

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 August 2015

TRIAL CHAMBER II

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

SITUATION : DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF

THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public

Public redacted version of "Request for extension of time to submit the draft implementation plan on reparations", 11 August 2015, ICC-01/04-01/06

Source: The Trust Fund for Victims

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

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Trust Fund for Victims

Mr Pieter de Baan, Executive Director,
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I. Introduction

1. The Appeals Chamber, in the Amended Order for Reparations ¹(hereinafter “Appeals Chamber’s reparations order”) of 3 March 2015, ICC-01/04-01/06-3129-AnxA, requested the Trust Fund for Victims (hereinafter “Trust Fund”) to submit within six months of the issuance of the Appeals Chamber’s reparations order, i.e. by 3 September 2015, a draft implementation plan and to provide the Trial Chamber, as part of this plan, with the anticipated monetary amount that the Trust Fund considers necessary to remedy the harms caused by the crimes for which Mr Lubanga was convicted.² The Appeals Chamber further explicitly stated that “extension may be granted if good cause is shown”³.
2. Pursuant to Regulation 35 of the Regulations of the Court, the Trust Fund respectfully requests that the Trial Chamber grant an extension of two months, allowing for a submission by 3 November 2015.
3. The Trust Fund considers that reparations are a great promise that the Rome Statute system makes to the victims of international crimes. In its view, all stakeholders in these proceedings are therefore required to make their best efforts to translate this promise into a tangible reality.
4. The Trust Fund notes with great concern the significant amount of time that

¹ The order constitutes annex A of the *Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations”* of 7 August 2012, ICC-01/04-01/06-3129

² see paragraph 78 of the Appeals Chamber’s reparations order

³ see paragraph 75 of the Appeals Chamber’s reparations order

has already lapsed since the crimes were committed from 1 September 2002 to 13 August 2003 and there is a need to provide redress to victims urgently.

5. The Trust Fund considers that the tasks that have been set by the Appeals Chamber are highly complex and that the envisaged time-frame for submission of a draft implementation plan for reparations in the present case was found ambitious. The Trust Fund respectfully submits that the possible need to submit a request for extension was also recognized by the Appeals Chamber, when it stated explicitly that an extension may be granted when good cause is shown.
6. The Trust Fund recalls that this is the first time for reparations before the International Criminal Court to have reached such an advanced procedural stage and the Court has requested a draft implementation plan in reparation proceedings. The Trust Fund respectfully submits that it aims at establishing best practices and methodologies through this present process that can be applied for future reparation proceedings beyond this case when the resources of the Trust Fund are used by the Board of Directors to complement a Court-order for collective reparations under Trust Fund Regulation 56⁴,

⁴ Regulation 56 states: “The Board of Directors shall determine whether to complement the resources collected through awards for reparations with “other resources of the Trust Fund” and shall advise the Court accordingly. Without prejudice to its activities under paragraph 50, sub- paragraph (a), the Board of Directors shall make all reasonable endeavours to manage the Fund taking into consideration the need to provide adequate resources to complement payments for awards under rule 98, sub-rules 3 and 4 of the Rules of Procedure and Evidence and taking particular account of ongoing legal proceedings that may give rise to such awards.”

whilst being mindful of the likely necessity that these practices and methodologies may need to be adapted to the particular circumstances of future cases.

7. In order to comply comprehensively with the request of the Appeals Chamber, and despite administrative challenges faced at the Court, related *inter alia* to the Revision of the structure of its Secretariat and multiple audits, the Trust Fund has undertaken several important steps since the issuance of the Appeals Chamber's order towards comprehensively replying to the Appeals Chamber's direction.
8. In particular, the Trust Fund has liaised with relevant stakeholders within the Court, including *inter alia* the Victims Participation and Reparations Section (hereinafter "VPRS"), and established an on-going dialogue with victims counsel in this case and the Office of Public Counsel for Victims (hereinafter "OPCV").
9. In May 2015, the Trust Fund held a multi-disciplinary expert consultation at the University of Ulster, Transitional Justice Institute in Belfast, Northern Ireland with over twenty-five experts, including the Legal Representative of Victims and OPCV, to review the background information and legal overview of the case; initial findings from the VPRS mapping of qualified victims; gender justice issues related to the case and possible gender considerations for reparations; disarmament, demobilization, and reintegration (DDR) programmes in the Democratic Republic of the Congo (DRC); initial findings

from the Trust Fund community consultations in Ituri; collective reparations – understanding concept and practice: programmes, comparative practice, and lessons learned; administration and implementation issues such as victims verification methodologies, standard of proof – causality vs. proximate cause for collective reparations; physical, material and psychological harm assessment methodologies; and criteria of selection for collective reparations. The results of these expert discussions will inform the substantive sections of the Trust Fund filing and implementation plan.

