

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 18 September 2015

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE REVIEW  
CONCERNING REDUCTION OF THE SENTENCE**

**Before:** Judge Piotr Hofmański, Presiding Judge  
Judge Sanji Mmasenono Monageng  
Judge Christine Van den Wyngaert

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

**Public**

With confidential *ex parte* Annex A available only to the Legal Representative, confidential redacted Annex A1, public redacted Annex A2 and public Annex B

**Legal Representative's observations on the reduction of sentence of  
Germain Katanga**

**Source:** Legal Representative of Victims

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

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**Victims Participation and Reparations  
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## I. PROCEDURAL HISTORY

1. By a decision of 3 August 2015, the Appeals Chamber appointed, from its midst, three judges to conduct the review concerning the reduction of Germain Katanga's sentence pursuant to article 110 of the Statute and rule 224(1) of the Rules of Procedure and Evidence.<sup>1</sup>
2. On 13 August 2015, the panel of three judges issued an Order scheduling a hearing for 6 October 2015 and instructed the Defence, the Prosecution and the Legal Representative to file, by 11 September 2015, their submissions on the criteria set out in article 110(4) of the Statute and rule 223 of the Rules of Procedure and Evidence.<sup>2</sup>
3. On 26 August 2015, the Prosecution submitted an urgent request to the panel of three judges of the Appeals Chamber to modify the schedule for the filing of its submissions.<sup>3</sup> It asked to be allowed to file them after the Defence had filed its submissions so that it could respond to them. On 27 August 2015, the Legal Representative added his voice to this request and asked for the schedule to be modified in the same way to accommodate him.<sup>4</sup>
4. On 31 August 2015, the panel of three judges of the Appeals Chamber granted the requests in part and issued a decision by which it instructed the Prosecution and the Legal Representative to file their submissions by 18 September 2015.<sup>5</sup>
5. On 4 September 2015, the Registry filed its observations on the criteria set out in rule 223 of the Rules of Procedure and Evidence.<sup>6</sup>
6. On 11 September 2015, the Defence filed its observations on the reduction of sentence of Mr Germain Katanga.<sup>7</sup>

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<sup>1</sup> "Decision appointing three judges of the Appeals Chamber for the review concerning reduction of sentence of Germain Katanga", ICC-01/04-01/07-3572.

<sup>2</sup> "Scheduling order for the review concerning reduction of sentence of Mr Germain Katanga", ICC-01/04-01/07-3574.

<sup>3</sup> "Prosecution's urgent request to modify the schedule for written submissions for Germain Katanga's sentence review", ICC-01/04-01/07-3575.

<sup>4</sup> "*Requête urgente du Représentant légal en modification des délais pour soumettre ses observations sur la réduction de peine de Germain Katanga*", ICC-01/04-01/07-3577.

<sup>5</sup> "Decision on the requests to modify the schedule for written submissions", ICC-01/04-01/07-3581.

<sup>6</sup> "Registrar's Observations on the criteria set out in rule 223 of the Rules of Procedure and Evidence", ICC-01/04-01/07-3584.

7. Under regulation 23*bis* of the Regulations of the Court, Annex A is filed confidentially and *ex parte*, available only to the Legal Representative. Annex A1 is the confidential redacted version of Annex A. This document contains information identifying new applicants, whose applications for reparations will subsequently be filed before Trial Chamber II. In accordance with the jurisprudence of the Court, victims' identities cannot be disclosed to the parties until after their applications have been admitted by the Chamber. Annex A2 is the public redacted version of Annex A. Lastly, Annex B is a public filing.

## II. PRELIMINARY MATTER: THE COMPOSITION OF THE PANEL OF THREE JUDGES OF THE APPEALS CHAMBER

8. The Legal Representative wishes to give voice to the victims whom he represents. The victims in question expressed great surprise when they were informed of the composition of the panel of three judges of the Appeals Chamber responsible for ruling on the reduction of the sentence of G. Katanga.

9. Informed of the strongly dissenting opinions of Judge Van den Wyngaert, both in the judgment pursuant to article 74 of the Statute and in the decision on the sentence imposed on G. Katanga, the victims found it hard to understand the Appeals Chamber's choice regarding the composition of the panel.

