

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **15 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

**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**

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 Victims

V01

Mr Luc Walleyen

Mr Franck Mulenda

Legal Representatives of Victims

V02

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

Office of Public Counsel for Victims

Ms Paolina Massidda

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Trust Fund for Victims

Mr Pieter de Baan

TRIAL CHAMBER II (“the Chamber”) of the International Criminal Court, acting pursuant to article 75 of the Rome Statute (“the Statute”), rule 16 of the Rules of Procedure and Evidence, and regulation 86(9) of the Regulations of the Court, decides the following:

I. Procedural history

1. On 9 February 2016, the Chamber instructed the Trust Fund for Victims (“the TFV”) to supplement the draft implementation plan submitted on 3 November 2015¹ (“the Order of 9 February 2016”). In this regard, the Chamber instructed the TFV to prepare a file for each potential victim and to transmit to the Chamber a first batch of files by 31 March 2016, a second batch by 15 July 2016 and a third batch by 31 December 2016² (“the first aspect of the Order of 9 February 2016”). The Chamber also instructed the TFV to continue developing the programmes proposed and to transmit to it the complete details of the initial group of reparation programmes by 7 May 2016³ (“the second aspect of the Order of 9 February 2016”).
2. On 31 May 2016, after being granted an extension of the time limit,⁴ the TFV filed a document concerning the first aspect of the Order⁵ and, in the same document, requested that the approach set out in the Order of 9 February 2016⁶ (“the Document of 31 May 2016”) be reconsidered.

¹ “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, 9 February 2016, ICC-01/04-01/06-3198-tENG.

² *Ibid.*, paras. 17-18 and p. 12.

³ *Ibid.*, paras. 21-22 and p. 12.

⁴ “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-tENG.

⁵ “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.

⁶ Document of 31 May 2016, paras. 85-192, 199 and p. 68.

3. On 7 June 2016, after being granted a further extension of the time limit,⁷ the TFV filed a document concerning the reparations projects⁸ (“the Document of 7 June 2016”).

4. On 1 July 2016, in accordance with the Chamber’s instructions,⁹ the Office of Public Counsel for Victims¹⁰ (“OPCV”), the Legal Representatives of the V01¹¹ and V02¹² groups of victims and the Defence team for Thomas Lubanga Dyilo¹³ filed consolidated observations on the Document of 31 May 2016 and the Document of 7 June 2016.

5. On 14 July 2016, the TFV filed a second batch of files of victims potentially eligible for reparations in the instant case¹⁴ (“the Document of 14 July 2016”).

II. Analysis

6. The Chamber recalls the responsibilities of the Registry relating to victims, as stated *inter alia* under rule 16 of the Rules of Procedure and Evidence – in particular subparagraph (1)(c) – and under regulation 86(9) of the Regulations of the Court. The Chamber also recalls that the Registry assists victims in participating in the

⁷ “Décision prorogeant le délai pour le dépôt de l’information additionnelle relative aux programmes de réparation”, 4 May 2016, ICC-01/04-01/06-3207.

⁸ “Additional Programme Information Filing”, 7 June 2016, ICC-01/04-01/06-3209.

⁹ “Order setting the time limit for observations on the latest documents filed by the Trust Fund for Victims”, 14 June 2016, ICC-01/04-01/06-3210-tENG.

¹⁰ “Réponse consolidée aux soumissions déposées le 31 mai et le 7 juin 2016 par le Fonds au profit des victimes”, 1 July 2016, ICC-01/04-01/06-3212 and a confidential, *ex parte* annex available only to the OPCV (“the Observations of the OPCV”).

¹¹ “Observations consolidées du groupe de victimes V01 sur les documents ‘First submission of victim dossiers’ et ‘Additional Programme Information Filing’ déposés par le Fonds au profit des victimes respectivement les 31 mai et 1er Juin”, 1 July 2016, ICC-01/04-01/06-3213.

¹² “Observations de l’équipe V02 sur les écritures ICC-01/04-01/06-3208 et ICC-01/04-01/06-3209 du Fonds au profit des victimes”, 1 July 2016, ICC-01/04-01/06-3214.

¹³ “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 and a public annex, ICC-01/04-01/06-3211-Corr-AnxA.

¹⁴ “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, *ex parte* annexes.

different phases of the proceedings before the Court,¹⁵ including the reparations phase.¹⁶

7. The Registry's role is, therefore, essential in ensuring victims' effective access to the Court; under rules 92(8) and 96(2) of the Rules of Procedure and Evidence, it is the Registry above all that is responsible for taking all necessary measures to inform the victims of the different stages of the proceedings to enable them to participate. The Chamber also recalls that the Assembly of States Parties underlined the need for the Court

to continue to optimize and adapt outreach activities, in light of the different phases of the judicial cycle, and to encourage further efforts to ensure that victims and affected communities have access to accurate information about the Court, its mandate and activities, as well as about victims' rights under the Rome Statute, including their right to participate in judicial proceedings and claim for reparations.¹⁷

8. To fulfil the mandate conferred upon it by the Appeal Chamber's judgment of 3 March 2015,¹⁸ the Chamber considers – in view of the Order of 9 February 2016, considering the information provided to date by the parties and the TFV, and in the interest of the smooth conduct of the ongoing proceedings before the Court – that the search for victims potentially eligible for reparations in the instant case should continue.¹⁹ In this regard, the Chamber recalls the deadline set in the Order of

¹⁵ See, *Situation in the Republic of Kenya*, Pre-Trial Chamber II, "Order to the Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute", 9 December 2009, para. 9; *The Prosecutor v. Bosco Ntanganda*, Pre-Trial Chamber II, "Decision Requesting the Victims Participation and Reparations Section to Submit Observations", 26 April 2013, ICC-01/04-02/06-54, para. 5; *The Prosecutor v. Bosco Ntanganda*, Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67, para. 11.

¹⁶ See, in particular, *The Prosecutor v. Germain Katanga*, Trial Chamber II, "Order instructing the Registry to report on applications for reparations", 27 August 2014, ICC-01/04-01/07-3508; *The Prosecutor v. Germain Katanga*, Trial Chamber II, "Decision on the 'Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve' and future stages of the proceedings", 8 May 2015, ICC-01/04-01/07-3546-tENG.

¹⁷ Resolution RC/Res.2, "The impact of the Rome Statute system on victims and affected communities" adopted by the Assembly of States Parties on 8 June 2010, by consensus.

¹⁸ "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2", 3 March 2015, ICC-01/04-01/06-3129, annex A, ICC-01/04-01/06-3129-AnxA, and the two public annexes, ICC-01/04-01/06-3129-Anx1 and ICC-01/04-01/06-3129-Anx2.

¹⁹ See Observations of the OPCV, para. 47.

9 February for transmitting to the Chamber the files of potential victims, i.e. 31 December 2016. The Chamber will then be able to supplement the sample already available²⁰ and to better assess to what extent the list of victims identified is representative of all potential victims. The Chamber considers, therefore, that the Registry must provide the TFV and the Legal Representatives of victims with all the assistance necessary for this purpose.

²⁰ Document of 31 May 2016 and Document of 14 July 2016.

FOR THE FOREGOING REASONS, the Chamber

INSTRUCTS the Registry to provide the Legal Representatives of victims and the Trust Fund for Victims with all the necessary and appropriate aid and assistance for the purpose of locating and identifying victims potentially eligible for reparations in the instant case.

Judge Olga Herrera Carbuccion will append a dissenting opinion to this order in due course.

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 July 2016

At The Hague, the Netherlands

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

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Official Court Translation