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Date: **25 March 2016**

TRIAL CHAMBER II

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

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

Public

URGENT Defence Requests with relation to the Victims Applications

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

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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 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 for Mr Katanga (“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 was notified the third Registry report on these applications on the 1st of February 2016.⁸

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 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 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.

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. 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
9. On 3 February 2016, the defence was notified 31 applications for reparations; it was also redisclosed 4 applications for reparation, completed with further documents.¹¹ The defence was notified the fourth Registry report on these applications on the 18th February 2016.¹²
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.¹³
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)*'.¹⁴
12. On 19 February 2016, the defence was disclosed 85 applications for reparations.¹⁵ The defence has not been notified the Registry report on these applications.

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-01/04-01/07-3648, Quatrième Transmission de Demandes en réparation à la Défense.

¹² ICC-01/04-01/07-3657-Conf-Anx-Red-Corr, annexed to ICC-01/04-01/07-3658, *Transmission à la Défense du Rapport concernant la Quatrième Transmission des Demandes en Réparation*.

¹³ ICC-01/04-01/07-3653-Corr.

¹⁴ ICC-01/04-01/07-3655.

¹⁵ ICC-01/04-01/07-3659, Cinquième Transmission de Demandes en réparation à la Défense.

13. On 24 February 2016, the defence filed its Defence Observations on the Victims Applications for Reparation¹⁶ notified between 25 and 30 November 2015.
14. On 29 February 2016, the defence was notified 78 applications for reparation; it was also redisclosed 2 applications for reparation, completed with further documents.¹⁷
15. On 29 February 2016, the defence was also notified 15 applications for reparation.¹⁸
The defence has not been notified the Registry report on the applications submitted on 29 February 2016.
16. On 15 March 2016, The Legal Representative of Victims submitted a '*Demande de reprise des actions introduites par les victimes a/0015/09, a/0032/08, a/0057/08, a/0166/09, a/0192/08, a/0225/09, a/0281/08, a/0282/09, a/0286/09, a/0298/09 a/0354/09, a/0361/09, a/0391/09, A/2743/10 et a/30490/15*' ("Application of 15 March 2016"),¹⁹ according to which the '*conseils de famille*' put in place for 15 victims deceased during the ICC proceedings have appointed one person to act on their behalf.
17. In addition to not having received the last reports from the Registry on the applications notified on 19 and 29 February 2016, the defence reiterates that it still does not have a direct computer link with Mr Katanga, and therefore any filing must be discussed orally by phone, which slows down the defence work.

Request for extension of time

18. 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.

¹⁶ ICC-01/04-01/07-3660-Conf.

¹⁷ ICC-01/04-01/07-3663, Sixième Transmission de Demandes en réparation à la Défense.

¹⁸ ICC-01/04-01/07-3665, Septième Transmission de Demandes en réparation à la Défense.

¹⁹ ICC-01/04-01/07-3668-Conf.

19. The defence respectfully requests an extension of time to submit its observations in response to the 215 applications for reparations notified in February 2016, to ten days after the defence has received the last Registry report on the last applications.
20. The defence stresses that almost 100 applications have been notified on the 29th of February, deadline to submit such applications.
21. Given the number of applications, it is understandable that the Registry has not had the time to issue its report yet. The defence is placed in a similar, difficult position, the analysis of such numerous applications being very time-consuming.
22. 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 February 2015 in one filing, after having received the benefit of the last Registry report.
23. In addition, the extension of time sought will not extensively delay the proceedings given the short extension of time requested.
24. 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.

Request for the disclosure of unredacted death certificates

25. The defence notes that the death certificates of the victims deceased in the course of the ICC proceeding, annexed to the Legal Representative's Application of 15 March 2016, are heavily redacted. In particular, the name of the public officer, the place of death, the territory of origin of the victim, and the place where the death certificate was signed are redacted. Yet, the death certificates annexed to the consolidated victims applications are not redacted at all. In these circumstances, the defence submits that the redactions applied by the Legal Representative of Victims are not justified nor authorised by the Chamber.
26. Therefore the defence respectfully asks the Trial Chamber to order the Legal Representative of Victims to redisclose to the defence the death certificates annexed to his Application of 15 March 2016 in an unredacted format.

Request for a list summarising the eventual family links between the applicants

27. The defence has identified several applicants belonging to the same family, who allege the same material and/or moral damage (for instance the loss of the family house, of the family cattle, of the family field, of the same relatives, etc.), which may have an impact on the extent of reparation granted to each of them. However, none of the application indicates whether a relative has also applied to participate in the proceedings. Since in the DRC, the children do not necessary carry the names of their parents, it is very difficult for the defence to identify such family link; besides several identifying documents contains mistakes or do not give the complete name of the relatives.
28. Since the Legal Representative has met the applicants several times and has probably met the relatives of a family at the same period, the defence submits that he is in a better position to identify the family links between the applicants, as evoked by the Chamber in a mail of the 9th of March 2016. The defence submits that it would be in the interest of the administration of justice that he provides a list of all the applicants having a family link between them. This would be fairer to Mr Katanga, who should not be ordered to pay twice for a same damage, and this would assist the Chamber in its determination of the harm and eventual reparation to be granted to each applicant.

Conclusion

29. For the forgoing reasons, the defence respectfully requests the Trial Chamber:
- To extend the deadline for submitting observations in response to the applications for reparations notified in February 2015, to ten days after the defence has received the last Registry report on these applications, pursuant to Regulation 35 of the Regulations of the Court;
 - To order the Legal Representative of Victims to redisclose to the defence the death certificates annexed to his Application of 15 March 2016 in an unredacted format;
 - To order the Legal Representative of Victims to submit a list summarising the eventual family links between the applicants.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D Hooper', with a long horizontal flourish extending to the right.

~~David Hooper~~ Q.C.

Dated this 25 March 2016,

London. W.C.1