

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 2 January 2020

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***

Confidential

**Order on the Reports of the Trust Fund for Victims of 19 July 2019 and 21 October
2019 on the Implementation of Collective Reparations**

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

Office of the Prosecutor

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 Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

TRIAL CHAMBER II (“Chamber”) of the International Criminal Court, acting pursuant to article 75 of the Rome Statute, orders as follows.

I. Procedural History

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”¹ and the appended “Order for Reparations (amended)”² (“Order for Reparations”) directing the Trust Fund for Victims (“Trust Fund”) to submit within six months, i.e., by 3 September 2015, a draft implementation plan giving effect to the principles and procedures adopted in the Order for Reparations.³
2. On 14 August 2015, in response to the Trust Fund’s request, the Chamber extended until 3 November 2015 the time limit for filing the draft implementation plan.⁴
3. On 3 November 2015, the Trust Fund submitted its draft implementation plan (“Draft Implementation Plan”).⁵
4. On 9 February 2016, the Chamber ordered the Trust Fund to supplement the Draft Implementation Plan.⁶ To that end, the Chamber instructed the Trust Fund to continue developing collective reparations programmes and to transmit the complete details of the initial group of programmes to the Chamber.⁷
5. On 6 April 2017, the Chamber approved the first phase of the Trust Fund’s programme for collective reparations of 13 February 2017, namely the selection of

¹ “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2”, 3 March 2015, ICC-01/04-01/06-3129.

² Order for Reparations, 3 March 2015, ICC-01/04-01/06-3129-AnxA.

³ Order for Reparations, para. 75.

⁴ “Decision on the ‘Request for extension of time to submit the draft implementation plan on reparations’”, 14 August 2015, ICC-01/04-01/06-3161-tENG.

⁵ “Filing on Reparations and Draft Implementation Plan”, 3 November 2015, ICC-01/04-01/06-3177-Red, (“Document relating to the Draft Implementation Plan”) with two annexes (“Draft Implementation Plan”, ICC-01/04-01/06-3177-AnxA and “Annex I”, ICC-01/04-01/06-3177-Conf-Exp-AnxI).

⁶ “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, 9 February 2016, ICC-01/04-01/06-3198-tENG.

⁷ Order of 9 February 2016, paras. 21-22 and p. 12.

local implementing partners for service-based collective reparations.⁸ In this connection, the Chamber instructed the Trust Fund to report to it on the results of the process for selecting implementing partners, and to approach the Chamber before finalizing the contracts with the implementing partners selected.⁹

6. On 15 December 2017, the Chamber handed down the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable” (“Decision of 15 December 2017”).¹⁰

7. On 18 July 2019, the Appeals Chamber rendered, unanimously, the judgment on two appeals brought against the Decision of 15 December 2017.¹¹ The Appeals Chamber confirmed the impugned decision subject to one amendment: the victims whom the Trial Chamber found ineligible to receive reparations, and who consider that their failure to sufficiently substantiate their allegations, including by supporting documentation, resulted from insufficient notice of the requirements for eligibility, may seek a new assessment of their eligibility for reparations by the Trust Fund, together with other victims who may come forward in the course of the implementation stage.¹²

8. On 19 July 2019, the Trust Fund submitted its sixth progress report on the implementation of reparations (“Sixth Report”).¹³ In particular, the Trust Fund

⁸ “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, (“Order of 6 April 2017”).

⁹ Order of 6 April 2017, para. 17.

¹⁰ “Corrected version of the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’”, 21 December 2017, ICC-01/04-01/06-3379-Conf-Corr-tENG, 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 one confidential redacted version of Annex II. The decision and annexes were issued on 15 December 2017 and the corrected versions were filed on 21 December 2017.

¹¹ “Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’”, 18 July 2019, ICC-01/04-01/06-3466-Conf (“Judgement of 18 July 2019”), with two public annexes. A public version of the Judgement was filed on the same day.

¹² Judgement of 18 July 2019, para. 332.

¹³ Annex A to the “*Sixième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 (ICC-01/04-01/06-3251) et 6 avril 2017 (ICC-01/04-01/06-3289) et la Décision du 7 février 2019 (ICC-01/04-01/06-3440-Red)*”, 19 July 2019, ICC-01/04-01/06-3467-Conf-Exp-AnxA, with the main document (ICC-01/04-01/06-3467), and with

provided the Chamber with a document containing a request for proposals which was to be sent to the 11 shortlisted organizations¹⁴ to enable them to prepare proposals for service-based collective reparation projects in accordance with the terms of reference (“Request for Proposals”).¹⁵ The Trust Fund also explained that before receiving all the documents relating to the request for proposals, each of the 11 organizations was required to sign a confidentiality agreement.¹⁶ The Trust Fund noted that the agreement had been based on the standard agreement used by the Registry’s Procurement Unit.¹⁷

9. On 21 October 2019, the Trust Fund submitted its seventh progress report on the implementation of reparations (“Seventh Report”).¹⁸ The Trust Fund informed the Chamber, *inter alia*, that the confidentiality agreement had been sent to the 11 shortlisted organizations, that it had been signed by the Registry and the organizations and forwarded to the Trust Fund, and that, therefore, all the documents relating to the Request for Proposals had been sent to the 11 organizations on 13 September 2019.¹⁹ The Trust Fund also informed the Chamber of a workshop that was held in Bunia between 18 and 20 September 2019 to assist the 11 shortlisted organizations with the preparation of their proposals for service-based collective reparations projects. The Trust Fund noted that the 11 shortlisted

confidential Annexes B-L, *ex parte*, Legal Representatives of Victims V01 and V02, OPCV, Victims Participation and Reparations Section (VPRS) and the Trust Fund, confidential Annexes N, P and Q, *ex parte*, Legal Representatives of Victims V01 and V02, OPCV and Trust Fund, and confidential Annexes M and O, *ex parte*, TFV. A public redacted version of the Sixth Report was filed on 14 August 2019.

