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TRIAL CHAMBER II

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

IN THE CASE OF

*THE PROSECUTOR
v. THOMAS LUBANGA DYILO*

Public

**Prosecution's request for extension of time to file observations on the Trust Fund
for Victims' Reparations and Draft Implementation Plan**

Source: Office of the Prosecutor

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

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Introduction

1. On 12 November 2015, Trial Chamber II ordered the Prosecution, and other interested persons and States to file observations on the Trust Fund for Victims' Reparations and Draft Implementation Plan¹ by 11 December 2015 at the latest.²

2. The Prosecution respectfully requests an extension of time until 18 January 2016 to file its observations. The Prosecution is ready to assist the Chamber by filing its observations to the TFV's Plan (constituting several hundreds of pages). However, the Prosecution's planned move to the Court's Permanent Premises in the week of 7 December 2015—the same week as filing—will seriously affect its capacity to file these observations. Although the Prosecution has explored all reasonable possibilities to assist the Chamber's schedule (including considering if the observations could be filed ahead of the deadline), its current staffing constraints and existing onerous work load does not permit this. Good cause for extending the time limit is therefore established.

Submissions

3. Regulation 35 of the Regulations of the Court provides that when a Chamber prescribes a time limit, it "may extend[...] a time limit if good cause is shown."³ The Appeals Chamber has found good cause, "if founded upon reasons associated with a person's capacity to conform to the [...] directions of the Court."⁴ Good cause also exists when there are severe functional or technical problems,⁵ or when the work load prevents the deadline from being met.⁶

¹ TFV's Plan.

² ICC-01/04-01/06-3179 ("Order of 12 November 2015"), para. 6, p. 5.

³ Regulation 35(1) and (2), Regulations of the Court ("RoC").

⁴ ICC-01/04-01/07-653 OA 7, para. 5.

⁵ ICC-01/04-01/06-562 OA 5, paras. 2, 5; ICC-01/04-01/06-2975 A4, A5, A6, para. 5.

⁶ ICC-01/04-01/06-190 OA 3, paras. 4-5; ICC-02/11-01/11-458-Red OA 4, para. 6; ICC-02/11-01/11-189 OA, para. 4.

4. The Prosecution is unable to meet the set deadline of 11 December 2015.

5. First, the intended move of the Office of the Prosecutor (OTP) to the Permanent Premises is scheduled for the week of 7–11 December 2015. This in itself will seriously diminish the OTP's capacity during the entire week, especially as office equipment and files are to be packed and moved during that week, and staff will not even have access to their offices on at least some days. Indeed, the Prosecution Division of the OTP is scheduled to pack and move on 9 and 10 December 2015, and to move into the new building, unpack and attend familiarisation training on 11 December 2015—the day on which the Prosecution's observations are due. This schedule is set Court-wide and will not change.

6. As such, in the week leading up to the proposed filing of its observations, the OTP will be in a state of flux, and likely without access to work stations for considerable periods of time. At the same time, OTP staff, along with other Court staff, are expected to fully cooperate with all the requirements of the move. This includes participating in the necessary inductions and training regimen at the times scheduled. These circumstances pose severe technical and functional difficulties. They affect the Office as a whole and are beyond the control of the individual staff members. The Office can be reasonably expected to resume full capacity only once the move has fully taken place and following the winter judicial recess.

7. Second, even though the Prosecution has explored all reasonable possibilities to comply with the Chamber's deadline, staffing constraints and its existing work load (including both litigation and non-litigation priorities) do not allow it. When proceedings against Thomas Lubanga Dyilo ended, individual staff members of the Prosecution trial team for *Lubanga* were redeployed to other active cases. Because the *Lubanga* team no longer exists, the Office relies on an *ad hoc* basis on available lawyers to complete *Lubanga* related assignments, including the filing of these

observations to the TFV's Plan. However, finding appropriate staffing in the three weeks before the move is challenging.

8. Significantly, the two senior lawyers of the *Lubanga* trial team are now fully immersed within other cases until the move, including *Ntaganda* which is currently mid trial. The Appeals Section's current work load does not permit it to take over the preparation of the filing and besides, in order to properly assist the Chamber, first-hand knowledge of the facts of the case is required.

9. As such, even though the Prosecution has explored all reasonable possibilities to comply with the Chamber's deadlines including if it can prepare its observations in advance of the move, it cannot. Despite the Prosecution's best efforts, the voluminous nature and length of the TFV's Plan ensures that it cannot be easily digested in the three short weeks remaining before the intended move, with the limited staff available. Notwithstanding, the move itself in the week of filing prevents the observations from being properly finalised, with appropriate peer and senior management review, in time.

10. The Prosecution seeks a reasonable extension of time until 18 January 2016. If the Chamber is minded to grant this limited extension, the proceedings will be delayed only slightly, for approximately a month, no more. In any case, much of this time (from 11 December 2015 until 18 January 2016) is likely to be spent with the judges and staff adjusting to the Court's new premises (and any teething problems there may be) and the judicial recess.

11. If the Chamber is minded to grant this extension of time, the Prosecution does not object to similar extensions of time to other Parties and Participants (which would also have the benefit of synchronising the filings in a manner reflecting the Chamber's present order).

Conclusion

12. For these reasons, the Prosecution respectfully requests an extension of time until 18 January 2016 to file its observations.



Fatou Bensouda, Prosecutor

Dated this 13th November 2015

At The Hague, The Netherlands