



Original: **French**

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**

**Decision on the Motion of the Office of Public Counsel for Victims  
for Reconsideration of the Decision of 6 April 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 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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Section**

**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 decides the following.<sup>1</sup>

### **I. Procedural history**

1. On 9 February 2016, the Chamber instructed the Trust Fund for Victims (“Trust Fund”) to “begin the process of locating and identifying victims potentially eligible to benefit from the reparations [...]” (“Order of 9 February 2016”).<sup>2</sup> Accordingly, it instructed the Trust Fund to prepare files on behalf of the victims potentially eligible for reparations in the instant case (“Potentially Eligible Victims”) and to submit those files to the Chamber by 31 December 2016.<sup>3</sup>
2. On 15 July 2016, the Chamber instructed the Registry to provide the Legal Representatives of V01 and V02 Victims (“V01 and V02 LRVs”), the Office of Public Counsel for Victims (“OPCV”) and the Trust Fund with all the necessary and appropriate aid and assistance for the purpose of locating and identifying Potentially Eligible Victims (“Order of 15 July 2016”).<sup>4</sup>
3. On 21 October 2016, the Chamber instructed the Trust Fund to continue the process of locating and identifying Potentially Eligible Victims and the Registry to begin outreach missions as soon as possible (“Order of 21 October 2016”).<sup>5</sup> The Chamber also authorized the OPCV to continue the process of locating and identifying Potentially Eligible Victims and to prepare their files and transmit them

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<sup>1</sup> 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).

<sup>2</sup> “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, 9 February 2016, ICC-01/04-01/06-3198-tENG, para. 15.

<sup>3</sup> Order of 9 February 2016, paras. 17-18 and p. 12.

<sup>4</sup> “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.

<sup>5</sup> “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.

to the Chamber, through the Victims Participation and Reparations Section, as and when they became ready and no later than 31 December 2016.<sup>6</sup>

4. On 21 December 2016, further to requests filed by the V02 LRVs<sup>7</sup> and the OPCV,<sup>8</sup> the Chamber extended until 31 March 2017 the deadline for completing the location and identification process, preparing the files of Potentially Eligible Victims and transmitting them to the Chamber (“Order of 21 December 2016”).<sup>9</sup>

5. On 22 February 2017, the Chamber set a schedule for the Registry to provide the Defence Team for Thomas Lubanga Dyilo (“Defence” and “Mr Lubanga”, respectively) with redacted versions of the Potentially Eligible Victim files compiled by the OPCV and the Trust Fund in collaboration with the V01 and V02 LRVs (“Order of 22 February 2017”).<sup>10</sup>

6. On 6 April 2017, the Chamber rejected<sup>11</sup> the request from the OPCV (“Second Extension Request”) for an extension of the time limit set in the Order of 21 December 2016<sup>12</sup> (“Decision of 6 April 2017”).

7. On 12 April 2017, the OPCV filed a motion for reconsideration of the Decision of 6 April 2017 (“Motion for Reconsideration”).<sup>13</sup> The OPCV essentially contended that,

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<sup>6</sup> “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 Carbuccion dissenting, ICC-01/04-01/06-3252-Anx-tENG.

<sup>7</sup> “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.

<sup>8</sup> “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).

<sup>9</sup> “Order to complete the process of identifying victims potentially eligible to benefit from reparations”, dated 21 December 2016 and French version registered on 22 December 2016, ICC-01/04-01/06-3267-tENG.

<sup>10</sup> “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.

<sup>11</sup> “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”, 6 April 2017, ICC-01/04-01/06-3290-tENG.

