

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **1 April 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***

Confidential

Order granting leave to file representations pursuant to article 75(3) of the Statute

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

Mr Andreas O'Shea

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 Fiona McKay

Other

Mr Pieter de Baan (Trust Fund for
Victims)

*Ligue pour la paix, les droits de l'homme et la
justice* (LIPADHO)

TRIAL CHAMBER II ("the Chamber") 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 ("the Statute") and rule 103 of the Rules of Procedure and Evidence ("the Rules"), hereby issues an "Order granting leave to file representations pursuant to article 75(3) of the Statute".

Procedural background

1. On 7 March 2014, the Chamber, by majority, handed down judgment pursuant to article 74 of the Statute ("the Decision of Conviction").¹
2. On 9 April 2014, pursuant to rule 150(1) of the Rules of Procedure and Evidence ("the Rules"), the Prosecution and the Defence gave notice of appeal against the Decision of Conviction.²
3. On 23 May 2014, the Chamber, also by majority, passed sentence in accordance with article 76 of the Statute ("the Sentencing Decision"), imposing 12 years of imprisonment on Germain Katanga.³
4. On 25 June 2014, the Defence team for Germain Katanga ("the Defence") and the Officer of the Prosecutor ("the Prosecution") each informed the Chamber of their discontinuance of appeal against the Decision of Conviction.⁴ In so doing, the Defence also made known that it would not appeal the Sentencing Decision.

¹ "Judgment pursuant to article 74 of the Statute", 7 March 2014, ICC-01/04-01/07-3436-tENG and Judge Christine Van den Wyngaert's minority opinion, ICC-01/04-01/07-3436-Anx1.

² "Prosecution's Appeal against Trial Chamber II's '*Jugement rendu en application de l'article 74 du Statut*'", 9 April 2014, ICC-01/04-01/07-3462; "Defence Notice of Appeal against the decision of conviction '*Jugement rendu en application de l'article 74 du Statut*' rendered by Trial Chamber II, 7th March 2014", 9 April 2014, ICC-01/04-01/07-3459.

³ "*Décision relative à la peine (article 76 du Statut)*", 23 May 2014, ICC-01/04-01/07-3484 and "Dissenting opinion of Judge Christine Van den Wyngaert", 24 May 2014, ICC-01/04-01/07-3484-Anx1.

⁴ "Defence Notice of Discontinuance of Appeal against the '*Jugement rendu en application de l'article 74 du Statut*' rendered by Trial Chamber II on 7 April 2014", 25 June 2014, ICC-01/04-01/07-3497 and

5. On 27 August 2014, the Chamber directed the Registry to contact the victims who had applied for participation and/or reparations for further, updated information on the harm suffered and the reparations sought, and to submit a report on the matter.⁵
6. On 15 December 2014, the Registry submitted its report, which stated, *inter alia*, that, in close consultation and cooperation with the Legal Representative, 305 of the 365 victims had been interviewed (“the Report”).⁶
7. By order of 21 January 2015, the Chamber invited applications for leave to file representations pursuant to article 75(3) of the Statute as part of the reparations proceedings.⁷
8. On 2 February 2015, the Redress Trust sought leave to participate, stating its intention to address, among other matters, “[f]actors relating to the appropriateness of awarding reparation on a collective or individual basis” and

public annex; “Notice of Discontinuance of the Prosecution’s Appeal against the Article 74 Judgment of Conviction of Trial Chamber II dated 7 March 2014 in relation to Germain Katanga”, 25 June 2014, ICC-01/04-01/07-3498.

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

⁶ “Registry Report on Applications for Reparations in accordance with Trial Chamber II’s Order of 27 August 2014”, 15 December 2014, ICC-01/04-01/07-3512 including one confidential annex and two confidential annexes, *ex parte* Registry, Legal Representative and Trust Fund for Victims. A confidential redacted version and a public redacted version of Annex 1 were notified on 21 January 2015 (ICC-01/04-01/07-3512-Conf-Anx1-Red and ICC-01/04-01/07-3512-Anx1-Red2). The following French translations of Annex 1 were also notified: the confidential, *ex parte* version on 6 February 2015, the confidential version on 23 February 2015 and the public version on 6 February 2015 (ICC-01/04-01/07-3512-Conf-Exp-Anx1-tFRA, ICC-01/04-01/07-3512-Conf-Anx1-tFRA-Red2 and ICC-01/04-01/07-3512-Anx1-tFRA-Red). A confidential, redacted version of Annex 2 was notified on 31 March 2015 (ICC-01/04-01/07-3512-Conf-Anx2-Corr-Red).

