

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **23 January 2017**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding
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

**First report on the implementation of symbolic collective reparations as per the Trial
Chamber II Order of 21 October 2016**

with

One Annex CONFIDENTIAL *EX PARTE* available to the Registrar only

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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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" (the "3 March 2015 Reparations Judgment")¹, together with the "Amended order for reparations" (the "3 March 2015 Reparations Order"), appended as an annex thereto².

2. On 3 November 2015, having previously granted a request for an extension of time, the Trust Fund for Victims (hereinafter "the Trust Fund"), submitted the "Filing on Reparations and Draft Implementation Plan" (the "Draft Implementation Plan")³.

3. On 18 December 2015, the Ligue pour la Paix, les Droits de l'Homme et la Justice⁴, as well as the Prosecutor⁵ submitted observations on the Draft Implementation Plan to the Trial Chamber.

4. On 1 February 2016, the Legal Representatives of Victims V01⁶ and V02,⁷ the Office of Public Counsel for Victims (the "OPCV")⁸ and the Defence⁹ filed their observations on the Draft Implementation Plan.

¹ ICC-01/04-01/06-3129 and its annexes.

² ICC-01/04-01/06-3129-AnxA.

³ ICC-01/04-01/06-3177-Red.

⁴ "Observations de la Ligue pour la Paix, les Droits de l'Homme et la Justice (LIPADHOJ) sur le projet de plan mise en oeuvre depose 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.

⁵ "Prosecution's observations on the Trust for Victims' Filing on Reparations and Draft Implementation Plan", 18 December 2015, ICC-01/04-01/06-3186.

⁶ "Observations du groupe de victimes V01 sur le projet de plan de mis en oeuvre des reparations depose par le Fonds au profit des victimes ICC-01/04-01/06-3177", 1 February 2016, ICC-01/04-01/06- 3194.

⁷ "Observations de l'equipe V02 sur le projet de plan de mise en oeuvre de reparations depose 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.

5. On 9 February 2016, the Trial Chamber issued the "Order instructing the Trust Fund for Victims to supplement the draft implementation plan" (the "9 February 2016 Order"),¹⁰ in which the Chamber, inter alia, considered that the Trust Fund's proposals submitted in the Draft Implementation Plan were "in line with the modalities of reparations ordered by the Appeals Chamber".¹¹ 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".¹² The Chamber also expressed its willingness "to examine any programmes the TFV deems useful to present to it".¹³

6. On 7 June 2016, the Trust Fund submitted additional information¹⁴.

7. On 1 July 2016 and in accordance with the Trial Chamber's decision issued on 14 June 2016¹⁵, the OPCV¹⁶, the legal representatives for victims¹⁷ and the Defence¹⁸ presented their responses.

⁸ "Observations sur le Projet de mise en œuvre des réparations déposées par le Fonds au profit des victimes le 3 novembre 2015", 1 February 2016, ICC-01/04-01/06-3193.

⁹ Version publique expurgée des « Observations de la Défense de M. Thomas Lubanga relatives au « Filing on Reparations and Draft Implementation Plan », Lubanga relatives au « Filing on Reparations and Draft Implementation Plan », 2 February 2016, ICC-01/04-01/06-3196-Red2.

¹⁰ ICC-01/04-01/06-3198-tENG.

¹¹ ICC-01/04-01/06-3198-tENG, para. 20.

¹² ICC-01/04-01/06-3198-tENG, paras 20-21.

¹³ ICC-01/04-01/06-3198-tENG, para. 22.

¹⁴ "Additional Programme Information Filing", ICC-01/04-01/06-3209.

¹⁵ ICC-01/04-01/06-3210.

¹⁶ ICC-01/04-01/06-3212.

¹⁷ ICC-01/04-01/06-3213 (team V01) and ICC-01/04-01/06-3214 (team V02).

¹⁸ ICC-01/04-01/06-3211-Corr.

8. On 15 July 2016, the Trial Chamber issued the "Request Concerning the Feasibility of Applying Symbolic Collective Reparations",¹⁹ in which it requested the Trust Fund to study the feasibility of developing a concrete project aiming at providing prompt symbolic reparations" and requested to receive concrete information regarding: a) the estimated costs of such a project; b) the time frame for its completion; and c) any concrete proposal(s) related to this matter.

