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TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Péter Kovács

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

Public
With
24 confidential *EX PARTE* annexes, Registry and Office of Public Counsel for
Victims only

First Transmission and Report on Applications for Reparations

Source: Registry

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

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I. Introduction

1. The Registry hereby transmits to Trial Chamber II (“Chamber”) 23 applications for reparations (“Applications”) in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (“Case”), together with the Registry’s report on its assessment of the Applications against the requirements of rule 85 of the Rules of Procedure and Evidence (“Assessment Report” and “Rules”), in accordance with the Chamber’s “Ordonnance relative à la requête du Bureau du conseil public pour les victimes du 16 septembre 2016” (“Order of 21 October 2016”).¹

II. Procedural history

2. 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”² including in annex an “Order for Reparations (amended)” (“Order for Reparations”).³
3. On 9 February 2016, the Chamber issued an order instructing the Trust Fund for Victims (“TFV”), *inter alia*, to begin the process of locating and identifying victims potentially eligible to benefit from reparations, to prepare a file for each victim potentially eligible for reparations in the Case (“Potentially Eligible Victims”) and to provide the Chamber with a first batch of files by 31 March 2016, a second batch by 15 July and a third batch by 31 December 2016.⁴

¹ Trial Chamber II, “Ordonnance relative à la requête du Bureau du conseil public pour les victimes du 16 septembre 2016”, 21 October 2016, ICC-01/04-01/06-3252, para. 21.

² Appeals Chamber, “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)”, 3 March 2015, ICC-01/04-01/06-3129.

³ Appeals Chamber, “Order for Reparations(amended)”, 3 March 2015, ICC-01/04-01/06-3129-AnxA.

⁴ Trial Chamber II, “Ordonnance enjoignant au Fonds au profit des victimes de compléter le projet de

4. On 31 May and 14 July 2016 the TFV submitted two batches of files of Potentially Eligible Victims.⁵
5. On 15 July 2016, the Chamber ordered the Registry to provide the Legal Representatives of Victims and the TFV with all the necessary and appropriate aid and assistance for the purpose of locating and identifying Potentially Eligible Victims.⁶
6. On 16 September 2016, the Office of Public Counsel for Victims ("OPCV") filed a request for guidance on a number of matters, including the arrangements for identifying Potentially Eligible Victims.⁷
7. In its Order of 21 October 2016, the Chamber authorized the OPCV to continue the identification process initiated by the TFV and to identify and transmit the files of more Potentially Eligible Victims by 31 December 2016.⁸ The Chamber further ordered to receive these files through the Victims Participation and Reparations Section ("VPRS") of the Court.⁹
8. On 29 November 2016, the OPCV transmitted the Applications to the Registry. The OPCV also announced the transmission to the VPRS of third batch of applications by 20 December 2016.¹⁰

plan de mise en oeuvre", 9 February 2016, ICC-01/04-01/06-3198, paras. 15-18.

⁵ TFV, "First submission of victim dossiers", 31 May 2016, ICC-01/04-01/06-3208 and "Second submission of victim dossiers", 14 July 2016, ICC-01/04-01/06-3216 .

⁶ Trial Chamber II, "Ordonnance enjoignant au Greffe de fournir aide et assistance aux représentants légaux et au Fonds au profit des victimes afin d'identifier des victimes potentiellement éligibles aux réparations", 15 July 2016, ICC-01/04-01/06-3218, para. 8.

⁷ OPCV, "Requête afin de solliciter des lignes directrices de la Chambre suite à l'Ordonnance émise le 15 juillet 2016", 16 September 2016, ICC-01/04-01/06-3222.

⁸ Trial Chamber II, "Ordonnance relative à la requête du Bureau du conseil public pour les victimes du 16 septembre 2016", 21 October 2016, ICC-01/04-01/06-3252, paras. 18 and 21.

⁹ Trial Chamber II, "Ordonnance relative a la requete du Bureau du conseil public pour les victimes du 16 septembre 2016", 21 October 2016, ICC-01/04-01/06-3252, para. 21. The Registry notes that the Chamber has ordered the transmission of the files of Potentially Eligible Victims who have consented to the disclosure of their identities to the Defence, as well as the files of those who have refused such disclosure.

¹⁰ Email exchange between the OPCV and the VPRS of 9 December 2016.

III. Classification

9. Pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court (“Regulations”), the annexes to the present submission are classified as confidential *ex parte*, Registry and OPCV only, since they contain information that may lead to the unwarranted identification of victims.¹¹

IV. Applicable Law

10. The Registry submits the present Assessment Report in accordance with articles 68(1) and 75 of the Rome Statute, rules 85 and 94 of the Rules, regulations 88 of the Regulations and regulation 110 of the Regulations of the Registry, and in accordance with the Order of 21 October 2016.

