

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: French

No.: ICC-01/04-01/07  
Date: 25 September 2015

**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.* GERMAIN KATANGA**

**Confidential**

**Observations of the Registry on the “*Requête du Représentant légal sollicitant de la Chambre d’enjoindre à l’Unité d’aide aux victimes et aux témoins*”  
(ICC-01/04-01/07-3585-Conf)**

**Source:** Registry

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

**Office of the Prosecutor**

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**Legal Representatives of Victims**

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**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**Office of Public Counsel for Victims**

**Office of Public Counsel for the  
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**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

Mr Esteban Peralta Losilla

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

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

**NOTING** the “*Requête du Représentant légal sollicitant de la Chambre d’enjoindre à l’Unité d’aide aux victimes et aux témoins d’assister celui-ci pour l’identification d’enfants traumatisés en vue de permettre le recueil de leurs demandes en réparation*” (“the Request”) of 7 September 2015;<sup>1</sup>

**NOTING** the “*Ordonnance relative à la requête du Représentant légal commun des victimes sollicitant l’assistance de l’Unité d’aide aux victimes et aux témoins*” (“the Order”) issued by Pre-Trial Chamber II (“the Chamber”) on 11 September 2015;<sup>2</sup>

**NOTING** articles 43(6) and 68(1) and (4) of the Rome Statute (“the Statute”); rules 16 to 19 of the Rules of Procedure and Evidence (“the Rules”); regulations 23 *bis* and 44 of the Regulations of the Court; and regulations 79, 80 and 92 to 96 of the Regulations of the Registry;

**CONSIDERING** that the Legal Representative stated in his request that he wished to receive the assistance of the Victims and Witnesses Unit (“VWU”) in order to assess

[TRANSLATION] the specific degree of prevalence of this trauma phenomenon within the Bogoro community; to identify the victims among the young children [...] and among the adults (‘mapping’); to assess their condition from a psychological point of view; and, for those who have shown an interest in the reparations proceedings, to establish the conditions in which they can be met in individual interviews;

**CONSIDERING** that, in its above-mentioned order, the Chamber invited the Registry to file submissions on the Request by 25 September 2015;

Respectfully **SUBMITS** the following observations:

1. Following the submission of the Legal Representative’s Request, a meeting was held on 17 September 2015 between the Legal Representative and his

<sup>1</sup> ICC-01/04-01/07-3585-Conf.

<sup>2</sup> ICC-01/04-01/07-3593-Conf.

team, and members of the Registry, including representatives of the Victims Participation and Reparations Section, the Counsel Support Section and VWU. The purpose of this meeting was to clarify the Legal Representative's Request and to explore what type of assistance might be granted to him in accordance with the mandates of the respective sections. The present submission (I) reviews the points put forward at the meeting by setting out the extent of the assistance that VWU can provide within the limits of its mandate and (II) includes general observations and recommendations respectfully submitted by the Registry for the attention of the Chamber.

#### **I. The assistance that can be provided by the Victims and Witnesses Unit**

2. With regard to the intervention sought, the Registry notes that, pursuant to the mandate conferred on it by article 43(6) of the Statute, VWU is responsible for providing protective measures and security arrangements and other appropriate assistance for witnesses and victims who appear before the Court. In exercising its mandate, and in accordance with article 68(4) of the Statute, VWU may advise on the measures and arrangements required to protect victims and witnesses and allow them to appear before the Court. In accordance with rule 18 of the Rules, and in order to perform its functions effectively, VWU acts impartially when cooperating with all parties. VWU notes that it has been asked to provide assistance with "mapping" the people who are the subject of the Request and to help to draw up criteria enabling their status as victims to be established. In this regard, VWU wishes to point out that these functions are not part of the mandate conferred on it and that they fall under the remit and purview of the Legal Representative. Furthermore, such participation would be inconsistent with the neutrality required for the exercise of VWU's mandate. The Registry therefore recommends that the Legal Representative request additional resources under the Court's legal aid scheme to enable it to receive the support of a

professional within its team, in accordance with regulation 83(3) of the Regulations of the Court. Consequently, if the Legal Representative were to request the help of (a) qualified psychologist(s) for the purposes of the identification (“mapping”) exercise, and if the Chamber were to grant its request, the Registry could, in accordance with regulation 44 of the Regulations of the Court, provide him with the names of all those on the Registry’s list of experts who may be qualified for the task. Moreover, VWU could also ask professionals with whom it is in contact in the field about possible candidates who might be able to support the Legal Representative in the event that he wishes to call on a consultant.

