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

Date: 13 July 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 Document

**Order Instructing the Parties to File Submissions on the Evidence Admitted
for the Determination of Thomas Lubanga Dyilo's Liability for Reparations**

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**

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, issues the following order.¹

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’² [...] with AMENDED order for reparations (Annex A)³ [...]”, directing the Trust Fund for Victims (“TFV”) to submit, within six months,⁴ i.e. by 3 September 2015, a draft implementation plan giving effect to the principles and procedures adopted in the order for reparations. The Appeals Chamber also mandated the present Chamber to determine the amount of the liability for reparations incurred by Thomas Lubanga Dyilo (“Mr Lubanga”).⁵

2. On 3 November 2015, having been accorded further time,⁶ the TFV submitted its draft implementation plan (“Draft”).⁷

3. On 9 February,⁸ 15 July⁹ (majority opinion) and 21 October 2016¹⁰ (majority opinion), with a view to gathering information relevant to Mr Lubanga’s liability for

¹ Judge Herrera Carbuca reiterates her opinions of 15 July 2016 (ICC-01/04-01/06-3217-Anx-tENG) and 25 October 2016 (ICC-01/04-01/06-3252-Anx-tENG).

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.

³ “ORDER FOR REPARATIONS (amended)”, 3 March 2015, ICC-01/04-01/06-3129-AnxA (“Amended Reparations Order”).

⁴ Amended Reparations Order, para. 75.

⁵ “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, paras. 241-242. See also Amended Reparations Order, para. 80.

⁶ “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.

⁷ “Filing on Reparations and Draft Implementation Plan”, 3 November 2015, ICC-01/04-01/06-3177-Conf, with two annexes (ICC-01/04-01/06-3177-AnxA and ICC-01/04-01/06-3177-Conf-Exp-AnxI). A redacted version was filed on the same day.

⁸ “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, 9 February 2016, ICC-01/04-01/06-3198-tENG.

⁹ “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, Judge Herrera Carbuca dissenting, ICC-01/04-01/06-3217-Anx-tENG (“Order of 15 July 2016”).

reparations, the Chamber instructed the TFV¹¹ – with assistance from the Legal Representatives of V02 Victims and the Legal Representatives of V01 Victims (“V01 and V02 LRVs”), the Office of Public Counsel for Victims¹² (“OPCV”) and the Registry – to begin the process of locating and identifying victims potentially eligible to benefit from reparations in the instant case (“Potentially Eligible Victims”), to prepare those victims’ files, and to convey those files to the Chamber via the Victims Participation and Reparations Section, as and when the files became ready and no later than 31 December 2016.¹³

4. Between 31 May 2016 and 31 March 2017,¹⁴ following extensions of time,¹⁵ the TFV, together with the V01 and V02 LRVs and the OPCV, provided the Chamber¹⁶ – and, after redaction, the Defence for Mr Lubanga¹⁷ (“Defence”) – with 474 files of Potentially Eligible Victims.

¹⁰ “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, Judge Herrera Carbuca dissenting, ICC-01/04-01/06-3252-Anx-tENG.

¹¹ Order of 9 February 2016, p. 12.

¹² “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, Judge Herrera Carbuca dissenting, ICC-01/04-01/06-3252-Anx-tENG.

¹³ Order of 9 February 2016, paras. 17-18 and p. 12.

¹⁴ “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.

¹⁵ “Decision on the request of the Trust Fund for Victims for an extension of the time limit for the submission of the first batch of files of potential victims”, 29 March 2016, ICC-01/04-01/06-3205-tENG; “Order to complete the process of identifying victims potentially eligible to benefit from reparations”, 21 December 2016, ICC-01/04-01/06-3267-tENG.

¹⁶ “First submission of victim dossiers”, 31 May 2016, ICC-01/04-01/06-3208, with 12 confidential *ex parte* annexes available only to the Registrar and V01 LRVs; “Second submission of victim dossiers”, 14 July 2016, ICC-01/04-01/06-3216, with 11 confidential *ex parte* annexes available only to the Registrar, V02 LRVs and OPCV; “Third submission of victim dossiers”, 22 December 2016, ICC-01/04-01/06-3268, with eight confidential *ex parte* annexes (victim files) available only to the Registrar, VPRS, and V01 and V02 LRVs, and three *ex parte* annexes (VPRS analyses of the three submissions) available only to the Registrar and VPRS (ICC-01/04-01/06-3268-Conf-Exp-Anx9, ICC-01/04-01/06-3268-Conf-Exp-Anx10 and ICC-01/04-01/06-3268-Conf-Exp-Anx11); “First Transmission and Report on Applications for Reparations”, 22 December 2016, ICC-01/04-01/06-3269, with 23 confidential *ex parte* annexes (victim files) available only to the Registry and OPCV, and another confidential *ex parte* annex (Registry report) also available only to the Registry and OPCV (ICC-01/04-01/06-3269-Conf-Exp-Anx24); “Second Transmission and Report on Applications for Reparations”, 20 January 2016, ICC-01/04-01/06-3270; “Third Transmission and Report on Applications for Reparations”, 31 March 2017, ICC-01/04-01/06-3287, with confidential *ex parte* annexes 1-93 available only to the Registry and OPCV (confidential redacted versions of annexes 1-92 were disclosed to the Defence on 24 April 2017: ICC-01/04-01/06-3298); “Fourth Transmission to Trial

