

**Cour
Pénale
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**International
Criminal
Court**

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TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding
Judge Olga Herrera Carbuccion
Judge Péter Kovacs

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

Confidential

**Defence Consolidated Response to the Legal Representative of Victims' Request and the
Registry's Observations**

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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Transitional Justice Institute
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PROCEDURAL BACKGROUND

1. On 7 September 2015, the Legal Representative of victims submitted a '*Requête du Représentant légal sollicitant de la Chambre d'enjoindre à l'Unité d'aide aux victimes et aux témoins d'assister celui-ci pour l'identification d'enfants traumatisés en vue de permettre le recueil de leurs demandes en réparation*',¹ by which he requested the assistance of the Victims & Witnesses Unit (VWU) to identify a new category of potential victims (« the Request »).
2. On 11 September 2015, the Trial Chamber issued its '*Ordonnance relative à la requête du Représentant légal commun des victimes sollicitant l'assistance de l'Unité d'aide aux victimes et aux témoins*', by which it invited the Registry and the Defence for Mr Katanga ("the defence") to submit their responses to the Legal Representative of Victims Request by 25 September and 2 October 2015, respectively.²
3. On 25 September 2015, the Registry submitted its '*Observations du Greffe sur la Requête du Représentant légal commun des victimes sollicitant l'assistance de l'Unité d'aide aux victimes et aux témoins*' (« Registry's Observations »).³

SUBMISSION

4. The defence hereby submits the following observations in response to the Request and to the Registry's Observations.
5. The defence supports the Registry submissions according to which the assistance sought by the Legal Representative of Victims in the identification of victims is not within the VWU mandate, because it would lead to a lack of neutrality of the VWU towards the other parties, and especially the convicted person. This task belongs to the Legal Representative of Victims.⁴
6. The defence also notes that the scope of the new category of victims that would have

¹ ICC-01/04-01/07-3585-Conf.

² ICC-01/04-01/07-3593-Conf.

³ ICC-01/04-01/07-3601-Conf.

⁴ ICC-01/04-01/07-3601-Conf, para. 2.

to be identified, with or without the VWU assistance, is unclear.

7. The Request primarily targets young children at the time of the Bogoro attack, or children born shortly afterwards, who would currently face difficulties at school and eventually be violent, this being, it is submitted, the consequence of trauma linked to the Bogoro attack.⁵
8. The Request also asks for the assistance of the VWU to identify not only children but also adults, who would generally have suffered trauma as a result of the Bogoro attack.⁶
9. However, the Court has already recognised that reparation concerns both material and psychological harm; that is why the victims application forms include a part where the victims can define their psychological harm. The Registry, in its Individual Reports of 31 Mars 2015,⁷ has reported the allegation of psychological harm of several victims, such as the loss of relatives, emotional harm resulting from the attack, etc. Accordingly, the defence fails to see in what way the category of 'person having suffered trauma because of the Bogoro attack' would be a new category of victims.
10. As for the proposed new category consisting of young children at the time of the Bogoro attack, in particular those who were present during the attack, who lost a relative, who are psychologically affected by the attack, and/or whose trauma has had an adverse impact on their studies, *etc.*, they can already allege a psychological harm because of the Bogoro attack and therefore do not represent a new category of victims. The Trial Chamber, and/or the TFCV, depending on the procedure to be adopted, will rule on the merits of their allegations and their application to participate as victims and obtain reparation.
11. As for children born shortly after the Bogoro attack, the defence notes that, in line with the jurisprudence of the Court, Chambers tend to dismiss applications on behalf of deceased persons but grant applications of victims alleging their own suffering

⁵ Request, para. 5.

⁶ Request, para. 7.

⁷ ICC-01/04-01/07-3512-Conf-Anx2-Corr-Red.

because of the death of a relative.⁸ Therefore the defence submits that, if properly justified, the Chamber may grant any application of a person born after the attack, alleging psychological harm because of the death of their parents during the attack. However, the application of persons born after the attack based on the fact that their village was once attacked before their birth and that it affected the life of their family themselves, should be dismissed. The prejudice alleged is not sufficiently proximate or personal, and not sufficiently linked to the crimes for which the accused was convicted.⁹ Otherwise, the Court would have to grant applications to too wide a class, effectively to nearly anyone currently living in Bogoro because the village and/or its inhabitants still face some difficulties which could be, in part, the result of the Bogoro attack.

12. Accordingly, the defence does not support the Registry's suggestion that the Chamber may open consultations, including with experts, as to the assessment of the category of victims of the Bogoro attack having suffered trauma.
13. The defence raises concern that this issue is only raised now, at a very late stage of the proceedings, while the accused has already been convicted, sentenced, and submitted a request for early release which will be discussed in few days, while the Legal Representatives of Victims were appointed in 2008.
14. Mr Katanga is entitled to a trial within a reasonable time, which includes the reparation decision; he will not be fully informed of the consequences of his case until he knows the extent of the reparation order made against him. The reparation proceedings should therefore be as expeditious as possible, in accordance with Articles 64(2) and 67(1)(c) of the Rome Statute.¹⁰ The victims are also entitled to

⁸ ICC-01/04-423-Corr, Situation en République Démocratique du Congo, Corrigendum à la « Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, paras 24-25; ICC-01/04-01/07-478-Conf and 479, The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case, 10 June 2008, paras 62-63.

⁹ ICC-01/04-01/07-632, Decision on the Application for Participation of Witness 166, 23 June 2008, para. 6.

¹⁰ ICC-01/04-01/07-3591, Defence Consolidated Response to the Legal Representative of Victims and the Registry's Requests for an extension of time limit, 10 September 2015.

finality with regard to the reparation proceedings.

CONCLUSION

15. For these reasons, the defence respectfully requests the Chamber to dismiss the Request.

Respectfully submitted,



David Hooper Q.C.

Dated this 2 October 2015,
The Hague