<sup>12</sup> “Second Request for an Extension of the Time Limit for Filing Additional Applications for Reparations of Potential Beneficiaries”, 20 March 2017, ICC-01/04-01/06-3279-Conf-tENG (a public redacted version was filed on the same day). The Chamber did, however, grant the Registry’s request of 21 March 2017 (“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).

in effect, the Decision of 6 April 2017 deprived many former child soldiers of victim status for the purpose of reparations in the instant case.<sup>14</sup> It also argued that the decision in question hindered the “[TRANSLATION] effective participation of all Potentially Eligible Victims in this crucial phase of the proceedings”.<sup>15</sup> In particular, the OPCV submitted that not allowing its team to travel to “pro-Lubanga” areas (where the Registry had conducted outreach missions) in order to compile applications for Potentially Eligible Victims would “[TRANSLATION] necessarily have discriminatory consequences” and would “[TRANSLATION] inevitably lead to tensions on the ground”.<sup>16</sup>

8. The parties have not responded to the Motion for Reconsideration.

## II. Analysis

9. The Chamber recalls that, in the Order of 9 February 2016, it instructed the Trust Fund to begin the process of locating and identifying Potentially Eligible Victims and preparing their files.<sup>17</sup> It then indicated, in the Orders of 15 July 2016,<sup>18</sup> 21 October 2016<sup>19</sup> and 22 February 2017,<sup>20</sup> that the purpose of this process is to collect a sample of files representative of all Potentially Eligible Victims in the instant case and on which the Defence will have had the opportunity to make submissions, to inform its decision as to Mr Lubanga’s liability for reparations and the monetary amount thereof.

10. Accordingly, in its Decision of 6 April 2017, the Chamber determined that the files submitted to the Registry by 31 March 2017 constituted a sufficient number of representative files. The Chamber therefore considers that the mandate conferred on

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<sup>13</sup> “Demande de réexamen de la ‘Décision portant sur les demandes de prorogation de délai présentées par le Bureau du conseil public pour les victimes, le Greffe et les Représentants légaux du groupe de victimes V02’ (ICC-01/04-01/06-3290)”, 12 May 2017, ICC-01/04-01/06-3292.

<sup>14</sup> Motion, para. 18.

<sup>15</sup> *Ibid.*, para. 15.

<sup>16</sup> *Ibid.*, paras. 17-18.

<sup>17</sup> Order of 9 February 2016, para. 15.

<sup>18</sup> Order of 15 July 2016, para. 8.

<sup>19</sup> Order of 21 October 2016, para. 15.

<sup>20</sup> Order of 22 February 2017, para. 12.

the OPCV by way of the Order of 21 October 2016 – to continue the process of locating and identifying Potentially Eligible Victims, to prepare their files and to transmit them to the Chamber, all of which the OPCV has done with great diligence – is now at an end. The OPCV will, however, continue to represent the Potentially Eligible Victims whose files it prepared.

11. However, the Chamber wishes to stress that the Decision of 6 April 2017 does not imply that other Potentially Eligible Victims cannot be considered for reparations in the instant case. The eligibility for reparations of persons who were unable to submit their applications by 31 March 2017 will be examined by the Trust Fund when reparations are implemented.

12. The Chamber notes in this regard that previous submissions by the Trust Fund have included some preliminary information on the victim screening process that the Trust Fund intends to put in place at the reparations implementation stage.<sup>21</sup> In particular, the Chamber notes that the Trust Fund has invited all organizations applying to be partners in the implementation of reparations to submit proposals on the process. The Chamber hereby informs the parties that the related modalities will be determined in due course.

13. Lastly, the OPCV and the V01 and V02 LRVs are instructed to transmit to the Trust Fund any files in their possession that they were not able to submit to the Chamber within the time allotted.

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<sup>21</sup> “Information regarding Collective Reparations”, 13 February 2017, ICC-01/04-01/06-3273, with public annexes A, B and C, confidential annex D1 and its public redacted version, and confidential *ex parte* annex D2, paras. 42-50 and p. 56. See also “Observations on the ‘*Requête afin de solliciter des lignes directrices de la Chambre suite à l’Ordonnance émise le 15 juillet 2016*’”, 3 October 2016, ICC-01/04-01/06-3237, paras. 24-33.

**FOR THESE REASONS, the Chamber**

**REJECTS** the Motion for Reconsideration.

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

[signed]

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**Judge Marc Perrin de Brichambaut**  
**Presiding Judge**

[signed]

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**Judge Olga Herrera Carbuccia**

[signed]

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**Judge Péter Kovács**

Dated this 13 July 2017

At The Hague, Netherlands