



Original: **French**

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

Date: **9 October 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

**Decision on the request of the common legal representative of victims for
assistance from the Victims and Witnesses Unit**

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 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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court”, respectively), acting pursuant to articles 43(6) and 68(1) and (4) of the Rome Statute and rule 17 of the Rules of Procedure and Evidence, decides the following.

I. History of proceedings

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 requests for participation in proceedings and/or reparations initially submitted by 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; the Registry to transmit to the Chamber and to the parties a redacted version of any other request for reparations made by victims yet to make themselves known, including – where possible – documentation supporting their request; and the Legal Representative to represent any victim who might be identified in the future.¹

2. On 7 September 2015, the Legal Representative filed a request for assistance from the Victims and Witnesses Unit² (VWU) in identifying new categories of victims, namely children who were present at the Bogoro attack of 23 February 2003 (“the Attack”) and who, owing to the trauma caused by the Attack, are unable to pursue “[TRANSLATION] a satisfying social and professional life”;³ children born after the Attack and suffering from a specific type of trauma called “[TRANSLATION] transgenerational” trauma;⁴ and parents having “[TRANSLATION] voluntarily or involuntarily concealed”

¹ “Decision on the ‘Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve’ and future stages of the proceedings”, 8 May 2015, ICC-01/04-01/07-3546-tENG, pp. 9-10 (“the Decision of 8 May 2015”).

² “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”, 7 September 2015, ICC-01/04-01/07-3585-Conf (“the Request”). A public redacted version was filed on 18 September 2015 (ICC-01/04-01/07-3585-Red).

³ Request, paras. 10-12.

⁴ Request, paras. 13-15.

their trauma until now.⁵ The Legal Representative submitted that he required VWU's assistance in assessing the "[TRANSLATION] prevalence" of the trauma suffered by these new categories of victims in Bogoro, in identifying all victims suffering from said trauma and in determining "[TRANSLATION] under what conditions they may be individually interviewed".⁶

3. On 21 September 2015, the Chamber issued a decision amending the time limit for the filing of consolidated applications for reparations, ordering the Registry and the Legal Representative to transmit and submit them as soon as they became available and by 1 December 2015; and amending the time limit for the filing of submissions by the defence team for Germain Katanga ("the Defence") to 11 January 2016.⁷

4. On 25 September 2015, as instructed by the Chamber,⁸ the Registry filed observations on the Request⁹ ("the Observations"). The Registry informed the Chamber that a meeting had been held between the Registry – namely representatives of the Victims Participation and Reparations Section, the Counsel Support Section and the VWU – and the Legal Representative for the purposes of clarifying the Request and exploring what type of assistance might be granted to the Legal Representative by the sections operating within the Registry; and that the content of that meeting was presented in the Observations.¹⁰

5. The Registry contended that the assistance requested by the Legal Representative "[TRANSLATION] [did] not fall within the scope of the mandate [of VWU] and [came] under the remit and purview of the Legal Representative".¹¹ It also submitted that "[TRANSLATION] such participation [...] would be inconsistent

⁵ Request, paras. 16-19.

⁶ Request, paras. 7 and 32-38.

⁷ "Decision on the requests of the Common Legal Representative of Victims and the Registry for an extension of time limit for transmitting and filing applications for reparations", 21 September 2015, ICC-01/04-01/07-3599-tENG.

⁸ "Ordonnance relative à la requête du Représentant légal commun des victimes sollicitant l'assistance de l'Unité d'aide aux victimes et aux témoins", 11 September 2015, ICC-01/04-01/07-3593-Conf.

⁹ "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 (ICC-01/04-01/07-3585-Conf)", 25 September 2015, ICC-01/04-01/07-3601-Conf.

¹⁰ Observations, para. 1.

¹¹ Observations, para. 3.

with the neutrality required for the exercise of [VWU's] mandate".¹² The Registry therefore submitted that the Legal Representative could "[TRANSLATION] request additional resources under the Court's legal aid scheme so as to be able to obtain the support of a professional on its team in accordance with regulation 83(3) of the Regulations of the Court".¹³ Lastly, the Registry submitted that VWU would be willing to provide the Legal Representative and his team with training to prepare them to interact with victims qualifying as vulnerable within the meaning of regulation 94 *bis*(2) of the Regulations of the Registry.¹⁴

6. On 2 October 2015, the Defence filed a consolidated response to the Request and the Registry's Observations as instructed by the Chamber¹⁵ ("the Response"). The Defence supported the Registry's submission that the assistance sought by the Legal Representative in the identification of potential victims would be outside VWU's mandate.¹⁶ The Defence submitted, moreover, that the task of identifying victims belonged to the Legal Representative.¹⁷

7. The Defence also submitted that the victims identified by the Legal Representative as having suffered trauma because of the Attack did not constitute a new category of victim.¹⁸ In the case of children born after the Attack, the Defence submitted that applications for reparations alleging that the Attack had affected the lives of the victims' families did not represent a sufficiently proximate or personal prejudice for reparations to be awarded.¹⁹

8. Accordingly, the Defence did not support the Registry's suggestion that the Chamber may open consultations as to the assessment of the categories of victim of

¹² Observations, para. 3.

¹³ Observations, para. 3.

¹⁴ Observations, paras. 4-5.

¹⁵ "Defence Consolidated Response to the Legal Representative of Victims' Request and the Registry's Observations", 2 October 2015, ICC-01/04-01/07-3605-Conf.

¹⁶ Response, para. 5.

¹⁷ Response, para. 5.

¹⁸ Response, paras. 6-10.

¹⁹ Response, para. 11.

the Attack having suffered trauma.²⁰ The Defence concluded that to do so would conflict with the Defence's and victims' rights.²¹

II. Analysis

9. The Chamber takes note of the Legal Representative's concerns, in particular as regards the need to identify any and all potential victims²², ensure victims' psychological well-being and address individual victims' specific needs in interviews with them.²³

10. The Chamber also notes, however, that VWU's functions are limited by rule 17 of the Rules of Procedure and Evidence and that the assistance sought by the Legal Representative is outside VWU's mandate. The Chamber therefore rejects the Request and invites the Legal Representative to file an application with the Registry for the support of a professional in accordance with regulation 83(3) of the Regulations of the Court.

11. Finally, the Chamber deems it necessary to recall that any new application for reparations must be accompanied – where possible – by supporting documents attesting to the extent of the harm suffered by the victim and the causal link between the alleged harm and the crimes of which Germain Katanga has been convicted.²⁴

²⁰ Response, para. 12.

²¹ Response, para. 14.

²² Request, paras. 20-30.

²³ Request, paras. 36-38.

²⁴ Decision of 8 May 2015, pp. 9-10.

FOR THESE REASONS, the Chamber,

REJECTS the Request;

INVITES the Legal Representative to file an application with the Registry in accordance with regulation 83(3) of the Regulations of the Court;

ORDERS the Defence to file a public version of the Response by 13 October 2015;

ORDERS the Registry to file a public version of the Observations by 13 October 2015.

Done in both English and French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccia

[signed]

Judge Péter Kovács

Dated this 9 October 2015

At The Hague, the Netherlands