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**International
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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***

Public Document

**The Legal Representative's submission regarding the redactions on the requests
for reparations filed by victims yet to make themselves known to the Court**

Source: The Legal Representative of Victims

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

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Section**

Ms Isabelle Guibal, interim head

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A. Background

1. On 8 May 2015, Trial Chamber II (“the Chamber”) rendered a decision on the request for clarification concerning the implementation of rule 94 of the Rules of Procedure and Evidence and future stages in the procedure (“Decision No. 3546”).¹
2. In that decision, the Chamber ordered the Legal Representative, in consultation with the Registry, to file, by 1 October 2015:
 - the consolidated documents for each of the 305 applicants who were met during the consultation with the Registry and the Legal Representative in Autumn 2014, and any other information deemed necessary;
 - any request for reparations or any other information needed to complete the reparations requests of victims authorised to participate in the proceedings but who were not met during the consultation with the Registry and the Legal Representative (also by 1 October 2015).²
3. In the decision, the Chamber also ordered the Registry to transmit to it and to the parties a redacted version of any other request for reparations within the same time limit. The Chamber added that such requests must also be accompanied – where possible – by supporting documentation attesting to the extent of the harm suffered and the causal link between the harm alleged and the crime committed.³
4. The Chamber further ordered the Legal Representative to represent any victim yet to make him or herself known to the Court (“new applicants”).

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”, ICC-01/04-01/07-3546.

² *Ibid.*, operative part of the Decision.

³ *Ibid.*, operative part of the Decision and para. 19.

5. By decision of 21 September 2015⁴ and decision of 8 December 2015,⁵ the above-mentioned time limit of 1 October 2015 was extended to 1 December 2015, and subsequently to 29 February 2016.
6. On 1 September 2015, the Chamber rendered its Decision on the “Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications” (“Decision No. 3583”).⁶ In its Decision the Chamber sets forth the principles applicable to redactions relating to the three types of information with respect to which the Defence requested the lifting of redactions in applications to participate and/or requests for reparations (identity of intermediaries, identity of the person(s) killed and their link with the victim, information concerning the description of the Bogoro attack and the harm suffered by victims). The Chamber’s decision states that the principles it sets forth are applicable to the new requests for reparations.
7. Pursuant to Decision No. 3546 above, between June and September 2015, the Legal Representative and his team carried out their first mission to Ituri. During the mission, several new applicants made themselves known and their applications were acknowledged by the Legal Representative.
8. Subsequently, during a mission in October 2015 to a refugee camp in Uganda, the Registry identified a group of prospective new applicants. The Legal Representative met with them and a number of requests for reparations were accepted for submission to the Court.
9. The Legal Representative also interviewed a recently identified group of young and very young prospective applicants for reparations. The interviews took place after the Legal Representative had apprised the Chamber of the very young applicants’ situation.⁷ Following the Chamber’s decision of

⁴ ICC-01/04-01/07-3599-tENG.

⁵ ICC-01/04-01/07-3628.

⁶ ICC-01/04-01/07-3583-tENG.

⁷ “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”, 18 September 2015, ICC-01/04-01/07-3585-Red.

9 October 2015,⁸ assisted by a neuropsychiatric expert, the Legal Representative met these prospective applicants. A number of further requests for reparations were accepted for submission to the Court.

10. In application of Decision No. 3546 and in accordance with Decision No. 3583, the Legal Representative filed a consolidation of these new requests for reparations with the Registry.

