

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/04-01/07**
Date: **16 February 2016**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Péter Kovács

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

Public Document

**Corrigendum to the “Order relating to the submission of the
Legal Representative of Victims”**

Order 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 the Defence

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

Detention Section

**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Other

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court”, respectively) orders the following.

I. Procedural background

1. On 8 May 2015, the Chamber ordered, among others, the common Legal Representative of Victims (“the Legal Representative”), in consultation with the Registry, to submit by 1 October 2015 all of the requests for participation and/or reparations initially presented by the victims authorised to participate in the proceedings, along with – where possible – supporting documentation attesting, in particular, to the extent of the harm suffered and the causal link between the alleged harm and the crime committed (“the consolidated requests” and “the initial applicants”). It also ordered the Registry to transmit to the Chamber and the Defence a redacted version of any other requests for reparations from victims who have yet to make themselves known, along with – where possible – documentation supporting their requests¹ (“the new requests” and “the new applicants”).

2. On 1 September 2015, in response to the request of the Defence² and after having heard the Legal Representative³ and the Registry⁴, the Chamber issued a decision on the redactions applicable to the requests for reparations⁵ (“the Decision of 1 September 2015”).

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 “Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications”, 22 May 2015, ICC-01/04-01/07-3557-Conf, paras. 1, 23-25. A public redacted version was filed the same day (ICC-01/04-01/07-3557-Red).

³ “Response by victims to the Defence request entitled ‘Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications’ (ICC-01/04-01/07-3557-Conf)”, 11 June 2015, ICC-01/04-01/07-3561-Conf-tENG (“the Response”).

⁴ “Registry’s observations on the Defence Request entitled ‘Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications’ (ICC-01/04-01/07-3557-Conf)”, 31 July 2015, registered 3 August 2015, ICC-01/04-01/07-3571-Conf-tENG (“the Observations”).

⁵ “Decision on the ‘Defence Request for Disclosure of Unredacted or Less Redacted Victim Applications’, 1 September 2015.

3. On 12, 20 and 27 November 2015, the Registry transmitted three batches of requests for reparations, containing both consolidated requests and new requests, to the Chamber.⁶ On 24 and 27 November 2015, the Registry transmitted the redacted versions of the three batches⁷ (“the Batches”) to the Defence.

4. On 29 January 2016, the Legal Representative filed a submission seeking clarification from the Chamber regarding the redactions applicable to the new requests⁸ (“the Submission”). The Legal Representative submitted that “[TRANSLATION] the Chamber ha[d] not ruled”⁹ on the question of whether reparation proceedings required the Chamber to first rule “[TRANSLATION] on the participation of the [new] applicants according to a process similar to the applicable process”¹⁰ in the proceedings against an accused. Consequently, “[TRANSLATION] as a precaution and [in order] to comply with requirements relating to the security and the protection of the privacy” of the applicants for reparations, the Legal Representative instructed the Registry to apply redactions to the identity of the new applicants and their contact persons.¹¹

5. On 1 February 2016, in response to the Defence request,¹² the Chamber extended the time limit for the Defence to file observations on the Batches¹³ until 12 February 2016 (“the Decision of 1 February 2016”).

⁶ “Transmission de demandes en réparation”, 12 November 2015, ICC-01/04-01/07-3614 and confidential annexes 1 to 43; “Seconde transmission de demandes en réparation”, 20 November 2015, ICC-01/04-01/07-3617 and confidential annexes 1 to 19; “Troisième transmission de demandes en réparation”, 27 November 2015, ICC-01/04-01/07-3621 and confidential annexes 1 to 33.

⁷ “Transmission de demandes en réparation à la Défense”, 24 November 2015, ICC-01/04-01/07-3619 and redacted confidential annexes 1 to 43; “Seconde transmission de demandes en réparation à la Défense”, 27 November 2015, ICC-01/04-01/07-3622 and redacted confidential annexes 1 to 19; “Troisième transmission de demandes en réparation à la Défense”, 27 November 2015, ICC-01/04-01/07-3624 and redacted confidential annexes 1 to 33.

