

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

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

Date: **8 May 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***

Public

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

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Éric MacDonald

Counsel for Germain Katanga

Mr David Hooper

Legal Representative of Victims

Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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 Fiona McKay

Other

TRIAL CHAMBER II of the International Criminal Court (“the Court”), in the case of *The Prosecutor v. Germain Katanga*, acting pursuant to article 75 of the Rome Statute, rule 94 of the Rules of Procedure and Evidence (“the Rules”) and regulation 88 of the Regulations of the Court, issues the following decision.

I. Request for clarification concerning the implementation of rule 94 of the Rules

(a) Procedural history

1. On 27 August 2014, the Chamber directed the Registry to contact the victims who had applied for participation in the proceedings and/or reparations for further, updated information on the harm suffered and the reparations sought, and to submit a report on the matter. In its Order, the Chamber invited the Registry to work in close consultation and cooperation with the common Legal Representative of victims (“the Legal Representative”).¹
2. On 16 December 2014, the Registry filed its report on the results of the consultations held with the victims (“the Consultations”) from 25 September to 17 November 2014 (“the Report”).² Annex 2 to the Report includes a table containing information on the 305 victims who were consulted and the reparations measures sought (“Annex 2”).³
3. On 12 March 2015, the Legal Representative filed a request for clarification concerning the implementation of rule 94 of the Rules (“the Request”).⁴

¹ “Order instructing the Registry to report on applications for reparations”, 27 August 2014, ICC-01/04-01/07-3508. See also “Order on the ‘Request for an Extension of Time to Report on Applications for Reparations Pursuant to Regulation 35 of the Regulations of the Court’”, 24 November 2014, ICC-01/04-01/07-3511.

² “Registry Report on Applications for Reparations in accordance with Trial Chamber II’s Order of 27 August 2014”, 16 December 2014, ICC-01/04-01/07-3512-Anx1-Red2.

³ ICC-01/04-01/07-3512-Conf-Exp-Anx2-Corr. A confidential redacted version was filed on 31 March 2015. ICC-01/04-01/07-3512-Conf-Exp-Anx2-Corr-Red.

⁴ “Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve”, 12 March 2015 (notified on 13 March 2015), ICC-01/04-01/07-3527 (“the Request”). This Request was initially submitted to the Chamber by e-mail at 12.10 p.m. on 5 March 2015. In an

4. On 13 April 2015, the Defence for Germain Katanga (“the Defence” and “Mr Katanga”, respectively) and the Registry each filed their observations on the Request.⁵

(b) Submissions

5. The Legal Representative submitted that, during the consultation with the victims, the Registry and the Legal Representative had gathered the necessary information on the reparations measures sought by the 305 participating victims and that, in his opinion, all the information required by rule 94 of the Rules was contained in the forms produced and in the data collated in Annex 2. He then asked the Chamber whether it considered it necessary to receive application forms for reparations as set out in rule 94 of the Rules from these same victims.⁶
6. Furthermore, the Legal Representative submitted that the questionnaires can be considered as equivalent to application forms for reparations as required by rule 94 of the Rules, all the more so as the rule does not require application forms for reparations to be signed. In the view of the Legal Representative, such an approach would avoid the need to go back to victims who have already been consulted and oblige them to fill out a new document, which would merely repeat information already within the Chamber’s possession.⁷

e-mail sent at 11.48 a.m. on 9 March 2015, the Chamber ordered the Legal Representative to file such a request in the records of the case in a timely manner.

⁵ “Second Defence Observations on the ‘*Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve*’”, 13 April 2015, ICC-01/04-01/07-3534 (“the Response”); “Registry’s Observations on the Legal Representative of Victims’ request for clarification”, ICC-01/04-01/07-3527, 13 March 2015, ICC-01/04-01/07-3535. A corrected version was filed on 16 April 2015, ICC-01/04-01/07-3535-Corr (“the Registry’s Observations”). On 20 March 2015, the Chamber granted a Defence request for an extension of time to respond to the Request (“Defence Observations on the ‘*Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve*’”, 17 March 2015, ICC-01/04-01/07-3529-Conf) and ordered it to file its response within 10 days of the notification of the redacted version of Annex 2 (e-mail from the Chamber to the parties and participants, 20 March 2015, 1.07 p.m.). On 1 April 2015, the Chamber ordered the Registry to file its observations by 13 April 2015 (e-mail from the Chamber to the Registry, 1 April 2015, 2.41 p.m.).

