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Date: **8 February 2016**

**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***

**Public**

**Defence Response to the**  
***‘Soumission du Représentant légal relative aux expurgations pratiquées sur les demandes en réparation déposées par les victimes qui ne se sont pas encore fait connaître de la Cour’***

**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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**Legal Representatives of Victims**

Mr Fidel Nsita Luvengika

**REGISTRY**

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**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 ‘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’,<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. On 1<sup>st</sup> September 2015, the Trial Chamber issued its ‘Decision on the “Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications”’.<sup>2</sup> It granted the defence request for lifting of redactions in the victims’ applications for reparation, relating to the identity of the person(s) killed and their link with the victim and to the description of the Bogoro attack and the harm suffered by victims. The Chamber ordered the Registry to apply these instructions to any new application for reparations.
3. 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>3</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 consolidated applications for reparations by 11 January 2016.
4. On 25 November 2015, the defence for Mr Katanga (“the defence”) was disclosed 43 consolidated applications for reparations.<sup>4</sup>
5. On 27 November 2015, the defence was notified the first Registry report on these 43 applications.<sup>5</sup>

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

<sup>2</sup> ICC-01/04-01/07-3583-tENG.

<sup>3</sup> ICC-01/04-01/07-3599-tENG.

<sup>4</sup> ICC-01/04-01/07-3614-conf-exp-Anx1-Red to Anx43-Red, annexed to ICC-01/04-01/07-3614, *Transmission de demandes en réparation*, of 13 November 2015.

<sup>5</sup> ICC-01/04-01/07-3616-Conf-Exp-Anx1-Red, annexed to ICC-01/04-01/07-3616, *Transmission du Rapport sur les demandes en réparation*, of 17 November 2015.

6. The same day, the defence was disclosed 19 consolidated applications for reparations.<sup>6</sup> The defence was notified the second Registry report on these 19 applications on 9 December 2015.<sup>7</sup>
7. On 30 November 2015, the defence was disclosed 33 consolidated applications for reparations.<sup>8</sup> The defence was notified the third Registry report on these applications on the 1<sup>st</sup> of February 2016.<sup>9</sup>
8. On 8 December 2015, Trial Chamber II issued its '*Décision accordant une nouvelle prorogation de délai au Représentant légal commun des victimes pour le dépôt des demandes en réparation*'.<sup>10</sup> It allowed an extension to 29 February 2016 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 consolidated applications for reparations previously notified, by 31 January 2016, and to file observations on the applications that will be disclosed a posteriori, by 28 March 2016.
9. On 29 January 2016, the Legal Representative of Victims filed its '*Soumission du Représentant légal relative aux expurgations pratiquées sur les demandes en réparation déposées par les victimes qui ne se sont pas encore fait connaître de la Cour*',<sup>11</sup> by which he asked the Chamber's guidance regarding the redactions of the identity of the new applicants, who have not been admitted to participate in the proceedings yet :

23. *Le Représentant légal souhaite par conséquent recevoir les instructions de la Chambre quant au statut de ces nouveaux demandeurs et par répercussions aux expurgations à pratiquer sur leur demande. Si la Chambre considère qu'effectivement la distinction entre admission à participer et participation effective telle qu'elle est appliquée à la procédure au fond n'a pas lieu d'être dans la procédure actuelle, rien ne justifie alors de maintenir les expurgations décrites au paragraphe précédent sur les demandes déposées par les nouveaux demandeurs. Il sera alors procédé à leur retrait dans les délais les plus rapides et de façon à permettre à la Défense de déposer ses observations dans le délai imparti. Si la Chambre devait par contre procéder par l'adoption de décisions préalables*

<sup>6</sup> ICC-01/04-01/07-3617-conf-exp-Anx1-Red to Anx19-Red, annexed to ICC-01/04-01/07-3617, *Seconde transmission de demandes en réparation*, of 20 November 2015.

<sup>7</sup> ICC-01/04-01/07-3618-Conf-Anx-Red, annexed to ICC-01/04-01/07-3618, *Transmission du Rapport concernant la Seconde Transmission des Demandes en Réparation*, of 25 November 2015.

<sup>8</sup> ICC-01/04-01/07-3621-Conf-Exp-Anx1-Red to Anx33-Red, annexed to ICC-01/04-01/07-3621 *Troisième transmission de demandes en réparation*, of 27 November 2015.

<sup>9</sup> ICC-02/11-01/15-3639-Conf-Anx-Red, annexed to ICC-01/04-01/07-3639, *Transmission du Rapport concernant la Troisième Transmission des Demandes en Réparation*, 26 January 2015.

<sup>10</sup> ICC-01/04-01/07-3628.

<sup>11</sup> ICC-01/04-01/07-3643.

