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No.: ICC-01/04-01/06
Date: 19 November 2015

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

**Request for access to Annex 1 confidential *ex parte* annexed to the filing
ICC-01/04-01/06-3177-Conf**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (“Principal Counsel” and “OPCV”), acting as legal representative of certain applicants for reparations as well as of victims potentially concerned by an order for collective reparations,¹ respectfully requests Trial Chamber II (“the Chamber”) to order notification of Annex 1 to the Filing on Reparations and Draft Implementation Plan (“the Filing” and “the Draft”)² submitted by the Trust Fund for Victims (“TFV”) on 3 November 2015, currently classified as confidential and *ex parte* available only to TFV and the Registry.

2. The Principal Counsel submits that access to this Annex is essential for the preparation of her observations on the Draft because it contains important information regarding the scope of victimisation and harm suffered by the victims. As OPCV was appointed by Trial Chamber I to represent the interests of victims who have not submitted an application but who could be affected by an order for collective reparations, the information contained in Annex 1 seems all the more important.³

II. PROCEDURAL HISTORY

3. On 3 March 2015, the Appeals Chamber delivered its judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” and its annex “Order for Reparations (amended)” (“the Order”).⁴

¹ See the “Decision on the OPCV’s request to participate in the reparations proceedings” (Trial Chamber I), ICC-01/04-01/06-2858, 5 April 2012.

² See the “Redaction of Filing on Reparations and Draft Implementation Plan”, ICC-01/04-01/06-3177-Conf and ICC-01/04-01/06-3177-AnxA, 3 November 2015 (“the Filing” and “the Draft”).

³ See the “Decision on the OPCV’s request to participate in the reparations proceedings”, *supra*, footnote 1.

⁴ See the “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

4. On 3 November 2015, TFV submitted its Filing and the Draft,⁵ with Annex 1, confidential and *ex parte* available only to TFV and the Registry, containing the Mapping Report (“the Report”) prepared by the Registry’s Victims Participation and Reparations Section.

III. SUBMISSIONS

5. Regulation 23 *bis*(1) of the Regulations of the Court provides for the possibility of a participant to submit a document classified, in particular, as “confidential” or “*ex parte*”. In doing so, the participant must, however, state “the factual and legal basis for the chosen classification”. Furthermore, the document is treated according to that classification throughout the proceedings “unless otherwise ordered by a Chamber”. In addition, under regulation 23 *bis*(3) of the Regulations of the Court, a Chamber “may also re-classify a document upon request by any other participant or on its own motion”.

6. The Principal Counsel notes that the Filing submitted by TFV does not include any explanation regarding the chosen classification for Annex 1 of the Filing, nor for the filing itself. In the absence of adequate justification, Annex 1 should, therefore, have been made available in the same way as the Filing, which was transmitted confidentially to the other participants in the proceedings.

7. The Principal Counsel also notes that TFV indicates repeatedly in the Filing, and also in the Draft itself, that the Report underpins the proposals set forth to implement the collective reparations in the present case.⁶ TFV states that the Report

public annexes 1 and 2” (Appeals Chamber), ICC-01/04-01/06-3129 A, A2 and A3, 3 March 2015 (“the Order”).

⁵ See the Filing, *supra*, footnote 2.

⁶ See *ibid.*, paras. 33-43, 50, 54, 77, 80, 89, 188, 242 and 251. See also the Draft, *supra*, footnote 2, para. 2.

was drawn up with the objective of collecting information from all possible sources concerning the identification and whereabouts of direct and indirect victims.⁷

8. Furthermore, as emphasised by TFV, the fact that the victims who have communicated with the Court to date may not be all the victims eligible for reparations forms the very basis of the exercise undertaken by the Registry with the aim of obtaining an overview of the situation on the ground.⁸ Moreover, it appears that this exercise has revealed numerous difficulties connected to victim identification, as summed up in the Filing.⁹

9. Given that OPCV was appointed by Trial Chamber I to represent the interests of victims who have not submitted an application but who could be affected by an order for collective reparations,¹⁰ the information contained in the Report is essential for it to fulfil its mandate. All information regarding the identification of victims potentially eligible for reparations, as well as the extent of the harm they have suffered, is of utmost importance with respect to this mandate.

10. Furthermore, the Principal Counsel notes that TFV also refers to the Report, without going into detail, stating that the harm resulting from the crimes suffered by the victims has specific gender dimensions.¹¹ The Principal Counsel notes, in this respect, the significant part of the Draft given over to these dimensions by TFV, in accordance with the Order. This being the case, it would appear that the Report amply complements the proposals made by TFV throughout the entire Draft.

⁷ See the Filing, *supra*, footnote 2, para. 37.

⁸ *Ibid.*, para. 39.

⁹ *Ibid.*, para. 42.

¹⁰ See the “Decision on the OPCV’s request to participate in the reparations proceedings”, *supra*, footnote 1.

¹¹ See the Filing, *supra*, footnote 2, para. 89.

11. Lastly, the Principal Counsel notes that the Report was one of the tools used during the expert panel discussions held by TFV in Belfast, in May and June 2015, and which she attended.¹²

FOR THE FOREGOING REASONS, the Principal Counsel respectfully requests Trial Chamber II to order the notification to OPCV of Annex 1 to TFV's Filing. Alternatively, if the Chamber is of the view that certain information contained in the Report should not be made available to participants other than TFV and the Registry, the Principal Counsel respectfully requests the Chamber to order the necessary redactions so that the Report may be transmitted to OPCV, as well as to other legal representatives, in redacted form if need be.

[signed]

Paolina Massidda

Principal Counsel

Dated this 19 November 2015

At The Hague, the Netherlands

¹² *Ibid.*, paras. 46-50.