

**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 Carbuca
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public

Order pursuant to rule 103 of the Rules of Procedure and Evidence

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 Walley

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 and rule 103 of the Rules of Procedure and Evidence (the “Rules”) issues the following order:

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 a first batch of files to the Chamber by 31 March 2016, a second batch by 15 July 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 the Chamber the complete details of the initial group of reparation programmes on 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 regarding the first aspect of the Order of 9 February 2016,⁴ the TFV transmitted to the Chamber 12 files of victims who were potentially eligible to benefit from reparations, as well as its observations on those files⁵ (“the Document concerning the first submission of files”). In the same document the TFV also requested that the approach set out in the Order of 9 February 2016⁶ 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; “Filing on Reparations and Draft Implementation Plan”, 3 November 2015, ICC-01/04-01/06-3177-Red and its two annexes (“Draft Implementation Plan”, ICC-01/04-01/06-3177-AnxA and “Annex I” ICC-01/04-01/06-3177-Conf-Exp-AnxI).

² Order of 9 February 2016, 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 concerning the first submission of files”, paras. 85-192, 199 and p. 68.

3. On 7 June 2016, after being granted a further extension of the time limit regarding the second aspect of the Order of 9 February 2016,⁷ the TFV transmitted to the Chamber information concerning the procedural and operational implications on the development and implementation of the reparation projects⁸ (“the Document concerning the reparations projects”).

4. On 1 July 2016, pursuant to the decision of the Chamber of 14 June 2016,⁹ the Office of Public Counsel for Victims¹⁰ (“the OPCV”), the Legal Representatives of the V01¹¹ and V02¹² groups of victims and the Defence team for Thomas Lubanga Dyilo¹³ (“Mr Lubanga” and “the Defence”, respectively) submitted consolidated observations on the Document concerning the first submission of files and the Document concerning the reparations projects.

II. Analysis

5. The Chamber notes that rule 103 of the Rules grants it the possibility, at any stage of the proceedings, if it considers it desirable for the proper determination of the case, to invite or grant leave to “a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate”.

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 (“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 (“the Legal Representative V01” and “the Observations of the Legal Representative V01”, respectively).

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 (“the Legal Representative V02” and “the Observations of the Legal Representative V02”, respectively).

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 June 2016, ICC-01/04-01/06-3211), 1 July 2016, ICC-01/04-01/06-3211-Corr and a public annex.

6. The Chamber considers that, under the mandate it was granted in the Judgment of the Appeals Chamber of 3 March 2015,¹⁴ and in the light of the information provided to date by the TFV, it lacks the collective reparation projects for the victims of Mr Lubanga which would allow it to fulfil its mandate. In the observations submitted to the Chamber¹⁵ it was emphasised, however, that the Chamber needed to confirm, at least in preliminary form, the types of projects which could subsequently be implemented.

7. To do so, the Chamber considers that it would be helpful if it obtained additional information and local expertise. The Chamber notes, in this regard that, thanks to their global experience or their presence in the field, the Government of the Democratic Republic of the Congo, the regional authorities of Ituri, and various organisations, such as the United Nations and its specialised agencies and non-governmental organisations, have detailed knowledge of the context in which Mr Lubanga committed the crimes of which he has been convicted and of the social and cultural groups from which his victims originate.

8. Accordingly, the Chamber invites the States concerned, as well as any organisations which so wish (collectively “the participants”), to file submissions with the Chamber in writing and, where applicable, at the public hearing organised by the Chamber. Firstly, the participants are invited to submit to the Chamber their observations on current or past collective projects for former child soldiers in the East of the Democratic Republic of the Congo, whether carried out by public or private actors. In this regard, the Chamber invites the participants to present it with a description of the partners who are responsible for the projects, the beneficiaries and the locations where they were developed, the timeline for their development and implementation as well as the evaluation of the projects. Secondly, the Chamber invites the participants to present it with

¹⁴ “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 (“Order for reparations (amended)”) as well as two public annexes, ICC-01/04-01/06-3129-Anx1 and ICC-01/04-01/06-3129-Anx2.

¹⁵ Observations of the OPCV, para. 35; Observations of the Legal Representative V01, paras. 7 and 9.

proposals for future collective projects to support the setting up of a range of collective reparation projects for the former child soldier victims of Mr Lubanga.¹⁶

9. The Chamber considers it necessary to order the Registrar, in accordance with rule 96(2) of the Rules, to take the most appropriate measures, including by seeking the cooperation of relevant States and the assistance of intergovernmental organisations, to ensure that the invitation made by the Chamber in the instant order is publicised as widely as possible.

10. Written observations in response to this invitation must be transmitted to the Chamber by 30 September 2016. These observations should be limited to 30 pages.

11. The Chamber will organise a public hearing,¹⁷ in the presence of the parties, the TFV and the Registry, on 11, 13 and 14 October 2016. The Chamber will issue in due course a list of participants invited to present observations during this hearing and will set the agenda. As provided for in rule 103(2) of the Rules, the parties to the proceedings and the TFV will be invited to respond orally, at the end of the hearing, to the written and oral observations.

12. The participants will be able, if need be, to present their observations to the hearing by video conference from Bunia.

¹⁶ The participants are invited to refer to the Order for reparations (amended) (see in particular paras. 67-72), the draft implementation plan (see in particular paras. 65-172) and the Order of 9 February 2016 (see in particular paras. 19-20), which deal with the reparation modalities for the victims of Mr Lubanga.

¹⁷ See the requests submitted by the OPCV (Observations of the OPCV, para. 52) and the Legal Representative V02 (Observations of the Legal Representative V02, para. 26). The Chamber also notes that the Legal Representative V01 requested that a closed, partly *ex parte*, hearing be held in order to provide more detail on some of the problems encountered (Observations of the Legal Representative V01, para. 21). The Chamber will issue a decision on such a hearing in due course.

FOR THESE REASONS, the Chamber

ORDERS the Registrar to

- (a) Notify the present decision to the competent authorities of the Democratic Republic of the Congo;
- (b) Take all necessary measures to ensure that the present decision is publicised as widely as possible.

INVITES the participants to file their observations, as indicated in paragraph 8, limited to 30 pages, by 30 September 2016.

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

Done in 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