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Date: **8 March 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 Redacted Version
with Confidential, *Ex Parte*, Registry, Legal Representative of Victims, and Defence
only, Annex A**

Defence Observations on the Victims Applications for Reparation

Source: Defence for Mr Germain Katanga

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

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REGISTRY

Registrar

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**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

1. The defence for Mr Katanga (“the defence”) hereby presents its observations on the consolidated victims applications for reparation notified between 25 and 30 November 2015.

PROCEDURAL HISTORY

2. 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.
3. 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 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.
4. On 25 November 2015, the defence for Mr Katanga (“the defence”) was disclosed 43 applications for reparations.³
5. On 27 November 2015, the defence was notified the first Registry report on these 43 applications.⁴
6. 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

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 réparation*, 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 réparation*, 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. On 30 November 2015, the defence was disclosed 33 applications for reparations.⁷ The defence was notified the third Registry report on these applications on the 1st of February 2016.⁸
8. 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.
9. On the 1st of February 2016, Trial Chamber II issued its '*Décision accordant une prorogation de délai pour le dépôt des observations de la Défense sur les demandes en réparation*' by which it allowed an extension to 12 February 2016 for the defence observations on the victims applications.¹⁰
10. On 12 February 2016, Trial Chamber II issued its '*Ordonnance relative à la soumission du Représentant légal des victimes*', by which it ordered the Registry to redisclose to the defence a less redacted version of previous victims applications by 17 February 2016 and it allowed an extension to 24 February 2016 for the defence observations on the victims applications.¹¹
11. On 17 February 2016, the Registry filed its '*Transmission de Demandes en réparation à la Défense en versions moins expurgées en application de l'Ordonnance du 12 février 2016 (ICC-01/04-01/07-3653-Corr)*'.¹²

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 réparation*, of 27 November 2015.

⁸ ICC-02/11-01/15-3639-Conf-Anx-Red, annexed to 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 ICC-01/04-01/07-3645.

¹¹ ICC-01/04-01/07-3653-Corr.

¹² ICC-01/04-01/07-3655.

LEGAL SUBMISSION

12. The defence reiterates its observations contained in its Defence Consolidated Response to the Parties, Participants and Other Interested Persons' Observations on Reparation ("Defence Observations").¹³
13. In reviewing the individual applications the defence was mindful that any order for reparation will be directed at Mr Katanga personally. In those circumstances, as submitted previously, the resulting prejudice to Mr Katanga is such that it requires the Trial Chamber to proceed with a high degree of caution when considering individual claims. In all cases an applicant's claim should only be accepted when a proper and sufficient level of proof of loss or damage is provided by the applicant. As previously submitted "In the present case, which concerns only one attack, on one day, against one village, the defence submits that it is not an onerous burden for victims to produce sufficient and credible evidence in support of their claims."¹⁴ This is particularly important given the poverty of the region and the practice of the Chambers not to make a substantive assessment of the credibility, or reliability, of a victim's application in the initial stages of the trial.¹⁵
14. Many of the claims for reparation relate to land or chattels but the applicants do not provide the barest evidence of such loss, often relying on no more than the say so of the applicant. There is a general lack of corroborating or supporting material - no witness statements, health certificates, medical bills, photographs or other relevant supporting materials are produced by victims in support of the alleged harm. The defence submits that such claims are insufficient and may lead to obvious abuse of the reparation process. The defence submits that the procedure adopted in the *Lubanga* case must be applied in this case, namely that two witnesses should testify as to such loss.
15. The defence notes that there are several inconsistencies between the death certificates submitted in 2008/2009 and those produced in 2015, adapted to the changes in the applicants' statements. The manner in which the death certificates/kinship certificates have come into being raises concern as they often appear to be based only on the word of applicants who themselves did not witness the death of their relatives but

¹³ ICC-01/04-01/07-3564, 16 June 2015.

¹⁴ Defence Observations on Reparations, 15 May 2015, ICC-01/04-01/07-3549, para. 41.

