

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: ICC-01/04-01/07
Date: **1 September 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 “Defence Request for the Disclosure of Unredacted or Less
Redacted Victim Applications”**

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
Ms Caroline Buisman

Legal Representatives 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**

Other

Ms Fiona McKay

TRIAL CHAMBER II (“the Chamber”) of the International Criminal Court (“the Court”), pursuant to articles 68(1) and 75 of the Rome Statute, rules 87 and 94 of the Rules of Procedure and Evidence (“the Rules”) and regulation 88 of the Regulations of the Court (“the Regulations”), issues the following decision.

I. Procedural History

1. On 8 May 2015, the Chamber ordered the common legal representative of victims (“the Legal Representative”), in consultation with the Registry, to consolidate and file, by 1 October 2015, all the applications to participate in the proceedings and/or reparations initially submitted by the victims admitted to participate in the proceedings, 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; ordered the Registry to submit to the Chamber and to the parties a redacted version of any other application for reparations made by victims yet to make themselves known, also including – where possible – documentation in support of their applications; and ordered the Legal Representative to represent any victim who might subsequently come to be identified¹ (“the Consolidated Document”).
2. On 22 May 2015, the Defence team for Germain Katanga (“the Defence” and “Mr Katanga”, respectively) filed a request for the disclosure of the applications to participate in the proceedings and/or reparations submitted by victims admitted to participate in the proceedings and already notified, as well as unredacted or less redacted versions of any new applications for reparations² (“the Request”).

¹ “*Décision sur la demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve et étapes ultérieures de la procédure*”, 8 May 2015, ICC-01/04-01/07-3546, pp. 9-10 (“the Decision of 8 May 2015”).

² “Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications”, 22 May 2015, ICC-01/04-01/07-3557-Conf, paras. 1, 23-25. A redacted public version was filed on the same day (ICC-01/04-01/07-3557-Red).

3. In the view of the Defence, certain redactions, such as (a) the identity of intermediaries who assisted victims in filling out the application forms for participating in the proceedings and/or reparations, (b) the identity of the person(s) killed and their link with the victim, and (c) a number of other details contained in accounts of the attack on Bogoro of 24 February 2003 (“the Bogoro attack”) and of the harm suffered by victims, were no longer justified in the current circumstances.³ The Defence recalled that the identities of these victims had already been disclosed to it with no demonstrable impact on their security.⁴
4. The Defence submitted that access to unredacted or less redacted versions of applications to participate in the proceedings and/or reparations was essential for the proper exercise of its rights, in particular, to test the credibility of the victims and to assess the extent of the prejudice of the victims.⁵ The Defence argued that it was particularly important in the light of the Appeals Chamber’s determination that the convicted person could be held personally liable for the harm suffered by victims⁶ and given that a low standard of proof had been applied to determine whether victims qualified to participate in the proceedings as victims.⁷ Lastly, the Defence recalled that false or unreliable testimonies had already been made in the *Katanga* proceedings.⁸
5. On 11 June 2015, the Legal Representative filed his response to the Request.⁹ The Legal Representative submitted that, in order to safeguard the rights of the Defence, he did not object to a new assessment of the need to maintain certain redactions that had initially been authorised to protect the victims.¹⁰ However, he considered that any lifting of redactions must apply only to the material

³ *Ibid.*, paras. 10 and 12.

⁴ *Ibid.*, para. 13.

⁵ *Ibid.*, paras. 14 and 21-22.

⁶ *Ibid.*, para. 20.

⁷ *Ibid.*, para. 21.

⁸ *Ibid.*, paras. 15-17.

⁹ “Réponse des victimes à la demande de la Défense intitulée ‘Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications’ (ICC-01/04-01/07-3557-Conf)”, 11 June 2015, ICC-01/04-01/07-3561-Conf (“the Response”).

