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No.: ICC-01/04-01/06
Date: 22 February 2017

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

**Order for the Transmission of the Application Files of Victims who may be
Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo**

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

Ms Catherine Mabile

Mr Jean-Marie Biju-Duval

Legal Representatives of V01 Victims

Mr Luc Walley

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

Paolina Massidda

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

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 rule 97 of the Rules of Procedure and Evidence, hereby issues the following order.¹

I. Procedural Background

1. On 9 February 2016, the Chamber issued an order² in which it specifically instructed the Trust Fund for Victims (“Trust Fund”) “to begin the process of locating and identifying victims potentially eligible to benefit from the reparations [...]”³ (“Identification process”). The Chamber also instructed the Trust Fund to prepare an application for each victim who may be eligible to benefit from reparations in the instant case and to transmit the first batch of applications to the Chamber by 31 March 2016, the second batch by 15 July, and the third batch by 31 December 2016.⁴
2. On 31 May 2016, after being granted an extension of time,⁵ the Trust Fund submitted 12 applications of victims who may be eligible⁶ (“First submission of victim dossiers by the Trust Fund”).
3. On 1 July 2016, the defence team for Mr Lubanga⁷ (“Defence”) filed observations seeking, *inter alia*, the transmission to the Defence of the applications of victims who may be eligible and who have consented to the disclosure of their identities.⁸

¹ Judge Herrera Carbuccia confirmed her opinion of 15 July 2016 (ICC-01/04-01/06-3217-Anx-tENG) and of 25 October 2016 (ICC-01/04-01/06-3252-Anx-tENG).

² “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, 9 February 2016, ICC-01/04-01/06-3198-tENG (“Order of 9 February 2016”).

³ *Ibid.*, para. 15.

⁴ *Ibid.*, paras 17-and 18, and p. 12.

⁵ “Decision on the request of the Trust Fund for Victims for an extension of the time limit for the submission of the first batch of files of potential victims”, 29 March 2016, ICC-01/04-01/06-3205.

⁶ “First submission of victim dossiers With Twelve confidential, *ex parte* annexes, available to the Registrar, and Legal Representatives of Victims V01 only”, 31 May 2016, ICC-01/04-01/06-3208, and 12 confidential *ex parte* annexes.

⁷ “*Corrigendum - Réponse consolidée de la Défense de M. Thomas Lubanga relative à la ‘First submission of victim dossiers’, datée du 31 mai 2016, et au ‘Additional Programme Information Filing’, daté du 7 juin 2016 (30 juin 2016, ICC-01/04-01/06-3211)’*”, 1 July 2016, ICC-01/04-01/06-3211-Corr (“Observations of the Defence”) and one public annex, ICC-01/04-01/06-3211-Corr-AnxA.

⁸ Observations of the Defence, paras 44-46.

4. On 14 July 2016, the Trust Fund submitted 11 applications of victims who may be eligible⁹ (“Second submission of victim dossiers by the Trust Fund”).
5. On 15 July 2016, the Chamber issued an order instructing the Registry to provide the OPCV, the Legal Representatives of V01 and V02 victims, and the Trust Fund with all the support and assistance they needed to carry out the Identification Process successfully and prepare and forward the applications of victims who may be eligible.¹⁰
6. On 25 July 2016, the Defence reiterated its request for the Trust Fund to provide it with the applications of victims who may be eligible and have consented to the disclosure of their identities to Mr Lubanga.¹¹
7. On 21 October 2016, the Chamber issued an order instructing the Trust Fund to carry on with the Identification Process.¹² It also authorised the OPCV to carry on with the Identification Process and to forward the applications of victims who may be eligible, to the Chamber, via the Victims Participation and Reparations Section (“VPRS”), as they became ready and by 31 December 2016.¹³
8. On 21 December 2016, the Chamber extended to 31 March 2017 the deadline for completing the Identification Process and for preparing and forwarding the applications of victims who may be eligible.¹⁴

⁹ “Second submission of victim dossiers With eleven confidential, ex parte annexes, available to the Registrar, and Legal Representatives of Victims V02 and OPCV only”, 14 July 2016, ICC-01/04-01/06-3216 and 11 confidential 7 annexes.

