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

Date: **23 August 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. GERMAIN KATANGA***

Public Document

With confidential *ex parte* annex, available only to the Registry, the Legal Representative, the Defence team for Germain Katanga and the Trust Fund for Victims

Order on the Trust Fund's request for access to document ICC-01/04-01/07-3681-Conf and on observations on the monetary value of the alleged harm

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

Office of the Prosecutor

Counsel for Germain Katanga

Mr David Hooper

Ms Caroline Buisman

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Other

Mr Pieter de Baan

TRIAL CHAMBER II (“the Chamber”) of the International Criminal Court (“the Court”), acting pursuant to article 75 of the Rome Statute and regulation 23 *bis*(3) of the Regulations of the Court (“the Regulations”), issues the following order.

I. Background

1. On 8 May 2015, the Chamber ordered the common legal representative of victims (“the Legal Representative”), in consultation with the Registry, to submit to the Chamber and, in redacted form, to the Defence for Mr Katanga (“Mr Katanga” and “the Defence”, respectively): all applications for participation initially presented by victims authorised to participate in the proceedings against Mr Katanga; the requests for reparations already submitted to the Chamber, together with relevant supporting documentation; and any new request for reparations¹ (“the Decision of 8 May 2015”).

2. Between 12 November 2015 and 29 February 2016, the Legal Representative transmitted the requests for reparations through the Registry to the Chamber² (“the Requests for Reparations”) and, in redacted form, to the Defence.³

¹ “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,” 8 May 2015, ICC-01/04-01/07-3546-tENG, pp. 9-10.

² “*Transmission de demandes en réparation*”, 12 November 2015, ICC-01/04-01/07-3614 and confidential annexes 1-43; “*Seconde transmission de demandes en réparation*”, 20 November 2015, ICC-01/04-01/07-3617 and confidential annexes 1-19; “*Troisième transmission de demandes en réparation*”, 27 November 2015, ICC-01/04-01/07-3621 and confidential annexes 1-33; “*Quatrième transmission de demandes en réparation*”, 2 February 2016, ICC-01/04-01/07-3646 and confidential annexes 1-35; “*Cinquième transmission de demandes en réparation*”, 18 February 2016, ICC-01/04-01/07-3656 and confidential annexes 1-85; “*Sixième transmission de demandes en réparation*”, 26 February 2016, ICC-01/04-01/07-3661 and confidential annexes 1-78; “*Septième transmission de demandes en réparation*”, 29 February 2016, ICC-01/04-01/07-3664 and confidential annexes 1-15.

³ “*Transmission de demandes en réparation à la Défense*”, 24 November 2015, ICC-01/04-01/07-3619 and redacted confidential annexes 1-43; “*Seconde transmission de demandes en réparation à la Défense*”, 27 November 2015, ICC-01/04-01/07-3622 and redacted confidential annexes 1-19; “*Troisième Transmission de Demandes en réparation à la Défense*”, 27 November 2015, ICC-01/04-01/07-3624 and redacted confidential annexes 1-33; “*Quatrième Transmission de Demandes en réparation à la Défense*”, 2 February 2016, ICC-01/04-01/07-3648 and redacted confidential annexes 1-35; “*Transmission de Demandes en réparation à la Défense en version moins expurgées en application de l’Ordonnance du 12 février 2016 (ICC-01/04-01/07-3653-Corr)*”, 17 February 2016, ICC-01/04-01/07-3655; “*Cinquième Transmission de Demandes en réparation à la Défense*”, 19 February 2016, ICC-01/04-01/07-3659 and redacted confidential annexes 1-85; “*Sixième Transmission de Demandes en réparation à la Défense*”, 26 février 2016, ICC-01/04-01/07-3663 and redacted confidential annexes 1-80; “*Septième Transmission de Demandes en réparation à*

3. On 24 February and 11 April 2016, the Defence filed general observations on the redacted versions of the Requests for Reparations, and specific observations on each request.⁴ In its general observations of 11 April 2016⁵ (“the Second Defence Observations”), the Defence proposed the current price of certain goods and properties which the applicants claim to have lost in the attack on Bogoro on 24 February 2003⁶ (“the attack on Bogoro”).
4. On 13 May 2016, the Legal Representative filed a report on the implementation of the Decision of 8 May 2015,⁷ as well as a summary table highlighting the nexus between crimes and harm⁸ (“the Summary table of the nexus between crimes and harm”).
5. On 6 July 2016, the Legal Representative submitted quick reference tables of harm alleged by the requesters⁹ (“quick reference tables”).
6. On 15 July 2016, the Chamber instructed the Legal Representative, the Defence and the Trust Fund for Victims (“the Trust Fund”), to file observations on the monetary

la Défense”, 29 February 2016, ICC-01/04-01/07-3665 and redacted confidential annexes 1-15; “Corrigendum: Annex 9 to the *Septième Transmission de Demandes en réparation*”, 10 March 2016, ICC-01/04-01/07-3664-Conf-Exp-Anx9-Corr; “*Transmission à la Chambre d’un Document additionnel concernant une Demande en réparation*”, 17 March 2016, notified on 18 March 2016, ICC-01/04-01/07-3672 with two confidential annexes.

