



Original: **French**

No.: **ICC-01/04-01/06**
Date: **13 January 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

**Decision on the request of the Office of Public Counsel for Victims and the
request of the Legal Representatives of Victims V02**

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for Thomas Lubanga Dyilo

Ms Catherine Mabilile

Mr Jean-Marie Biju-Duval

Legal Representatives of Victims V01

Mr Luc Walley

Mr Franck Mulenda

Legal Representatives of Applicants

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 of the International Criminal Court (“the Chamber” and “the Court”, respectively), acting pursuant to article 75 of the Rome Statute and regulation 35 of the Regulations of the Court (“the Regulations”), decides the following.

I. Procedural history

1. 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”¹ and its annex “Order for Reparations (amended)”² (“the Order”), directing the Trust Fund for Victims (“the TFV”) to submit, within six months, a draft implementation plan (“the Draft”) to give effect to the principles and procedures adopted in the Order.³
2. On 14 August 2015, in response to the TFV’s request, the Chamber granted an extension of time until 3 November 2015, for filing the Draft.⁴
3. On 3 November 2015, the TFV filed the Draft and annex I, marked confidential and *ex parte*, available to the Trust Fund for Victims and Registry only, containing a mapping report produced by the Victims Participation and Reparations Section to help the TFV locate victims potentially eligible for reparations⁵ (“the Report”).

¹ “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.

² “Order for reparations”, 3 March 2015, ICC-01/04-01/06-3129-AnxA.

³ *Ibid.*, para. 75.

⁴ “Decision on the ‘Request for extension of time to submit the draft implementation plan on reparations’”, 14 August 2015, ICC-01/04-01/06-3161-tENG.

⁵ “Filing on reparations and draft implementation plan”, 3 November 2015, ICC-01/04-01/06-3177-Red; and its two annexes: ICC-01/04-01/06-3177-AnxA and ICC-01/04-01/06-3177-Conf-Exp-Anx1.

4. On 12 November 2015, the Chamber issued an order instructing interested persons or States, including the Prosecutor, as well as parties, to submit observations on the Draft by 11 December 2015 and 11 January 2016 respectively.⁶
5. On 19 November 2015, the Office of Public Counsel for Victims (“the OPCV”) filed an application (“Request for access”) under regulation 23 *bis* of the Regulations requesting access to the Report in its entirety, or, alternatively, with redactions where necessary.⁷
6. On 20 November 2015, following the Prosecutor’s request,⁸ the Chamber granted an extension of time for filing observations on the Draft until 18 December 2015 for the Prosecutor and interested persons or States, and to 18 January 2016 for the parties⁹ (“the Decision of 20 November 2015”).
7. On 26 November 2015, the Legal Representatives of Victims V02 (“the Legal Representatives V02”) filed a request under regulation 35 of the Regulations seeking an extension of the time limit for filing their observations on the Draft to 15 February 2016¹⁰ (“Request for extension of time”).
8. On 15 December 2015, the TVF filed a redacted version of the Report,¹¹ which was notified to the Defence for Thomas Lubanga Dyilo (“the Defence”), the OPCV as well as the Legal Representatives of Victims V01 (“Legal Representatives V01”) and Legal Representatives V02.

⁶ “Order fixing the schedule for the submission of observations on the draft implementation plan submitted by the Trust Fund for Victims”, 12 November 2015, ICC-01/04-01/06-3179-tENG.

⁷ “Request for access to Annex 1 confidential *ex parte* annexed to the filing ICC-01/04-01/06-3177-Conf”, 19 November 2015, ICC-01/04-01/06-3181-tENG.

⁸ “Prosecution’s request for extension of time to file observations on the Trust Fund for Victims’ Reparations and Draft Implementation Plan”, 13 November 2015, ICC-01/04-01/06-3180.

⁹ “*Décision relative à la requête du Procureur aux fins de prorogation du délai pour le dépôt d’observations*”, 20 November 2015, ICC-01/04-01/06-3183.

¹⁰ “Request for an extension of time to respond to the submission filed by the Trust Fund for Victims on 3 November 2015 (+ 3 confidential annexes)”, dated 26 November 2015 and registered on 27 November 2015, ICC-01/04-01/06-3184-Conf-tENG.

¹¹ “Confidential redacted version of Annex I to Filing on Reparations and Draft Implementation Plan”, 15 December 2015, ICC-01/04-01/06-3177-Conf-Exp-Anx1-Red.

II. Analysis

9. In the light of the connection between the Request for access and the Request for extension of time, the Chamber holds that both requests should be considered in one decision.

(a) Request for access

10. The OPCV recalls that, in its previous composition, Trial Chamber I authorised it to represent the interests of victims who had not submitted applications for reparations but who could be affected by the present proceedings.¹² The OPCV also maintains that the Report contains information regarding the identification and whereabouts of victims, which it needs if it is to fulfil its mandate and submit observations on the Draft.¹³

11. The Chamber notes that, on 15 December 2015, the TFV submitted a confidential, *ex parte* version of the Report,¹⁴ available to the Trust Fund for Victims, Registry and the Legal Representatives V01 and V02 only, and redacted as deemed necessary. The Chamber therefore considers that the Request for access has become moot.

(b) Request for extension of time

12. The Legal Representatives V02 maintain that, to be able to submit observations on the Draft, they must inform their clients of the content of the Draft and gather their views and concerns.¹⁵ To do so, the Legal Representatives V02 claim that they need to go on mission to Ituri.¹⁶ This being the case, they have indicated that “the

¹² “Request for access”, para. 2.

¹³ *Ibid.*, paras. 2 and 7-9.

¹⁴ “Confidential redacted version of Annex I to Filing on Reparations and Draft Implementation Plan”, 15 December 2015, ICC-01/04-01/06-3177-Conf-Exp-Anx1-Red.

¹⁵ “Request for extension of time”, paras. 10-11 and 13.

¹⁶ *Ibid.*, para. 6.

rainy season in Ituri ends in late January”¹⁷ and the Registry has refused to authorise a field mission, stating “that the regions where the victims are located are inaccessible” during this season.¹⁸ Accordingly the Legal Representatives V02 consider that they have “good cause to request an extension until 15 February 2016 so that they may file their observations following a field mission”.¹⁹

13. The Chamber recalls that, pursuant to regulation 35 of the Regulations, an extension of the time limit may be granted if good cause is shown.

14. The Chamber notes that, although the Registry’s refusal was transmitted to the Legal Representatives V02 on 10 November 2015,²⁰ the latter did not file the Request for extension of time until 26 November 2015. The Chamber notes that anyone interested in submitting a request for an extension of time with the Chamber is required to do so as soon as he or she is aware of good cause for such modification.²¹

15. On the basis of the above-mentioned filings, the Chamber considers that, despite the late submission of their request, the Legal Representatives V02 have shown good cause for a two-week extension to the time limit set by the Decision of 20 November 2015.

FOR THESE REASONS, the Chamber

CONSIDERS the Request for access to be moot;

GRANTS, in part, the Request for extension of time; and

DIRECTS the Legal Representatives V02, the Legal Representatives V01, the OPCV and the Defence to file their observations on the Draft by 1 February 2016.

¹⁷ *Ibid.*, para. 14.

¹⁸ *Ibid.*, para. 7.

¹⁹ *Ibid.*, para. 15.

²⁰ *Ibid.*, para. 7.

²¹ “*Décision accordant une nouvelle prorogation de délai au Représentant légal commun des victimes pour le dépôt des demandes en réparation*,” 8 December 2015, ICC-01/04-01/07-3628, para. 9.

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 13 January 2016

At The Hague, the Netherlands