

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06
Date: 21 October 2016

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuca
Judge Péter Kovács

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

Public

**Order approving the proposed plan of the Trust Fund for Victims in relation to
symbolic collective reparations**

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

The Office of the Prosecutor

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Mr James Stewart

Counsel for the Defence

Ms Catherine Mabilille

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Legal Representatives of Victims V01

Mr Luc Walley

Mr Franck Mulenda

Legal Representatives of Applicants

Legal Representatives of Victims V02

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REGISTRY

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Detention Section

Victims Participation and Reparations Section

Isabelle Guibal

Others

Trial Chamber II of the International Criminal Court (“the Chamber”), acting pursuant to article 75 of the Rome Statute and rule 98 of the Rules of Procedure and Evidence, issues this order approving the proposed plan of the Trust Fund for Victims (the “TFV”) in relation to 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 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

¹ This order is without prejudice to the pending request for reconsideration (ICC-01/04-01/06-3208), which will be decided by the Chamber in due course. Judge Olga Herrera Carbuccia is in agreement with the present order. However, as indicated in her Opinion of 15 July 2016 (ICC-01/04-01/06-3217-Anx), she would have preferred for the Chamber to approve the entirety of the draft implementation plan submitted by the TFV.

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.

addressed, *inter alia*, the different modalities of reparations as envisaged by the Appeals Chamber in the 3 March 2015 Reparations Judgment.⁷

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 from the Prosecutor.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" and to submit them to the

⁷ ICC-01/04-01/06-3177-Red, paras 181-212.

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' daté du 3 novembre 2015', déposées le 1^{er} février 2016 (ICC-01/04-01/06-3196-Conf) », 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.

Chamber no later than 7 May 2016.¹⁶ The Chamber also expressed its willingness “to examine any programmes the TFV deems useful to present to it”.¹⁷

6. Having granted 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.

8. On 15 July 2016, the Chamber issued the “Request Concerning the Feasibility of Applying Symbolic Collective Reparations” (the “15 July 2016 Request”).²³

9. On 19 September 2016, the Chamber received the “Filing regarding symbolic collective reparations projects with Confidential Annex: Draft Request for Proposals, ICC-01/04-01/06-3223-Conf” (the “19 September 2016 Filing”).²⁴ The parties did not respond to the 19 September 2016 Filing.

¹⁶ ICC-01/04-01/06-3198-tENG, paras 20-21.

¹⁷ ICC-01/04-01/06-3198-tENG, para. 22.

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-01/04-01/06-3219.

²⁴ ICC-01/04-01/06-3223-Conf and its confidential annex (ICC-01/04-01/06-3223-Conf-Anx); a Public redacted version has also been filed in the record of the case: (ICC-01/04-01/06-3223-Red) and its confidential annex (ICC-01/04-01/06-3223-Conf-Anx).

10. On 11 and 13 October 2016, the Chamber convened a set of public hearings in the presence of a number of organizations as well as other participants to the reparation proceedings (the “Hearings”).²⁵

II. Analysis

11. The Chamber recalls the 15 July 2016 Request, in which it pointed out that “the TFV refrained from providing the Chamber with concrete information about particular projects concerning symbolic reparations [...] [and] that nowhere in its 9 February 2016 Order did the Chamber rule out the possibility of approving symbolic reparations”.²⁶ The Chamber also referred to the relevant part of the 9 February 2016 Order, in which, it “consider[ed] that the TFV’s proposals are in line with the modalities of reparations ordered by the Appeals Chamber’,”²⁷ [and] “that the TFV ‘ha[d] presented only a summary description of the prospective programmes’”.²⁸ In addition, the Chamber stated that “[t]o the extent that symbolic reparations are concerned, [it] considers that the information provided in Annex A of the Draft Implementation Plan remains unclear”.²⁹ Accordingly, the Chamber requested the TFV “to study the feasibility of developing a concrete project aiming at providing prompt symbolic reparations, [...] [which] may take the form of, *inter alia*, a commemoration and/or building a statute for child soldiers who have suffered from the events”.³⁰ In particular, the Chamber requested “concrete” information on the “a) estimated costs of such a project; b) the time frame for its completion; and c) any concrete proposal(s) related to this matter”.³¹

²⁵ “Order on the conduct of the hearing to be held on 11 and 13 October 2016”, 6 October 2016, ICC-01/04-01/06-3245-tENG.