⁶ Request, ICC-01/04-01/07-3527, paras. 6-7.

⁷ *Ibid.*, paras. 8-9.

7. Furthermore, the Legal Representative was of the view that victims yet to be consulted should be contacted to allow them to submit a request for reparations or to complete any incomplete request.⁸ He also intended to submit, whether *proprio motu* or at the request of the Chamber, any document or other material that might support his clients' cases.
8. The Defence objected to the Request. It submitted that, to participate in the proceedings and obtain reparations on an individual basis, each victim must fill out and sign a document indicating that he or she wishes to participate in the reparations proceedings and obtain reparations, specifying the types of reparations sought. In the view of the Defence, the victims' wishes could not be established on the basis of Annex 2. The Defence therefore submitted that reparations on an individual basis, especially in the light of the financial consequences for Mr Katanga, could not be awarded on the basis of interviews carried out by the Registry without the Defence, the Prosecutor and the Legal Representative being present.⁹
9. In its observations, the Registry explained that the information gathered during the Consultations, and in the light of the notes taken by the Legal Representative's team, had been recorded in the database of the Victims Participation and Reparations Section and that Annex 2 had been compiled on that basis. It underlined that the consultation procedure, including the collecting and recording of information, had been carried out in consultation with the Legal Representative.
10. The Registry submitted that the victims they had met had answered, at length, several questions regarding reparations in the presence of their Legal Representative. In the view of the Registry, it was not advisable to approach victims again on the issue of reparations solely for the purpose of obtaining their

⁸ *Ibid.*, para. 10.

⁹ *Ibid.*, paras. 11-15.

signatures and without providing them with new information, as that might well expose them to re-traumatisation.¹⁰

11. The Registry therefore recommended that the Chamber consider the documents already in its possession as constituting valid requests for reparations pursuant to rule 94 of the Rules. It also proposed that consolidated documents be submitted on behalf of each of the applicants, consolidating the requests for participation in proceedings and/or reparations already in the record together with a form containing the additional information gathered during the Consultations (and reflected in Annex 2).¹¹
12. The Registry did not object to the Legal Representative's request that those victims who had not been met during the Consultations and who wished to submit a request for reparations or to complete an application for reparations be given the opportunity to submit a request or provide the necessary information to complete an application.¹²

(c) Applicable law

13. Rule 94 of the Rules sets forth the procedure to be followed when requests are submitted by victims:

1. A victim's request for reparations under article 75 shall be made in writing and filed with the Registrar. It shall contain the following particulars:
 - (a) The identity and address of the claimant;
 - (b) A description of the injury, loss or harm;
 - (c) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;
 - (d) Where restitution of assets, property or other tangible items is sought, a description of them;
 - (e) Claims for compensation;
 - (f) Claims for rehabilitation and other forms of remedy;
 - (g) To the extent possible, any relevant supporting documentation, including names and addresses of witnesses.

¹⁰ Registry's Observations, ICC-01/04-01/07-3535-Corr, paras. 1-3.

¹¹ *Ibid.*, para. 4.

¹² *Idem.*

2. At commencement of the trial and subject to any protective measures, the Court shall ask the Registrar to provide notification of the request to the person or persons named in the request or identified in the charges and, to the extent possible, to any interested persons or any interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3.

14. Regulation 88 of the Regulations of the Court, which concerns requests for reparations made by victims in accordance with rule 94, provides that:

1. For the application of rule 94, the Registrar shall develop a standard form for victims to present their requests for reparations and shall make it available to victims, groups of victims, or intergovernmental and non-governmental organizations which may assist in its dissemination, as widely as possible. This standard form shall be approved in accordance with regulation 23, sub-regulation 2, and shall, to the extent possible, be used by victims.
2. The Registrar shall seek all necessary additional information from a victim in order to complete his or her request in accordance with rule 94, sub-rule 1, and shall assist victims in completing such a request. The request shall then be registered and stored electronically in order to be notified by the unit described in regulation 86, sub-regulation 9, in accordance with rule 94, sub-rule 2.