⁸ “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”, 29 January 2016, ICC-01/04-01/07-3643.

⁹ Submission, para. 17.

¹⁰ *Idem*.

¹¹ *Idem*.

¹² “Defence Request for Extension of Time”, 28 January 2016, ICC-01/04-01/07-3641.

¹³ “Décision accordant une prorogation de délai pour le dépôt des observations de la Défense sur les demandes en réparation”, 1 February 2016, ICC-01/04-01/07-3645.

6. On 2 February 2016, the Registry transmitted other requests for reparations to the Chamber¹⁴ and redacted versions of these requests to the Defence¹⁵ (“Batch Four”).

7. On 8 February 2016, the Defence filed a response to the Submission¹⁶ (“the Response”). The Defence asserted that it was not necessary for the Chamber to issue preliminary decisions on the participation of new applicants before ruling on the merits of their requests for reparations.¹⁷ The Defence also submitted that, by virtue of the principle of public proceedings, and in order to ensure the fairness of the proceedings, the identity of the new applicants must be disclosed to it.¹⁸ Consequently, the Defence requested that less redacted versions of the new requests, disclosing the identity of the new applicants, be notified to it without delay¹⁹ and that the Chamber consider extending the deadline set in the Decision of 1 February 2016 for filing observations on the Batches and the less redacted versions of the new requests.²⁰

II. ANALYSIS

8. The Chamber recalls that, in its Decision of 1 September 2015, it ordered the lifting of the redactions relating to the identity of the persons killed and their link with the victims, and to any information relating to the description of the attack on Bogoro or of the harm suffered by the victims, in order to enable the Defence to test the credibility of the victims, assess the extent of the alleged harm and verify the

¹⁴ “*Quatrième Transmission de Demandes en réparation*”, 2 February 2016, ICC-01/04-01/07-3646 and confidential annexes 1 to 35.

¹⁵ “*Quatrième Transmission de Demandes en réparation à la Défense*”, 2 February 2016, ICC-01/04-01/07-3648 and redacted confidential annexes 1 to 35.

¹⁶ “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*’”, filed 8 February 2016 and notified 9 February 2016, ICC-01/04-01/07-3651.

¹⁷ Response, para. 15.

¹⁸ *Ibid.*, para. 16.

¹⁹ *Ibid.*, para. 17.

²⁰ *Ibid.*, para. 19.

applicants' status as victims.²¹ Moreover, the Chamber ordered the above instructions to be applied to both the consolidated requests and the new requests.²²

9. The Chamber notes that the Legal Representative understood that the instructions relating to the redactions, which the Chamber defined in the Decision of 1 September 2015, apply to both the consolidated requests and the new requests,²³ and that the Legal Representative has not put forward any arguments justifying different treatment for the new requests. Consequently, the Chamber is of the view that the Legal Representative did not have good cause for applying different redactions depending on whether the request is a consolidated request or a new request. Lastly, the Chamber considers that, if in doubt, the Legal Representative should have raised this issue before the Chamber before instructing the Registry to apply other redactions to the new requests contained in the Batches and Batch Four.

10. The Chamber finds it useful, however, to clarify certain points raised by the Legal Representative below.

a. Decision regarding the participation of the new applicants in the reparation proceedings

11. The Chamber notes that the Legal Representative himself concludes that, according to the texts of the Court, reparation proceedings do not require the Chamber to issue a preliminary decision on the participation of the applicant.²⁴ The Legal Representative rightly notes that applicants "[TRANSLATION] participate in the [reparation] proceedings simply by filing their request".²⁵

12. The Chamber confirms that it will not rule on the participation of applicants in the reparation proceedings and that applicants participate in the proceedings simply

²¹ Decision of 1 September 2015, paras. 8-24.

²² *Ibid.*, para. 26.

²³ Submission, para. 6.

²⁴ *Ibid.*, paras 14-16.

