



Original: **French**

No.: ICC-01/04-01/06
Date: 15 October 2020

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

Ex parte, Legal Representatives of the V01 and V02 Groups of Victims, Office of Public Counsel for Victims, Trust Fund for Victims, and Victims Participation and Reparations Section

Decision on the Request of the Trust Fund for Victims of 8 October to File a Reply

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

Office of the Prosecutor

Counsel for Thomas Lubanga Dyilo

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**

Mr Philipp Ambach

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 and regulations 24(5) and 34(c) of the Regulations of the Court, issues the following decision.

1. On 21 September 2020, the Trust Fund filed a request (“Request of the Trust Fund of 21 September 2020”),¹ for the Chamber’s approval of the results of the invitation to tender to provide service-based collective reparations to the victims (“Proposed Programme for Service-Based Collective Reparations” or “Proposed Programme”).²
2. On 24 September 2020, the Chamber instructed the Legal Representatives of the V01 and V02 Groups of Victims (“Legal Representatives V01 and V02”) and the Office of Public Counsel for Victims (“OPCV”) to file observations on the Proposed Programme for Service-Based Collective Reparations by 16.00 on 2 October 2020.³
3. On 30 September 2020, the Trust Fund filed additional information on the Request of the Trust Fund of 21 September 2020.⁴
4. On 2 October 2020, in accordance with the Chamber’s instructions, the OPCV,⁵ Legal Representatives V01⁶ (“Observations of Legal Representatives V01”)

¹ “*Requête d’approbation des résultats de l’invitation à soumissionner concernant les réparations collectives basées sur les services apportés aux victimes*”, 21 September 2020, ICC-01/04-01/06-3480-Conf.

² Annex A to the “*Requête d’approbation des résultats de l’invitation à soumissionner concernant les réparations collectives basées sur les services apportés aux victimes*”, 21 September 2020, ICC-01/04-01/06-3480-Conf-Exp-AnxA.

³ “Order Setting the Deadline for the Filing of Observations on the Request of the Trust Fund for Victims of 21 September 2020”, 24 September 2020, ICC-01/04-01/06-3482-Conf-tENG.

⁴ Additional information concerning the “*Requête d’approbation des résultats de l’invitation à soumissionner concernant les réparations collectives basées sur les services apportés aux victimes*”, 30 September 2020, ICC-01/04-01/06-3480-Conf.

⁵ “*Observations du BCPV sur la ‘Requête d’approbation des résultats de l’invitation à soumissionner concernant les réparations collectives basées sur les services apportés aux victimes déposée par le Fonds au profit des victimes’*”, 2 October 2020, ICC-01/04-01/06-3484-Conf (“Observations of the OPCV”).

⁶ “*Observations des Représentants Légaux des victimes V01 conformément à l’Ordonnance fixant le délai pour le dépôt d’observations sur la requête du Fonds au profit des victimes du 21 septembre 2020*”, 2 October 2020, ICC-01/04-01/06-3485-Conf-Exp.

and V02⁷ filed their respective observations on the Request of the Trust Fund of 21 September 2020 and on the Proposed Programme for Service-Based Collective Reparations. In particular, the OPCV and Legal Representatives V01 noted that the detailed budget mentioned in point 8 of the Proposed Programme had not been disclosed to the Legal Representatives of Victims, and thus, they asked the Chamber to direct the Trust Fund to disclose the budget to them.⁸

5. On 8 October 2020, the Trust Fund filed a request for the Chamber's leave, pursuant to regulation 24(5) of the Regulations of the Court, to file a reply on the issue of the budget, which had been raised by Legal Representatives V01 in their observations of 2 October 2020 ("Request of the Trust Fund of 8 October 2020").⁹

6. The OPCV and Legal Representatives V01 and V02 did not file a response to the Request of the Trust Fund of 8 October 2020.

7. The Chamber recalls regulation 24(5) of the Regulations of the Court, which reads as follows:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

8. The Chamber is of the view that if it is to rule on the Request of the Trust Fund of 21 September 2020, the Trust Fund should be granted leave to file a reply so as to respond to the observations of Legal Representatives V01 and the OPCV on the estimated budget amounts allocated to the various components of the Proposed Programme for Service-Based Collective Reparations, by 16.00 on 21 October 2020.

9. Furthermore, the Chamber notes that Thomas Lubanga Dyilo ("Mr Lubanga") does not have access to filings ICC-01/04-01/06-3485-Conf-Exp or ICC-01/04-01/06-

⁷ "Observations des Représentants légaux du groupe VO2 sur la requête ICC-01/04-01/06-3480-Conf + Conf-Exp-AnxA du Fonds au profit des victimes en date du 21 septembre 2020", filed on 2 October 2020 and registered on 5 October 2020, ICC-01/04-01/06-3486-Conf.

⁸ Observations of the OPCV of 2 October 2020, para. 101, p. 11; Observations of Legal Representatives V01, para. 7.

⁹ "Demande d'autorisation de réplique aux observations des représentants légaux du groupe de victimes V01 (ICC-01/04-01/06-3485-Conf-Exp) conformément à la norme 24-5 du Règlement de la Cour", 8 October 2020, ICC-01/04-01/06-3488-Conf-Exp.

3488-Conf-Exp because the observations of Legal Representatives V01 deal primarily with the Proposed Programme¹⁰ and because the Trust Fund restricted access to this annex, considering that it contains “[TRANSLATION] sensitive information that would place victims at considerable risk if distributed to anyone other than the designated recipients.”¹¹ Nonetheless, the Chamber considers that Mr Lubanga should be granted access to filings ICC-01/04-01/06-3485-Conf-Exp and ICC-01/04-01/06-3488-Conf-Exp.

10. Therefore, acting pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Chamber directs Legal Representatives V01 to file a confidential redacted version of filings ICC-01/04-01/06-3485-Conf-Exp or to indicate whether these filings can simply be reclassified as “confidential”, without redactions, by 16.00 on 19 October 2020.

11. For the same reason, the Chamber directs the Trust Fund to file the reply, including a confidential redacted version, if the Trust Fund deems it necessary, in order to add Mr Lubanga’s defence team to the list of recipients of this filing, as well as a confidential redacted version of filings ICC-01/04-01/06-3488-Conf-Exp or to indicate whether filings ICC-01/04-01/06-3488-Conf-Exp can simply be reclassified as “confidential”, without redactions, by 16.00 on 21 October 2020.

¹⁰ Observations of Legal Representatives V01, p. 5.

¹¹ Request of the Trust Fund of 21 September 2020, para. 12.

FOR THESE REASONS, the Chamber

GRANTS the Request of the Trust Fund of 8 October 2020;

AUTHORIZES the Trust Fund to file a reply, including, if necessary, a confidential redacted version, to the points mentioned in paragraph 8 of this decision, by 16.00 on 21 October 2020;

DIRECTS Legal Representatives V01 to file a confidential redacted version of filings ICC-01/04-01/06-3485-Conf-Exp or to indicate whether these filings can simply be reclassified as “confidential”, without redactions, by 16.00 on 19 October 2020; and

DIRECTS the Trust Fund to file a confidential redacted version of filings ICC-01/04-01/06-3488-Conf-Exp or to indicate whether these filings can simply be reclassified as “confidential”, without redactions, by 16.00 on 21 October 2020.

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

[signed]

Judge Marc Perrin de Brichambaut

Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 15 October 2020

At The Hague, Netherlands