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No.: ICC-01/04-01/07
Date: **27 February 2015**

TRIAL CHAMBER II

Before: Judge Silvia Fernandez de Gurmendi, Presiding
Judge Christine van den Wyngaert
Judge Olga Herrera Carbuca

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

**IN THE CASE OF
THE PROSECUTOR v. GERMAIN KATANGA**

Public Redacted Version of :

Confidential

**Defence Observations on the Applications ICC-01/04-01/07-3517, ICC-01/04-01/07-3519,
ICC-01/04-01/07-3521 and ICC-01/04-01/07-3523 for leave to submit observations in
respect of reparations proceedings in the case of Germain Katanga**

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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Section

Ms Fiona McKay

Other

Mr Pieter de Baan, Executive Director
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INTRODUCTION

1. The defence for Germain Katanga (“defence”) hereby submits its observations in response to the applications made in respect of the reparation proceedings by the following four applicants:
 - Redress Trust (ICC-01/04-01/07-3517);
 - Queen’s University Belfast’s Human Rights Centre (“HRC”) and University of Ulster’s Transitional Justice Institute (“TJI”) (ICC-01/04-01/07-3519);
 - [REDACTED] (ICC-01/04-01/07-3521);
 - United Nations, on behalf of (ICC-01/04-01/07-3523):
 - (i) United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”);
 - (ii) Office of the High Commissioner for Human Rights (“OHCHR”);
 - (iii) United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”);
 - (iv) Ms Zainab Hawa Bangura, Special Representative of the United Nations Secretary-General on Sexual Violence in Conflict (“Special Representative”).

2. The defence has no particular objection to any of the applications and leaves it to the Chamber to determine whether the Chamber will be assisted by receiving the submissions.¹

3. The defence files these observations confidentially given that one of the applicants – [REDACTED] – filed its application confidentially requesting that its name and application not be disclosed to the public. The defence will file a public redacted version shortly.

¹ *Prosecutor v. Lubanga*, Decision granting leave to make representations in the reparations proceedings, 20 April 2012, ICC-01/04-01/06-2870, para. 17.

PROCEDURAL HISTORY

4. On 27 February 2014, with a view to commencing the reparation stage in the case, Trial Chamber II requested the Registry to reach out to the victims who qualify to participate in the reparation proceedings and to produce an updated report detailing the number of victims, the harm suffered, the crimes as a result of which they suffered and the types and modalities of the reparations requested.²
5. On 15 December 2014, the Registry filed a “Report on applications for reparations in accordance with Trial Chamber II Order of 27 August” (“Report”),³ a public redacted and confidential filing of which were filed on 21 January 2015.⁴
6. On 21 January 2015, the Chamber invited all interested States, or other interested persons, to apply for leave to file submissions pursuant to Article 75(3) of the Rome Statute on any areas addressed in the Report and set a deadline of 2 February 2015 to do so.⁵
7. On 2 February 2015, the Chamber extended the deadline to apply for leave to file submissions to 13 February 2015.⁶
8. On 2 February 2015, the Redress Trust submitted its *Application ... for leave to submit observations pursuant to Article 75 of the Statute*.⁷ In its Application, the Redress Trust submits that, given its extensive experience in directly representing victims and interventions before national and international courts, it could provide useful comparative practice assistance in how other courts have determined the

² Order instructing the Registry to report on applications for reparations, 27 August 2014, ICC-01/04-01/07-3508.

³ Report on applications for réparations in accordance with Trial Chamber II Order of 27 August, ICC-01/04-01/07-3512, with confidential *ex parte* annexes 1 to 3.

⁴ ICC-01/04-01/07-3512-Conf-Anx1-Red and ICC-01/04-01/07-3512-Anx1-Red2.

⁵ Scheduling order 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.

⁶ Order extending the deadline for interested States and other interested persons to apply for leave to file submissions pursuant to Article 75 of the Statute, 2 February 2015, ICC-01/04-01/07-3518. This was on a request from the Registry by email of 30th January 2015, requesting for an extension of the deadline in order for it provide a French translation of the Report and seek to reach out to local counterparts in the Democratic Republic of the Congo (« DRC »).