¹⁰ “Order instructing the Registry to provide aid and assistance to the Legal Representatives and the Trust Fund for Victims to identify victims potentially eligible for reparations”, 15 July 2016, ICC-01/04-01/06-3218-tENG (“Order of 15 July 2016”), and Judge Herrera Carbuccia’s dissenting opinion, ICC-01/04-01/06-3217-Anx-tENG.

¹¹ “Response by the Defence for Mr Thomas Lubanga to the Trust Fund for Victims’ ‘Second submission of victim dossiers’ of 14 July 2016”, 25 July 2016, ICC-01/04-01/06-3221-tENG, p. 4.

¹² “Order relating to the request of the Office of Public Counsel for Victims of 16 September 2016”, 21 October 2016, ICC-01/04-01/06-3252-tENG (“Order of 21 October”), and Judge Herrera Carbuccia’s dissenting opinion, ICC-01/04-01/06-3252-Anx-tENG.

¹³ “Order relating to the request of the Office of Public Counsel for Victims of 16 September 2016, 21 October 2016, ICC-01/04-01/06-3252-tENG and Judge Herrera Carbuccia’s dissenting opinion, ICC-01/04-01/06-3252-Anx-tENG.

¹⁴ “Order to complete the process of identifying victims potentially eligible to benefit from reparations”, dated 21 December 2016 and registered on 22 December 2016, ICC-01/04-01/06-3267-tENG. See also, “*Demande de prorogation du délai initialement fixé au 31 décembre 2016 pour la transmission*

9. On 22 December 2016, the Trust Fund submitted eight additional applications of victims who may be eligible¹⁵ (“Third submission of victim dossiers by the Trust Fund”).
10. On 22 December 2016, the OPCV submitted, via the Registry, 23 applications of victims who may be eligible¹⁶ (“First submission by the OPCV”).
11. On 20 January 2017, the OPCV submitted, via the Registry, 96 applications of victims who may be eligible¹⁷ (“Second submission by the OPCV”).

II. Analysis

a. Approach

12. The Chamber notes that, as stipulated by the Appeals Chamber, it has to determine Mr Lubanga’s liability for reparations.¹⁸ To that end, the Chamber considered that it needed the application files of victims who may be eligible, to supplement the sample already available, and to better determine the extent to which the list of identified victims is representative of all victims, the objective being to inform its decision as to the share of reparations to be borne by Mr Lubanga.¹⁹ Accordingly, the Chamber notes that, consequent to its various orders, the Trust Fund and the OPCV, via the Registry, have provided it with a

à la Chambre des dossiers des victimes”, 16 December 2016, ICC-01/04-01/06-3265 and “Demande de prorogation du délai aux fins de dépôt des demandes en réparation supplémentaires de bénéficiaires potentiels”, 20 December 2016, ICC-01/04-01/06-3266-Conf (“Request by the OPCV”). A public redacted version was filed on the same day.

¹⁵ “Third submission of victim dossiers”, 22 December 2016, ICC-01/04-01/06-3268, eight confidential *ex parte* annexes (application files), available only to the Registry, VPRS, Legal Representatives of V01 and V02 victims and three annexes (VPRS analysis of the three submissions) *ex parte*, available only to the Registry and VPRS (ICC-01/04-01/06-3268-Conf-Exp-Anx9, ICC-01/04-01/06-3268-Conf-Exp-Anx10, ICC-01/04-01/06-3268-Conf-Exp-Anx11).

¹⁶ First Transmission and Report on Applications for Reparations”, 22 December 2016, ICC-01/04-01/06-3269 and 23 confidential *ex parte* annexes (application files), available only to the Registry and OPCV and one confidential *ex parte* annex (Registry’s report), available only to the Registry and the OPCV (ICC-01/04-01/06-3269-Conf-Exp-Anx24).

¹⁷ Second Transmission and Report on Applications for Reparations, 20 January 2016, ICC-01/04-01/06-3270.

¹⁸ Order of 9 February 2016, para. 9.