*d'admission des demandeurs à la procédure, le Représentant légal sollicite alors de pouvoir maintenir lesdites expurgations pour les motifs développés ci-dessus.*

10. On the 1<sup>st</sup> of February 2016, Trial Chamber II issued its '*Décision accordant une prorogation de délai pour le dépôt des observations de la Défense sur les demandes en réparation*' by which it allowed an extension to 12 February 2016 for the defence observations on the victims applications.<sup>12</sup>

## **APPLICABLE LAW**

11. Pursuant to Rule 89 of the Rules of Procedure and Evidence,

*Subsection 3. Participation of victims in the proceedings*

### **Rule 89 Application for participation of victims in the proceedings**

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.
2. The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.
3. An application referred to in this rule may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled.
4. Where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision.

12. Rule 94 provides:

*Subsection 4. Reparations to victims*

### **Rule 94 Procedure upon request**

1. A victim's request for reparations under article 75 shall be made in writing and filed with the Registrar. It shall contain the following particulars:
  - (a) The identity and address of the claimant;
  - (b) A description of the injury, loss or harm;

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<sup>12</sup> ICC-01/04-01/07-3645.

- (c) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;
- (d) Where restitution of assets, property or other tangible items is sought, a description of them;
- (e) Claims for compensation;
- (f) Claims for rehabilitation and other forms of remedy;
- (g) To the extent possible, any relevant supporting documentation, including names and addresses of witnesses.

2. At commencement of the trial and subject to any protective measures, the Court shall ask the Registrar to provide notification of the request to the person or persons named in the request or identified in the charges and, to the extent possible, to any interested persons or any interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3.

## DISCUSSION

13. The defence notes that, Mr Katanga having already been convicted by the Court, the crimes for which the applicants can claim reparation are clearly defined.
14. The Legal Representative of Victims indicates that it has registered 135 new applicants, and that *“il finalise actuellement le traitement de ces dossiers pour s’assurer de ne déposer que ceux d’entre eux qui sont complets et manifestement fondés.”*<sup>13</sup>
15. In these circumstances, and given the late stage of the proceedings, the defence submits that it is not necessary for the Chamber to issue preliminary decisions to admit the new applicants to participate in the proceedings. The Chamber will be able to rule on the merits on any new applications in its decision which will rule on the awarding of reparations, *i.e.* to then decide the issue as to whether a claimant qualifies as victim and the extent to which he/she/it should benefit from reparations, if any, on the basis of the Consolidated Documents, having taken into consideration, *inter alia*, the observations of the Defence.
16. Therefore, the defence submits that in fairness to the convicted person, against whom the reparation order will be made, and by virtue of the principle of public proceedings, the identity of any new applicant should be disclosed to the defence at the time of the submission of his/her initial application for reparation. This will contribute to the efficiency and expeditiousness of the proceedings, by avoiding

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<sup>13</sup> ICC-01/04-01/07-3643, para. 22.

double submissions by the defence, on the redacted and then less redacted applications for reparation. Indeed, no applicant should obtain reparation in these proceedings without having first disclosed his/her identity to the convicted person, in order to allow the convicted person to challenge meaningfully the applicant's claim.<sup>14</sup>

17. For these reasons, the defence respectfully requests the Trial Chamber to order the Registry to notify to the defence, without delay, a less redacted version of the applications for reparation of the new, still anonymous, applicants, disclosing their identity.
18. The defence submits that its request is further justified by the fact that several new applicants, such as a/30475/15, a/30469/15, a/30468/15, a/30467/15, a/30481/15, a/30482/15, a/30479/15, a/30478/15, a/30473/15, a/30473/15, a/30471/15, and a/30484/15, have indicated that they have no security concerns.
19. In these circumstances, the defence submits that the Chamber may consider that it will be in the interests of the administration of justice to invite the defence to extend the deadline for the defence observations so as to permit the defence to file consolidated observations on all the victim's applications once the identity of the applicants has been disclosed to it.

## CONCLUSION

20. For the above reasons, the defence respectfully requests the Trial Chamber to order the Registry to notify to the defence, without delay, a less redacted version of the applications for reparation of the new, still anonymous, applicants, disclosing their identity.

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<sup>14</sup> ICC-01/04-01/06-462-tEN, The Prosecutor v. Thomas Lubanga Dyilo, Decision on the Arrangements for Participation of Victims a/0001/06, a/0002/06 and a/0003/06 at the Confirmation Hearing, 22 September 2006, p. 7: "Considering however, that the fundamental principle prohibiting anonymous accusations would be violated, if victims ... were permitted to add any point of fact or any evidence at all to the Prosecution's case-file presented against ... Lubanga in the notification charges document and the list of evidence; ... victims ... would therefore not be able to question the witnesses according to the procedure set out in Rule 91 (3) of the Rules. [...]".

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D Hooper', with a long horizontal stroke extending to the right.

David Hooper Q.C.

Dated this 8 February 2016,  
London. W.C.1