

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **1 July 2016**

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***

Public Document

Consolidated observations of the V01 Group of Victims on the documents “First submission of victim dossiers” and “Additional Programme Information Filing”, filed by the Trust Fund for Victims on 31 May and 1 June respectively

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Source: Legal Representatives of the V01 group of victims

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

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I. INTRODUCTION

1. On 9 February 2016, the Chamber instructed the Trust Fund for Victims (TFV) to supplement the draft implementation plan of 3 November 2015.¹

2. On 4 March 2016, the TFV's request for leave to appeal the order was dismissed.²

3. In compliance with the Chamber's instructions, and in consultation with the TFV, the V01 team of Legal Representatives undertook a field mission to Bunia from 4 to 8 April 2016. During the mission, 16 victim participants in the trial were interviewed by the TFV with the assistance of a member of the team. In consultation with the OPCV, the Legal Representatives also agreed to assist two new eligible victims who came forward of their own accord.

II. Reaction of victims to the order of 9 February 2016

4. The TFV report of 31 May 2016³ stated that all the victims were shocked by the conditions in the Chamber's order which they have to fulfil in order to participate in the collective reparations programme whose content is yet to be determined and from which it is not clear whether they will benefit as individuals.

5. To fully understand the issues at stake, the social condition of most child soldiers has to be considered. On the whole, they have no qualification, are unemployed, perform odd jobs, or engage in petty trading (e.g. selling telephone airtime or fuel per litre). Many of them suffer from psychological disorders or

¹ "Order instructing the Trust Fund for Victims to supplement the draft implementation plan", ICC-01/04-01/06-3198.

² "Decision on the request of the Trust Fund for Victims for leave to appeal against the order of 9 February 2016", ICC-01/04-01/06-3202-tENG.

³ "First submission of victim dossiers with Conf-Exp-Anxs 1 to 12", ICC-01/04-01/06-3208.

become drug addicts after joining the militia. Social reintegration into their communities is sometimes difficult.

6. Most of these victims have participated in the proceedings for over 10 years. Disappointed by Trial Chamber I's decision of 7 August 2012 and the Appeals Chamber decision of 15 March 2015 on individual applications for reparations, they have lost hope in the ability of reparations to effect radical change in their lives. Nevertheless, when they heard that the Trust Fund for Victims was preparing to implement a collective reparations programme, they participated in the discussions on these projects with the TFV, through their Legal Representatives. Once again, their hopes were dashed when, pursuant to the order of 9 February, the implementation of the reparations programmes was postponed to 2017.

7. The victims question the relevance of sitting through a series of interviews, narrating their childhood suffering for the nth time and providing proof of identity without being sure that any of the collective programs would benefit them. They are also disturbed by the request to disclose their identity and records to the Defence for Mr. Thomas Lubanga Dyilo whereas the reparations programme will evidently be funded by the TFV. The victims feel that, whereas they are not allowed to benefit from individual financial compensation, they are being burdened with responsibilities which scarcely have any bearing on the implementation of a collective reparations programme.

III. Victims' attitude to the Trust Fund for Victims and the Defence

8. All victims expressed the desire to participate in one of the reparations programmes to be implemented by the Trust Fund for Victims and consented to the disclosure of their identity and documents to the TFV. Only three of them consented to the disclosure of their identity to the Defence, although almost all of them had previously given oral consent.

9. This attitude apparently stems from three reasons, namely:

- The convict's consistently negative and, in fact, aggressive stance towards victims (e.g. during the reduction of sentence hearing);
- The convict's presence in the DRC and the fact that some UPC members and some elders of the region travelled to Kinshasa to meet with him; and
- The fact that the reparations programme will be implemented within one year at the earliest, and that its content have not yet been finalised, making it difficult for victims to weigh the potential benefits of the programme against the possible disadvantages of revealing their identities to the Defence.

10. It should be noted that during the reduction of sentence hearings, the victims were verbally assaulted by the Defence, whereas they had been open to dialogue with the convict regarding the implementation of reparations.⁴ This speaks volumes of the convict's attitude towards those claiming any reparation and confirms the perception of animosity by victims (and by the TFV during investigations), especially within the Hema community.

