

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **7 December 2015**

**TRIAL CHAMBER II**

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

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

**Public**

**Defence Response to the Legal Representative of Victims Second Request for an  
extension of time limit**

**Source:** Defence for Mr Germain Katanga

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

M. James Stewart

Mr Eric MacDonald

**Counsel for the Defence for Germain**

**Katanga**

Mr David Hooper Q.C.

Ms Caroline Buisman

**Legal Representatives of Victims**

Mr Fidel Nsita Luvengika

**REGISTRY**

---

**Registrar**

Mr Herman von Hebel

**Victims Participation and Reparations**

**Section**

Ms Fiona McKay

## PROCEDURAL BACKGROUND

1. On 8 May 2015, the Trial Chamber issued its '*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*',<sup>1</sup> by which it ordered the Legal Representative of Victims and the Registry to file consolidated victim reparation forms, for both victims admitted to participate in the proceedings and for new applicants, by the 1<sup>st</sup> October 2015.
2. However, on 7 September 2015, the Legal Representative of Victims submitted the '*Demande en prorogation du délai fixé par la décision ICC-01/04-01/07-3546 pour le dépôt et la transmission des demandes en réparation*', by which he requested an extension of this deadline until mid-December 2015.<sup>2</sup> The same day, the Registry filed the '*Demande de prorogation du délai relatif à la transmission des demandes en réparation en application de la norme 35 du Règlement de la Cour*', by which it requested an extension of this deadline until the 1<sup>st</sup> December 2015.<sup>3</sup>
3. On 10 September 2015, the defence for Mr Katanga ("the defence") filed its 'Defence Consolidated Response to the Legal Representative of Victims and the Registry's Requests for an extension of time limit', by which it expressed its concern regarding these requests, given the late stage of the proceedings and the abundant time within which to address the issue. It invited the Trial Chamber to maintain short deadlines on the issue of reparation so as to expedite the case.<sup>4</sup>
4. On 21 September 2015, Trial Chamber II issued its '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'.<sup>5</sup> It allowed an extension to 1st December 2015 for the time limit for submitting to the Registry and transmitting to the Chamber and the defence consolidated and redacted versions of all applications for reparations; it instructed the defence to file submissions on the

---

<sup>1</sup> ICC-01/04-01/07-3546.

<sup>2</sup> ICC-01/04-01/07-3586.

<sup>3</sup> ICC-01/04-01/07-3587.

<sup>4</sup> ICC-01/04-01/07-3591.

<sup>5</sup> ICC-01/04-01/07-3599-tENG.

consolidated applications for reparations by 11 January 2016.

5. On 26 November 2015, the Legal Representative of Victims filed a '*Demande en prorogation du délai fixé par la décision ICC-01/04-01/07-3599 pour le dépôt et la transmission des demandes en réparation*' ("the Request"), by which he requested an extension of the deadline to file consolidated applications for reparations until 31 March 2016.<sup>6</sup> Thus he asked for an extension of time of fourth months, in addition of the extension of time of two months already granted. No explanation was provided as to why the further request was filed only a few days before the expiry of the deadline set by the Chamber.

## DISCUSSION

6. The defence is concerned at the request for yet a further extension of time. The Legal Representative for Victims has failed to show good cause pursuant to Regulation 35 of the Regulations of the Court.
7. In support of the Request the Legal Representative repeats previous arguments that the gathering of evidence is still continuing.<sup>7</sup> The defence reiterates that the first victim applications were registered, and the first Legal Representative of Victims appointed, in 2008. It is understood that the Legal Representative of Victims has been employed on a full time basis since then together with a team composed of two legal assistants, one case manager and one resource person or investigator. There has been more than adequate time in the intervening eight years to identify potential victims, whether in the DRC or otherwise, and to gather evidence in support of the claims.
8. The Legal Representative further argues that an expert has been appointed at his request, that they met potential new applicants between the 3<sup>rd</sup> and 13<sup>th</sup> of November 2015 and that he needs more time to collect further evidence for this category of victims.<sup>8</sup> The kind of evidence sought is not specified nor why, with reasonable diligence, it could not have been collected at the time of the meetings or in the period

---

<sup>6</sup> ICC-01/04-01/07-3620.