10. Given the distinct nature of proceedings under article 110 of the Statute and of the issue being brought before the panel for review, the Legal Representative shares the victims' surprise. In this regard he also notes the findings of the Plenary of Judges in their decision on the Defence application for the disqualification of Judge

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<sup>7</sup> "Defence Observations on the reduction of sentence of Mr Germain Katanga", ICC-01/04-01/07-3594.

Silvia Fernández de Gurmendi from the case of *The Prosecutor v. Thomas Lubanga Dyilo*.<sup>8</sup>

11. It should be recalled that the decision first stipulated that:

The Majority acknowledged that the article 110 proceedings were part of a single case but distinguished between proceedings dealing with attribution of responsibility (i.e. conviction and sentence) and sentence review.<sup>9</sup>

It indicated in this regard that the prior participation of a judge in the case was not in itself a reason to exclude him or her from all participation in sentence review proceedings. It then considered the distinct nature of article 110 proceedings before dismissing the application for disqualification in this particular case, taking into account the fact that, in view of the distinct nature of the proceedings, the functions previously performed by Judge Silvia Fernández de Gurmendi did not prevent her from ruling on the reduction of sentence. In the case at hand, however, the Plenary's analysis of the distinct nature of article 110 proceedings militates against the participation of Judge Van den Wyngaert in these proceedings.

12. The Majority considered, in particular, the facts and circumstances that a judge assigned to a sentence reduction review panel must analyse. It stated that:

The Majority observed that article 110 proceedings require an assessment of facts and circumstances, such as the person's conduct in prison and recognition of his criminal responsibility, that largely arise following conviction and sentence [emphasis added].<sup>10</sup>

13. In her dissenting opinion on the judgment, issued on 7 March 2014, Judge Van den Wyngaert stated that she was in complete disagreement with the sentence imposed on Mr Germain Katanga.<sup>11</sup> In the opinion, she argued that:

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<sup>8</sup> "Decision of the Plenary of Judges on the Defence Application for the Disqualification of Judge Silvia Fernández de Gurmendi from the case of *The Prosecutor v. Thomas Lubanga Dyilo*", 4 August 2015, ICC-01/04-01/06-3154-AnxI.

<sup>9</sup> *Ibid.*, para. 36.

<sup>10</sup> *Idem.*

<sup>11</sup> "Minority opinion of Judge Christine Van den Wyngaert", 7 March 2014, ICC-01/04-01/07-3436-AnxI.

The Bogoro attack of 24 February 2003 was not an attack directed against a civilian population and the alleged existence of a group of Ngiti commanders/combatants acting with the criminal purpose to attack Hema civilians and to which Germain Katanga allegedly contributed is not sustained by the evidence.<sup>12</sup>

14. In her dissenting opinion on the decision on sentence, issued on 23 May 2014, she effectively kept out of the discussion on the sentence and stated that she could not agree with the sentence imposed by the Majority.<sup>13</sup> She also distanced herself from the Chamber's decision in her assertion that the time between Germain Katanga's arrest by the Congolese authorities and the notification of the warrant of arrest by the Court should have been deducted from the sentence imposed by the Chamber on G. Katanga.<sup>14</sup>

15. In these conditions, the Legal Representative believes that victims are entitled to express their concerns as Judge Van den Wyngaert has now been asked to rule on a reduction of sentence of G. Katanga.

16. The Legal Representative considers it important that he should speak out on behalf of his clients, whose concerns he shares, echoing the considerations of the Court in its previous decisions on applications for disqualification. The Plenary of Judges has consistently considered that the applicant need not establish any actual bias on the part of the judge concerned. The *appearance* of grounds to doubt the judge's impartiality may be sufficient, in which case, in the words of the Plenary, the relevant standard of assessment is whether "the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias in the judge".<sup>15</sup>

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<sup>12</sup> *Ibid.*, para. 289.

