

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

No.: ICC-01/04-01/06
Date: 1 November 2016

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***

**URGENT
Confidential
EX PARTE Registry**

**Order instructing the Registry to file a report on the current security situation
prevailing in the Ituri region**

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

Office of the Prosecutor

Counsel for Thomas Lubanga Dyilo

**Legal Representatives of the V01
Victims**

**Legal Representatives of the V02
Victims**

Office of Public Counsel for Victims

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Trust Fund for Victims

TRIAL CHAMBER II ("Chamber") of the International Criminal Court, pursuant to article 75 of the Rome Statute.

1. On 9 February 2016, the Chamber issued an order¹ instructing the Trust Fund for Victims ("TFV") to supplement the draft implementation plan for collective reparations that it had submitted on 3 November 2015.² The Chamber instructed the TFV to, *inter alia*, "begin the process of locating and identifying victims potentially eligible to benefit from the reparations and transmit the results of this process [...]".³ The Chamber also instructed the TFV to prepare files of victims potentially eligible for reparations in the instant case ("Potentially Eligible Victims") and to provide the Chamber with a first batch of files by 31 March 2016, a second batch by 15 July and a third batch by 31 December 2016.⁴

2. The TFV subsequently voiced concerns about the process for identifying Potentially Eligible Victims and informed the Chamber of the reluctance of some victims to participate in collective reparations out of fears arising from the security situation in Ituri.⁵ The Legal Representatives of V01⁶ and V02⁷ Victims also submitted that potentially eligible victims were hesitant or unwilling to reveal their identity to the Defence, because Mr Lubanga still holds influence over their communities. Likewise, the OPCV stressed the genuine threat posed by disclosing the identity of

¹ "Order instructing the Trust Fund for Victims to supplement the draft implementation plan", 9 February 2016, ICC-01/04-01/06-3198-tENG.

² *Ibid.*, p. 12.

³ *Ibid.*, para. 15.

⁴ *Ibid.*, paras. 17-18 and p. 12.

⁵ "First submission of victim dossiers With Twelve confidential, *ex parte* annexes, available to the Registrar, and Legal Representatives of Victims V01 only", 31 May 2016, ICC-01/04-01/06-3208, para. 56; see also "Additional Programme Information Filing", 7 June 2016, ICC-01/04-01/06-3209, paras. 25, 59-60.

⁶ "Consolidated observations of the V01 Group of Victims on the documents 'First submission of victim dossiers' and 'Additional Programme Information Filing', filed by the Trust Fund for Victims on 31 May and 1 June respectively", 1 July 2016, ICC-01/04-01/06-3213-tENG, paras. 9-11.

⁷ "Observations of the V02 team on filings ICC-01/04-01/06-3208 and ICC-01/04-01/06-3209 submitted by the Trust Fund for Victims", 1 July 2016, ICC-01/04-01/06-3214-tENG, para. 17.

the victims to the Defence in the light of the current situation in Ituri.⁸ At the hearing held by the Chamber on 11 and 13 October 2016, the amicus curiae, Women's Initiative for Gender Justice ("Women's Initiative"), invited to speak, stated that the victims were concerned for their safety and feared being the target of retaliation were they to participate in collective reparations projects.⁹

3. At the same hearing, the Defence drew the Chamber's attention to the lack of objective information about the security situation in the Ituri region and the legitimacy of the fears of retaliation expressed by the victims.¹⁰

4. In the light of the observations presented by the parties, the TFV and the Women's Initiative organization, the Chamber considers that the Registry should be instructed to conduct an assessment of the security situation prevailing in the Ituri region and file the resulting report in the record of the case. This assessment may concern any influence and support enjoyed by Mr Lubanga in Ituri, on the one hand, and activities of the UPC (*Union des Patriotes Congolais* [Union of Congolese Patriots]) and its conduct towards the communities concerned by the collective reparations in the instant case, on the other hand. This assessment may be updated regularly and submitted to the Chamber. The Registry is also instructed to specify whether the report may subsequently be disclosed to the parties in its entirety and, if not, to redact it, as necessary, for distribution to the parties.

⁸ "Consolidated response to the submissions filed on 31 March and 7 June 2016 by the Trust Fund for Victims", 1 July 2016, ICC-01/04-01/06-3212-tENG and a confidential *ex parte* annex available only to the OPCV, para. 48.

⁹ ICC-01/04-01/06-T-367-ENG, 11 October 2016, p. 8, lines 3-5, and p. 8, lines 21-22. See also, ICC-01/04-01/06-T-367-ENG, 11 October 2016, p. 10, lines 11-17.

¹⁰ ICC-01/04-01/06-T-367-ENG, 11 October 2016, p. 79, line 25, p. 80, lines 1-25, p. 81, lines 1-28 and p. 82, lines 1-12.

FOR THESE REASONS, the Chamber

INSTRUCTS the Registry to conduct an assessment of the security situation in the Ituri region, as indicated in paragraph 4 of this Order, and to transmit this assessment to it in the form of a report by 30 November 2016.

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

[signed]

Judge Marc Perrin de Brichambaut

Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 1 November 2016

At The Hague, Netherlands