

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-01/06**
Date: **18 December 2015**

TRIAL CHAMBER II

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

IN THE CASE OF

*THE PROSECUTOR
v. THOMAS LUBANGA DYILO*

Public

**Prosecution's observations on the Trust Fund for Victims' Filing on Reparations
and Draft Implementation Plan**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart
Mr Fabricio Guariglia

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims V01

Mr Luc Walley
Mr Franck Mulenda

Legal Representatives of Applicants

Legal Representative of Victims V02

Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta Orwinyo

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Ms Fiona McKay

Trust Fund for Victims

Mr Pieter de Baan

Submissions

1. On 3 November 2015, the Trust Fund for Victims¹ filed its submissions on reparations in the *Thomas Lubanga Dyilo* case.² It also included a Draft Implementation Plan.³

2. On 12 November 2015, Trial Chamber II instructed the Prosecution “to submit observations on the Draft” and to state “[its] interest in participating and the points [it] intends to address.”⁴ To this end, the Prosecution endorses the primary role of the TFV, with the Chamber’s oversight, in implementing reparations in this case. However, mindful of its own mandate to take appropriate measures in the interests of victims,⁵ and its direct role in fostering accountability,⁶ the Prosecution welcomes the invitation in this case to submit observations on the TFV Filing on Reparations and Draft Implementation Plan to facilitate these proceedings.⁷

3. The Prosecution has carefully reviewed the TFV Filing on Reparations and Draft Implementation Plan. In the Prosecution’s view, the TFV Filing comprehensively outlines its proposed approach to reparations in this case, as does the TFV’s Draft Implementation Plan, which includes concrete and practical ways to implement reparations for the victims of Thomas Lubanga’s crimes. Not only are the TFV’s submissions appropriately guided by the Appeals Chamber’s principles on

¹ Here, TFV.

² ICC-01/04-01/06-3177-Conf and ICC-01/04-01/06-3177-Red (“TFV Filing on Reparations” or “TFV Filing”).

³ ICC-01/04-01/06-3177-AnxA (“Draft Implementation Plan”).

⁴ ICC-01/04-01/06-3179-tENG (“Decision of 12 November 2015”), para. 6, p. 5. *See also* ICC-01/04-01/06-3183, authorising the Prosecution to file its observations by 18 December 2015.

⁵ Article 68(1), Statute.

⁶ Article 42(1), Statute.

⁷ The Prosecution takes the Decision of 12 November 2015 to indicate that it could be a “participant” in the reparation proceedings. *See e.g.*, ICC-01/04-556 OA4 OA5 OA6, para. 55 (recalling the case law of the Appeals Chamber that a participant is different from a party, and that the role of a participant is confined to “participation” in “issues [...] touching upon their personal interests, and then at stages and in a manner not inconsistent with the rights of the accused” and “fair and impartial” proceedings.)

reparations,⁸ they also echo the guidelines that the Office of the Prosecutor has itself set out in its Policy Paper on Sexual and Gender-Based Crimes.⁹

4. The Office of the Prosecutor supports a gender-inclusive approach to reparations, taking into account the gender-specific impact on, harm caused to, and suffering of the victims affected by the crimes for which an individual has been convicted.¹⁰ It also supports consultation with the victims and communities in order to determine the most effective and appropriate forms of reparation within a particular community.¹¹ The Office also supports and encourages efforts to seek the views of children affected by the crimes for which Thomas Lubanga was convicted.¹²

5. The TFV's submissions are thorough and demonstrate its unique and significant expertise in implementing reparations. The Prosecution, however, notes that several key determinations are yet to be made.¹³ In particular, because the screening of eligible victims will only be done at the implementation stage, the precise number of victims is presently unknown. The TFV's estimate of potentially eligible direct and indirect victims at 3000 is not determinative at this stage.¹⁴ Further, although the TFV is prepared to complement 1 million euros from its reparations

⁸ See generally ICC-01/04-01/06-3129 A A2 A3 ("*Lubanga* Appeals Chamber Decision on Reparations Principles"). See e.g., TFV Filing on Reparations, paras. 19-27 in particular, and more generally the entire submissions.

⁹ See OTP Policy Paper on Sexual and Gender-Based Crimes ("OTP SGBC Policy"), para. 11, noting that "[t]he Office supports a gender-inclusive approach to reparations, taking into account the gender-specific impact on, harm caused to, and suffering of the victims affected by the crimes for which an individual has been convicted."; see also para. 102, noting "[t]he Office will also support consultation with the victims, and the carrying out of a gender analysis by an appropriate body in order to determine the most effective and appropriate forms of reparation within a particular community. This approach is intended to promote the reparations that are transformative and contribute to advancing gender equality."

https://www.icc-cpi.int/iccdocs/otp/Policy_Paper_on_Sexual_and_Gender-Based_Crimes-20_June_2014-ENG.pdf

See e.g., TFV Filing on Reparations, paras. 81-98, noting *inter alia* "[t]he significance of gender and gender equality to the design and delivery of reparation." See also Draft Implementation Plan, paras. 32-40, once again documenting "a gender-inclusive approach" and "a gender sensitive approach" in implementing reparations.

¹⁰ See OTP SGBC Policy, para. 102.

¹¹ OTP SGBC Policy, para. 102.

¹² See e.g., article 12, Convention on the Rights of the Child.

¹³ See e.g., ICC-01/04-01/06-3161-tENG, paras. 6-7.

¹⁴ TFV Filing on Reparations, para. 253.

reserve for funding the collective reparations programme, this figure remains only an estimate at this stage. As the TFV notes, the “final decision” depends on a “formal declaration of Mr Lubanga’s indigence for the purposes of reparations by the Court”, and the Chamber’s approval of the Draft Implementation Plan.¹⁵ Depending on the outcome of these pending issues, among others, the Prosecution may make further submissions, if required.

6. The Prosecution supports the TFV’s efforts in implementing reparations so the harm suffered by the victims of Thomas Lubanga’s crimes can be fairly and finally addressed.



Fatou Bensouda, Prosecutor

Dated this 18th December 2015

At The Hague, The Netherlands

¹⁵ TFV Filing on Reparations, para. 120.