¹⁹ Order of 21 October 2016, para. 15.

total of 150 applications of victims who may be eligible. The Chamber considers that before examining the applications of victims who may be eligible it has to instruct the Defence to submit observations on the said files.²⁰

13. However, before transmitting them to the Defence, the Chamber considers it necessary to set out the redaction modalities applicable to the dossiers of victims who may be eligible.

b. Applicable redaction modalities

i. Information about the current residence or other contact information that might disclose the location of the victims

14. The Chamber considers that it would be appropriate to order the redaction of information pertaining to the current residence or other contact information that may be used to locate victims who may be eligible.
15. Nonetheless, the Chamber considers that the names of the victims who may be eligible and other identifying information about them could be useful to the Defence when it examines the eligibility of said victims and the reliability of their claims. Consequently, the identities of victims who may be eligible should not be redacted if they have consented to the disclosure of such information to the Defence.²¹
16. Regarding victims who may be eligible but who have refused to disclose their identities to the Defence for security reasons,²² the Chamber considers that, at this stage of the proceedings, it would also be appropriate to provide their application files to the Defence. However, mindful of the victims' concerns, the

²⁰ Order of 9 February 2016, paras 14 and 18.

²¹ See the redaction modalities applied in *The Prosecutor v. Germain Katanga* ("Corrigendum to the 'Order relating to the submission of the Legal Representative of Victims'", 16 February 2016, ICC-01/04-01/07-3653-Corr-tENG, para. 16; "Decision on the 'Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications'", 1 September 2015, ICC-01/04-01/07-3583-tENG, para. 20 ("Decision of 1 September 2015").

²² See for example, First submission by the OPCV, para. 18 and Second submission by the OPCV, para. 10.

Chamber instructs the Victims Participation and Reparations Section ("VPRS") to redact their names as well as any other identifying information.

17. The Chamber will, in due course, rule on the application files of these victims.

ii. Other information that could compromise the identity of victims who have refused to disclose it to the Defence

18. The Chamber considers that information describing the harm suffered and the incidents that caused it may also be useful in enabling the Defence to gauge the extent of the harm alleged.²³ Consequently, the Chamber considers that any information relating strictly to the description of the harm suffered, the events that caused the harm, and the link between such harm and the crimes of which Mr Lubanga has been convicted, should not be redacted, except for information that might reveal the identities of victims who may be eligible who have refused to disclose that information to the Defence.

iii. Information relating to the identity of potential intermediaries

19. Where intermediaries are used²⁴ to assist in the process of identifying victims who may be eligible, and prepare their files, the Chamber considers that, for now, their identities should be redacted.

c. Transmission to the Defence of redacted application files of victims who may be eligible

20. After effecting the abovementioned redactions, the VPRS is directed to transmit to the Defence, by 8 March 2017, the redacted versions of the First, Second, and Third submissions of the Trust Fund. The Defence is directed to submit observations on the redacted versions of these three submissions by 10 April 2016.

21. Next, the VPRS is directed to transmit to the Defence, by 22 March 2017, the redacted versions of the applications in the First submission by the OPCV. The

²³ See in this respect, *Katanga*, Decision of 1 September 2015, para. 24.

²⁴ See in this respect, *Katanga*, Decision of 1 September 2015, para. 15.

Defence is directed to submit observations on the redacted versions of the applications in the First submission of the OPCV by 24 April 2017.

22. Lastly, the VPRS is directed to transmit to the Defence, by 5 April 2017, the applications in the Second submission by the OPCV. The Defence is directed to submit observations on the redacted versions of the applications in the Second submission of the OPCV by 5 May 2017.

FOR THESE REASONS, the Chamber

INSTRUCTS the VPRS to apply the redaction modalities set out under paragraphs 14 to 19 to all application files of victims who may be eligible;

INSTRUCTS the VPRS to transmit the redacted versions of the First, Second, and Third submissions of the Trust Fund to the Defence by 8 March 2017, the redacted versions of the applications in the First submission of the OPCV by 22 March 2017, and the redacted versions of the applications in the Second submission of the OPCV by 5 April 2017;

INSTRUCTS the Defence to submit observations on the redacted versions of the First, Second, and Third submissions of the Trust Fund by 10 April 2017, on the redacted versions of the applications contained in the First submission of the OPCV by 24 April 2017, and on the redacted versions of the applications in the Second submission of the OPCV by 5 May 2017; and

INSTRUCTS the VPRS to liaise with the OPCV and the Trust Fund, should it consider further redactions necessary, and accordingly to inform the Chamber forthwith.

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 22 February 2017

At The Hague, Netherlands