B. Subject of the submission

11. The Legal Representative wishes to apprise the Chamber of the specific situation of new applicants who are not among the victims previously admitted to participate in the main proceedings.
12. The Legal Representative considers that, owing to the specific nature of the reparations stage, applicants for reparations qualify to participate in the proceedings by dint of making a request only. They may participate without the need – which is the case in the main proceedings – for a decision of the relevant Chamber regarding their actual participation in the proceedings.
13. The Legal Representative wishes to recall that the victims are acknowledged as parties in the reparations hearings, not participants, in accordance with a specific recognised right (namely their right to reparations on the basis of a conviction).
14. In fact, the distinction regarding victims' status in either type of proceedings is clearly made in the core texts. In the Rules of Procedure and Evidence, under "Victims and witnesses" – Chapter 4, Section III – a clear distinction is made between the "Participation of victims in the proceedings", Subsection 3, and "Reparations to victims", Subsection 4. The provisions regarding the participation of victims in the proceedings regulate the way in which victims' applications to participate in the main proceedings are processed and,

⁸ "Decision on the request of the common legal representative of victims for assistance from the Victims and Witnesses Unit", ICC-01/04-01/07-3608-tENG.

subsequently, the ways in which that participation takes place. These provisions lay down the conditions under which applications for participation may be rejected on a Chamber's own initiative or on the application of the Prosecutor or the defence. No such stipulation is made in the provisions relating to the procedure for submitting and processing requests for reparations. In fact, this is a different procedure in which the parties are no longer identical to those participating in the main proceedings.

15. The distinction described in the previous paragraph also appears in the Regulations of the Court, which distinguish between "Participation of victims in the proceedings under rule 89" (regulation 86) and "Requests for reparations in accordance with rule 94" (regulation 88). Here, too, it is clear that there is no provision regarding any precondition for allowing the participation of persons making requests for reparations at this stage in the proceedings.
16. As stated earlier, this appears to be fully consistent both with the victim's status as a party to these proceedings and with the specific nature of the rights claimed by the victim in the reparations stage, namely that participation in this stage of the proceedings does not require any prior decision by the Chamber.
17. However, the issue raised here by the Legal Representative is a new matter that the Chamber is yet to litigate upon. Under the circumstances, the Legal Representative must therefore proceed with caution and due regard for the security and the protection of his clients' privacy. At present, he cannot exclude the fact that the Chamber may choose to rule on the participation of applicants following a procedure similar to that applicable to participation in the main proceedings. The Legal Representative considers therefore that, at this stage, the redaction of identifying information must be applied to the new requests, following the type of redactions applied to the applications for participation in the main proceedings. As a result, and for

the same reasons as those which warranted their redaction from the applications for participation, the following remained redacted with respect to the convicted person, in the new applicants' requests for reparations: names, date of birth, ethnic group, names of parents, address and contact details of the contact person, and, in some request files, the names of deceased friends and relatives in respect of whom a claim of mental harm is being made.

18. The Legal Representative would recall that the anonymity of all participating victims he represents was maintained throughout the initial procedure when applying for participation. In accordance with Trial Chamber I's Decision of 6 May 2008 in the case of the *The Prosecutor v. Thomas Lubanga Dyilo*,⁹ Trial Chamber II – and, previously, Pre-Trial Chamber I¹⁰ – was indeed careful to maintain the anonymity of the applicants during that procedure, as redactions were the only reasonable and appropriate measures, considering the Trial Chamber's duty to provide protection pursuant to article 68(1) of the Statute¹¹ in particular.
19. After the victims were admitted to participate, their anonymity was gradually lifted. In fact, considering the need to safeguard the rights of the defence, and the role played by victims participating in the proceedings,

⁹ "Decision inviting the parties' observations on applications for participation of a/0001/06 to a/0004/06, a/0047/06 to a/0052/06, a/0077/06, a/0078/06, a/0105/06, a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06, a/0001/07 to a/0005/07, a/0054/07 to a/0062/07, a/0064/07, a/0065/07, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0168/07 to a/0185/07, a/0187/07 to a/0191/07, a/0251/07 to a/0253/07, a/0255/07 to a/0257/07, a/0270/07 to a/0285/07, and a/0007/08", ICC-01/04-01/06-1308, paras. 19-30.

¹⁰ "Decision authorising the filing of observations on applications for participation in the proceedings a/0072/06 to a/0080/06 and a/0105/06", 29 September 2006, ICC-01/04-01/06-494-tENG", p. 3.

