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No.: ICC-01/04-01/06

Date: 6 April 2017

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

Decision on Requests for the Extension of Time submitted by the Office of Public Counsel for Victims, the Registry and the Legal Representatives of V02 Victims

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

Office of the Prosecutor

Counsel for Mr Thomas Lubanga Dyilo

Ms Catherine Mabile

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**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

TRIAL CHAMBER II (“Chamber”) of the International Criminal Court (“Court”), acting pursuant to article 75 of the Rome Statute (“Statute”) and regulation 35(2) of the Regulations of the Court (“Regulations”), issues the following order.¹

I. Procedural background

1. On 9 February 2016, the Chamber issued an order² containing an instruction to the Trust Fund for Victims (“Trust Fund”) “to begin the process of locating and identifying victims potentially eligible to benefit from the reparations [...]”.³ To that end, the Chamber instructed the Trust Fund to prepare files of victims who are potentially eligible to benefit from reparations in the instant case, and to transmit those files by 31 December 2016.⁴

2. On 21 October 2016, the Chamber authorized the Office of the Public Counsel for Victims (“OPCV”) to continue with the process of identifying victims potentially eligible to benefit from reparations, to prepare their files and to transmit those files to the Chamber, through the Victims Participation and Reparations Section (“VPRS”), as they became ready and by 31 December 2016 (“Order of 21 October 2016”).⁵

3. On 21 December 2016, in accordance with the request of the Legal Representative of V02 Victims⁶ and the request of the OPCV,⁷ the Chamber extended

¹ Judge Herrera Carbuca confirms her dissenting opinion of 21 October 2016, ICC-01/04-01/06-3252-Anx-tENG.

² “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, 9 February 2016, ICC-01/04-01/06-3198-tENG (“Order of 9 February 2016”).

³ Order of 9 February 2016, para. 15.

⁴ *Ibid.*, paras. 17-18 and p. 12.

⁵ “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, and dissenting opinion of Judge Herrera Carbuca, ICC-01/04-01/06-3252-Anx-tENG.

⁶ “*Demande de prorogation du délai initialement fixé au 31 décembre 2016 pour la transmission à la Chambre des dossiers des victimes*”, 16 December 2016, ICC-01/04-01/06-3265.

⁷ “*Demande de prorogation du délai aux fins de dépôt des demandes en réparation supplémentaires de bénéficiaires potentiels*”, 20 December 2016, ICC-01/04-01/06-3266-Conf. A public redacted version was filed on the same day.

the time limit set in the Order of 21 October 2016 until 31 March 2017 (“Order of 21 December 2016”).⁸

4. On 20 March 2017, the OPCV filed a request for a new extension of the time limit set in the Order of 21 December 2016⁹ to transmit the files of victims potentially eligible for reparations in the instant case to the VPRS, until 30 June 2017 (“OPCV’s Request”).¹⁰

5. On 21 March 2017, on the basis of regulation 35(2) of the Regulations of the Court, the Registry also filed a request for an extension of the time limit set in the Order of 21 December, to process the files of victims potentially eligible for reparations which the OPCV and the Trust Fund had transmitted to it by 21 March 2017, as well as the files they would transmit to it on 31 March 2017 (“Registry’s Request”).¹¹ The Registry submitted that, taking into consideration its available resources and the time it would need to process the files in question, it required an additional time limit of 60 days for the transmission of the said files to the Chamber.¹²

6. On 29 March 2017, the Legal Representatives of V02 Victims filed a request for an extension of the time limit set in the Order of 21 December 2016 (“Request of the Legal Representatives of V02 Victims”).¹³

7. On 30 March 2017, in accordance with the Chamber’s instructions,¹⁴ the Defence team of Mr Thomas Lubanga Dyilo (“Defence” and “Mr Lubanga”,

⁸ “Order to complete the process of identifying victims potentially eligible to benefit from reparations”, dated 21 December 2016 and registered on 22 December 2016, ICC-01/04-01/06-3267-tENG.

⁹ *Ibid.*

¹⁰ “Deuxième demande de prorogation du délai aux fins de dépôt des demandes en réparation supplémentaires de bénéficiaires potentiels”, 20 March 2017, ICC-01/04-01/06-3279-Conf, (a public redacted version was filed on the same day).

¹¹ “Request for an Extension of Time Pursuant to Regulation 35 of the Regulations of the Court to Transmit Victims’ Dossiers and Registry’s Legal Assessment Report Thereon”, 21 March 2017, ICC-01/04-01/06-3280.

¹² Registry’s Request, para. 11.

¹³ “Demande de prorogation du délai fixé au 31 mars 2017 pour la transmission à la Chambre des dossiers des victimes”, dated 29 March 2017, registered on 30 March 2017 and reclassified as “Confidential” on 30 March 2017, ICC-01/04-01/06-3284-Conf.