10. The Trust Fund has requested for the VPRS to undertake a victim mapping exercise in order to gather information on the current location of direct and indirect victims who may qualify for reparations on this case. The results of the victim mapping will be submitted as part of the substantive Trust Fund filing and implementation plan.

11. Furthermore, mindful of the fact that reparations will not be implemented without considering the local communities ⁵, in May and June 2015, the Trust Fund led targeted community consultations with VPRS and PIDS in twenty-two localities in the Ituri Province, eastern DRC (Djugu, Irumu, Mahagi, and Aru territories) with 1125 participants. Stakeholder mapping was conducted with the Registry prior to the consultations to target the invitations to these consultations to ensure former child-soldiers who may qualify for reparations

⁵ In paragraph 47 of the Appeals Chamber’s reparation order the principle is set out that “wherever possible, reparations should reflect local cultural and customary practices unless these are discriminatory, exclusive or deny victims equal access to their rights”.

and their families were highly represented. Forty percent of the participants represented young people (ex-child soldiers and others) of 18-30 years old (girls - boys).

12. The primary objectives of the community consultation were to: a) inform the victims and the communities about Appeal Chamber's Judgement and Amended Order for Reparations in the Lubanga case, as well as on the TFV mandates and activities; b) collect information on injuries and damages suffered in relation to the case; c) collect opinions about appropriate collective reparation measures; and d) collect victims' views and opinions about the ex-child soldiers' reintegration process. The results of the consultations will be submitted as part of the full Trust Fund filing and implementation plan.
13. On July 21-22 2015, the Board of Directors of the Trust Fund at the ICC convened in an extraordinary meeting in The Hague to review and discuss progress made in the development of a draft implementation plan for reparations on the case. Acknowledging the preliminary results of the Trust Fund's Secretariat's consultations with local communities and potentially eligible victims as well as the international expert meeting in Belfast, the Board of Directors endorsed the approach undertaken and reiterated the strong interest that it has in ensuring that the draft reparations implementation plan is responsive to the rights and expectations of eligible victims of the crimes, and provides a solid foundation for collective reparations awards to be made in a meaningful way.

14. Despite these various important efforts, the Trust Fund is still lacking important information required to comprehensively address the tasks set by the Appeals Chamber. In particular, the Trust Fund considers that in order to assist the Trial Chamber with establishing the liability of the convicted person and to craft the draft implementation plan, it will be necessary to have access to reliable data on the direct victims as defined by the Court currently held by [REDACTED].

15. The Trust Fund has undertaken several initiatives to gain access to such data. [REDACTED]

16. [REDACTED]

17. [REDACTED]

18. The Trust Fund respectfully submits that in spite of its efforts to continuously follow-up, replies to these requests are still outstanding at present.

19. The Trust Fund will continue to follow up with the requests, and is hopeful that the requested information will be provided by the various parties in a timely way.

20. The Trust Fund remains concerned that the timeframe set by the Appeals Chamber will not allow for sufficient time for the necessary process of receiving and compiling any relevant information thus received.

21. The Trust Fund estimates that it will take an additional two months time to receive the required information, synthesize all of the relevant information from the various consultations, and incorporate them into the submission in

response to the Appeals Chamber's reparations order. It is also important to allow for the Board of Directors sufficient time to review the filing and implementation plan and for the Secretariat to incorporate the Board's observations into a final version for submission to the Court.

22. Accordingly, the Trust Fund requests the Chamber to find that good cause has been shown in the sense of regulation 35 of the Regulations of the Court for an extension of time limit of two months.

FOR THE FOREGOING REASONS,

Pursuant to regulation 35 of the Regulations of the Court, the Executive Director of the Secretariat of the Trust Fund for Victims, on behalf of the Board of Directors, respectfully requests the Trial Chamber to extend the deadline for submitting the draft implementation plan as directed by the Appeals Chamber in its amended reparations order by two months to 3 November 2015.



Pieter W.I. de Baan
Executive Director of the Secretariat of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 13 August, 2015

At The Hague, The Netherlands