

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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Date: **2 February 2015**

TRIAL CHAMBER II

Before:

**Judge Silvia Fernandez de Gurmendi, Presiding
Judge Christine Van den Wyngaert
Judge Olga Herrera Carbuccion**

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

Public

**Application by the Redress Trust for leave to submit observations pursuant to
Article 75 of the Statute**

Source: The Redress Trust

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

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Legal Representatives of the Victims

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

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Defence Support Section

Victims and Witnesses Unit

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**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

Mr Pieter de Baan

I. INTRODUCTION

1. The REDRESS Trust respectfully seeks leave to file submissions in accordance with the Trial Chamber's 'Scheduling order setting a deadline for interested States or other interested persons to apply for leave to file submissions pursuant to Article 75 of the Statute' of 21 January 2015.¹

II. Procedural Background

2. On 7 March 2014, the Chamber issued its Judgment pursuant to Article 74 of the Statute ("Judgment").²
3. On 23 May 2014, the Chamber issued its Decision pursuant to Article 76 of the Statute ("Sentencing decision") and sentenced Mr Katanga to 12 years imprisonment.³
4. On 21 August 2014, the Legal Representative of Victims requested the Chamber to set out a timetable for the submission of observations on the principles relating to reparations that could be applied in the case, and the procedure to be followed.⁴
5. On 27 August 2014, the Chamber requested the Registry to file a report with additional and up to date information setting out the number of victims, the harm suffered, the crimes as a result of which the victims suffered harm, and the types and modalities of the reparations requested.⁵
6. On 21 January 2015, the Registry filed a public redacted version of annex 1 of its 'Report on applications for reparations in accordance with Trial Chamber II Order of 27 August' (hereinafter the Registry's Report).⁶

¹ Scheduling order setting a deadline for interested States or other interested persons to apply for leave to file submissions pursuant to Article 75 of the Statute, 21 January 2015, ICC-01/04-01/07-3516.

² Jugement rendu en application de l'article 74 du Statut, 7 March 2014, ICC-01/04-01/07-3436.

³ Décision relative à la peine (article 76 du Statut), 23 May 2014, ICC-01/04-01/07-3484.

⁴ Requête sollicitant la fixation d'un calendrier en vue de permettre aux victimes de soumettre leurs observations sur les réparations (Articles 68, 75 et 76 du Statut), 21 August 2014, ICC-01/04-01/07-3507.

⁵ Order instructing the Registry to report on applications for reparations, 27 August 2014, ICC-01/04-01/07-3508.

⁶ The Registry's Report on applications for reparations in accordance with Trial Chamber II's Order of 27 August 2014, 21 January 2015, ICC-01/04-01/07-3512-Conf-Anx1-Red2.

7. On 21 January 2015, in accordance with Article 75(3) of the Statute, the Chamber invited representations from or on behalf of the convicted persons, victims, and other interested persons or interested States on areas including ‘the issues specifically addressed in the [Registry’s] Report.’⁷

III. Specific Issues the Applicant Seeks to address

8. The Applicant seeks to make submissions on:

- (a) Factors relating to the appropriateness of awarding reparation on a collective or individual basis [Part V of the Registry Report].

The Registry Report raises several important points concerning victims’ attitudes and preferences in relation to reparations, based upon its field research. We would propose to provide the Court with comparative analysis of how other courts have addressed similar challenges. For instance, we will provide information on how other courts and related claims bodies have arrived at decisions on whether to award collective or individual reparations or both. This will include in particular the rationales used to guide their decisions, as well as the legal and other principles that were used to underpin those rationales. We will also provide research findings on the possible linkages between victims’ perceptions about the legitimacy of reparations processes and any prior roles they may have had in articulating preferences on the modalities of reparation and how those preferences were reflected in the awards. The observations will further draw upon examples from the practice of post conflict countries in determining modalities of reparation.

- (b) Other Factors relevant to the types and modalities of reparations to be awarded [Part VI of the Registry Report].

The Registry has underscored that the way reparations are addressed in any case before the Court needs to be tailored to the particular circumstances of that case. With respect to the particular areas that the Registry identifies as defining the specificities of the victims affected by the crimes in this case, REDRESS proposes to focus on the following specific aspects:

- How other courts, tribunals and related bodies have tackled situations in which the intended beneficiaries of reparations are no longer congregated exclusively or mainly

⁷ ICC-01/04-01/07-3516, Supra note 1.

in the area where the harm was committed, such as being dispersed over a large area within a country and/or globally. [para 71 of the Registry Report]

- How other courts, tribunals and related bodies have tackled situations in which not all qualifying victims have presented applications for participation or reparations or have been identified [paras. 83-85 of the Registry Report]. Here, we would set out and explain the different frameworks that have been developed to a) proactively identify persons or communities that may qualify under specified conditions; and/or b) determine awards to benefit categories of unnamed persons or communities on the basis of the *cy-près* or related doctrines.
- How other courts and related claims bodies have dealt with the challenges of limited resources available for reparation [paras 86-87 of the Registry Report]. In particular, we propose to provide analysis of how other courts and related bodies have addressed the inadequacy of funds for full reparations in decisions as to the quantum and/or type of awards issued. As part of this analysis, we propose to provide information to the Court on whether, and if so how courts have ‘prioritised’ aspects of reparations, including when the sources for reparations come from locations other than the accused or other defendants determined to be responsible for the harm.