¹⁴ “Ordonnance fixant calendrier à l’équipe de la défense de Thomas Lubanga Dyilo pour le dépôt d’observations sur les demandes de prorogation de délai des 20 et 21 mars 2017”, 29 March 2016, ICC-01/04-01/06-3283.

respectively) filed a consolidated response to the OPCV's Request and the Registrar's Request, in which it asked for the requests in question to be denied ("Defence Response").¹⁵

8. On 31 March 2017, the Registry transmitted 92 additional files to the Chamber ("Transmission of 31 March 2017").¹⁶

II. Analysis

i) Request of the Legal Representatives of V02 Victims

9. The Chamber notes that the Request of the Legal Representatives of V02 Victims was filed on 29 March 2017 and registered on 30 March 2017 – one day before the expiry of the time limit imposed by the Chamber in its Order of 21 December 2016. The Chamber further notes that the Legal Representatives of V02 Victims put forward no arguments justifying the submission of the request one day before the expiry of the additional time limit of three months, making it difficult for the Defence to file any response, and thus not allowing the Chamber to give due consideration to the arguments submitted. The Chamber therefore rejects *in limine* the Request of the Legal Representatives of V02 Victims.

ii) The OPCV's Request

10. In support of its request, the OPCV submitted that, for logistical and budgetary reasons, it had not been able to complete the files of some potentially eligible victims identified by its team. The OPCV also submitted that other potentially eligible victims located, in particular, in "pro-Lubanga" zones, and who had already shown an interest in being considered for the proceedings, had not yet been able to meet the members of the OPCV team to have their files prepared, owing to a lack of time and/or because one or more of them were unavailable.¹⁷ For those reasons, the OPCV insisted on the need to extend the time limit previously set by the

¹⁵ "Réponse consolidée de la Défense de M. Thomas Lubanga sur les demandes de prorogation de délai des 20 et 21 mars 2017", 30 March 2017, ICC-01/04-01/06-3286.

¹⁶ "Third Transmission and Report on Applications for Reparations", 31 March 2017, ICC-01/04-01/06-3287 and 93 confidential *ex parte* annexes for the Registry and OPCV only.

¹⁷ OPCV's Request, paras. 13-15.

Chamber by three months, so as not to exclude a large number of victims who would be potentially eligible for reparations in the instant case.¹⁸

11. The Defence requested the Chamber to deny the OPCV's Request. In support of its request, the Defence claimed the right of Mr Lubanga to be tried within a reasonable time. It also recalled that the Legal Representatives of V01 and V02 Victims, the OPCV and the Trust Fund had repeatedly benefited from an extension of the time limit so that files of victims potentially eligible for reparations in the instant case could be collated and transmitted to the Chamber.¹⁹

12. The Chamber notes the recent developments submitted by the OPCV. However, the Chamber recalls that the time limit initially set was 31 December 2016, and that it previously granted an extension until 31 March 2017. The Chamber also considers the arguments of the Defence, namely the right of Mr Lubanga to be notified within a reasonable time of his obligations in terms of reparations. Under these circumstances and to ensure the smooth progress of the proceedings, the Chamber finds that a second extension of time is not justified.

iii) The Registry's Request

13. The Registry argued that it required an additional period of 60 days to transmit to the Chamber the files of victims potentially eligible for reparations which the OPCV and the Trust Fund, in conjunction with the Legal Representatives of V01 and V02 Victims, had transmitted to it by 21 March 2017, as well as the files they would transmit to it on 31 March 2017, taking into consideration the time it would need to process the files in question and its available resources.²⁰

14. The Chamber finds that it is justified to grant the Registry an extension of time. In this respect, to move the proceedings forward, the Chamber finds that the files should be transmitted in batches. The Registry is therefore instructed to transmit to the Defence the redacted version of the Transmission of 31 March 2017 by 24 April 2017. The Registry is instructed to transmit 60 files to the Chamber, and

¹⁸ *Ibid.*, para. 15.

¹⁹ Defence's Response, paras. 9-25.

²⁰ Registry's Request, para. 11.

their redacted version to the Defence, every two weeks as of 4 May 2017, including the legal analyses of each file that the OPCV and the Trust Fund, in conjunction with the Legal Representatives of V01 and V02 Victims, had submitted, by 31 March 2017.

iv) Defence observations

15. The Chamber finds that a schedule must be set for the Defence to submit its observations on the files which it will soon receive, in the same way as for the schedule already set for the Defence in its Order of 22 February 2017.²¹ Accordingly, the Defence is instructed to submit its observations on the redacted versions of the files, which it will receive in several batches, within a period of 30 days from the notification of each transmission.

FOR THESE REASONS, the Chamber

REJECTS *in limine* the Request of the Legal Representatives of V02 Victims;

REJECTS the OPCV's Request;

GRANTS the Registry's Request;

EXTENDS the time limit set in the Order of 21 December 2016;

INSTRUCTS the Registry to transmit to the Defence the redacted version of the Transmission of 31 March 2017 by 24 April 2017;

INSTRUCTS the Registry to transmit 60 files to the Chamber, and their redacted version to the Defence, every two weeks as of 4 May 2017, as set out in paragraph 14; and

²¹ "Ordonnance relative à la transmission des dossiers de victimes potentiellement éligibles aux réparations à l'équipe de défense de Thomas Lubanga Dyilo", 22 February 2017, ICC-01/04-01/06-3275.

INSTRUCTS the Defence to submit to the Chamber its observations on the redacted versions of the files within a period of 30 days from the notification of each transmission, as set out in paragraph 15.

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 6 April 2017

At The Hague, Netherlands