11. Those who are reluctant to allow disclosure of their identities fear a backlash and even hostility, exclusion or discrimination by their communities and, sometimes, their own families, given that they live in a local context where reliance on family and community solidarity is crucial in almost all areas of life.

IV. Eligibility of victim participants

12. The TFV considers that all former child soldiers in the V01 group, whose dossiers are considered complete, meet the conditions for victim status and are

⁴ This is also noted in the Appeal Chamber's Decision of 22 September 2015: "The Panel observes that Mr Lubanga has not responded to the Victims' suggestion regarding his involvement in, *inter alia*, the reparation process or a demonstration of regret, which could be acts considered to be of relevance to this factor. On the contrary, the Panel observes that during the Sentence Review Hearing Mr Lubanga's counsel continued to challenge the Victims' status" (ICC-01/04-01/06-3173, para. 69).

eligible for the reparations programme. The four incomplete dossiers are being completed.

13. Some victims or their parents provided different dates of birth on various occasions (school enrolment, voter's card, driver's license etc.). This should not, in any way, cast doubt on the credibility of the persons concerned as such situations are common in that part of the DRC where civil status registers were no longer being properly updated at the time of the victims' birth and were partly destroyed during the wars that have ravaged the region for decades.

14. Although all the victims state that they are currently aged between 23 and 27 years, some have admitted that they do not know their exact date and month of birth while others give precise dates which are clearly inconsistent with the age which they provided in the same form. However, this rather underscores their good faith. In fact, while several victims do not know whether dates of birth they use accurate, these are indeed the dates which their parents or the victims themselves have had to declare at the request of some official authority. Accordingly, the date declared by parents or guardians when enrolling a child in school is sometimes different from the date provided by the young adult during voter registration. Furthermore, the date currently used may also be different from the date stated in one of the documents appended to the application for participation in the proceedings or in the application itself.

15. Nevertheless, none of the victims, at this juncture or when applying for reparations, has declared an age, provided a date of birth or submitted any document indicating that they could have been over 15 years of age when they joined the militia. Regardless of the above-mentioned disparities, all of the victims were between the ages of 10 and 14 years at the material time.

V. Harm suffered by victims

16. According to reports drafted by various TFV experts, almost all former child soldiers suffer from acute psychological disorders resulting from their experience in the militia (post-traumatic stress syndrome, depression, substance abuse...). Many of them still bear the scars of injury or suffer from other physical disorders after the events. Their socio-economic situation is one of extreme poverty and hardship.

VI. Procedural options

17. The Legal Representatives find it unfortunate that the cost for expert reports and screening costs significantly affect the amount earmarked by the TFV for reparations. Whereas approximately 3000 euros per victim may be acceptable in proceedings to determine compensation for all the harm suffered, there is no justification for such an amount in collective reparations, since it is glaringly insufficient relative to the amount available for the entire programme, including preparation costs.

18. The Legal Representatives respectfully submit that, since the two field missions have confirmed and supplemented the information already gathered by the TFV during its investigations, it may not be necessary to wait until prior identification of all victims and their alleged harm is completed before approving the TFV programme.

19. On behalf of their clients, they would like this reparations programme, together with the few amendments suggested in their previous submission, to be implemented without further delay, while making adjustments, where appropriate, in the course of implementation.

20. The reparations amount to be paid by the convict should be a lump sum determined *ex aequo et bono*, save where the parties concerned (victims, TFV and the

Defence), under the supervision of the Chamber as appropriate, are able to reach an agreement which prompts a more positive attitude from the convict's community towards the reparations programme, and promotes reconciliation among the communities in Ituri.

21. They also recommend the convening of a partly *ex parte*, closed-session hearing with the Legal Representatives and the Trust Fund for Victims, during which certain issues encountered may be presented in greater detail and the judges may ask questions on the more sensitive aspects of some files.

FOR THESE REASONS,

MAY IT PLEASE THE TRIAL CHAMBER to:

Take note of the observations of the Legal Representatives.

For the V01 Group of Victims

[signed]
Luc Walley
Legal Representative

Dated this 1 July 2016

At Brussels, Belgium