5. Between 10 April and 29 June 2017,¹⁸ the Defence submitted its observations on the redacted versions of the files of Potentially Eligible Victims.¹⁹

Chamber II of Confidential Applications for Reparations and the Report Thereon”, 4 May 2017, ICC-01/04-01/06-3304, with confidential *ex parte* annexes 1-62 available only to the Registry and OPCV (confidential redacted versions of annexes 1-61 were disclosed to the Defence on the same day: ICC-01/04-01/06-3305); “Sixth Transmission to Trial Chamber II of Confidential Applications for Reparations and the Report Thereon”, 1 June 2017, ICC-01/04-01/06-3323, with confidential *ex parte* annexes 1-34 available only to the Chamber, the V02 LRVs and the TFV, and confidential *ex parte* annexes 35-62 available only to the Chamber and OPCV (confidential redacted versions of annexes 1-60 were disclosed to the Defence on the same day: ICC-01/04-01/06-3324); “Seventh Transmission to Trial Chamber II of Confidential Applications for Reparations and the Report Thereon”, 15 June 2017, ICC-01/04-01/06-3329, with confidential *ex parte* annexes 1-10 available only to the Chamber, the V01 LRVs and the TFV, and confidential *ex parte* annexes 11-25 available only to the Chamber, the V02 LRVs and the TFV, and confidential *ex parte* annexes 26-56 available only to the Chamber and the OPCV.

¹⁷ “First Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Order ICC-01/04-01/06-3275 of 22 February 2017”, 8 March 2017, ICC-01/04-01/06-3276, with confidential redacted annexes 1-31; “Second Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Order ICC-01/04-01/06-3275 of 22 February 2017”, 22 March 2017, ICC-01/04-01/06-3281, with confidential redacted annexes 1-23; “Third Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Order ICC-01/04-01/06-3275 of 22 February 2017”, 5 April 2017, ICC-01/04-01/06-3288, with confidential redacted annexes 1-95; “Fourth Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017”, 24 April 2017, ICC-01/04-01/06-3298, with confidential redacted annexes 1-92; “Fifth Transmission to the Defence of Confidential Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017”, 4 May 2017, ICC-01/04-01/06-3305, with confidential redacted annexes 1-61; “Sixth Transmission to the Defence of Confidential Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017”, 18 May 2017, ICC-01/04-01/06-3313, with confidential redacted annexes 1-60; “Seventh Transmission to the Defence of Confidential Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017”, 1 June 2017, ICC-01/04-01/06-3324, with confidential redacted annexes 1-60; “Eighth Transmission to the Defence of Confidential Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017”, 15 June 2017, ICC-01/04-01/06-3330, with confidential redacted annexes 1-53.

¹⁸ “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.

¹⁹ “Observations de la Défense de M. Lubanga à la première transmission des formulaires de réparation expurgés du 8 mars 2017”, 10 April 2017, ICC-01/04-01/06-3291, with three confidential annexes; “Observations de la Défense de M. Lubanga à la deuxième transmission des formulaires de réparation expurgés du 22 mars 2017”, 10 April 2017, ICC-01/04-01/06-3299, with one confidential annex; “Observations de la Défense de M. Lubanga à la troisième transmission des formulaires de réparation expurgés du 5 avril 2017”, ICC-01/04-01/06-3311, with two confidential annexes; “Observations de la Défense de M. Lubanga à la quatrième transmission des formulaires de réparation expurgés du 24 avril 2017”, 22 May 2017, ICC-01/04-01/06-3315, with two confidential annexes; “Observations de la Défense de M. Lubanga à la cinquième transmission des formulaires de réparation expurgés du 4 mai 2017”, 30 May 2017, ICC-01/04-01/06-3320, with one confidential annex; “Observations de la Défense de M. Lubanga à la sixième transmission des formulaires de réparation expurgés du 18 mai 2017”, 31 May 2017, ICC-01/04-01/06-3322, with one confidential annex; “Observations de la Défense de M. Lubanga à la septième transmission des formulaires de réparation expurgés du 1^{er} juin 2017”, 29 June 2017, ICC-01/04-01/06-3335, with one confidential annex, ICC-01/04-01/06-3335-Conf-Anx1; “Observations de