V. Submissions

A. Explanation of the assessment criteria applied by the Registry

11. The approach followed by the Registry in assessing the Applications against the requirements of rule 85 of the Rules is described below.

1- Completeness

12. When assessing the completeness of applications for participation in the proceedings and/or for reparations, the Registry examines: (1) whether sufficient proof of identity and kinship or guardianship is provided, as

¹¹ In addition, as outlined in para. 19 *infra*, only five out of the 23 Potentially Eligible Victims consented to their identities being disclosed to the Defence.

applicable; (2) whether the personal details are consistent throughout the application; (3) whether the application contains basic information related to the crime, including date, place, harm suffered and the alleged perpetrator, and; (4) whether the applicant has signed the application form.¹²

13. In assessing whether the proof of identity provided by an applicant is sufficient, the Registry refers to Trial Chamber I's decision on the identification documents available to victims in the Democratic Republic of the Congo¹³ and to the Order for Reparations,¹⁴ that also apply to proof of kinship.

14. Where there appear to be inconsistencies in the information provided in the application forms or discrepancies between the application forms and the identity documents submitted, the Registry has followed the approach that various Chambers have previously adopted:¹⁵ applications containing minor inconsistencies which appear to be the result of human error have been assessed as complete. In those instances, the Registry, whilst highlighting to the Chamber the discrepancy or inconsistency, concluded that the application appears to be complete.¹⁶

¹² Pre-Trial Chamber I, "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", dated 17 August 2007 and notified on 20 August 2007, ICC-01/04-374, paras 12 -15; Pre-Trial Chamber I, "Decision on the applications for participation filed in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/16, a/0163/06 to a/0187/06, a/0221/06, a/0225/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241/06 to a/0250/06", 3 July 2008, ICC-01/04-505, paras 16-18.

¹³ Trial Chamber I, "Decision on victims' participation", 18 January 2008, ICC-01/04-01/06-1119, paras. 87-88;

¹⁴ Appeals Chamber, "Order for reparations (amended)", 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 57.

¹⁵ Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", 15 January 2014, ICC-01/04-02/06-211, para. 23. See also Trial Chamber II, "Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims", 23 September 2009, ICC-01/04-01/07-1491-Red-tENG, para.32-33; Pre-Trial Chamber I, "Decision on the 138 applications for victims' participation in the proceedings", 11 August 2011, ICC-01/04-01/10-351, paras. 27-28; and Trial Chamber I, "Decision on victim participation", 6 March 2015, ICC-02/11-01/11-800, para. 32.

¹⁶ Trial Chamber I, "Decision on victims' participation", 18 January 2008, ICC-01/04-01/06-1119, paras 99-100.

2- Requirements relating to the alleged crime

15. In considering whether the acts described by an applicant appear to constitute crimes for which Mr Lubanga was convicted, four issues were taken into account: (1) the type of crime; (2) the geographical location and the date of the commission of the alleged crime; (3) the harm suffered; and (4) the alleged perpetrator.

3- Requirements relating to the harm suffered

16. Only personal harm, direct or indirect, which appeared to be the result of the crimes for which Mr Lubanga was convicted, has been considered in the Assessment Report.¹⁷ In line with the Order for Reparations, the Registry has listed the alleged types of harm using the wording as defined by the Appeals Chamber in the present case.¹⁸ The Registry notes that the Potentially Eligible Victims listed in the Applications did not have their injuries assessed by experts. Therefore, the harm listed by the Registry in its Assessment Report is based on the narratives provided in the respective application. Furthermore, none of the 23 Potentially Eligible Victims provided additional documentation in support of their allegations related to the harm suffered. In light of this, the Registry applied a *prima facie* standard of proof when assessing the Applications against the requirements of rule 85 of the Rules.

B. Other information included in the Registry's report

1- Reparations measures sought

¹⁷ Appeals Chamber, "Order for Reparations(amended)", 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 10.

¹⁸ Appeals Chamber, "Order for Reparations(amended)", 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 58.

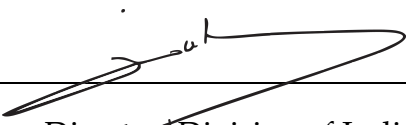
17. The Registry notes that 19 applicants indicated in the Applications their desired forms of reparations, including professional training, support with professional activities, medical and financial assistance. This information is outlined in more detail in the Assessment Report.

2- Consent to the disclosure of the Potentially Eligible Victims' identity to the Defence

18. The Registry notes that five out of the 23 Potentially Eligible Victims consented to their identities being disclosed to the Defence, the remaining 18 applicants expressing security concerns.

3- Consent for the TFV to be given access to the Potentially Eligible Victims' files

19. The Registry notes all 23 Potentially Eligible Victims consented to the TFV being given access to their files.



 Marc Dubuisson, Director, Division of Judicial Services
per delegation of Herman von Hebel, Registrar

Dated this 22 December 2016

At The Hague, The Netherlands