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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 Submissions on the Redaction of the Trial Chamber's Individual Assessment of
the Applications for Reparation**

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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1. The defence for Mr Germain Katanga (“the defence”) hereby submits its observations on the redactions to apply, if any, to the Trial Chamber’s individual assessment of the victims’ applications for reparations.

PROCEDURAL BACKGROUND

2. On 24 March 2017, Trial Chamber II issued its *Ordonnance de réparation en vertu de l’article 75 du Statut* (thereafter the “Reparations Order”)¹, including a public Annex I, containing a procedural background, and a confidential *ex parte* Annex II, containing the individual assessment of the applications for reparation.
3. On the same day, the Trial Chamber II issued its *Ordonnance enjoignant aux parties de soumettre des propositions d’expurgations et aux victimes de donner leur consentement à la communication au Fonds au profit des victimes de leurs coordonnées*, by which, *inter alia*, it ordered the defence, the Legal Representative of Victims and the OPCV to submit propositions of redactions to the Annex II of its Reparation Order by 24 April 2017.²
4. On 6 April 2017, the Legal Representative of Victims filed his *Observations déposées en application de l’« Ordonnance enjoignant aux parties de soumettre des propositions d’expurgations et aux victimes de donner leur consentement à la communication au Fonds au profit des victimes de leurs coordonnées »* (ICC-01/04-01/07-3729) ». ³ He indicated that most of the victims do not object to the disclosure of their identities to the Trust Fund for the purposes of the reparations process and that such a disclosure constitutes a means to recognize their status as victims. However, their general disclosure would not be feasible at this time in light of the attention generated by the Reparation Order, in particular from the press, and that their welfare requires their anonymity be preserved not only in their own interests but also in the interests of the Legal Representative's work with these victims. Also, that any appeal against the making of the Reparations Order will generate further attention and could cause interference. The Legal Representative of Victims asked for a further

¹ ICC-01/04-01/07-3728.

² ICC-01/04-01/07-3729.

³ ICC-01/04-01/07-3730.

three months to determine the relevant redactions to apply in light of the progress of the reparations order.

5. On 13 April 2017, the Trial Chamber II issued its *Décision rejetant la requête du Représentant legal des victimes du 5 avril 2017*,⁴ by which it dismissed the Legal Representative of Victims' request for an extension of time to submit redactions, on the ground that it was in the interest of justice to issue a public redacted version of the Annex II of its Reparation Order as soon as possible since it formed part of its Order and that any redactions proposed by the Legal Representative, the OPCV and the Defence, such as redactions relating to the identity of the three hundred and forty claimants, should be submitted to the Chamber by 24 April 2017 as previously ordered. In effect, the Decision leaves the Legal Representative to decide, as in the original order on redactions, whether or not to submit redactions and emphasises that if the claimants subsequently decide to disclose their identity, a second public version of Annex II would be rendered.

APPLICABLE LAW

6. Pursuant to Article 64(7) of the Rome Statute, the trial shall be held in public.
7. According to Article 67(1), the accused is entitled to a public hearing.
8. In its *Ordonnance portant instructions en vue de favoriser la publicité de la procédure*, Trial Chamber II recalled that its role is to guarantee the publicity of the debates in criminal proceedings, in accordance with articles 64(7) and 67(1) of the Statute.⁵
9. Pursuant to Article 68-1, the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. However, protective measures can be taken only if not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial (article 68(1)).⁶

⁴ ICC-01/04-01/07-3732.

⁵ ICC-01/04-01/07-3226, 31 January 2012, para. 1.

⁶ ICC-01/04-01/07-579, Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case, 10 June 2008, para 30.

10. In line with these principles, the scope of protective measures “cannot exceed what is strictly necessary in light of the applicant’s security situation”.⁷

DISCUSSION

11. The defence submits that in accordance with the principle of publicity of the debates, the redactions applied to the Annex II of the Reparation Order, if any, should be as limited as possible.
12. The only concern expressed by the Legal representative in his filings to date is the interest surrounding the victims caused by the Reparation Order, in particular from the media, and such further interest that may arise should there be an appeal of the Reparations Order. It is unclear whether he is preoccupied with the well-being or the security of the victims, since his concern is not sufficiently described. The Legal Representative does not provide any support for this, nor how it would impact the work of his own team and, as presently submitted, this does not justify the protective measures to be sought.
13. If security is the issue then it is for the Legal Representative to assess the reality of that risk and to make submissions accordingly. If only the well-being of the victims is at stake, it should be stressed that it is the essence of a trial to be public and normal that it attracts attention to both the convicted person and to the victims. This cannot justify in itself the anonymity of the victims from the public, especially since most of the victims appear to be willing to disclose their identity, as it would constitute a new step in the recognition of their status of victims, provided that no security concerns are raised at the same time. The Legal Representative will, it is submitted, need to further support any redactions sought on the basis of insecurity, if that be the issue of concern.
14. If the Trial Chamber, when it receives the proposed redactions, were to consider some redactions justified at this stage, the defence submits that they should be limited, essentially, to the full name of the victims. Indeed the Trial Chamber reasoning is

⁷ *Prosecutor v. Kony et al*, ICC-02/04-01/05-134, Decision on legal representation, appointment of counsel for the defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, 1 February 2007, para. 23.

sufficiently general and anonymised, with the exception of the mention of the full name of each victim, to prevent any identification of the victims once their name is redacted.

15. The defence has no further observations to make in respect of redactions at this stage.

CONCLUSION

16. For these reasons, the defence respectfully requests the Trial Chamber to give due consideration to the defence observations.

Respectfully submitted,



David Hooper Q.C.

Dated this 23 April 2017,
London.