

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/04-01/06**
Date: **20 September 2018**

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***

Confidential

**Order Directing the Trust Fund for Victims to File the Fifth Progress Report
on the Implementation of Reparations**

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

Office of the Prosecutor

Counsel for Thomas Lubanga Dyilo

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of V01 Victims

Mr Luc Walleyen

Mr Franck Mulenda

Legal Representatives of V02 Victims

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

Office of Public Counsel for Victims

Ms Paolina Massidda

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Trust Fund for Victims

Mr Pieter de Baan

TRIAL CHAMBER II ("Chamber") of the International Criminal Court, acting pursuant to article 75 of the Rome Statute, issues the following order.

1. On 15 December 2017, the Chamber handed down its "Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable" ("Decision of 15 December 2017").¹ In its decision, the Chamber analysed the 473 dossiers of individuals alleging that they were victims of the crimes of which Thomas Lubanga Dyilo ("Mr Lubanga") had been convicted, which had been transmitted to it² by the Trust Fund for Victims ("Trust Fund"), working with the Legal Representatives of the V01 and V02 groups of victims ("Legal Representatives of V01 and V02 Victims") and the Office of Public Counsel for Victims ("OPCV").

2. The Chamber found that, of those 473 individuals, 425 established on a balance of probabilities that they had suffered harm as a result of the crimes of which Thomas Lubanga had been convicted.³ Accordingly, the Chamber awarded them collective reparations in the case at bar.⁴ The Chamber found, however, that the 425 individuals did not constitute the sum total of the victims, and that hundreds and possibly thousands more victims had also suffered harm as a result of the crimes of which Mr Lubanga had been convicted.⁵ Lastly, the Chamber reiterated that persons not yet having been in a position to file a dossier would be screened by the Trust Fund for eligibility at the implementation stage of reparations.⁶ In that connection, the Chamber directed the Trust Fund to file submissions on the possibility of continuing

¹ "Corrected version of the 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'", 21 December 2017, ICC-01/04-01/06-3379-Red-Corr-tENG, with two public annexes (Annex I and Annex III) and one confidential annex *ex parte* the Registry, the Trust Fund for Victims, the Legal Representatives of victim groups V01 and V02, and the Office of Public Counsel for Victims (Annex II), and one confidential redacted version of Annex II. This decision was handed down, with its annexes, on 15 December 2017, and the corrected versions were filed on 21 December 2017.

² Decision of 15 December 2017, paras. 35-191.

³ Decision of 15 December 2017, para. 190.

⁴ Decision of 15 December 2017, para. 194.

⁵ Decision of 15 December 2017, p. 111 and, in particular, paras. 232-244.

⁶ Decision of 15 December 2017, para. 293, referring to the "Decision on the Motion of the Office of Public Counsel for Victims for Reconsideration of the Decision of 6 April 2017", 13 July 2017, ICC-01/04-01/06-3338-tENG, para. 11.

to seek and identify further persons who might qualify for reparations, with the assistance of the OPCV and the Legal Representatives of V01 and V02 Victims, by 15 January 2018.⁷

3. On 15 January 2018, the Trust Fund filed observations in which it said that the assistance of the Legal Representatives of V01 and V02 Victims, the OPCV and also the Victims Participation and Reparations Section ("VPRS") would be of great help to it in continuing to seek and identify victims in the case.⁸

4. On 25 January 2018, the Chamber reiterated that persons not yet having been in a position to file a dossier by that time would be screened by the Trust Fund for eligibility for reparations and directed the Trust Fund to provide, by 12 February 2018, further information on the process for determining victim status for reparations purposes at the implementation stage of reparations ("victim identification process").⁹

5. On 16 March 2018, the Chamber directed the Trust Fund to file the documents requested by the Chamber concerning the process of screening further victims, the status of discussions with the relevant stakeholders about seeking and identifying further victims, the possibility of earmarking an additional amount for reparations and progress in the implementation of reparations.¹⁰

6. On 21 March 2018, after receiving three extensions of time, the Trust Fund filed information on the victim identification process.¹¹

⁷ Decision of 15 December 2017, para. 296 and p. 112.

⁸ "Observations in relation to locating and identifying additional victims pursuant to the Trial Chamber's decision of 15 December 2017", 15 January 2018, ICC-01/04-01/06-3386, para. 6 ("Trust Fund Observations of 15 January 2018").

⁹ "Order Directing Further Information from the Trust Fund for Victims on the Procedure for Determining Victim Status at the Implementation Stage of Reparations", 25 January 2018, ICC-01/04-01/06-3391-tENG.

¹⁰ "Order Instructing the Trust Fund for Victims to File the Documents Requested by the Chamber on the Process of Screening New Victims, the Progress of Discussions with the Stakeholders Involved in Locating and Identifying New Victims, the Possibility of Earmarking an Additional Amount for Reparations and the Progress of the Implementation of Reparations", 16 March 2018, ICC-01/04-01/06-3395-tENG ("Order of 16 March 2018").

¹¹ "Observations in relation to the victim identification and screening process pursuant to the Trial Chamber's order of 25 January 2018", 21 March 2018, ICC-01/04-01/06-3398.

7. On 13 April 2018, the Trust Fund filed information on the status of discussions with the relevant stakeholders about seeking and identifying further victims and on the possibility of earmarking an additional amount for reparations ("Trust Fund Submissions of 13 April 2018" or "Submissions of 13 April 2018").¹²

8. On the same day, the Trust Fund filed the fourth progress report on the implementation of collective reparations ("Fourth Report").¹³

9. On 25 and 26 April 2018, the Defence,¹⁴ the OPCV¹⁵ and the Legal Representatives of V01 and V02 Victims¹⁶ filed observations on the Trust Fund's submissions of 21 March and 13 April 2018.