²⁵ *Ibid.*, para. 12.

by virtue of filing their request for reparations. Once the Chamber has received all of the requests for reparations, it will rule on their merits.²⁶

b. Names and information relating to the identity of the new applicants, information relating to the address and contact details of their contact persons, and identity of the deceased family members

13. The Chamber notes that, in case the Chamber issued a preliminary ruling on the participation of the new applicants, the Legal Representative applied redactions relating to the “[TRANSLATION] names, date of birth, ethnicity, parents’ names, address and complete contact details of the contact person [and] the names of deceased family members for whom psychological harm is claimed” in the new requests contained in the Batches and Batch Four “[TRANSLATION] as a precaution and [in order to] comply with requirements relating to the security and the protection of the privacy” of the new applicants for reparations.²⁷

14. The Chamber notes that the redaction of the names and other information relating to the identity of the applicants, including the new applicants, was not expressly addressed in the Decision of 1 September 2015, as the names and information relating to the identity of the initial applicants were disclosed to the Defence once the applicants were admitted to participate in the proceedings against Mr Katanga.²⁸ In this context, the Chamber recalls that it previously ordered, in these proceedings, the disclosure to the Defence of the identity of the persons authorised to resume the actions initiated in these proceedings by deceased family members.²⁹

15. As indicated in the Decision of 1 September 2015, the Chamber is of the view that the Defence needs this information in order to examine the merits of the requests

²⁶ Decision of 8 May 2015, para. 21.

²⁷ Submission, para. 17.

²⁸ Decision of 1 September 2015, para. 3.

²⁹ “Decision on the applications for resumption of action submitted by the family members of deceased victims a/0170/08 and a/0294/09”, 11 May 2015, ICC-01/04-01/07-3547-tENG, paras. 10-11.

for reparations.³⁰ The Chamber also considers that the Legal Representative has not raised any specific grounds for not disclosing the identity of the applicants to the Defence.³¹

16. Consequently, it is the Chamber's view that the redactions relating to the names and the information relating to the identity of the new applicants, with the exception of the information relating to the applicants' current place of residence,³² must be lifted. In keeping with the Decision of 1 September 2015, it follows that the redactions relating to "[TRANSLATION] the names of deceased family members for whom psychological harm is claimed"³³ must also be lifted.³⁴

17. The Chamber accordingly instructs the Registry to lift the redactions relating to the above information and notify to the Defence, by 17 February 2016, less redacted versions of the new requests contained in the Batches.

18. Lastly, the Chamber orders the Registry to apply the instructions provided in the Decision of 1 September 2015 and specified in paragraph 16 to Batch Four and any new requests filed by the Legal Representative for transmission to the Defence.

c. Observations of the Defence

19. The Chamber recalls that, in the Decision of 1 February 2016, the Defence was instructed to file observations on the Batches by 12 February 2016.³⁵

20. The Chamber notes that redacted versions of the new requests contained in the Batches were transmitted to the Defence on 24 and 27 November 2015. The Chamber considers that, if the Defence was unable to file observations on them, it should have made this known to the Chamber as quickly as possible.

21. Nevertheless, the Chamber considers that consolidated observations on the Batches and the less redacted versions of the new requests should be submitted to it

³⁰ Decision of 1 September 2015, paras. 8-24.

³¹ Submission, paras. 17 and 22.

³² Decision of 1 September 2015, para. 20.

³³ *Ibid.*, paras. 16-19.

³⁴ *Idem.*

³⁵ Para. 9 and p. 6.

at the same time. Consequently, the Chamber modifies the time limit set in the Decision of 1 February 2016 and instructs the Defence to file consolidated observations on the Batches, including the less redacted versions of the new requests, by 24 February 2016.

FOR THESE REASONS, the Chamber

ORDERS the Registry to apply the instructions provided in the Decision of 1 September 2015 and specified in paragraph 16 to the new requests contained in the Batches;

ORDERS the Registry to notify to the Defence, by 17 February 2016, the less redacted versions of the new requests contained in the Batches;

ORDERS the Registry to apply the instructions provided in the Decision of 1 September 2015 and specified in paragraph 16 to Batch Four and any new requests transmitted to the Defence; and

INSTRUCTS the Defence to file consolidated observations on the Batches, including the less redacted versions of the new requests, by 24 February 2016.

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 16 February 2016

At The Hague, the Netherlands