⁷ “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. See also “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.

“other Factors relevant to the types and modalities of reparations to be awarded”.⁸

9. Also on 2 February 2015, Queen’s University Belfast’s Human Rights Centre and University of Ulster’s Transitional Justice Institute sought leave of the Chamber to file representations, *inter alia*, on “the procedural role of victims in the reparation process and implementation”, “how compensation can be a means of symbolic acknowledgement” and “how acknowledgment of responsibility and apology by the convicted person can be facilitated to be more sensitive to victims’ needs”.⁹
10. On 12 February 2015, the *Ligue pour la Paix, les Droits de l’Homme et la Justice* [League for Peace, Human Rights and Justice] (LIPADHOJ) (“the NGO”) applied to file representations on the award of reparations to the victims of those crimes established at trial but of which Mr Katanga was not convicted and the appropriate modalities for reparations to child-soldier victims.¹⁰
11. On 13 February 2015, the United Nations also sought leave of the Chamber to file representations on “the form of reparations that should be granted”, “the principles to be applied”, “[TRANSLATION] the principles applicable to reparations and “[the] [p]ossible impact of the implementation of the ICC reparation programme on domestic reparations/peace and reconciliation process/fight against impunity in DRC.”¹¹

⁸ “Application by the Redress Trust for leave to submit observations pursuant to Article 75 of the Statute”, 2 February 2015, ICC-01/04-01/07-3517.

⁹ “Request for leave to file submissions on reparations issues pursuant to Article 75 of the Statute”, 2 February 2015, ICC-01/04-01/07-3519.

¹⁰ “Demande de la Ligue pour la Paix, les Droits de l’Homme et la Justice (LIPADHOJ) en vue de présenter des observations en vertu de l’article 75 du Statut”, 12 February 2015 (notified on 13 February 2015), ICC-01/04-01/07-3521-Conf.

¹¹ “Application by the United Nations for leave to submit observations pursuant to Article 75 of the Statute”, 13 February 2015 (notified on 16 February 2015), ICC-01/04-01/07-3523.

12. On 27 February 2015, in compliance with the instructions of the Chamber reducing the time for response,¹² the Defence¹³ and the Legal Representative¹⁴ filed representations on the four aforementioned applications ("the Applications") and stated that they had no objection to their participation.

II. Analysis

13. The Chamber recalls that it received notice of four applications for leave to file representations pursuant to article 75(3) of the Statute from the Redress Trust, Queen's University Belfast's Human Rights Centre and University of Ulster's Transitional Justice Institute, the NGO and the United Nations ("the Applicants").

14. The Chamber notes that the Applicants all possess expertise in areas relevant to the matter at bar. For example, the NGO and the United Nations (thanks, above all, to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo) have extensive field experience involving close cooperation with the affected communities in Ituri. Of further note is that the Redress Trust specialises in seeking justice and reparations at both national and international levels.

15. The Chamber also notes that the Applicants intend to respond to issues inherently connected to the particularities of the instant case and to address subjects discussed by the victims in the consultations which culminated in the filing of the Report.

¹² E-mail from a Legal Officer of the Chamber to the parties and participants, 17 February 2015, 10.21.

¹³ "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", 27 February 2015, ICC-01/04-01/07-3525-Conf. A public redacted version was notified on 27 February 2015 (ICC-01/04-01/07-3525-Red).

¹⁴ "Observations du Représentant légal des victimes sur les demandes d'autorisation à déposer des observations des Organisations intéressées, en vertu de l'Article 75 du Statut", 27 February 2015, ICC-01/04-01/07-3524-Conf. A public redacted version was notified on 27 February 2015 (ICC-01/04-01/07-3524-Red).

16. The Chamber is of the view that the filing of representations is in the interests of the administration of justice and accordingly invites representations from the Applicants by 30 April 2015.
17. The Chamber further invites the parties and participants to respond to such representations by 29 May 2015, should they so wish.

FOR THESE REASONS, TRIAL CHAMBER II

GRANTS the Applications;

AUTHORISES the participation of the Redress Trust; Queen's University Belfast's Human Rights Centre and University of Ulster's Transitional Justice Institute; the NGO; and the United Nations and **INVITES** representations no longer than 50 pages from them, by 4 p.m. on 30 April 2015; and

ORDERS the parties and participants to file any consolidated response to the representations – no longer than 50 pages – by 4 p.m. on 29 May 2015.

Done in both 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 1 April 2015
At The Hague, The Netherlands