15. The Chamber notes that the 305 applicants whom the Registry met had already submitted either a request for reparations or a request for participation. These individuals have therefore already provided information on their identities and the alleged harm and most of them, on several occasions, have also stated the reparations measures that they consider to be appropriate. The Chamber also notes that the Consultations were held in the presence of the Legal Representative or a member of his team.¹³

16. The Chamber underlines that rule 94 of the Rules requires a certain number of particulars to be submitted to it. It also notes that this rule does not require the applicant's signature. It further notes that the purpose of the form developed by the Registry, pursuant to regulation 88 of the Regulations of the Court, is "for victims to present their requests for reparations" and the form must, "to the extent possible", be used by victims to present their requests for reparations.

17. With regard to the 305 applicants whom the Registry was able to interview in the presence of their Legal Representative, the Chamber notes that it possesses the necessary information, as set forth in rule 94 of the Rules, for these requests to be

¹³ Report, ICC-01/04-01/07-3512-Anx1-Red2, para. 21.

considered. The Chamber emphasises, however, that – where possible – it is up to the Legal Representative, in consultation with the Registry, to append to the request for reparations initially presented (whether it was filed together with a request to participate in the proceedings or in a separate form), or to the request for participation initially presented, any supporting documentation within the meaning of rule (94)(1)(g) of the Rules, attesting, in particular, to the extent of the harm suffered and the causal link between the alleged harm and the crime committed. In order to facilitate the consideration of information provided by victims requesting reparations, the Chamber invites the Registry to file the consolidated documents, as proposed in its observations.¹⁴

18. With regard to victims admitted to participate in the proceedings whom it was not possible to meet during the consultation with the Registry in the presence of the Legal Representative, the Chamber notes that the Registry's Report contains a proposal for opening a period, not exceeding six months, for submitting new requests for reparations.¹⁵ It also notes the submissions of the Legal Representative in this regard.¹⁶ In the view of the Chamber, it is up to the Legal Representative, in consultation with the Registry, to submit any request for reparations or any other information required to complete the requests for reparations presented by the victims. Any such requests for reparations submitted must be accompanied – where possible – by supporting documentation attesting to the extent of the harm suffered and the causal link between the alleged harm and the crime committed.
19. Lastly, the Chamber believes that a period should be opened for the submission of any other request for reparations in this case made by victims yet to make themselves known. Such requests must also be accompanied – where possible – by supporting documentation attesting to the extent of the harm suffered and the causal link between the alleged harm and the crime committed.

¹⁴ Registry's Observations, ICC-01/04-01/07-3535-Corr, para. 4(a)(i) and (ii).

¹⁵ Report, ICC-01/04-01/07-3512-Anx1-Red2, paras. 93-94(d) and p. 49. See also the footnote on p. 117.

¹⁶ "*Observations des victimes sur les réparations*", 8 January 2015, para. 46 (more on para. 46 of this filing could be included).

20. The Chamber proposes that the Registry and the Legal Representative take every opportunity to contact the three above-mentioned categories of victims to assist them in presenting the documents needed to make their request for reparations before the Chamber.
21. On the basis of all the documents submitted, and after considering, *inter alia*, the observations of the Defence, the Chamber will consider, on a case-by-case basis, whether the requests, within the meaning of rule 94 of the Rules, justify the awarding of reparations on an individual and/or collective basis.

FOR THESE REASONS, THE CHAMBER

GRANTS the Request in part and provides the requested clarification, as indicated in paragraph 17 *supra*;

ORDERS the Legal Representative, in consultation with the Registry, to file the consolidated documents for each of the 305 applicants mentioned above and any other information deemed necessary, as indicated in paragraph 17, by 1 October 2015;

ORDERS the Legal Representative, in consultation with the Registry, to submit any request for reparations or any other information needed to complete the reparations requests of victims authorised to participate in the proceedings but who were not met during the consultation with the Registry and the Legal Representative, as indicated in paragraph 18, by 1 October 2015;

ORDERS the Registry to transmit to the Chamber and to the parties a redacted version of any other request for reparations, as indicated in paragraph 19, by 1 October 2015; and

ORDERS the Legal Representative to represent any victim who might be identified in the future, as indicated in paragraph 19.

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

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 8 May 2015,
At The Hague, the Netherlands