10. At the outset, the Chamber recalls that it has directed the Trust Fund on several occasions¹⁷ to provide it with regular progress reports on the implementation of reparations. The Chamber notes that the Trust Fund did not file the report that was due in July 2018. Accordingly, the Chamber directs the Trust Fund to file the fifth progress report on the implementation of collective reparations.

11. In that regard, the Chamber notes that in its Submission of 13 April 2018 the Trust Fund said that it was possible that some of the service-based collective reparations projects might not suit the needs of the 425 qualifying victims or the

¹² "Further information on the reparations proceedings in compliance with the Trial Chamber's order of 16 March 2018", 13 April 2018, ICC-01/04-01/06-3399-conf.

¹³ "Fourth progress report on the implementation of collective reparations as per Trial Chamber II's orders of 21 October 2016 and 6 April 2017", 13 April 2018, ICC-01/04-01/06-3400, and two confidential *ex parte* annexes.

¹⁴ "Réponse consolidée de la Défense aux Observations du Fonds au profit des victimes communiquées les 21 mars et 13 avril 2018", dated 24 April 2018 and registered on 25 April 2018, ICC-01/04-01/06-3401.

¹⁵ "Réponse aux observations du Fonds au profit des victimes sur le processus d'identification et de sélection des autres victimes potentiellement éligibles aux réparations ainsi que sur les prochaines étapes de la mise en œuvre des réparations", 26 April 2018, ICC-01/04-01/06-3403-conf.

¹⁶ "Réponse consolidée aux 'Observations in relation to the victim identification and screening process pursuant to the Trial Chamber's order of 25 January 2018' du 23 mars 2018 et au 'Fourth progress report on the implementation of collective reparations as per Trial Chamber's II 's orders of 21 October 2016 and 6 April 2017' avec annexes du 13 Avril 2018", 26 April 2018, ICC-01/04-01/06-3402-conf and one confidential annex.

¹⁷ Order of 16 March 2018; "Order Instructing the Trust Fund for Victims to Inform the Chamber of the Progress Made in the Implementation of Reparations", 7 November 2017, ICC-01/04-01/06-3376-tENG; "Order approving the proposed programmatic framework for collective service-based reparations submitted by the Trust Fund for Victims", 6 April 2017, ICC-01/04-01/06-3289, para. 17 ("Decision of 6 April 2017"); and "Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations", 21 October 2016, ICC-01/04-01/06-3251, para. 17.

victims yet to be identified during the implementation of reparations.¹⁸ Accordingly, the Trust Fund said, those projects should be revised in the light of the needs of the victims identified.¹⁹ To that end, the Trust Fund said that it planned to analyse the information contained in the 425 qualifying victims' applications for reparations and the observations filed by the legal representatives of victims in order to adapt or amend the service-based collective reparations projects where appropriate. The Trust Fund said the analysis could take place from early May to mid-June.²⁰ In that connection, the Trust Fund said that the request for expressions of interest (the first step in the process of calling for tenders) had come to a close at the end of January 2018 and that more than 20 organizations had responded.²¹ The request for proposals that will be sent to the organizations shortlisted for the implementation of reparations will be amended in line with the changes to the projects adopted.²² The Trust Fund said that it planned to complete the shortlist of applicant organizations from the expression of interest phase and to send them the request for proposals in July 2018.²³ Lastly, the Chamber notes that, despite the constraints in question attributable to the security situation on the ground, the Trust Fund said that it might be possible to start the implementation of reparations at the end of 2018 for the 425 qualifying victims.²⁴ Having regard to the foregoing, the Chamber directs the Trust Fund to file information on the status of the above operations. The Chamber reiterates in this connection that the Trust Fund "is instructed to report to the Chamber before finalising the contracts with the selected implementing partner, at which point, the Chamber may approve the second stage of the implementation process, after having determined Mr Lubanga's liability for reparations".²⁵

12. The Chamber furthermore notes that the Trust Fund said in its Fourth Report that it intended to stop the call for tenders for symbolic collective reparations on

¹⁸ Trust Fund Submissions of 13 April 2018, paras. 33-35.

¹⁹ Trust Fund Submissions of 13 April 2018, para. 36.

²⁰ Trust Fund Submissions of 13 April 2018, para. 39.

²¹ Trust Fund Submissions of 13 April 2018, para. 40. Fourth Report, Annex A, p. 3.

²² Trust Fund Submissions of 13 April 2018, para. 40.

²³ Fourth Report, Annex A, p. 4.

²⁴ Trust Fund Submissions of 13 April 2018, para. 41.

²⁵ Decision of 6 April 2017, para. 17.

account of, *inter alia*, the security situation in Ituri.²⁶ The Chamber directs the Trust Fund to file information on any developments since the submission of the Fourth Report concerning symbolic collective reparations.

13. The Chamber notes, lastly, that in its Submissions of 13 April 2018 the Trust Fund said that the Board of Directors of the Trust Fund undertook to carry out fundraising activities to mobilize additional funds pursuant to the Decision of 15 December 2017, in which the Chamber set the size of the reparations award against Mr Lubanga at USD 10,000,000.²⁷ The Chamber directs the Trust Fund to file information on the progress made in that regard.

FOR THESE REASONS, the Chamber

DIRECTS the Trust Fund to file the fifth progress report on collective reparations, containing the information sought in paragraphs 11-13, by 28 September 2018.

Done in both English and French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut

Presiding Judge

[signed]

Judge Olga Herrera Carbuccia

[signed]

Judge Péter Kovács

Dated this 20 September 2018

At The Hague, Netherlands

²⁶ Fourth Report, Annex A, pp. 1-2.

²⁷ Trust Fund Submissions of 13 April 2018, para. 42.