¹¹ See, "Decision on the treatment of applications for participation, 26 February 2009, ICC-01/04-01/07-933-tENG"; "Decision Inviting the Parties to Submit their Observations on Applications for Participation (Rule 89(1) of the Rules of Procedure and Evidence)", 4 May 2009, ICC-01/04-01/07-1094-tENG; Second Decision Inviting the Parties to Submit their Observations on Applications for Participation (Rule 89(1) of the Rules of Procedure and Evidence)", ICC-01/04-01/07-1129-tENG, "Third Decision Inviting the Parties to Submit their Observations on Applications for Participation (Rule 89(1) of the Rules of Procedure and Evidence)", ICC-01/04-01/07-1151-tENG, "Fourth Decision Inviting the Parties to Submit their Observations on Applications for Participation (Rule 89(1) of the Rules of Procedure and Evidence)", ICC-01/04-01/07-1206-tENG, paras. 11 and 13.

the Trial Chamber, in a series of decisions, lifted the redactions concerning the identities of victims participating in the proceedings.¹² This was done with the approval of the victims concerned and after assessing each file's peculiar security conditions.

20. The Trial Chamber, however, has always emphasised that "[as] regards the applicants who do not object to their identities being disclosed to the parties, the Chamber will authorise such disclosure only in the event that it accords them the status of victim participating in the proceedings."¹³
21. For his part the Legal Representative is concerned that the said redactions may put him at odds with the above-mentioned Decision No. 3583. The question arises specifically with respect to the anonymity of deceased friends and relatives of the applicant as their identification could lead to the identification of the applicant.
22. The Legal Representative has registered 135 new requests to date. He is currently finalising the processing of the files to ensure that only those that are complete and clearly well-founded are submitted. At present 24 of them have been transmitted to the Chamber and the Defence. Several dozen other new applications will be submitted by the 29 February 2016 deadline. The requirements set forth by the different Trial Chambers regarding the victims' security and privacy, for the processing of applications for participation, were therefore applied during the Registry's redactions on the requests for reparations filed by these new applicants.
23. The Legal Representative therefore seeks direction from the Chamber regarding the status of these new applicants and, consequently, the

¹² "*Divulgence de l'identité des victimes aux parties*", 13 November 2009, ICC-01/04-01/07-1633-Conf-Exp; "*Divulgence de l'identité d'un deuxième groupe de victimes aux parties*", 20 November 2009, ICC-01/04-01/07-1664-Conf-Exp; "*Divulgence de l'identité d'un quatrième groupe de victimes aux parties*", 18 December 2009, ICC-01/04-01/07-1733-Conf-Exp; "*Divulgence de l'identité d'un cinquième groupe de victimes aux parties*", 1 February 2010, ICC-01/04-01/07-1816-Conf-Exp.

¹³ "Corrigendum to the 'Decision on the Disclosure to the Parties of the Identities of the Victims'" (ICC-01/04-01/07-1607), 12 November 2009, ICC-01/04-01/07-1607-Corr-tENG, para. 19.

redactions to be made on their applications. Should the Chamber consider that the distinction made between admission to participate and actual participation, as applied to the main proceedings, should not apply in the current proceedings, maintaining the redactions described in the previous paragraph on the requests filed by the new applicants cannot be justified. As a result, they will have to be lifted as soon as possible to allow the Defence to file its observations within the time limits. In the event that the Chamber, on the other hand, decides to issue decisions before applicants can be admitted to the proceedings, the Legal Representative asks for the possibility to maintain the said redactions for the reasons set out above.

FOR THESE REASONS, the Legal Representative RESPECTFULLY PRAYS THE CHAMBER to grant these submissions.

[signed]

Mr Fidel Nsita Luvengika

Common Legal Representative of Victims

Dated this 29 January 2016

At Bunia, Democratic Republic of the Congo