3. Furthermore, VWU notes the Legal Representative’s keenness to ensure the psychological well-being of the people in question, to make a list of the difficulties that may arise during individual interviews and to determine their specific needs on the basis of their psychological state.
4. In accordance with rule 17(2)(a)(iv) of the Rules, VWU is tasked with making available to the Court and the parties training in issues of trauma with respect to all witnesses and victims who appear before the Court. In performing its functions, VWU must pay particular attention to vulnerable persons. In order to fulfil this mandate, and in accordance with rule 19 of the Rules, VWU includes among its staff trauma experts who are qualified to recommend measures for assisting vulnerable persons.
5. Consequently, and if the Legal Representative considers that the persons whom he will meet can be classed as vulnerable within the meaning of regulation 94 *bis* (2) of the Regulations of the Registry, insofar as they are at an increased risk of psychological harm by reason of being interviewed, VWU proposes, in accordance with its mandate and in order to assist the Legal Representative with his request, to provide those people who are going to meet children, their parents and survivors likely to suffer from trauma issues with training targeted at the specific needs of these groups. VWU is willing to provide this training to any member of the Legal Representative’s team or

anyone appointed by him to meet potentially vulnerable persons with a view to safeguarding, as far as possible, the psychological well-being of such persons during the interviews to be held. In the view of VWU, the training provided by its psychologist will equip the trainees in question with the tools required to gain greater insight into such persons.

## II. General observations of the Registry

6. The Registry notes that the Legal Representative's Request in this case raises the broader question of particular categories of victims who have suffered from a unique type of trauma.<sup>3</sup> The Registry notes, in particular, that the legal framework relating to this question does not yet appear to have been defined by the Court, either in respect of the legal conditions that these categories of victims must satisfy to be able to participate in the reparations proceedings or in respect of the possible implementation of a specific, working methodological framework for interacting with such victims in a way that safeguards their dignity and psychological well-being.
7. Thus, the Registry respectfully submits that, in the present case, given the widespread nature of the phenomenon described by the Legal Representative in his Request,<sup>4</sup> the Chamber may find it useful to gain insight into these particular categories of victims and it would also be in the Court's interest to obtain any useful information on this subject as the question may arise in other cases. To this end, the Registry respectfully submits that, if the Chamber considers it desirable and necessary, the Legal Representative may, at any point deemed appropriate in the present proceedings, help to shed light on this question in consultation with qualified and independent professionals in order to identify the general and case-specific factors required to understand this category of victims from a legal, psychological and socio-cultural

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<sup>3</sup> The Registry notes that the Legal Representative employs the term "transgenerational trauma".

<sup>4</sup> ICC-01/04-01/07-3585-Conf, paras. 6 and 39.

standpoint. Given that these categories of victims might participate in the present reparations proceedings, this would make it possible to define, for example, the type of questions that should be put to them in order to assess the extent of the harm suffered and the links between this harm and the alleged crime. The contents of the current application forms for reparations might prove to be inappropriate for this type of victim. The factors established in this way would then be shared with the Legal Representative so that he can refer to them when he checks the eligibility criteria of these potential victims.

8. Lastly, the Registry notes the prerogatives conferred on the Chamber by the Statute when the latter considers it appropriate (a) to invite any organisation or person to submit, in writing or orally, observations on any issue that it deems relevant, thereby also allowing adversarial debate to take place in accordance with rule 103 of the Rules, and (b) to appoint competent experts, in accordance with rule 97 of the Rules, to help it to determine, in the context of the reparations proceedings, the extent of the damage, losses or harm caused to all types of victims so that it may suggest appropriate types and modalities of reparations.

[signed]

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Marc Dubuisson, Director, Division of Court Services

Per delegation of  
Herman von Hebel, Registrar

Dated this 25 September 2015

At The Hague, the Netherlands