



Original: **French**

No.: ICC-01/04-01/06
Date: 22 November 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***

Urgent

Public Document

Order inviting the Government of the Democratic Republic of the Congo to submit observations on the participation of child soldiers in programmes for the disarmament, demobilisation and reintegration of armed groups in Ituri

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 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

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 articles 75 and 86 of the Rome Statute (“the Statute”), issues the following order.

1. On 9 February 2016, the Chamber instructed the Trust Fund for Victims (“the TFV”) to supplement the draft implementation plan for collective reparations which it had submitted on 3 November 2015¹ (“the Order of 9 February 2016”). In its Order, the Chamber recalled the duties assigned to it by the Appeals Chamber² – namely, to monitor and oversee the implementation of the TFV’s plan for implementing collective reparations (once approved by the Chamber) and to set the amount of the liability for reparations incumbent on Thomas Lubanga Dyilo (“Mr Lubanga”).³ To fulfil the latter duty, the Chamber instructed the TFV to begin the process of identifying victims potentially eligible to benefit from reparations in the instant case (“the Identification Process” and “the Potentially Eligible Victims”) and to prepare a file for each potential victim, which the TFV was to submit to the Chamber by 31 December 2016.⁴

2. On 15 July 2016, the Chamber instructed the Registry to provide the TFV and the Legal Representatives of Victims with all the necessary assistance to continue the Identification Process, which would enable the Chamber to supplement the sample of Potentially Eligible Victim files⁵ already available and, as a result, better assess to

¹ “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, 9 February 2016, ICC-01/04-01/06-3198-tENG, p. 12.

² “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.

³ Order of 9 February 2016, para. 9.

⁴ *Ibid.*, paras. 15-18 and p. 12.

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, with 12 confidential *ex parte* annexes; “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, with 11 confidential *ex parte* annexes.

what extent the list of victims identified was representative of all potential victims.⁶

3. On 21 October 2016, the Chamber issued an order⁷ in which it reiterated its ruling that the search for Potentially Eligible Victims should continue, in part to inform the Chamber's decision as to the amount of Mr Lubanga's liability for reparations.⁸ The order consequently included instructions to the TFV and the Office of Public Counsel for Victims to continue the Identification Process, prepare files of Potentially Eligible Victims and transmit them to the Chamber as they became ready, with a deadline of 31 December 2016.⁹

4. In connection with these proceedings, the Chamber invites the Government of the Democratic Republic of the Congo¹⁰ ("the DRC Government") to provide official information on the participation of child soldiers in disarmament, demobilisation and rehabilitation/reinsertion/reintegration programmes for Congolese armed groups in Ituri ("DDR Programmes"). In addition to the files of Potentially Eligible Victims, the Chamber wishes to gather information on children under the age of 15 years who were conscripted and enlisted into the *Union des patriotes congolais* ("the UPC")/*Force patriotique pour la libération du Congo* ("the FPLC") and who participated actively in hostilities between early September 2002 and 13 August 2003 in the context of the non-international armed conflict in Ituri.¹¹

5. The Chamber is aware that not all of the children recruited by the UPC/FPLC were able to participate in DDR Programmes. Nevertheless, if the DRC Government

⁶ "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, para. 8.

⁷ "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 ("the Order of 21 October 2016") and "*Opinion de Mme la juge Herrera Carbuccia*", ICC-01/04-01/06-3252-Anx.

⁸ Order of 21 October 2016, para. 15.

⁹ *Ibid.*, p. 10.

¹⁰ "Transmission of the observations of the Government of the Democratic Republic of the Congo in response to Order ICC-01/04-01/06-3217", 21 October 2016, ICC-01/04-01/06-3253-tENG, with one public annex and one confidential annex.

¹¹ Appeals Chamber, "Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction", 1 December 2014, ICC-01/04-01/06-3121-Conf (a public redacted version was filed on the same day), para. 529; "Partly Dissenting Opinion of Judge Sang-Hyun Song" and "Dissenting Opinion of Judge Anita Ušacka".

shares all existing official data, even where incomplete, it could facilitate the Chamber's work of determining the approximate number of children under the age of 15 who were recruited by the UPC/FPLC during the period in question (from early September 2002 to 13 August 2003).

6. The Chamber therefore invites the DRC Government, in accordance with its obligation under article 86 of the Statute, to transmit the above-mentioned information and to focus on the following in its observations:

- the names and locations of the Transit and Orientation Centres ("CTOs") in Ituri, DRC;
- whether any CTOs were designated to work with child soldiers from a particular Congolese armed group, and which ones;
- the name of the commanding officer of each CTO;
- the names of the non-governmental organisations assigned to assist the Congolese authorities with disarmament, demobilisation and rehabilitation at each CTO; and
- the number or percentage of children demobilised at the CTOs, according to militia membership, with a mention of whether this figure was arrived at: by adding up, as applicable, the individual verification forms (also known as *fiches B*) or individual documentation forms (also known as *fiches C*) of children associated with armed forces and groups, from the operational framework of the DDR Programmes for children, or by a simple estimate or approximation.

7. Lastly, the DRC Government is invited to submit its observations under any level of classification it deems appropriate and, if necessary, to submit a public redacted version.

FOR THESE REASONS, the Chamber

INVITES the DRC Government to provide it with the information described in paragraphs 4 to 6 above, under any level of classification the DRC Government deems appropriate, by 20 December 2016; and

INSTRUCTS the Registry to transmit this Order to the competent DRC authorities.

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 November 2016

At The Hague, Netherlands