¹⁴ In its fifth report filed on 2 October 2018, the Trust Fund informed the Chamber that it had shortlisted 11 candidates following the Expression of Interest process (“**Fifth progress report on the implementation of collective reparations as per Trial Chamber II’s orders of 21 October 2016 and 6 April 2017 with Confidential, ex parte Annex A available to the Registry, Legal Representatives and OPCV only**”, 2 October 2018, ICC-01/04-01/06-3421, with one confidential annex, *ex parte*, Registry, Legal Representatives of Victims V01 and V02, OPCV, ICC-01/04-01/06-3421-Conf-Exp-AnxA, p. 3.

¹⁵ Annexes M and N to the Sixth Report.

¹⁶ Sixth Report, para. 55.

¹⁷ Sixth Report, para. 55; Annex O to the Sixth Report.

¹⁸ “*Septième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 (ICC-01/04-01/06-3251) et 6 avril 2017 (ICC-01/04-01/06-3289) et la Décision du 7 février 2019*”, 21 October 2019, ICC-01/04-01/06-3468, and confidential Annex A, *ex parte*, Legal Representatives of Victims V01 and V02, OPCV, VPRS and the Trust Fund, (“Seventh Report”).

¹⁹ Seventh Report, paras. 23 and 24.

organizations had until 25 October 2019 to submit their project proposals and that it was committed to considering the proposals without delay. The Trust Fund explained that once it had selected the projects meeting the criteria of the Request for Proposals, the organizations behind the projects would be informed of the outcome and the Registry would prepare the contracts to be signed with them. Lastly, the Trust Fund noted that, before implementation of the selected projects began, a working session with the selected organizations and the Trust Fund would be organized and that it hoped that implementation would commence in the first quarter of 2020.²⁰

10. On 8 November 2019, the Chamber issued an order in which it clarified that the deadline for transmitting applications for reparations to the Victims Participation and Reparations Section (“VPRS”) was 31 December 2020 and ordered that the last complete applications for reparations be transmitted to the VPRS no later than that date. The Chamber also noted with satisfaction the progress achieved in recent months by the Trust Fund, the Legal Representatives of Victims V01 and V02, OPCV and VPRS, with the assistance of the Registry, and urged them to redouble their efforts and continue to work closely together to enable the implementation of reparations to begin in early 2020.²¹

II. Analysis

11. The Chamber considers that recent developments in the implementation of collective reparations call for clarification on two points: (a) one concerning the confidentiality agreement; and (b) the other concerning the selection of service-based collective reparations projects and their implementation. The Chamber will consider them separately below.

²⁰ Seventh Report, para. 33.

²¹ “Order concerning the ‘Decision Approving the Proposals of the Trust Fund for Victims on the Process of Locating New Applicants and Determining their Eligibility for Reparations’ of 7 February 2019” 8 November 2019, ICC-01/04-01/06-3469-Conf-tENG.

a. Confidentiality agreement

12. The Chamber notes that the Trust Fund and the Registry's Procurement Unit required the 11 shortlisted organizations invited to make proposals for the implementation of collective reparations to sign a confidentiality agreement before receiving all the documents relating to the Request for Proposals.

13. In this regard, the Chamber notes its duty to ensure the "[...] safety, physical and psychological well-being, dignity and privacy of victims [...]" within the meaning of article 68(1) of the Statute. Accordingly, it takes the view that the Trust Fund must seek the Chamber's authorization before sharing confidential information on victims who are beneficiaries of reparations with third parties such as, for example, the shortlisted organizations. In this instance, the Chamber notes that the documents relating to the Request for Proposals in all likelihood contain no such information. Nonetheless, the Chamber finds it appropriate to draw the Trust Fund's attention to the fact that it must seek the Chamber's authorization before sharing confidential information about victim beneficiaries with third parties.

b. Selection of service-based collective reparations projects and their implementation

14. The Chamber notes that the Trust Fund intends to finalize the call to tender in order to select service-based reparations projects and begin their implementation in the first quarter of 2020. The Chamber therefore reminds the Trust Fund that in its Order of 6 April 2017, it instructed the Trust Fund to report to it on the results of the process for selecting implementing partners and to approach the Chamber before finalizing the contracts with the selected organizations.²²

15. The Chamber therefore instructs the Trust Fund to submit the results of the Request for Proposals, including all relevant information about the shortlisted organizations and projects, before signing contracts and before implementation begins. The Chamber will then hasten to approve the second phase of the Trust

²² Order of 6 April 2017, para. 17.

Fund's programme for collective reparations, i.e., the implementation of service-based collective reparations projects.

FOR THESE REASONS, the Chamber

INSTRUCTS the Trust Fund to seek the Chamber's authorization whenever it contemplates sharing confidential information about victim beneficiaries with third parties; and

INSTRUCTS the Trust Fund to submit for the Chamber's approval the results of the Request for Proposals, including all relevant information about the selected organizations and projects, before signing contracts and before implementation begins.

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

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

[signed]

Judge Olga Herrera Carbuccia

Judge Péter Kovács

Dated this 2 January 2020

At The Hague, Netherlands