<sup>13</sup> "Dissenting opinion of Judge Christine Van den Wyngaert", 23 May 2014, ICC-01/04-01/07-3484-Anx1, para. 1: "Considering that I disagree with the conviction of Germain Katanga, both from a procedural and from a substantive point of view, I also distance myself from the sentence being imposed by the Majority" [footnote omitted].

<sup>14</sup> *Ibid.*, paras. 2 *et seq.*

<sup>15</sup> "Annex to the Notification of the decision on the 'Defence Request for the Disqualification of a Judge'", 5 June 2012, ICC-02/05-03/09-344-Anx, paras. 11 and 13; "Annex: Notification of the decision on the Defence Application for the disqualification of Judge Sang-Hyun Song from the case of *The Prosecutor v. Thomas Lubanga Dyilo*", 12 June 2013, ICC-01/04-01/06-3040-Anx, para. 9; "Decision of the Plenary of Judges on the Application of the Legal Representative for Victims for the disqualification of Judge Christine Van den Wyngaert from the case of *The Prosecutor v. Germain Katanga*", 22 July 2014, ICC-01/04-01/07-3504-Anx; "Annex I: Notification of the Decision of the

17. In this case a reasonable, properly informed observer could not but have legitimate doubts about Judge Van den Wyngaert's ability to reach an impartial decision on the reduction of sentence of G. Katanga. However, the Legal Representative does not intend to make a request for disqualification in this case. He simply wishes to convey to the Court a concern which he believes to be wholly legitimate and whose significance for the victims must not be underestimated, given that they are being called on to submit their observations on proceedings whose outcome directly concerns them.

### III. APPLICABLE LAW – ANALYSIS OF THE CRITERIA SET OUT IN ARTICLE 110(4) AND RULE 223

#### General considerations:

18. The Legal Representative first wishes to emphasise the distinction to be established between the procedure before international criminal tribunals and that which applies before the Court with regard to early release.

19. Before the Court, early release is governed by the Statute and not by national legislations, as is the case before the ad hoc tribunals.<sup>16</sup> The main consequence of this difference is that, contrary to the provisions of most national systems, a decision to reduce a sentence on the basis of article 110 of the Statute is irreversible and final. Measures such as pardons and commutations of sentence were discussed during the preparatory works of the Rome Statute and are applied in the ad hoc tribunals but were removed from the final text of the Statute.

20. Owing to the distinct nature of the proceedings before the Court, extreme caution is required when making comparisons with the jurisprudence of the ad hoc tribunals. More specifically, the argument that sentenced persons are generally

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Plenary of Judges on the Defence Application for the Disqualification of Judge Silvia Fernández de Gurmendi from the case of *The Prosecutor v. Thomas Lubanga Dyilo*", 3 August 2015, ICC-01/04-01/06-3154-Anx, para. 28.

<sup>16</sup> Article 28 of the Statute of the International Criminal Tribunal for the former Yugoslavia; article 27 of the Statute of the International Criminal Tribunal for Rwanda.

released by the ad hoc tribunals when they have served two thirds of their sentence is not relevant here. According to the legal work cited by the Defence, one of the main justifications for early release is the suitability of the prisoner for social rehabilitation, which can take place very shortly after the sentence begins.<sup>17</sup> This is especially true in the case of international crimes. However, the same work goes on to emphasise the importance of the message conveyed by international criminal justice and the need to avoid betraying that message by granting a release merely on the basis of capacity for resocialisation. Neither the victims nor the public would understand this justice if convicted persons did not have to serve most, if not all, of their sentence.<sup>18</sup>

21. The sentence review proceedings before the Court are precisely and circumstantially governed by the Statute and the Rules of Procedure and Evidence. They therefore provide for the possibility that a sentence may be reviewed when two thirds of that sentence has been served, provided that the criteria set out in article 110(4) have been demonstrated. Any notion that release may be granted automatically when two thirds of a sentence have been served must therefore be dismissed. While it is up to the panel of three judges to review the sentence after two thirds of the sentence have been served, at the same time it is up to G. Katanga to demonstrate that all of the criteria set out in article 110(4) have been satisfied.

