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

Date: **19 May 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

**Decision on the Admissibility of Documents filed by the Parties
on 13 and 21 April 2017 and 5 May 2017**

Decision 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 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 regulations 22, 24, 33 and 34 of the Regulations of the Court, issues the following decision.

I. Procedural history

1. On 22 February 2017, the Chamber issued an order fixing a schedule and the modalities for transmission to the Defence team for Thomas Lubanga Dyilo (“Defence”) of the files of victims potentially eligible for reparations in the instant case, and setting time limits for the Defence to file observations on those files (“Order of 22 February 2017”).¹
2. On 8 March 2017, following the schedule fixed by the Chamber, the Registry transmitted to the Defence redacted versions of a first batch of files of potentially eligible victims (“First Transmission of Redacted Files”).²
3. On 22 March 2017, following the schedule fixed by the Chamber, the Registry transmitted to the Defence redacted versions of a second batch of files of potentially eligible victims (“Second Transmission of Redacted Files”).³
4. On 10 April 2017, in accordance with the Chamber’s instructions, the Defence submitted its observations on the First Transmission of Redacted Files (“Defence Observations of 10 April 2017”).⁴

¹ “Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to the Defence Team of Thomas Lubanga Dyilo”, 22 February 2017, ICC-01/04-01/06-3275-tENG.

² “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.

³ “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.

⁴ “*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.

5. On 13 April 2017, the Office of Public Counsel for Victims (“OPCV”) filed a document providing information on the issues as well as the concerns and wishes of potential beneficiaries in the reparations proceedings (“OPCV Information of 13 April 2017”).⁵

6. On 21 April 2017, the Legal Representatives of victim groups V01 and V02 (“LRVs”) filed a document in response to the Defence’s observations on the first transmission of redacted applications for reparations of 8 March 2017 (“LRV Document of 21 April 2017”).⁶

7. On 24 April 2017, in accordance with the Chamber’s instructions, the Defence submitted its observations on the Second Transmission of Redacted Files (“Defence Observations of 24 April 2017”).⁷

8. On 26 April 2017, the Defence filed a document in response to the information submitted by the OPCV on the issues as well as the concerns and wishes of potential beneficiaries in the reparations proceedings (“Defence Document of 26 April 2017”)⁸ moving the Chamber to declare the OPCV Information of 13 April 2017 inadmissible or, in the alternative, to fix a schedule for the Defence to respond to it. On the same day, the Defence also filed a motion to declare inadmissible the LRV Document of 21 April 2017 (“Defence Motion of 26 April 2017”).⁹

⁵ “Informations relatives aux enjeux ainsi qu’aux préoccupations et souhaits des bénéficiaires potentiels dans la procédure en réparations”, 13 April 2017, ICC-01/04-01/06-3293-Conf. A corrigendum and an explanatory note were filed on 25 April 2017 (ICC-01/04-01/06-3293-Conf-Corr and ICC-01/04-01/06-3293-Conf-Corr-Anx), along with a public redacted version (ICC-01/04-01/06-3293-Red).

⁶ “Réponse des Représentants des victimes aux observations de la Défense à la première transmission des formulaires de réparation expurgés du 8 mars 2017”, 21 April 2017, ICC-01/04-01/06-3296.

⁷ “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.

⁸ “Réponse de l’équipe de Défense de M. Lubanga aux ‘Informations relatives aux enjeux ainsi qu’aux préoccupations et souhaits des bénéficiaires potentiels dans la procédure en réparations’ déposées par le Bureau du conseil public pour les victimes”, 26 April 2017, ICC-01/04-01/06-3300.

⁹ “Requête de l’équipe de Défense de M. Lubanga aux fins de voir déclarer irrecevable la ‘Réponse des Représentants des victimes aux observations de la Défense à la première transmission des formulaires de réparation expurgés du 8 mars 2017’”, 26 April 2017, ICC-01/04-01/06-3301.

9. On 5 May 2017, the LRVs filed a response to the Defence Motion of 26 April 2017 (“LRV Response of 5 May 2017”).¹⁰

10. On 5 May 2017, the OPCV filed submissions on the Defence’s observations on the second transmission of redacted applications for reparations of 22 March 2017 (“OPCV Submissions of 5 May 2017”).¹¹

II. Analysis

11. Considering that the Defence Document of 26 April 2017 and the Defence Motion of 26 April 2017 pertain to the same procedural issue, the Chamber sees fit to dispose of them in a single decision.

a. Defence Document of 26 April 2017

12. As a preliminary matter, the Chamber sees fit to recharacterize the Defence Document of 26 April 2017. In view of the submissions and requests it contains, the Chamber considers that the document effectively constitutes a motion to declare the OPCV Information of 13 April 2017 inadmissible or, in the alternative, to fix a schedule for the Defence to respond to it.¹² Just as in the Defence Motion of 26 April 2017, the Defence asserts the inadmissibility of another filing before the Chamber.

¹⁰ “Réponse des représentants des victimes à la requête de la Défense aux fins de voir déclarer irrecevable la ‘Réponse des représentants des victimes aux observations de la Défense à la première transmission des formulaires de réparation expurgés du 8 mars’”, 5 May 2017, ICC-01/04-01/06-3308.