9. On 19 September 2016, the Trust Fund submitted the "Filing regarding symbolic collective reparations projects with Confidential Annex: Draft Request for Proposals, ICC-01/04-01/06-3223-Conf" ²⁰ (hereinafter "Trust Fund's symbolic reparations submission").

10. On 11 and 13 October 2016, the Trial Chamber convened a set of public hearings in the presence of the parties, the Trust Fund and a number of non-governmental organizations²¹.

11. On 21 October 2016, the Trial Chamber issued the "Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations". (hereinafter the "21 October 2016 order")²². The Trial Chamber stipulated that its "approval for said plan is confined to symbolic reparations and is subject to filing a report

¹⁹ ICC-01/04-01/06-3219.

²⁰ 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).

²¹ "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.

²² ICC-01/04-01/06-3251.

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.”²³

II. Progress report

12. The Trust Fund wishes to note that it very much welcomes the Trial Chamber’s approval of its programmatic framework for symbolic reparations and that it is proceeding to implement the project framework with due regard and compliance to the prevailing administrative rules, transparency, efficiency, and effectiveness. The Trust Fund is convinced that this first undertaking to implement reparations in the Lubanga case is sending a strong and important signal to the victims of the case and beyond.

13. With the present submission, the Trust Fund provides the Trial Chamber with a first three-monthly implementation progress report, as requested in the Trial Chamber’s 21 October 2016 order.

14. The Trust Fund recalls that it submitted that through a consultative process it has identified in detail the objectives of the symbolic reparations component, including *inter alia* to “foster awareness and acknowledgement within affected communities about the crimes and the on-going harms caused to victims and their families from these crimes”²⁴ and that in order to achieve these objectives, the Trust Fund had proposed a project plan with two main components, namely, firstly, the development and construction of

²³ ICC-01/04-01/06-3251, para. 17.

²⁴ Trust Fund’s symbolic reparations submission at para. 62

symbolic structures, in the form of commemoration centres that will host interactive symbolic activities, in three communities; and, secondly, the development and implementation of mobile memorialization initiatives in five additional communities that will promote awareness raising of the crimes and resulting harms, reintegration, reconciliation, and memorialization.²⁵

15. The progress report includes the steps undertaken by the Trust Fund in view of implementing the 21 October 2016 order and is contained in Annex A to this filing. The report addresses steps undertaken, in consultation with the relevant sections of the Registry, in the relevant procurement process, including the identification and selection of potential applicants to be invited to participate in the competitive bidding process. The Trust Fund notes with appreciation efforts and priority attention of the Procurement section to this procedure during a period of business peak (end of the year) and the seasonal break.

16. The Trust Fund takes note of the Trial Chamber's request asking it "to study the possibility of expanding its project beyond the five proposed localities referred to in paragraph 39"²⁶ of the Trust Fund's submission of 19 September 2016, in order to cover, to the extent possible, the Ituri region. The Trust Fund submits that it has determined that eight locations were the maximum number of locations feasible within this budget to ensure that an adequate level of financial resources could be allocated to each location.

²⁵ Trust Fund's symbolic reparations submission at para. 63.

²⁶ ICC-01/04-01/06-3251 at para. 16.

Accordingly, it is unfortunately not possible at this time to incorporate additional localities into the existing project framework and associated budget. However, should additional funds become available, e.g. in the instance that the dedicated fundraising effort yields results, this would allow the Trust Fund to revisit the issue.

17. The Trust Fund recalls that during the public reparations hearing the legal representative of VO2 encouraged the Trust Fund to consider an alternative site one of the communities to be the site of a symbolic structure because a significant number of victim participants originate from that area. In an effort to explore the feasibility of this suggestion the Trust Fund consulted with its partners and the local authorities in the region to solicit their view points on the initiative and possible support for such a project. The Trust Fund received positive feedback. It seeks to include this site in the list because of because of its relevance to the case, its size and its prominence as a socio-economic center in the region where many of the victim participants reside. This process is addressed in more detail in the attached report.

18. The Trust Fund submits that it will update the Trial Chamber on any further progress on the implementation of the symbolic reparation's component in periodic intervals of 3 months, as per the Trial Chamber's instructions.

FOR THE FOREGOING REASONS

The Board of Directors respectfully submits the report, contained in annex A to this submission, as requested by the Trial Chamber in its "Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations" of 21 October 2016.



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 23 January 2017

At The Hague, The Netherlands