### Examination of the criteria set out in article 110(4) and rule 223

#### (1) Articles 110(4)(a) and 110(4)(b)

22. The Legal Representative contests the Defence's interpretation of the criteria set out in article 110(4)(a) (cooperation with the Court) and article 110(4)(b) (facilitation of the enforcement of the judgments and orders of the Court).

23. The importance of these criteria must not be played down, as the Defence apparently wishes to do. Moreover, the Defence wrongly holds that these

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<sup>17</sup> William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, 2nd ed. (Oxford University Press 2013), p. 1102, cited by the Defence, ICC-01/04-01/07-3594, para. 6.

<sup>18</sup> *Ibid.*

circumstances should be taken into account when the sentence is determined but should play only a limited role in the review of its reduction.

(2) The criteria set out in article 110(4)(c) and rule 223

24. Article 110(4)(c) refers to the existence of other factors establishing a “clear and significant change of circumstances sufficient to justify the reduction of sentence”. This significant change must be established by demonstrating the criteria set out in rule 223.

25. The Legal Representative essentially wishes to address rule 223(c) and (d). These provisions concern, respectively, the risk of significant social instability arising from the early release (rule 223(c)) and any significant action taken by the sentenced person for the benefit of the victims and any impact on the victims and their families of an early release (rule 223(d)).

26. Where the first criterion is concerned, the Legal Representative considers that nothing in the texts justifies limiting the application of rule 223(c), as the Defence wishes to do. The Defence essentially claims that it would be a question of ruling on the basis of hearsay and speculation. Here, however, it is a question of assessing a risk in relation to which the Court has all the necessary means to obtain reliable information, in particular, on the basis of the observations of the parties and participants.

27. The criterion of the risk of social instability acquires particular importance in the context of mass crimes, as in the case at hand. The commission of these types of crime necessarily affects and concerns entire communities. The early release of their perpetrator is bound to lead to social instability, at the very least within the community concerned.

28. The Legal Representative also objects to the Defence’s argument that is based on action taken by the sentenced person making a positive contribution to peace and reconciliation. The risk of instability is triggered by the early release itself. As indicated above, it is largely dependent on factors associated with the conduct of the

sentenced person at the time of the crime and with its nature and scope. Subsequent conduct, even when it consists of proactive steps intended to restore peace (which would be taken only at the time of the announcement and would not yet have produced any concrete results) may not have the expected impact.

29. With regard to the assessment of significant actions taken by the sentenced person for the benefit of victims and any impact that the early release might have on the victims and their families (rule 223(d)), the Legal Representative would also like to make some observations on the importance of this criterion in the context of the case.

30. He would first like to note that the assessed action must appear significant in the minds of the victims and not in the mind of the person performing it. Thus, it is difficult for expressions of apology and regret to appear as elements to be considered under rule 223(d) when the apologies are not sought and the regrets are considered to be insincere.

31. Similarly to the previous criterion, the assessment of the impact of an early release on the victims also acquires particular significance in the context of mass crimes. Owing to the particular nature of the crimes which come before the Court and the large scale on which they are committed, the impact of an early release must be weighed in relation to a large number of victims. An early release will, within the meaning of this provision, have an impact on an entire community. This applies to the case at hand (see *infra*).

#### IV. THE SITUATION OF MR GERMAIN KATANGA IN RESPECT OF THE STANDARD OF REVIEW OF THE REDUCTION OF SENTENCE

##### (1) Rule 223(a): the conduct of the sentenced person in detention

32. The Legal Representative takes note of the Registry's Report on this point.<sup>19</sup>

33. He considers that the material submitted by the Defence must be treated with caution. The conduct of the sentenced person in detention may be a simple survival strategy adopted in an environment where resocialisation of some kind may be necessary.

##### (2) Rule 223(b): the sentenced person's prospects of resocialisation and successful resettlement

34. The Legal Representative takes note of the Registry's Report on this point also.<sup>20</sup>

35. The Defence observations on G. Katanga's plans are relatively general and do not call for any particular comment on the part of the Legal Representative.