<sup>7</sup> ICC-01/04-01/07-3620, para. 18.

<sup>8</sup> ICC-01/04-01/07-3620, para. 19.

subsequent to the application.

9. The Legal Representative states that he must deal with a further category of applicants, namely all the Bogoro victims living in Uganda. He states that he met them for the first time between the 17<sup>th</sup> and the 29<sup>th</sup> of October 2015.
10. However, the defence notes that since the beginning of the case it has been common knowledge that several victims left Bogoro to settle in other locations both in the DRC and Uganda. Indeed, Uganda was probably one of their main destinations being just over Lake Albert and therefore relatively easy to access compared with other parts of the DRC. This was mentioned by several witnesses called by the prosecution, by the defence, and by the Legal Representative himself. Even victims called as witnesses by the Legal Representative had themselves fled to Uganda.<sup>9</sup> Therefore it is difficult to see how the existence of victims of the Bogoro attack in Uganda could be qualified as “another category of new applicants”.
11. A failure to investigate or identify them over the past eight years is insufficient justification for further delay in the reparation proceedings. One must wonder what work has been done to identify victims of the Bogoro attack since the surrender of Mr Katanga to the ICC in October 2007 and since his conviction in March 2014. It is incomprehensible that there was no mission to meet with or identify potential victims in Uganda by the Legal Representative before October last.
12. The defence notes the Legal Representative further states that on the 16<sup>th</sup> of October 2015, the Registry informed him of the existence of ‘more than 200’ other potential applicants in Uganda, and that these persons still require preliminary screening (*un travail d’évaluation préliminaire*).<sup>10</sup> There is no explanation as to how it is that so many have not yet been subjected to even basic review, nor why it is that the Victim Representative was only informed in mid-October by the Registry (presumably its Victims Unit) of the existence of so many potential applicants. Since 8<sup>th</sup> May 2015, both the Registry and the Legal Representative of Victims have been specifically tasked by the Trial Chamber to identify new applicants, the initial deadline to submit

<sup>9</sup> ICC-01//04-01/07-2393-Conf-AnxA-Red; ICC-01//04-01/07-2393-Conf-AnxB-Red.

<sup>10</sup> ICC-01/04-01/07-3620, para. 21

new applications being the 1st October 2015.<sup>11</sup> The Trial Chamber has already demonstrated considerable patience in providing the Registry and the Legal Representative with further time for the conduct of what amounts to basic duties.

13. The defence reasserts that Mr Katanga is entitled to a trial within a reasonable time, which includes the reparation decision. Mr Katanga will not be fully informed of the consequences of his case until he knows the extent of the reparation order made against him. The proceedings should therefore be as expeditious as possible, in accordance with Articles 64(2) and 67(1)(c) of the Rome Statute.<sup>12</sup>
14. In addition, the defence reiterates that during its previous mission in Ituri, in August-September 2015, the victims clearly expressed a wish for the issue of reparations to be decided as soon as possible. This is a matter of fairness to the victims. This was raised by the inhabitants of Bogoro themselves when met by the defence.<sup>13</sup> It should be noted that numerous victims have already decided to withdraw from the reparation proceedings,<sup>14</sup> the length of proceedings being one of the reasons.

## CONCLUSION

15. The defence respectfully invites the Trial Chamber to dismiss the Legal Representative of Victims' Request; alternatively, the defence invites the Trial Chamber to issue a short and definitive deadline for the disclosure of any consolidated applications for reparations.



David Hooper Q.C.

Dated this 7 December 2015,  
London.

<sup>11</sup> ICC-01/04-01/07-3546-tENG, Decision on the “*Demande de clarification concernant la mise en oeuvre de la Règle 94 du Règlement de procédure et de preuve*” and future stages of the proceedings.

<sup>12</sup> ICC-01/04-01/07-3591.

<sup>13</sup> ICC-01/04-01/07-3591.

<sup>14</sup> ICC-01/04-01/07-3609, 12 October 2015.