⁴ “Defence Observations on the Victims Applications for Reparation”, filed on 24 February 2016, ICC-01/04-01/07-3660-Conf (a public redacted version was filed on 8 March 2016); “Second Defence Observations on the Victims Applications for Reparation”, 11 April 2016, ICC-01/04-01/07-3681-Conf, one *ex parte* confidential annex and one public annex.

⁵ “Second Defence Observations on the Victims Applications for Reparation”, 11 April 2016, ICC-01/04-01/07-3681-Conf.

⁶ Second Defence Observations, para. 36.

⁷ “*Rapport sur la mise en œuvre de la Décision n°3546, en ce compris l’identification des préjudices subis par les victimes suite aux crimes commis par G. Katanga (Article 75-1 du Statut et Norme 38-1-f) du Règlement de la Cour*”, 13 May 2016, ICC-01/04-01/07-3687 and four public annexes (“the Report”).

⁸ Annex 4 of the Report, ICC-01/04-01/07-3687.

⁹ “*Transmission des tableaux récapitulatifs des préjudices des demandeurs en réparation*”, 6 July 2016, ICC-01/04-01/07-3701, with one *ex parte* confidential annex, available only to the Legal Representative, and one redacted confidential annex.

value they considered fair for each type of harm alleged by the requesters in the instant case¹⁰ (“Order of 15 July 2016”).

7. On 12 August 2016, the Trust Fund requested access to the Second Defence Observations¹¹ (“the Request”) arguing that, as it did not have access to the requests for reparations or to the quick reference tables, it had not been able to familiarise itself with the specifics of the harm alleged by those requesting reparations.¹² It further argued that, to ensure that its observations were helpful and responsive to the Order of 15 July 2016, it should be allowed to consult the Second Defence Observations or, alternatively, the paragraphs relevant to the preparation of its observations.¹³

8. On 14 and 17 August 2016, the Defence and the Legal Representative informed the Chamber that they did not object to the disclosure of the Second Defence Observations to the Trust Fund.¹⁴

II. Analysis

9. The Chamber notes that, pursuant to regulation 23 *bis*(3) of the Regulations of the Court, “[a] Chamber may also re-classify a document upon request by any other participant [...]”.

10. The Chamber considers that access to the Second Defence Observations may assist the Trust Fund to prepare its observations on the monetary value of the harm alleged by the requesters and notes that the Defence and the Legal Representatives do not object to the Request. The Chamber therefore finds that it is appropriate for the Trust Fund to access the document. Consequently, the Chamber instructs the Registry to re-classify the Second Defence Observations as

¹⁰ “Order instructing the parties and the Trust Fund for Victims to file observations on the monetary value of the alleged harm,” 15 July 2016, ICC-01/04-01/07-3702-tENG.

¹¹ “Request for access to document ICC-01/04-01/07-3681-Conf”, 12 August 2016, ICC-01/04-01/07-3703.

¹² Request, para. 4.

¹³ Request, paras. 5 and 6.

¹⁴ E-mail sent by the Defence to Trial Chamber II at 13:05 on 14 August 2016; mail sent by the Legal Representative to Trial Chamber II at 16:47 on 17 August 2016.

“Confidential, *ex parte*, available only to the Registry, the Legal Representative, the Defence and the Trust Fund”.

11. The Chamber further notes that, in its Order of 15 July 2015, it specifically refers to the Second Defence Observations, which contain information on the current monetary value of certain material losses allegedly incurred by the requesters during the attack on Bogoro.¹⁵ In fact, the Chamber indicated to the Legal Representative, the Defence and the Trust Fund that they could consult the table describing the links between crimes and harm suffered for a list of the types of harm alleged.¹⁶

12. To obtain sufficiently precise and relevant observations on the monetary value of the harm alleged by the requesters, and for a comprehensive understanding of the situation, the Chamber hereby supplements its Order of 15 July 2016 and appends to the instant Order a more detailed list of types of harm. The Legal Representative, the Defence and the Trust Fund are hereby instructed to file observations on what in their view represents a fair monetary value for each type of harm listed and, to the extent possible, on the method to be adopted when determining such values. The Chamber is particularly interested in obtaining observations on the base value of the harm or suggested price ranges where deemed relevant by the parties and the Trust Fund.

13. Lastly, the Chamber notes that the Defence provided some information on the *current* monetary value.¹⁷ The Chamber therefore invites the Legal Representative, the Defence and the Trust Fund to submit observations on whether the monetary value of the harm – if established – should be assessed according to its value in 2003 or the value applicable in 2016.

¹⁵ Order of 15 July 2016, para. 8.

¹⁶ Order of 15 July 2016, para. 9.

¹⁷ Second Defence Observations, para. 36.

FOR THESE REASONS, the Chamber

GRANTS the Request;

INSTRUCTS the Registrar to re-classify forthwith the Second Defence Observations as “Confidential, *ex parte*, available only to the Registry, the Legal Representative, the Defence and the Trust Fund”; and

INSTRUCTS the Legal Representative, the Defence and the Trust Fund to submit observations to the Chamber on the basis of the list of alleged harm appended to the instant Order, within the time limits stated in the Order of 15 July 2016.

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

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccia

[signed]

Judge Péter Kovács

Dated this 23 August 2016

At The Hague, the Netherlands