¹⁰ *Ibid.*, para. 12.

submitted by the victims in support of their applications for reparations¹¹ and therefore that the disclosure of supplementary information “[TRANSLATION] must be actually and strictly related to the application for reparations and therefore to the harm suffered and the causal link”.¹²

6. On 31 July 2015, in accordance with the Chamber’s instructions,¹³ the Victims Participation and Reparations Section (“VPRS”) filed submissions¹⁴ in which it pointed out that, in view of his special position in relation to the victims, the Legal Representative is responsible for “[TRANSLATION] determining the scope and extent of the redactions to be lifted”.¹⁵

II. ANALYSIS

7. The Chamber notes that in the Request the Defence requested the lifting of redactions relating to three types of information. The Chamber examines each of them below.

a. The identity of intermediaries

8. The Defence requested the disclosure of the identity of intermediaries who assisted victims in filling out the application forms for participating in the proceedings and/or reparations in order to ensure that victims’ accounts had not been distorted or influenced by these intermediaries.¹⁶
9. In support of its request, the Defence recalled that, in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I had authorised the disclosure of the identities of certain intermediaries after noting that their security would not be

¹¹ *Ibid.*, para. 13.

¹² *Ibid.*, para. 12.

¹³ In an e-mail sent at 3.50 p.m. on 10 July 2015, the Chamber invited VPRS to file submissions by 31 July 2015.

¹⁴ “*Observations du Greffe sur la Requête de la Défense intitulée ‘Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications’* (ICC-01/04-01/07-3557-Conf)”, 31 July 2015, registered on 3 August 2015, ICC-01/04-01/07-3571-Conf (“the Observations”).

¹⁵ *Ibid.*, para. 1.

¹⁶ Request, paras. 10 and 18-19.

put at risk.¹⁷ Furthermore, the Defence submitted that, in the same case, certain intermediaries had been found to have influenced victims and encouraged them to testify falsely.¹⁸

10. The Legal Representative objected, maintaining that information on the identities of intermediaries was not relevant to Mr Katanga's review of the merits of applications for reparations.¹⁹

11. Moreover, the Legal Representative submitted that the responses given by the victims, "[TRANSLATED] however illiterate or unfamiliar" they may be with proceedings of this kind, were "[TRANSLATED] formalised by a single person following a pattern that may seem repetitive but reflects the victims' reality without in any way affecting the validity of the information received".²⁰

12. VPRS submitted that names and any other information that allows intermediaries to be identified must remain (or be) redacted in order both to protect intermediaries and victims, in accordance with article 68(1) of the Statute, and to avoid hampering the work of VPRS on the ground.²¹ With regard to allegations that accounts had been distorted or influenced by intermediaries, VPRS upheld the Legal Representative's analysis.²²

13. The Chamber notes that, in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I ordered the lifting of redactions relating to the identities of intermediaries because irregularities had been found in the identities and testimonies of certain victims.²³ Trial Chamber I was of the view that this information was required by the defence team of Thomas Lubanga Dyilo in order

¹⁷ *Ibid.*, para. 18, referring to *The Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the disclosure of information from victims' application forms (a/0225/06, a/0229/06 and a/0270/07)", 15 October 2010, ICC-01/04-01/06-2586-Conf-Exp, para. 41. A public redacted version was filed on 4 February 2011 (ICC-01/04-01/06-2586).

¹⁸ *Ibid.*, paras. 18-20.

¹⁹ Response, paras. 17-23 and 27.

²⁰ *Ibid.*, para. 23.

²¹ Observations, paras. 5-7, 9 and 13.

²² *Ibid.*, para. 8.

²³ *The Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the disclosure of information from victims' application forms (a/0225/06, a/0229/06 and a/0270/07)", 15 October 2010, ICC-01/04-01/06-2586-Conf-Exp, para. 4.

to shed light on these irregularities.²⁴ Moreover, Trial Chamber I was of the view that the disclosure of this information did not constitute a material risk to the security of intermediaries.²⁵

14. The Chamber notes that, in this case, no irregularity affecting the applications for reparations has been brought to its attention. Furthermore, the Chamber notes the observations made by VPRS that identifying victims could, on the one hand, put at risk the security not only of intermediaries but also of the victims with whom they are in contact and, on the other hand, hamper the work of VPRS on the ground.

