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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 THE CONGO

IN THE CASE OF

THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public

Registry's observations on the "Requête afin de solliciter des lignes directrices de la Chambre suite à l'Ordonnance émise le 15 juillet 2016" dated 16 September 2016

Source: Registry

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

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The Registrar of the International Criminal Court (the “Court”);

I. Introduction

1. In view of its mandate given by Trial Chamber II (“Chamber”) to provide the Legal Representatives of Victims and the Trust Fund for Victims with all the necessary and appropriate aid and assistance for the purpose of locating and identifying victims potentially eligible for reparations in the present case¹, the Registry hereby submits its observations on the *“Requête afin de solliciter des lignes directrices de la Chambre suite à l’Ordonnance émise le 15 juillet 2016”*² in accordance with the Chamber’s orders issued on 20 September 2016³ and 23 September 2016⁴.

II. Procedural history

2. On 15 July 2016, the Chamber issued the *“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 Order”).⁵
3. On 16 September 2016, the Office of Public Counsel for Victims (“OPCV”) submitted the *“Requête afin de solliciter des lignes directrices de la Chambre suite à l’Ordonnance émise le 15 juillet 2016”* (“OPCV Request”).⁶
4. On 20 September 2016, the Chamber issued the *“Ordonnance fixant un calendrier pour le dépôt des observations sur la requête du Bureau du conseil public*

¹ ICC-01/04-01/06-3218-tENG, page 7.

² ICC-01/04-01/06-3222.

³ ICC-01/04-01/06-3224.

⁴ ICC-01/04-01/06-3228.

⁵ ICC-01/04-01/06-3218-tENG.

⁶ ICC-01/04-01/06-3222.

pour les victimes du 16 septembre 2016”⁷ ordering the Registry to submit its observations on the OPCV Request by 26 September 2016.⁸

5. On 23 September 2016, upon the request of the Trust Fund for Victims (“TFV”)⁹, the Chamber granted to the TFV and the Registry an extension of deadline until 3 October 2016 to submit observations on the OPCV Request.¹⁰

III. Submissions

Preliminary remarks

6. In May 2016, the Registry developed the draft “*Proposition of a targeted approach to identify new potential new victims in the Lubanga case*” (“Draft Proposition”) which was sent to the TFV and the OPCV for their comments during the same month.
7. The Draft Proposition details an action plan on the identification of victims in the present case taking into consideration the particular context pertaining to the present case in the Ituri area and aiming at respecting the security, dignity and private life of potential victims as stated in the Rome Statute (“Statute”). The Draft Proposition also includes an outreach plan as the Chamber recalls in the 15 July 2016 Order the Registry’s mandate to inform the victims and the affected communities of different phases of the proceedings, including the reparations phase, and the right of victims to participate in the proceedings as *per* the Statute.
8. Following the issuance of the 15 July 2016 Order, the TFV and OPCV provided the Registry with their observations on the Registry’s Draft Proposition on 26 August 2016 and 30 August 2016 respectively.

⁷ ICC-01/04-01/06-3224.

⁸ ICC-01/04-01/06-3224, p. 6.

⁹ ICC-01/04-01/06-3226.

¹⁰ ICC-01/04-01/06-3228.

OPCV's participation in the Registry field outreach activities

9. In light of the 15 July 2016 Order, the Registry has established a detailed agenda and an outreach strategy with the key messages developed in consultation with the TFV and OPCV. This strategy aims at the following:
 - Inform the affected communities of the different stages of the proceedings and the right of victims to participate in the proceedings as *per* the Statute; and
 - Give publicity to the Chamber's request for observations addressed to the Congolese Government, civil society and international community.
10. The Registry's past experience has shown that successful outreach activities, being the first interaction between the victims and the Court, often lay good foundation for the smooth collection of the victims' reparations firm. As mandated by the 15 July 2016 Order, in addition to the general information provided during the outreach activities, the Registry will provide the identified victims, on an individual basis, with the detailed information on how to apply for participation in the reparations proceedings.
11. The Registry has no objections to the participation of the Counsel, representing the OPCV in the field, in the Registry field outreach activities. However, the Registry would like to draw the Chamber's attention to the fact that outreach activities are usually not conducted at the same time or in the same place as the individual interviews with victims, among which the sensitisation activities are conducted in advance to prepare the population. Indeed, possible obstacles may arise as a result of identifying victims during outreach activities.
12. First of all, in order to reduce the exposure to the public of the victims eligible for reparations, it is essential that the identification of specific victims and any

assistance to be provided by the Registry take place discreetly and therefore, are not conducted in public.

13. Secondly, it is recommended that potential victims be given opportunities to decide and reflect on whether they would be interested in the reparation process prior to meeting with their future legal representative and engaging in the reparations process.
14. Lastly, in view of efficiency it is also recommended that affected communities are well informed of the requirements to be eligible for reparations during the outreach activities in advance of engaging with the Court for reparations purposes. This approach will enhance the possibilities that the entire population understands the criteria to be a victim of the present case and avoid raising expectations. Identified victims will be aware of the information required to support their eligibility when later completing reparations forms. It will also reduce the number of incomplete reparations forms and the risk of having to return to the victims to request additional documentation.

Transmission of the reparations forms

15. The Registry emphasises the importance of maintaining the Registry as repository of all information regarding victims, whether they relate to their request for participation or their request for reparations. This enables the Registry to fulfil its mandate of assisting the Chamber in providing complete analysis and statistics on all the reparations forms received in the present case. Additionally, the Registry stands ready to assist any participants that may be appointed for the transmission of such forms in the record of the case. Regardless of the chosen participant who will collect the reparations forms, considering its mandate, the Registry also stands ready to receive these forms, to process and transmit them to the Chamber.

Transmission of the reparations forms to the Chamber only

16. The Registry supports the observations made by the OPCV in the OPCV Request on conditioning the access to reparations forms on the consents given by the victims to revealing their identities the Defence as it is in line with other participation and reparations processes before the Court. The Registry is of the opinion that the fact that only Judges have access to the identities of the victims beneficiaries constitutes a sufficient guarantee in the framework of collective reparations as they are fully competent to ensure that the identities of the applicants have been established and that their requests are complete for the objective of the reparations process.

High expectations of the affected communities

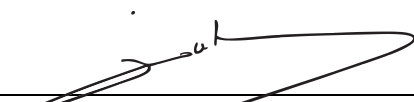
17. The Registry notes the concerns raised by the OPCV regarding the high expectations that the affected communities have.¹¹

18. The Registry hereby reports to the Chamber that the reactions within the affected communities are being closely monitored and that the Registry is preparing the communication lines with the affected communities in order to be able to respond to their concerns using language that is clear and adapted to their need.

¹¹ ICC-01/04-01/06-3222, para. 15.

Conclusion

19. The Registry has no further observations on other issues raised in the OPCV Request and would like to inform the Chamber that it stands ready to provide all the necessary and appropriate aid and assistance as required by the OPCV and the TFV in accordance the 15 July 2016 Order. Upon the notification of the Chamber's decision on the OPCV Request, the Registry will finalise its action plan with possible adjustments in accordance with this decision.



Marc Dubuisson, Director, Division of Judicial Services
per delegation of
Herman von Hebel, the Registrar

Dated this 3 October 2016

At The Hague, The Netherlands