¹⁵ *Ibid*, paras 42 to 44. and Defence Consolidated Response to the Parties, Participants and Other Interested Persons' Observations on Reparation, ICC-01/04-01/07-3564, 16 June 2015, paras 63-75.

claim to have heard about it later or simply concluded that they had died because they disappeared after the attack. This does not amount to indisputable evidence of death. The relatives may have fled and simply not returned to Bogoro/Bunia, *etc.* Therefore, in the case of inconsistencies in the applicants' statements and/or certificates regarding the death of their relatives, the defence invites the Chamber to treat these certificates and statements with caution.

16. The defence further notes that several applicants submit a certificate of residence, issued by the chefs de localités of Dodoy or Bagaya, certifying that *"Madame/Monsieur X a vécu à Bogoro jusqu'en février 2003 et avait X maison(s) et X qui a(ont) été détruite(es) lors de l'attaque du 24 février 2003."* The certificate is signed by [REDACTED]. The defence submits that [REDACTED] is not sufficiently neutral given [REDACTED]. The defence submits that the certificates of residence should be considered with caution, given that they were issued 12 years after the events with the specific purpose of being tendered in the reparation proceedings, are signed by [REDACTED], and are drafted in a standard form.
17. The defence also notes that whereas some Residence Certificates provide particulars of the property lost or damaged, most Residence Certificates are deficient in that respect and do not therefore provide the necessary support for such loss or damage.
18. Also, Bogoro was subject to extensive attacks prior to the particular attack that provides the foundation for reparations, as well as subsequent acts of pillaging and theft in the subsequent months and years.¹⁶ In respect of loss of cattle, the defence refers the Trial Chamber to its previous observations as to the prior movement of cattle and widespread rustling.¹⁷
19. Further to the previous defence observations,¹⁸ the defence notes that very few of the homes claimed to have been lost or damaged in the attack appear to have been built of brick or similar. Many are described as being made of straw. Indeed, most of the local homes at the time were built in the traditional manner – with straw. There is little remaining evidence to be seen there of homes destroyed that were built of stone or brick or other substantial material. Given that it is possible, the defence understands,

¹⁶ *Ibid*, para. 48.

¹⁷ Defence Consolidated Response to the Parties, Participants and Other Interested Persons' Observations on Reparation, ICC-01/04-01/07-3564, 16 June 2015, para. 29.

¹⁸ *Ibid.*, para. 21 & seq and, Defence Observations on Reparations, 15 May 2015 ICC-01/04-01/07-3549.

to construct a straw home in just a few days, any compensation for such loss should reflect the modest value of such a property. Mr Katanga can not be expected to provide a house built of significantly different and more expensive material than that of the original home lost or damaged in the course of the attack. It is also apparent that nearly all the homes in Bogoro appear newly roofed '*en tôles*'.

20. The defence previously noted that some rebuilding of schools has taken place over the past ten years and submitted that such past benefits must be taken into account when assessing awards.¹⁹ Indeed, applicant a/30480/15 states that there has been "... reconstruction of the primary school EP/Kavali, the health centre, the administrative building, 'CECA 20' school". There has also been construction of a new market and the Bogoro Institute itself. There has also been a monument erected, though now in a neglected condition.
21. The defence submits its observations on each applicant in the confidential *ex parte* annex A, since it refers to information disclosed on a confidential *ex parte* basis.

CONCLUSION

22. The defence respectfully requests the Trial Chamber to give due consideration to the defence observations.

Respectfully submitted,



-David Hooper Q.C.

Dated this 8 March 2016,
London. W.C.1

¹⁹ Defence Observations on Reparations, 15 May 2015, ICC-01/04-01/07-3549, para 14 and Defence Consolidated Response to the Parties, Participants and Other Interested Persons' Observations on Reparation, ICC-01/04-01/07-3564, 16 June 2015, paras 93 *et seq.*