²⁶ ICC-01/04-01/06-3219, para. 10.

²⁷ ICC-01/04-01/06-3219, para. 10; ICC-01/04-01/06-3198-tENG, para. 20.

²⁸ ICC-01/04-01/06-3219, para. 10; ICC-01/04-01/06-3198-tENG, para. 20.

²⁹ ICC-01/04-01/06-3219, para. 10.

³⁰ ICC-01/04-01/06-3219, para. 12.

³¹ ICC-01/04-01/06-3219, para. 12.

12 The Chamber has carefully studied the 19 September 2016 Filing, together with the draft request for proposals set out in the confidential annex appended to the submission. The Chamber also considered the views presented by the different participants during the Hearings conducted and in particular, agrees with the TFV that the implementation of symbolic reparations “paves the way for the social acceptance of reparations awards in the affected communities, and it creates a safe environment for victims to come forward and voluntarily participate in the service-based collective awards without undue fear for their safety or reputation”.³² The Chamber also concurs with the TFV that the proposed symbolic reparations project “provide for an enabling environment to develop and implement service-based collective reparations awards”.³³

13. On the basis of its assessment of the project components presented and the description of the envisaged method of implementation, the Chamber finds that the information provided therein sufficiently lays down the concrete parameters of the proposed future projects envisaged as well as the different steps to be undertaken by the TFV. The Chamber notes in particular that, according to the 19 September 2016 Filing, the funds allocated for the symbolic reparations project are available and “will be deducted from the overall amount [...] constituting the Trust Fund’s complement of the payment of reparations awards, as provisionally established by the Board of Directors in the Draft Implementation Plan”.³⁴

14. As such the Chamber considers that the information provided in the 19 September 2016 Filing complies with the 9 February 2016 Order, as it provides the detailed information and steps missing in the initial Draft Implementation Plan. Accordingly, the Chamber approves the proposed plan in line with the steps elaborated by the TFV in the 19 September 2016 Filing and the annex appended thereto. To this end, the Chamber invites the TFV Board of Directors to use the

³² ICC-01/04-01/06-T-368-Red-ENG WT, p. 17, lines 24-25, p. 18, lines 1-2.

³³ ICC-01/04-01/06-T-368-Red-ENG WT, p. 18, lines 15-17.

³⁴ ICC-01/04-01/06-3223-Red, para. 65.

amount referred to in the 19 September 2016 Filing for the implementation of the proposed plan on the symbolic reparations project.

15. In terms of time frame for conducting the procurement of services through the proposed process of international competitive bidding, the Chamber finds it more efficient to opt for the “alternative procurement modality”, which lasts for 18 weeks instead of the standard process which could take up to 33 weeks.³⁵

16. The Chamber also wishes to turn the TFV’s attention to study the possibility of expanding its project beyond the five proposed localities referred to in paragraph 39 of its 19 September 2016 Filing, in order to cover, to the extent possible, the Ituri region within the confines of the proposed budget. Finally, with regard to the three proposed locations referred to in paragraph 32 of its 19 September 2016 Filing, the Chamber draws the TFV’s attention to the need to ensure the permanence of the envisaged structures and therefore to provide for their sustainability in the future.

17. The Chamber’s approval for said plan is confined to symbolic reparations and is subject to filing a report every 3 months on the progress of this project and the concrete steps undertaken by the TFV in the course of implementation of each main stage.

³⁵ ICC-01/04-01/06-3223-Red, paras 49-50.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

APPROVES the plan submitted by the TFV as presented in the 19 September 2016 Filing;

DIRECTS the TFV to undertake the necessary steps to start implementing the plan submitted in accordance with the present order; and

ORDERS the TFV to file a report every 3 months to the Chamber in accordance with paragraphs 12-17 of the present order.

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



Judge Marc Perrin de Brichambaut
Presiding Judge



Judge Olga Herrera Carbuccion



M. le juge Péter Kovács

Dated Friday, 21 October 2016

At The Hague, The Netherlands