



Original: **French**

No.: ICC-01/04-01/07
Date: 8 December 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 DYLIO***

Public Document

**Decision granting a further extension of time to the Common Legal
Representative of Victims for submitting applications for reparations**

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

Mr Éric MacDonald

Counsel for the Defence

Mr David Hooper

Ms Caroline Buisman

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

Trial Chamber II of the International Criminal Court (“the Chamber”), pursuant to regulation 35(2) of the Regulations of the Court (“the Regulations”), issues the following decision.

I. Procedural background

1. On 8 May 2015, the Chamber ordered the Common Legal Representative of Victims (“the Legal Representative”), in consultation with the Registry, to consolidate and file, by 1 October 2015, all the applications to participate in the proceedings and/or for reparations initially submitted by the victims authorised to participate in the proceedings, including – to the extent possible – supporting documentation attesting to the extent of the harm suffered and the causal link between the alleged harm and the crime committed. It ordered the Registry to transmit to the Chamber and to the parties a redacted version of any other application for reparations made by victims who are yet to identify themselves, also including – to the extent possible – supporting documentation. It ordered the Legal Representative to represent any victim who might be identified in the future.¹
2. On 1 September 2015, the Chamber ordered the Registrar to transmit less redacted versions of all applications for reparations, by 1 October 2015.²
3. On 21 September 2015, the Chamber extended to 1 December 2015 the time limit for submitting to the Registry and transmitting to the Chamber and the Defence all applications for reparations as soon as they become available.³ The Chamber also

¹ “Decision on the ‘*Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve*’ and future stages of the proceedings”, 8 May 2015, ICC-01/04-01/07-3546, pp 9-10 (“the Decision of 8 May 2015”).

² “Decision on the ‘Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications’”, 1 September 2015, ICC-01/04-01/07-3583.

³ “Decision on the requests of the Common Legal Representative of Victims and the Registry for an extension of time limit for transmitting and filing applications for reparations”, 21 September 2015, ICC-01/04-01/07-3599 (“the Decision of 21 September 2015”); “Request to extend the time limit for the transmission of applications for reparations pursuant to regulation 35 of the Regulations of the Court”, 7 September 2015, ICC-01/04-01/07-3587; “*Demande de prorogation du délai fixé par la décision ICC-01/04-01/07-3546 pour le dépôt et la transmission des demandes en réparation*”, 7 September 2015, ICC-01/04-01/07-3586 (“the Request of 7 September 2015”); “Defence consolidated Response to

instructed the Defence to file submissions on the applications thus submitted by 11 January 2016.⁴

4. On 9 October 2015, the Chamber rejected the Legal Representative's request for assistance from the Victims and Witnesses Unit, and invited him to file with the Registry an application under regulation 83(3) of the Regulations for the support of a professional for the identification of new categories of victims.⁵ On the same day, the Legal Representative transmitted to the Chamber 71 cases of withdrawal from the proceedings.⁶
5. On 12, 20 and 27 November 2015, the Registry transmitted to the Chamber applications for reparations.⁷ On 24 and 27 November 2015, the Registry transmitted redacted versions of applications for reparations⁸ ("Batches") to the Defence for Germain Katanga ("the Defence" and "Mr Katanga", respectively).
6. On 25 November 2015, the Legal Representative requested a further extension of the time limit until 1 December 2015 for filing applications for reparations in

the Legal Representative of Victims and the Registry's Requests for an extension of time limit", 10 September 2015, ICC-01/04-01/07-3591.

⁴ Decision of 24 September 2015, p. 7.

⁵ "Decision on the request of the common legal representative of victims for assistance from the Victims and Witnesses Unit", 9 October 2015, ICC-01/04-01/07-3608-conf. A public version was filed on 19 October 2015 (ICC-01/04-01/07-3608).

⁶ "*Communication du Représentant légal relative à la situation de certaines victimes*", 9 October 2015, ICC-01/04-01/07-3609.

⁷ "*Transmission de demandes en réparation*", 12 November 2015, ICC-01/04-01/07-3614 with confidential annexes 1-43; "*Transmission du Rapport sur les demandes en réparation*", 17 November 2015, ICC-01/04-01/07-3616 with confidential annexes 1 and 2; "*Seconde transmission de demandes en réparation*", 20 November 2015, ICC-01/04-01/07-36170 with confidential annexes 1-19; "*Transmission du Rapport concernant la Seconde Transmission des Demandes en Réparation*", 25 November 2015, ICC-01/04-01/07-3618 with annexes; "*Troisième transmission de demandes en réparation*", 27 November 2015, ICC-01/04-01/07-3621 with confidential annexes 1-33.