¹¹ “Soumissions relatives aux ‘Observations de la Défense de M. Lubanga à la deuxième transmission des formulaires de réparation expurgés du 22 mars 2017’”, 5 May 2017, ICC-01/04-01/06-3306.

¹² Defence Document of 26 April 2017, p. 6.

13. The Defence submits that the OPCV Information of 13 April 2017 was akin to a reply in that its content, under the guise of general statements, responded to the Defence Observations of 10 April 2017.¹³ According to the Defence, the OPCV offered veiled responses to the Defence's allegations about a lack of supporting evidence for the files and the vagueness of certain statements by victims potentially eligible for reparations.¹⁴

14. In the Chamber's view, the fact that some of the OPCV's averments contradict those of the Defence is not reason enough, in itself, to conclude that the OPCV Information of 13 April 2017 constitutes a reply to the Defence Observations of 10 April 2017. Having performed a detailed analysis of the OPCV Information of 13 April 2017, the Chamber notes that it contains no express rebuttal of the Defence Observations of 10 April 2017. The Chamber also remarks that the information provided by the OPCV covered a wider range of topics than the Defence's observations did. In particular, the OPCV apprised the Chamber of the various missions it had conducted in Ituri and of the victims' practical needs arising from the different types of alleged harm. The OPCV's aim was in fact to bring to the Chamber's attention certain concerns raised during its interviews with victims potentially eligible for reparations.¹⁵

15. In the light of the foregoing, the Chamber finds that the OPCV submitted observations within the meaning of regulation 22 of the Regulations of the Court – to which the parties have a right to respond in accordance with regulation 24(1) of the Regulations of the Court. Given that the time limit referred to in regulation 34 of the Regulations of the Court has elapsed, the Chamber sees fit to fix a new time limit for the parties to respond to the OPCV Information of 13 April 2017. The Defence and the LRVs are accordingly instructed to file their respective responses to the OPCV Information of 13 April 2017 by 29 May 2017.

¹³ Defence Document of 26 April 2017, para. 20.

¹⁴ *Ibid.*, paras. 21 and 23.

¹⁵ OPCV Information of 13 April 2017, para. 5.

b. Defence Motion of 26 April 2017

16. The Defence contends that, in spite of its designation, the LRV Document of 21 April 2017 constitutes a reply, which should have been subject to a prior request for leave from the Chamber in accordance with regulation 34(c) of the Regulations of the Court.¹⁶ The Defence therefore submits that the Chamber must make a determination declaring the LRV Document of 21 April 2017 inadmissible.

17. The LRVs counter that their filing was a response to the Defence Observations of 10 April 2017. They contend that the Registry's transmission to the Defence of the files of victims potentially eligible for reparations cannot be characterized as a "document" within the meaning of regulation 22 of the Regulations of the Court because the files contain no submissions.¹⁷ Therefore, they argue, the Defence filed not a response but observations on the First Transmission of Redacted Files, to which they responded (rather than replied).¹⁸

18. Having reviewed the string of documents in question, the Chamber considers that the LRV Document of 21 April 2017 constitutes a reply to the Defence Observations of 10 April 2017, which the Defence filed in response to the First Transmission of Redacted Files. In the Chamber's view, the applications for reparations must be considered to be a "document" (within the meaning of regulation 22 of the Regulations of the Court) containing the submissions of applicants for reparations and thereby triggering the Defence's right to respond,¹⁹ which it exercised on 10 April 2017 when it filed its observations. In consequence, the Chamber finds that the LRVs replied (rather than responded) to the Defence Observations of 10 April 2017.

19. Moreover, the Chamber notes that the Order of 22 February 2017 made no specific provision for a right to reply to the Defence's observations on the First Transmission of Redacted Files.

¹⁶ Defence Motion of 26 April 2017, paras. 13, 18 and 19.

¹⁷ LRV Response of 5 May 2017, para. 7.

¹⁸ *Ibid.*, paras. 8-10.

¹⁹ Regulation 24(1) of the Regulations of the Court.

20. In the absence of express authorization in the Order of 22 February 2017, the Chamber finds that the LRVs should have moved it for leave to reply, in accordance with regulation 24(5) of the Regulations of the Court, within three days of the date of notification of the Defence Observations of 10 April 2017.²⁰

21. Since no such motion came before the Chamber within the time limits laid down, and since the Chamber gave no authorization, the LRV reply is inadmissible.

c. OPCV Submissions of 5 May 2017

22. Lastly, the Chamber considers that the same reasoning is applicable to the OPCV Submissions of 5 May 2017. In the Chamber's view, those submissions constitute a reply to the Defence Observations of 24 April 2017. Since no motion for leave to reply was filed in time, and since no authorization was granted by the Chamber, the OPCV reply is hereby declared inadmissible on the Chamber's own motion.

²⁰ Regulation 34(c) of the Regulations of the Court.

FOR THESE REASONS, the Chamber:

GRANTS, in part, the motion contained in the Defence Document of 26 April 2017;

INSTRUCTS the Defence and the LRVs to respond by 29 May 2017 to the OPCV Information of 13 April 2017;

GRANTS the Defence Motion of 26 April 2017;

DECLARES inadmissible the LRV Document of 21 April 2017; and

DECLARES inadmissible, *proprio motu*, the OPCV Submissions of 5 May 2017.

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

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuca

[signed]

Judge Péter Kovács

Dated this 19 May 2017

At The Hague, Netherlands