IV. The Applicant

9. REDRESS is an international nongovernmental organisation with a mandate to encourage accountability for those who perpetrate torture and related international crimes and to seek justice and reparation for victims of such crimes. It has over 20 years’ expertise in advocating for the rights of victims to gain both access to the courts and redress for their suffering, in over 50 countries.
10. REDRESS has extensive experience in directly representing victims as well as interventions before national and international courts and tribunals including, at the international level, the United Nations Committee against Torture, the United Nations Human Rights Committee, the European Court of Human Rights, the Inter-American Commission and Court on Human Rights, the African Commission on Human and Peoples’ Rights, the Special Court for Sierra Leone, and the Extraordinary Chambers

in the Courts of Cambodia. It has also intervened in proceedings before the International Criminal Court.⁸

11. REDRESS is regularly solicited for its expertise on reparations by governments, UN bodies, independent experts, civil society groups and courts. It has conducted in-depth research on reparations for victims of torture and other related international crimes,⁹ including in the African context.¹⁰ It has made substantive submissions relating to the right to reparation including to the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence¹¹; the Foreign and Commonwealth Office's Preventing Sexual Violence Initiative (PSVI)¹² and the Committee against Torture.¹³

V. The Application

12. Article 75(3) of the Statute provides that 'before making an order [for reparation] under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.'
13. Trial Chamber I in the *Lubanga* case ruled that organisations were not precluded from requesting to file submissions under Art 75(3) and that '[t]he central matter to be

⁸ *Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi* (Lawyers for Justice in Libya and Redress Trust's Observations pursuant to Rule 103 of the Rules of Procedure and Evidence), ICC-01/11-01/11-172, PTC I, 8 June 2012; *Prosecutor v Laurent Gbagbo* (Redress Trust Observations to Pre-Trial Chamber I of the International Criminal Court Pursuant to Rule 103 of the Rules of Procedure and Evidence) ICC-02/11-01/11-62, PTC I, 16 March 2012; *Prosecutor v Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen* (Amicus Curiae submitted pursuant to the Pre-Trial Chamber II "Decision on application for leave to submit observations under Rule 103" dated 5 November 2008), ICC-02/04-01/05-353, PTC II, 18 November 2009.

⁹ Carla Ferstman, Mariana Goetz and Alan Stephens (eds), *Reparations for Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making*, Martinus Nijhoff 2009; *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity. Systems in Place and Systems in the Making* (Conference Report- Peace Palace), September 2007.

¹⁰ *Reaching for Justice. The Right to Reparation in the African Human Rights System*, REDRESS, October 2013; *Right to Reparation for Survivors: Recommendations for Reparation for Survivors of the 1994 Genocide Against Tutsi*, IBUKA, the Survivors Fund (SURF) and REDRESS, October 2012.

¹¹ *Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations*, Submission to the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, REDRESS, July 2014.

¹² *What is reparation? Challenges and avenues to reparation for survivors of sexual violence*, Submission to the Foreign and Commonwealth Office's Preventing Sexual Violence Initiative, REDRESS, February, 2013.

¹³ *REDRESS submission on CAT draft General Comment on Article 14*, REDRESS, September 2011.

determined [...] is whether the Chamber will be assisted in its proper determination of the issues identified [...] by receiving submissions from the [organisations].'¹⁴

14. In the present case, Trial Chamber II has further indicated that submissions should focus on 'areas including 'the issues specifically addressed in the [Registry's] Report.'
15. As set out above, the Applicant's proposed submissions concern two aspects of the Registry's report: 'Factors Relating to the Appropriateness of Awarding Reparations on an Individual or Collective Basis' and 'Other Factors relevant to the types and modalities of reparations to be awarded'.
16. The Applicant's proposed submission would draw the Chamber's attention to international and domestic jurisprudence and practice relating to these aspects of the Registry's Report. We submit that such information would provide the Chamber with useful comparative practice of assistance to its determination of the issues in this case.
17. As detailed in the previous section, the Applicant has a unique expertise in relation to reparations for victims of crimes falling within the mandate of the Court. It has conducted research and activities in this field that are directly relevant to the issues it wishes to address in its submission and is thus well placed to assist the Chamber in relation to the issues identified above.

ACCORDINGLY, we respectfully requests that the Chamber grant leave to submit observations.



Carla Ferstman
Director, REDRESS

Dated 2 February 2015, At London, United Kingdom

¹⁴ Decision granting leave to make representations in the reparations proceedings, 20 April 2012, ICC-01/04-01/06-2870, at Para 17.