36. However, the Legal Representative wishes to respond to the Defence with regard to the alleged support of the Hema community for G. Katanga's resocialisation plans.<sup>21</sup> In support of its assertions, the Defence relies on the eight annexes to its observations. Of these eight documents, only Annex 6 actually concerns the Hema community.<sup>22</sup> This annex contains statements made by the Hema of Bunia, who come from communities other than that of Bahema Sud, to which the Bogoro community belongs. The Legal Representative is of the view that only the Hema of the Babiase chiefdom, of which Bogoro is a part, are fully entitled to make submissions on the requirements of this case.

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<sup>19</sup> ICC-01/04-01/07-3584, para. 2.

<sup>20</sup> *Ibid.*, para. 3.

<sup>21</sup> ICC-01/04-01/07-3594, para. 43, which refers to annexes 1-8.

<sup>22</sup> Annexes 1-3 are statements by the Aveba community. Annex 4 is a statement by prominent figures of the Lendu and Ngiti communities of Bunia. Annex 5 is a statement by the *Union des associations culturelles et du développement de l'Ituri*. Annex 7 is a statement by representatives of the UPC and Annex 8 contains photographs.

37. Support for the return to Ituri of G. Katanga, who is regarded as a brother, is thus expressed in Annex 6 in terms verging on the excessive by individuals who are not members of the community affected by the crimes committed in Bogoro on 24 February 2003. This approach, which was also adopted by the Defence for Mr Thomas Lubanga, has already created resentment among victims of the attack, who found it to be inappropriate and illegitimate (see *infra*).

(3) Rule 223(c): the risk of significant social instability following early release

38. The situation among the communities concerned is not that presented by the Defence.<sup>23</sup> Reconciliation between the communities does not run deep. Many steps have been taken to bring about reconciliation and enable it to take root but it would be wholly wrong to claim that these roots are now deep.

39. Tensions between the Hema and Lendu persist and land disputes, which remain a significant concern, foment mistrust between the communities. Many victims believe that lasting reconciliation is not possible as long as the land dispute remains unresolved.

40. On 7 August 2015, the Legal Representative visited Bogoro to listen to prominent figures of the village discuss the statements filed by the Defence for Thomas Lubanga before the panel of three judges appointed to review the reduction of his sentence. These documents, from figures holding prominent positions in various spheres in Ituri (religious leaders and members of civil society), indicate that nothing prevents Germain Katanga from returning to Ituri and that certain figures believe that this return will bolster the pacification process that is under way.<sup>24</sup>

41. It was important for the Legal Representative to hear the opinion of his clients and of prominent figures of Bogoro on the questions addressed in the documents since they also concern G. Katanga and, in particular, the consequences for the

<sup>23</sup> See, in particular, ICC-01/04-01/06-3594, para. 57.

<sup>24</sup> "Observations of the Defence for Mr Lubanga on the question of the reduction in sentence", 14 July 2015, ICC-01/04-01/06-3151, Annexes 4, 5 and 6.

community of his early release. The victims and prominent figures whom he met expressed their strong dissatisfaction with the documents presented to them. This dissatisfaction concerned both the individuals who had made statements for the Defence of T. Lubanga and the content of those statements.

42. The persons whom he met stated that they were “very surprised at the content of the above-mentioned statements which do not reflect the social and political context”; they deplored the fact that “some ethnic groups, including those of Bahema Sud, have not been included in these consultations”. They considered that:

The prominent figures of Bunia did not suffer the harm experienced by the victims in the *Katanga* case and are wholly unaware of the continuing problems faced by victims since the attack. Moreover, it must be noted that the prominent figures of Bunia who signed those statements do not represent the community of Bahema Sud or that of Bogoro.<sup>25</sup>

The victims added the following:

Lastly, we denounce the dishonesty of the signatories of the above-mentioned statements intended to mislead the communities by juxtaposing the application for the reduction of Germain Katanga’s sentence with that of Thomas Lubanga, whereas these are separate cases with different victims and losses.<sup>26</sup>

43. They further considered that it is entirely incorrect to claim that the communities of the territories of Ituri have overcome the conflicts between them and live in perfect harmony. While this may be the case for some parts of the communities, as indicated by the statements contained in some of the annexes to the Defence observations,<sup>27</sup> this is not the case for the Babiase Hema (Bogoro). Unfortunately, it must be noted that these statements implicitly exclude this community. Nowhere is any mention made of the Bahema Sud community, which is the only one to have suffered from the attack.

