

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **2 October 2018**

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

**Notification of the Board of Directors' decision on the Trial Chamber's
supplementary complement request pursuant to regulation 56 of the
Regulations of the Trust Fund for Victims**

Source:

The Trust Fund for Victims

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

The Office of the Prosecutor

Counsel for the Defence

Ms Catherine Mabile

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims V01

Mr Luc Walley

Mr Frank Mulenda

Legal Representatives of Victims V02

Ms Carine Bapita Buyanandu

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Mr Joseph Keta Orwinyo

The Office of Public Counsel for Victims The Office of Public Counsel for the Defence

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Ms Sarah Pellet

States Representatives

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section Others

**Victims Participation and Reparations
Section**

Mr Phillip Ambach

1. Pursuant to regulation 56 of the Regulations of the Trust Fund for Victims (hereinafter “TFV Regulations”), the Board of Directors of the Trust Fund for Victims (hereinafter “Board” and “Trust Fund”) respectfully submits the following notification to Trial Chamber II (hereinafter “Trial Chamber”).

I. BACKGROUND

2. On 15 December 2017, the Trial Chamber issued a decision,¹ in which it, *inter alia*, requested that the Board indicate whether, pursuant to regulation 56 of the TFV Regulations, it would provide a supplementary² complement to the payment of the collective awards for reparations ordered against Mr Lubanga or whether it would undertake activities in order to raise further funds (“Supplementary Complement Request”).³

3. In its 13 April 2018 submission, the Trust Fund informed the Trial Chamber that the Board “decided as a matter of principle of its intention to complement the full amount of the Supplementary Complement Request”, but was not in a position to provide a specific supplementary complement amount at that point in time.⁴

4. In December 2018, the Board held its bi-annual meeting during the 16th Session of the Assembly of States Parties, whereat it considered the question of administrative costs for reparations in relation to a different reparations proceedings before the Court.

5. In May 2018, the Board met at its bi-annual meeting and took a decision on the Supplementary Complement Request.

6. In its order of 20 September 2018, the Trial Chamber requested an update in relation to its Supplementary Complement Request.⁵

¹ Corrected version of the « Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu », 21 December 2017, ICC-01/04-01/06-3379-Red-Corr, with two public annexes (Annex I and Annex III) and one confidential annex, *ex parte* Registry, Trust Fund for Victims, Legal Representatives of V01 and V02 groups of Victims and Office of Public Counsel for Victims (Annex II) and confidential redacted version of Annex II (“Decision of 15 December 2017”).

² The Trust Fund’s initial complement was proposed in November 2015 for the amount of EUR 1,000,000. T

³ Decision of 15 December 2017, pp. 124-125.

⁴ Further information on the reparations proceedings in compliance with the Trial Chamber’s order of 16 March 2018, ICC-01/04-01/06-3399-Conf, para. 40.

⁵ Ordonnance enjoignant au Fonds au profit des victimes de déposer le cinquième rapport sur l’état d’avancement de la mise en œuvre des réparations, ICC-01/04-01/06-3418-Conf, para. 13.

II. THE BOARD'S DECISION RELEVANT TO ADMINISTRATIVE COSTS

A. The Board's decision relevant to administrative costs

1. On 4 and 5 December 2017, the Board held its annual meeting, at which it considered a request from Trial Chamber II in the *Katanga* case in relation to the Trust Fund's inclusion of administrative costs (estimated at approximately 15%) within the total amount of liability ordered against the convicted person. The Board noted the Trial Chamber's shared concern with that expressed by the legal representatives of victims and the questions this could raise for the rights of the defence. The Board further considered that its decision in the *Katanga* case should equally apply in other reparations proceedings.
2. During its deliberations, the Board highlighted the following points:
 - i. From a legal perspective, imputing such amounts to the convicted person, unless they were specifically included by the Trial Chamber in its order for reparations pursuant to article 75 of the Statute, did not seem justifiable.⁶ The Board considered that, absent the inclusion of such costs by the Trial Chamber in its order for reparations, the amount of liability for reparations should be understood as the amount for the direct services/benefits to the victims;
 - ii. The Trust Fund's position posed a risk to its reputation in the public sphere in that such a position would likely be regularly opposed by victims and their legal representatives. The Board further noted that including administrative costs within the amount of liability could be seen by victims as effectively reducing the amount of reparations understood to have been awarded to them;
 - iii. It would be difficult pre-order for the Trust Fund to make meaningful and properly justified submissions on the administrative costs to a Trial Chamber; and
 - iv. If the Trust Fund persisted in its position, it risked Trial Chambers themselves capping administrative costs in the order for reparations, which could negatively impact the implementation of more complex awards as well as the Trust Fund's ability to select the most appropriate implementing partner/s based on the quality of their proposals and their capacity to implement the reparations awards to victims.