⁷ ICC-01/04-01/07-3517.

modalities of reparations and dealt with issues such as collective versus individual reparations.⁸

9. On 2 February 2015, the Queen's University Belfast's HRC and the University of Ulster's TJI submitted a *Request for leave to file submission on reparations issues pursuant to Article 75 of the Statute*.⁹ These institutions identify, as their specific areas of expertise, human rights, international criminal justice and transitional justice and seek to make observations on the procedural role of victims and the modalities of collective versus individual damages.¹⁰
10. On 12 February 2015, [REDACTED] filed its [REDACTED].¹¹ [REDACTED] applies on the basis that [REDACTED], which may enable it to facilitate contact and communicate with the victims, and provide useful information to the Chamber on different areas.¹² It emphasizes its experience in assisting victims of international crimes [REDACTED].¹³
11. On 13 February 2015, the United Nations lodged its *Application for leave to submit observations pursuant to Article 75 of the Statute*.¹⁴ The Application is based on the experience of the different UN offices in the region and in the field of reparations.¹⁵
12. By email on 17th February the Chamber directed the parties and participants to file any response to filings 3517, 3519, 3521 and 3523 by 16.00hs on 27 February 2015.

⁸ Ibid, paras. 10, 16.

⁹ ICC-01/04-01/07-3519.

¹⁰ Ibid, para. 4.

¹¹ ICC-01/04-01/07-3521.

¹² Ibid, para. 10.

¹³ Ibid, paras. 11, 14.

¹⁴ ICC-01/04-01/07-3523. The application was filed late and distributed on 16 February 2015.

¹⁵ Ibid, paras. 14-28.

OBSERVATIONS

13. Reparation proceedings are a new phenomenon in international criminal courts. The International Criminal Court is the first to incorporate such proceedings. The case of Germain Katanga is only the second case to reach the stage of reparations and the Appeals Chamber's judgment on reparations in the first case is still pending.¹⁶ Accordingly, the Court is still searching for the most appropriate modalities to be applied in each case. Although such modalities cannot be determined in the abstract, but must be case-specific, the Court may benefit from receiving views from persons or organizations with expertise in the field of reparations in post-conflict areas.
14. With these considerations in mind, the defence does not have an objection in principle to the applications. No person or organization that can make a useful contribution to the process should be excluded. This corresponds with the standard that was applied in the Lubanga case: "The central matter to be determined [...] is whether the Chamber will be assisted in its proper determination of the issues identified [...] by receiving submissions from the [organizations]."¹⁷
15. In Lubanga, all applicants were allowed to make submissions as the Chamber considered they were "in a position to supply information and assistance that will be of direct relevance to issues related to reparations that otherwise will not be available to the Court, or would be costly and time consuming to secure".¹⁸ An important consideration was that the organizations had "worked in the field and particularly in the DRC, in relation to issues that are relevant to the present case. They have cooperated closely with the ICC, including the DRC, and in some instances in judicial proceedings (as is the case with Avocats sans Frontieres)."¹⁹

¹⁶ The judgment will be issued in public on 3 March 2015. See *Prosecutor v. Lubanga*, Scheduling Order for the delivery of the judgment on the appeals against the decision of Trial Chamber I entitled « Decision establishing the principles and procedures to be applied to reparations » of 7 August 2012, 24 February 2015, ICC-01/04-01/06-3127.

¹⁷ *Prosecutor v. Lubanga*, Decision granting leave to make representations in the reparations proceedings, 20 April 2012, ICC-01/04-01/06-2870, para. 17.

¹⁸ Ibid, para. 19.

¹⁹ Ibid, para. 18.

16. The applicants all possess expertise – although some more academic than practical. The defence refers, in particular, to the Queen’s University Belfast’s HRC and the University of Ulster’s TJI. Whilst these institutions have experience in conducting academic research in the field of human rights and victim reparations, nothing in their application suggests that they have practical experience in the field. It is questionable whether, at this stage of the proceedings, the Chamber is assisted by academic submissions on victim reparations. This is no academic exercise and specific case and/or region-related experience is required in order to present workable modalities. The defence does not object to their making submissions, if the Chamber takes the view that it may be assisted by them.
17. From the face of its application, it would appear that Redress Trust has more experience of a practical nature. Whilst Redress Trust appears not to have dealt with the DRC specifically, it has represented victims before courts in post-conflict situations. As such, the Chamber may be assisted by their expertise.
18. The submissions from [REDACTED] and the UN may be of particular assistance, as they have expertise of the region and can be helpful in many ways.
19. Some general questions about the scope of the reparations arose from the applications, most notably whether they should include victims of crimes other than those for which Mr. Katanga has been convicted. The defence submits that this is a very pertinent question and one for which it has a keen interest in exchanging views. It therefore particularly welcomes any observations about the scope of the reparations.

CONCLUSION

20. For the reasons explained above, the defence does not object in principle to the applications and respectfully considers it to be a matter for the Chamber in light of the extent to which it may be assisted by them.

Respectfully submitted,



David Hooper Q.C.

Dated this 27th of February 2015,
London.