15. In this regard, the Chamber considers that redactions relating to the identities of intermediaries must be maintained. However, should the situation change, the Chamber will reconsider this aspect of the Request.

b. The identity of the person(s) killed and their link with the victim

16. The Defence requested the disclosure of the identity of the person(s) killed and the nature of the link between the victim applicant and the person(s) killed cited in support of the application for reparations.²⁶

17. The Legal Representative submitted that

[TRANSLATION] information concerning the victim's family ties [...] is relevant to the Defence only insofar as it allows the applicant's indirect victim status to be established and therefore the link with the direct victim of the crimes for which [Mr] Katanga has been convicted.²⁷

18. VPRS supported the possible lifting of redactions relating to the above-mentioned information

[TRANSLATION] insofar as this information makes it possible [...] to substantiate the nature of the links between the victim and deceased members of his or her family and [...] is needed to justify the applicant's "indirect victim" status.²⁸

²⁴ See, for example, *ibid.*, paras. 33, 37, 38, 42 and 45.

²⁵ See, for example, *ibid.*, paras. 34, 41 and 48.

²⁶ Request, para. 10.

²⁷ Response, para. 15.

²⁸ Observations, para. 10.

19. The Chamber notes that the above-mentioned information may indeed be necessary for the Defence to verify the indirect victim status of the victim applicant. The Chamber also notes that the Legal Representative and the VPRS both consented. Consequently, the Chamber authorises the lifting of redactions relating to the identity of the person(s) killed and their link with the victim.

c. Information concerning the description of the Bogoro attack and the harm suffered by victims

20. The Defence requested the lifting of redactions relating to certain details contained in the description of the Bogoro attack and of the harm allegedly suffered by the victims.²⁹ The Defence did not object to the maintaining of redactions concerning the victims' current place of residence.³⁰

21. The Legal Representative submitted that

[TRANSLATION] information such as the complete and accurate description of the losses suffered during the [Bogoro] attack and anything linking [...] the [alleged] harm suffered by the victim to the attack [...] may be made known to the Defence to allow it to assess the merits of the application for reparations.³¹

22. VPRS, in agreement with the Legal Representative, considered that all previously redacted information that is directly related to the reparations proceedings and that might be relevant to Mr Katanga's review of the merits of the applications for reparations, "[TRANSLATION] such as the description of losses suffered and linked to the alleged harm", must be disclosed to him.³²

23. Finally, the Legal Representative and VPRS submitted that any other information falling outside the above-mentioned framework must remain redacted for reasons of safety, well-being and privacy within the meaning of article 68(1) of the Statute.³³

24. The Chamber notes that certain details included by the victims in their description of the Bogoro attack and of the harm suffered may prove useful in

²⁹ Request, para. 10.

³⁰ *Ibid.*, para. 26.

³¹ Response, para. 14. See also, Response, para. 19.

³² Observations, para. 11.

³³ Response, para. 15; Observations, para. 10.

allowing the Defence to test the credibility of victims and assess the extent of the alleged harm. Finally, the Chamber notes that the Legal Representative and VPRS raised no objection. Consequently, the Chamber authorises the lifting of redactions that are strictly related to the description of the Bogoro attack, the harm suffered, and the link between this harm and the crimes for which Mr Katanga has been convicted.

d. New applications for reparations

25. In the Decision of 8 May 2015, the Chamber instructed the Registry to transmit to the Chamber and to the parties a redacted version of any application for reparations yet to be made known.³⁴

26. The Chamber hereby orders the Registry to apply the instructions set out above to any new application for reparations.

e. Observations of the Defence

27. In the Decision of 8 May 2015, the Chamber informed the parties that it would rule on the awarding of reparations on the basis of the Consolidated Document, having taken into consideration the observations of the Defence.³⁵

28. Consequently, the Chamber informs the Defence that it will be able to file submissions on the Consolidated Document within one month of its being filed.

³⁴ Decision of 8 May 2015, para. 19 and p. 10.

³⁵ *Ibid.*, para. 21.

FOR THESE REASONS, THE CHAMBER,

GRANTS the Request in part and;

ORDERS the Registrar to transmit to the Chamber and to the Defence, on 1 October 2015, the Consolidated Document containing the applications to participate in the proceedings and/or reparations as well as less redacted versions of any relevant supporting material, as set down in paragraphs 15, 19 and 24;

ORDERS the Registrar to apply the instructions presented in paragraphs 15, 19 and 24 to any new application for reparations included in the Consolidated Document;

INSTRUCTS the Defence to file submissions on the Consolidated Document by 1 November 2015.

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 1 September 2015,

At The Hague, the Netherlands