⁶ In relation to individual awards, the Board noted specifically the legal framework of the Regulations of the Trust Fund ("TFV Regulations") applicable to when it is appropriate to use intermediaries for the distribution of individual reparations awards. See in particular regulation 67 of the TFV Regulations.

3. The Board therefore decided that it no longer maintains its position that administrative costs are to be included with the amount of liability for reparations ordered against a convicted person.

III. THE BOARD'S DECISION ON THE SUPPLEMENTARY COMPLEMENT REQUEST

7. In reaching its decision pursuant to regulation 56 of the Trust Fund Regulations, the Board considered: 1) the amount of resources currently available in its reparations reserve; 2) complement requests received in relation to other proceedings before the Court;⁷ 3) ongoing criminal proceedings before the Court that may give rise to reparations awards; and 5) resources necessary for its assistance mandate activities.

8. Further, the Board considered the administrative costs incurred by Trust Fund implementing partners relevant to the implementation of the reparations awards (approximately 15%). In relation to administrative costs incurred by Trust Fund implementing partners, the Trust Fund informs the Trial Chamber that the Board instructed the Trust Fund Secretariat to consult with the Court in order to determine whether these costs could be included in its regular budget. Following these consultations and upon the advice of the Trust Fund Secretariat, the Trust Fund informs the Trial Chamber that the Board does not consider this to be an option suitable to its business practice.⁸ The Board subsequently decided that, similar to its practice under the Trust Fund's assistance mandate, such administrative costs incurred by implementing partners are to be recovered from the reparations reserve, maintained from voluntary contributions, thereby ensuring that, in line with the approach taken in other reparations proceedings before the Court, the full amount of reparations awarded is received by the victims in the form of concrete benefits and support through the collective reparations programme.

9. Taking the above factors into consideration, the Board decided to allocate EUR 2.5 million towards the *Lubanga* Supplementary Complement Request and to recover the eventual administrative costs incurred by the Trust Fund's implementing partners from the reparations reserve.

⁷ Trial Chamber VIII, Public redacted version of "Decision on Trust Fund for Victims' Draft Implementation Plan for Reparations", 12 July 2018, ICC-01/12-01/15-273-Red, para. 75.

⁸ This is in relation to the administrative costs borne by implementing partners. Administrative costs of activities undertaken directly by Trust Fund staff are covered by the regular budget. The Trust Fund notes that it has accordingly informed the Committee on Budget and Finance (CBF) of the Assembly of States Parties in June 2018 (CBF/31/11), in response to a query from the CBF in its report on the thirtieth session in April 2018 (ICC-ASP/17/5).

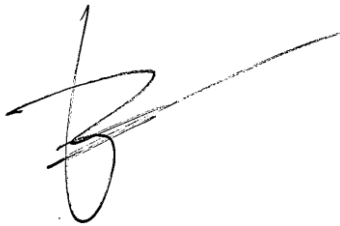
10. The Trust Fund informs the Trial Chamber that it continues to undertake fundraising activities and that the Board will, once additional resources are secured, consider a further complement to the *Lubanga* reparations awards with the goal of being able to provide a complement of the total amount ordered of USD 10,000,000. The Trust Fund will keep the Trial Chamber apprised of any developments in this regard.

IV. THE BOARD'S NOTIFICATION TO THE TRIAL CHAMBER

11. Pursuant to regulation 56 of the TFV Regulations, the Board hereby notifies the Trial Chamber of its decision to complement, in addition to the original complement of EUR 1,000,000, the payment of the collective awards for reparations ordered in the *Lubanga* case in the amount of EUR 2,500,000 USD, for a total present complement of EUR 3,500,000.

FOR THE FOREGOING REASONS

The Board of Directors of the Trust Fund for Victims respectfully submits this notification.



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 2 October 2018
At The Hague, The Netherlands