44. Aside from the question of the land conflict, the victims consider that:

The presence of operational militias and the recurrent attacks on civilian populations speak volumes about the continuing tension in Ituri which divides the Hema and Ngiti communities.<sup>28</sup>

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<sup>25</sup> See Annexes A, A1 and A2 to these submissions.

<sup>26</sup> *Ibid.*

<sup>27</sup> See Annex 1 to the Defence Observations, ICC-01/04-01/07-3594-Anx1-tENG. This Annex refers to the Bahema Nord and the Bahema Boga, which are different communities from the Bahema Sud.

<sup>28</sup> See Annexes A, A1 and A2 to these observations.

45. The Legal Representative notes that the victims' fear is actually caused by the proximity of the FRPI militias. These militias carry out acts of violence against the whole population and engage in general pillaging of livestock. Owing to their geographical proximity to the victims, however, it is the victims who are the first to be affected. These actions are significant manifestations of the underlying tensions in the region, which are liable to degenerate at the slightest provocation. During the Legal Representative's stay in Bunia, one of his clients presented him with a complaint concerning a "misappropriation of land" addressed by prominent figures of the Walendu-Bindi community to the Congolese authorities.<sup>29</sup> The terms in which this letter is written are indicative of the enduring nature of the conflict dividing the two communities.

46. The situation on the ground is in fact conducive to Germain Katanga returning to his position as the head of his community. According to documents submitted by the Defence, many people praise the role that he played within the community when it was attacked and emphasise his usefulness to it in the light of the difficulties experienced: "And he would be of greater use to the community, who need him, in view of the great sacrifice he made for the community at the time";<sup>30</sup> "He helped the population in a difficult period, when it was attacked".<sup>31</sup>

47. Besides the general backdrop of unrest owing to the land conflict and the incursions of the FRPI, the victims have expressed, in opposition to the early release of Germain Katanga, their deep dissatisfaction about the length of the sentence and the time at which this release would take place:

Furthermore, having regard to the gravity of the crimes of which he was found guilty and the extent of the harm suffered by the victims, we deplore the 12-year sentence imposed on Germain Katanga by the International Criminal Court. [...]. **The victims of the February 2003 attack on Bogoro consider that this sentence is not proportionate to the crimes committed and that any reduction would merely exacerbate the feeling of injustice shared by all the victims** [emphasis added].<sup>32</sup>

<sup>29</sup> See Annex B to these observations.

<sup>30</sup> ICC-01/04-01/07-3594-Anx2-tENG.

<sup>31</sup> ICC-01/04-01/07-3594-Anx1-tENG.

<sup>32</sup> See Annexes A, A1 and A2 to these observations.

48. Many victims have spoken with great bitterness of their regret that Germain Katanga was not tried in the Democratic Republic of the Congo, where he would have been handed a much more appropriate sentence for the same acts. They deplore the lack of a deterrent effect in this situation, which would worsen in the event of early release.

(4) Rule 223(d): Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release

49. Given that the reparations stage is taking place at the same time as the proceedings concerning the reduction of sentence, and taking into account the length of this sentence, there is no doubt that an early release would indeed have a significant impact on all of the participating victims. Mention is made above of the dissatisfaction expressed by the victims and prominent figures consulted about the length of the sentence and the additional injustice that an early release would constitute for them. Furthermore, the timing of this sentence reduction review is particularly unfortunate as the victims are currently undergoing an intense consultation process with the Legal Representative pursuant to the Decision on the request for clarification concerning the implementation of rule 94 of the Rules of Procedure and Evidence and future stages of the proceedings.<sup>33</sup> The victims are currently being interviewed about the harm that they suffered and the forms of reparations which they would like to be able to receive. Contrary to what the Defence claims, they are perfectly aware of the issues at stake in the proceedings and understand the need for the Legal Representative to establish solid cases and the time that will be required to review them. Their dissatisfaction about the length of the proceedings concerns the trial itself and its outcome and not the reparations proceedings, which began around one year ago with a victim consultation exercise in

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<sup>33</sup> "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.

collaboration with the Registry.<sup>34</sup> The victims are perfectly capable of distinguishing between the two proceedings.

