II orders of 21 October 2016 and 6 April 2017”, dated 15 November 2017 and registered on 16 November 2017, ICC-01/04-01/06-3377, and a confidential annex *ex parte* Registry. On 20 November 2017, further

15 February 2017, in accordance with the directions given by the Chamber in its decisions of 21 October 2016¹⁹ and 6 April 2017²⁰ and in its order of 7 November 2017.²¹ The Chamber observes, however, that the Trust Fund has not yet filed a new report, in non-compliance with its directions.²²

11. Lastly, the Chamber notes that the Trust Fund has not informed it of the decision of its Board of Directors about the possibility of earmarking an additional amount for the implementation of the collective reparations or of continuing its efforts to raise additional funds.

12. In the light of the foregoing, the Chamber can only conclude that the Trust Fund has failed to implement its instructions and without explanation. The Chamber sees fit to remind the Trust Fund that the reparations proceedings are judicial proceedings and that, as the Appeals Chamber has stated,²³ this Chamber's authority encompasses the implementation of reparations.

to the Chamber's instructions, document ICC-01/04-01/06-3377-Conf-Exp-AnxA was reclassified *ex parte* Registry, Legal Representatives of V01 and V02 Victims and OPCV.

¹⁹ "Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations", 21 October 2016, ICC-01/04-01/06-3251, para. 17.

²⁰ "Order approving the proposed programmatic framework for collective service-based reparations submitted by the Trust Fund for Victims", 6 April 2017, ICC-01/04-01/06-3289, para. 17.

²¹ "Order Instructing the Trust Fund for Victims to Inform the Chamber of the Progress Made in the Implementation of Reparations", 7 November 2017, ICC-01/04-01/06-3376-tENG.

²² *Idem*.

²³ Appeals Chamber, "Order for Reparations (amended)", dated 3 March 2015 and French translation registered on 1 August 2016, ICC-01/04-01/06-3129-AnxA, para. 76.

FOR THESE REASONS, the Chamber

INSTRUCTS the Trust Fund to file by 21 March 2018 the information on the procedure for determining at the implementation stage of reparations the status of victim for the purpose of reparations; and

INSTRUCTS the Trust Fund to report to it on the progress of discussions with the stakeholders involved in the location and identification of new victims, to forward to it the decision of the Trust Fund Board of Directors on the possibility of earmarking an additional amount for the implementation of the collective reparations or of continuing its efforts to raise additional funds, and to file the fourth report on the implementation of the service-based and symbolic collective reparations, by 13 April 2018.

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

[signed]

Judge Marc Perrin de Brichambaut

Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 16 March 2018

At The Hague, Netherlands