⁸ "*Transmission de demandes en réparation à la Défense*", 24 November 2015, ICC-01/04-01/07-3619 with redacted confidential annexes 1-43; "*Seconde Transmission de demandes en réparation à la Défense*", 27 November 2015, ICC-01/04-01/07-3622 with redacted confidential annexes 1-19; "*Transmission à la Défense du Rapport concernant la Transmission des Demandes en Réparation*", 27 November 2015, ICC-01/04-01/07-3623 with one redacted confidential annex and one confidential annex (ICC-01/04-01/07-3616-Conf-Exp-Anx1 and ICC-01/04-01/07-3616-Conf-Exp-Anx2); "*Troisième Transmission de demandes en réparation à la Défense*", 27 November 2015, ICC-01/04-01/07-3624 with redacted confidential annexes 1-33.

accordance with regulation 35(2) of the Regulations (“the Request”).⁹ Among other things the Legal Representative highlighted the difficulties described in the Request of 7 September 2015 with respect to securing supporting documentation with a view to consolidating applications for reparations presented by victims who had already been met,¹⁰ and the implications of discovering a new category of applicants in Uganda.¹¹ The Legal Representative maintained that, in view of his experience of the previous months, the time limit ought to be extended to 31 March 2016.¹²

7. On 7 December, the Defence filed a response to the Request¹³ (“the Response”), moving that the Chamber dismiss the Request. The Defence maintains, in particular, that Mr Katanga is entitled to a trial within a reasonable time, and that this includes the right to be informed of the extent of the reparation order against him.¹⁴

II. ANALYSIS

8. The Chamber noted that according to the first sentence of regulation 35(2) of the Regulations, a Chamber may extend a time limit if good cause is shown.
9. The Chamber notes, first of all, that the Legal Representative submitted the Request on 25 November 2015. The Chamber recalls that interested parties must submit a request as soon as the reasons preventing them from meeting the deadline set by the Chamber become known. In any event, such requests must be submitted in time for the Chamber to examine them in a timely

⁹ “*Demande en prorogation du délai fixé par la décision ICC-01/04-01/07-3599 pour le dépôt et la transmission des demandes en réparation*”, 25 November 2015, ICC-01/04-01/07-3620.

¹⁰ Request, paras. 18 and 22.

¹¹ Request, paras. 20-23.

¹² Request, para. 22.

¹³ “Defence Response to the Legal Representative of Victims Second Request for an extension of time limit”, 7 December 2015, ICC-01/04-01/07-3625.

¹⁴ Response, para. 13.

fashion.¹⁵ In this instance, the Chamber considers that the Legal Representative created a *de facto* extension of the time limit by submitting the Request less than one week before the lapse of deadline set by the Chamber.

10. Having regard to the merits of the Request, the Chamber considers that there is good cause to extend the time limit.¹⁶ The Chamber considers, nonetheless, that the time limit ought to be extended by three months so as to avoid undue delay in the proceedings, which would be detrimental to those victims who have already submitted their application for reparation and to Mr Katanga's right to be informed within a reasonable time of his liability regarding reparations. The Chamber also reminds the Legal Representative of the requirement to submit the applications for reparations to the Registry as soon as they become available and in time for the Registry to transmit them to the Chamber and to the Defence by 29 February 2016.

11. Lastly, the Chamber amends the time limit set out in the Decision of 21 September 2015 on filing Defence observations. It instructs the Defence to submit observations on the applications transmitted for reparations, by 31 January 2016, and to submit observations on applications for reparations to be transmitted by 29 February 2016, by 28 March 2016.

¹⁵ See, for example, "Decision on the Prosecution request for the addition of witness P-219 to the Prosecution List of Incriminating Witnesses and the disclosure of related incriminating material to the Defence", 23 October 2009, ICC-01/04-01/07-1553, para. 21.

¹⁶ The Prosecutor v. Thomas Lubanga Dyilo, "*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, para. 9.

FOR THESE REASONS, THE CHAMBER

GRANTS, in part, the Request;

ALLOWS the extension of the time limit for submitting applications for reparations to the Registry as soon as they become available so as to enable the Registry to transmit reparations applications in consolidated and redacted form to the Chamber and the Defence by 29 February 2016;

INSTRUCTS the Defence to submit observations on the applications for reparations thus transmitted, by 31 January 2016, and on the applications for reparations to be transmitted by 29 February 2016, by 28 March 2016.

Done in both English and French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccia

[signed]

Judge Péter Kovács

Dated this 8 December 2015

At The Hague, Netherlands