50. It is not currently possible for the victims to contemplate Germain Katanga's release while discussions are taking place over the reparations that will, if appropriate, be awarded to them. As indicated above "reducing the sentence and ordering Mr Katanga's release before the allocation of reparations would merely reinforce the victims' trauma and their sense of impunity" (see paragraph 43).

51. The fact that reparations proceedings are taking place and the expectations of the victims in respect of these proceedings must be taken into account under rule 223(d) (and rule 223(c)), especially since an early release would have an undeniable and extremely severe impact on victims. Moreover, this impact concerns an entire community.

52. With regard to the significant actions taken by the sentenced person for the benefit of the victims, the Defence notes the recording of an interview with G. Katanga in which he apologises to the Bogoro victims for the role that he played in the Bogoro attack.

53. The victims have spoken about the matter in the presence of the Legal Representative, who, during an initial meeting, informed them of the interview and of the prospects of moving towards reconciliation that it could bring about. The victims, however, received the information very cautiously. When they later met the Defence in Bogoro, in the presence of the Legal Representative, in order to discuss the apologies and the reduction in sentence, they were very unhappy about the meeting and some of them believed that it exposed them to further trauma.

54. As the Defence indicated in its observations, similarly to an early release, the offering of apologies (and their acceptance) would be at odds with a fundamental principle in Hema culture, according to which a person who has done someone harm must make amends before he or she makes an apology. A key prominent

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<sup>34</sup> "Order instructing the Registry to report on applications for reparations", 27 August 2014, ICC-01/04-01/07-3508.

figure in Bogoro perfectly expressed this principle during a meeting with the Legal Representative:

[TRANSLATION] According to our custom, when there is a conflict between two people they can sit down to discuss it; the first thing that we do is seek to make amends. The second stage is to bring people together to try to find a solution. Where Katanga is concerned, it is as if he is reversing the process. Personally, I do not agree with this back-to-front approach. People should first sit down, make amends, and then apologise. If someone has been hurt, the wound must be treated and, once the person is cured, forgiveness can be sought.<sup>35</sup>

55. The only victim who has seen the interview with Mr Germain Katanga is the girl who triggered the apologies following her discussion with the researcher. She said that she was very disappointed in view of the content of the film and that G. Katanga was insincere. The Legal Representative wonders whether G. Katanga would have considered taking this approach if the interview between the girl and the researcher had not taken place.

56. The Defence states that it has shown this film to a significant number of people, who welcomed the apologies. However, it has not shown it to the victims in Bogoro. In view of this fact, the Legal Representative wonders about the relevance of the approach since a significant action for the benefit of the victims cannot be said to have been taken when the victims concerned have not seen the film.

57. The Legal Representative notes that, in respect of every point, the Defence has demonstrated that all the conditions for G. Katanga's release have been satisfied, not for the community of the victims concerned, but for the Hema of Bunia and other communities that support G. Katanga (such as Aveba).

58. In conclusion, and for all the reasons set out above, the victims voice their opposition to a reduction in G. Katanga's sentence. This opposition, however, is not expressed in definitive terms ("we confirm that we oppose any steps to reduce Germain Katanga's sentence and his return, for the time being [emphasis added], to the district of Ituri"). However, their opposition is both steadfast and, to a large extent, reasoned having regard to the criteria that the panel of three Judges should consider.

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<sup>35</sup> Extract from the minutes of the meeting held on 8 August 2015 between the Legal Representative and the prominent figures of Bogoro.

**FOR THESE REASONS**, the Legal Representative **RESPECTFULLY REQUESTS**  
**THE CHAMBER** to admit these observations

[Signed]

Mr Fidel Nsita Luvengika

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Legal Representative of Victims

Dated this 18 September 2015,  
At The Hague, the Netherlands