6. On 16 June 2017, the Chamber authorized the Parties to file additional submissions.²⁰

7. On 11 July 2017, the Chamber issued an order instructing the Registry to reclassify document ICC-01/04-01/06-3274-Conf-Exp-AnxI as “confidential”.²¹

II. Analysis

8. The Chamber recalls that the Appeals Chamber has mandated it to determine the amount of Mr Lubanga’s liability for reparations and that its determination in that regard will constitute a part of the Amended Reparations Order.²²

9. Before determining the amount of Mr Lubanga’s liability for reparations, the Chamber considers it appropriate to instruct the Parties to file submissions on the evidence admitted in these proceedings and, in particular, on the points below.²³

10. The Chamber notes that the files submitted to it contain allegations, by Potentially Eligible Victims, of material, physical and psychological harm. Albeit mindful of the difficulty of the task, the Chamber instructs the Parties to provide it with an estimate of the current monetary value²⁴ of the harms alleged by the direct and indirect victims, and to explain the methodology behind that estimate. More specifically, and depending on what they consider fairest and most

la Défense de M. Lubanga à la huitième transmission des formulaires de réparation expurgés du 15 juin 2017”, 11 July 2017, ICC-01/04-01/06-3336, with one confidential annex, ICC-01/04-01/06-3336-Conf-Anx1.

²⁰ “Decision on the Applications of the Office of Public Counsel for Victims and the Legal Representatives of the V02 Group of Victims for Leave to Reply to the Observations of the Defence Team of Thomas Lubanga Dyilo of 22, 30 and 31 May 2017”, 16 June 2017, ICC-01/04-01/06-3331-tENG.

²¹ “Order Instructing the Registry to Reclassify Document ICC-01/04-01/06-3274-Conf-Exp-AnxI”, 11 July 2017, ICC-01/04-01/06-3337-tENG.

²² “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, paras. 238-242. See also Amended Reparations Order, para. 81.

²³ The Chamber accordingly notes that, before making an order under article 75(3) of the Statute, it “may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States”.

²⁴ See *The Prosecutor v. Germain Katanga*, “Ordonnance de réparation en vertu de l’article 75 du Statut”, 24 March 2017, paras. 183-185.

appropriate to the circumstances of the instant case, the Parties are instructed to provide the Chamber with:

- a *per capita* estimate of the monetary value of the physical harm, psychological harm and material harm caused to Potentially Eligible Victims; or
- a *per capita* estimate of the monetary value of the harm (all types of harm combined) caused to Potentially Eligible Victims; or
- an aggregate estimate of the monetary value of the harm caused to Potentially Eligible Victims.

11. Recalling that the 474 files in question reflect only a sample of the Potentially Eligible Victims,²⁵ the Chamber also instructs the Parties to provide it with an estimate of the total number of direct and indirect victims, along with an explanation of the methodology behind that estimate, taking particular account of the information submitted by the TFV and the Registry in the Draft. To that end, the Chamber informs the Parties that it will issue an order in due course enumerating the documents to be submitted to it for consideration in its determination of the amount of Mr Lubanga's liability for reparations.

12. Lastly, inasmuch as the harms alleged have been established according to the criteria laid down by the Appeals Chamber, the Chamber instructs the Parties to make submissions on Mr Lubanga's liability, taking into account the principle that a convicted person's liability for reparations must be proportionate to the harm caused and, *inter alia*, to his or her participation in the commission of the crimes of which he or she was found guilty, in the specific circumstances of the case.²⁶

²⁵ Order of 15 July 2016, para. 8.

²⁶ "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, paras. 6 and 118. See also *The Prosecutor v. Germain Katanga*, "Ordonnance de réparation en vertu de l'article 75 du Statut", 24 March 2017, ICC-01/04-01/07-3728, with one public annex and one confidential *ex parte* annex, paras. 251 and 252.

FOR THESE REASONS, the Chamber

INSTRUCTS the V01 and V02 LRVs and the OPCV to file their submissions pursuant to paragraphs 10-12 above by 11 August 2017; and

INSTRUCTS the Defence to file its response to the submissions of the LRVs and the OPCV by 8 September 2017.

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 July 2017

At The Hague, Netherlands