



Original: **English**

No.: ICC-01/04-01/07

Date: **28 January 2016**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding
Judge Olga Herrera Carbuca
Judge Péter Kovacs

***SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR v. GERMAIN KATANGA***

**Public
URGENT**

Defence Request for Extension of Time

Source: Defence for Mr Germain Katanga

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Eric MacDonald

Counsel for the Defence for Germain

Katanga

Mr David Hooper Q.C.

Ms Caroline Buisman

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

REGISTRY

Registrar

Mr Herman von Hebel

**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Other

Procedural background

1. On 8 May 2015, the Trial Chamber issued its ‘Decision on the “*Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve*” and future stages of the proceedings’,¹ by which it ordered the Legal Representative of Victims and the Registry to file consolidated victim reparation forms, for both victims admitted to participate in the proceedings and for new applicants, by the 1st October 2015.
2. On 21 September 2015, Trial Chamber II issued its ‘Decision on the requests of the Common Legal Representative of Victims and the Registry for an extension of time limit for transmitting and filing applications for reparations’.² It allowed an extension to 1st December 2015 for the time limit for submitting to the Registry and transmitting to the Chamber and the defence for Mr Katanga (“the defence”) consolidated and redacted versions of all applications for reparations; it instructed the defence to file submissions on the consolidated applications for reparations by 11 January 2016.
3. On 25 November 2015, the defence was disclosed 43 applications for reparations.³
4. On 27 November 2015, the defence was notified the first Registry report on these 43 applications.⁴
5. The same day, the defence was disclosed 19 applications for reparations.⁵ The defence was notified the second Registry report on these 19 applications on 9 December 2015.⁶
6. On 30 November 2015, the defence was disclosed 33 applications for reparations.⁷ The defence has still not been notified the third Registry report on these applications, notified to the Trial Chamber on an *ex parte* basis on 26 January 2015.⁸

¹ ICC-01/04-01/07-3546-tENG.

² ICC-01/04-01/07-3599-tENG.

³ ICC-01/04-01/07-3614-conf-exp-Anx1-Red to Anx43-Red, annexed to ICC-01/04-01/07-3614, Transmission de demandes en reparation, of 13 November 2015.

⁴ ICC-01/04-01/07-3616-Conf-Exp-Anx1-Red, annexed to ICC-01/04-01/07-3616, Transmission du Rapport sur les demandes en réparation, of 17 November 2015.

⁵ ICC-01/04-01/07-3617-conf-exp-Anx1-Red to Anx19-Red, annexed to ICC-01/04-01/07-3617, Seconde transmission de demandes en reparation, of 20 November 2015.

⁶ ICC-01/04-01/07-3618-Conf-Anx-Red, annexed to ICC-01/04-01/07-3618, Transmission du Rapport concernant la Seconde Transmission des Demandes en Réparation, of 25 November 2015.

⁷ ICC-01/04-01/07-3621-Conf-Exp-Anx1-Red to Anx33-Red, annexed to ICC-01/04-01/07-3621 Troisième transmission de demandes en reparation, of 27 November 2015.

7. On 8 December 2015, Trial Chamber II issued its '*Décision accordant une nouvelle prorogation de délai au Représentant légal commun des victimes pour le dépôt des demandes en réparation*'.⁹ It allowed an extension to 29 February 2016 for the time limit for submitting to the Registry and transmitting to the Chamber and the defence consolidated and redacted versions of all applications for reparations; it instructed the defence to file submissions on the consolidated applications for reparations previously notified, by 31 January 2016, and to file observations on the applications that will be disclosed a posteriori, by 28 March 2016.
8. In addition to not having received the third report from the Registry, the defence draws the attention of the Trial Chamber to the fact that since Mr Katanga's transfer to the Democratic Republic of Congo, its work has been hampered by the lack of a direct computer link, as discussed and proposed by the Registry, being put in place to enable confidential and other documentary material being provided to Mr Katanga. That problem is currently being addressed by the Registry but not yet in place. The defence cannot provide Mr Katanga - who remains in custody in Kinshasa despite having completed his sentence - with the material. Each filing can only be discussed orally by phone and communications are often interrupted because of problems of network within the Democratic Republic of Congo.

Applicable law

9. Pursuant to Regulation 35, Variation of time limits, of the Regulations of the Court,
 1. Applications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought.
 2. The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

Discussion

⁸ ICC-01/04-01/07-3639, Transmission du Rapport concernant la Troisième Transmission des Demandes en Réparation, 26 January 2015.

⁹ ICC-01/04-01/07-3628.

10. The defence respectfully requests an extension of time to submit its observations in response to the applications for reparations notified in November 2015, to ten days after the defence has received the third Registry report.
11. The defence notes that the Registry has indicated, in its *Transmission du Rapport concernant la Troisième Transmission des Demandes en Réparation*, that it will disclose to the defence a redacted version of the third report “in the near future” (“*prochainement*”).¹⁰
12. The defence submits that it will be more convenient for all the parties, and in particular the Trial Chamber, to permit the defence to address all the applications notified in November 2015 in one filing, after having received the benefit of the three Registry reports.
13. In addition, the extension of time sought will not delay the proceedings given that the Trial Chamber has already defined a second deadline, by 28 March 2016, for the defence submissions on any application for reparation notified after the Trial Chamber’s Decision of 8 December 2015.
14. Accordingly, the defence requests the Chamber to find that good cause has been shown in the sense of regulation 35 of the Regulations of the Court for an extension of time-limit to submit its observations.

Conclusion

15. For the forgoing reasons, pursuant to Regulation 35 of the Regulations of the Court, the defence respectfully requests the Trial Chamber to extend the deadline for submitting observations in response to the applications for reparations notified in November 2015, to ten days after the defence has received the third Registry report.

¹⁰ ICC-01/04-01/07-3639.

Respectfully submitted,



~~David Hooper Q.C.~~

Dated this 28 January 2016,

London. W.C.1