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

Date: **14 April 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

**Decision on the submission of observations on the requests for reparations and
the applications to resume action**

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

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Legal Representatives of Applicants

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**Unrepresented Applicants for
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**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Other

TRIAL CHAMBER II (“the Chamber”) of the International Criminal Court (“the Court”) decides the following.

I. Procedural background

1. On 8 May 2015, the Chamber ordered the Common Legal Representative of Victims (“the Legal Representative”), in consultation with the Registry, to file, by 1 October 2015, all requests for participation in proceedings and/or reparations initially submitted by victims admitted to participate in the proceedings, accompanied – where possible – by supporting documentation attesting to the extent of the harm suffered and the causal link between the alleged harm and the crime committed, and any other requests for reparations made by victims yet to make themselves known.¹
2. On 12, 20 and 27 November 2015, the Registry transmitted requests for reparations to the Chamber,² and redacted versions of these requests were transmitted to the Defence on 24 and 27 November 2015³ (“the first set of batches”).
3. On 8 December 2015, the Chamber granted the Legal Representative an extension of the time limit, until no later than 29 February 2016, to submit all of the requests for reparations with the Registry (“the Decision of 8 December 2015”). The Chamber also directed the Defence to submit its observations on the first set of batches by 31 January 2016 and with respect to all other requests for reparations transmitted by no later than 28 March 2016.⁴

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 “*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.

³ “*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.

⁴ “*Décision accordant une nouvelle prorogation de délai pour le Représentant légal commun des victimes pour le dépôt des demandes en réparation*”, 8 December 2016, ICC-01/04-01/07-3628.

4. On 1 February 2016, ruling on a request from the Defence,⁵ the Chamber extended the time limit for the Defence to submit observations on the first set of batches until 12 February 2016.⁶

5. On 2 February 2016, the Registry transmitted other requests for reparations (“batch four”) to the Chamber,⁷ in unredacted form, and to the Defence, in redacted form.⁸

6. On 17 February 2016, as instructed by the Chamber,⁹ the Registry transmitted less redacted versions of certain requests for reparations to the Defence.¹⁰

7. On 18 and 19 February 2016, the Registry transmitted other requests for reparations (“batch five”) to the Chamber¹¹ and the Defence,¹² in unredacted and redacted forms, respectively.

8. On 24 February 2016, as instructed by the Chamber, the Defence submitted observations on the first set of batches.¹³

9. On 26 and 29 February 2016, the Registry transmitted the most recent requests for reparations filed (“batches six and seven”) to the Chamber¹⁴ and the Defence,¹⁵ in unredacted and redacted forms.

⁵ “Defence Request for Extension of Time”, 28 January 2016, ICC-01/04-01/07-3641.

⁶ “Decision granting extension of time to submit Defence observations on requests for reparations”, 1 February 2016, ICC-01/04-01/07-3645-tENG.

⁷ “*Quatrième Transmission de Demandes en réparation*”, 2 February 2016, ICC-01/04-01/07-3646 and confidential annexes 1 to 35.

⁸ “*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.

⁹ “Corrigendum to the ‘Order relating to the submission of the Legal Representative of Victims’”, 12 February 2016, ICC-01/04-01/07-3653-Corr-tENG.

¹⁰ “*Transmission de Demandes en réparation à la Défense en version moins expurgées en application de l’Ordonnance du 12 février 2016 (ICC-01/04-01/07-3653-Corr)*”, 17 February 2016, ICC-01/04-01/07-3655.

¹¹ “*Cinquième Transmission de Demandes en réparation*”, 18 February 2016, ICC-01/04-01/07-3656 and confidential annexes 1 to 85.

¹² “*Cinquième Transmission de Demandes en réparation à la Défense*”, 19 February 2016, ICC-01/04-01/07-3659 and redacted confidential annexes 1 to 85.

¹³ “Defence Observations on the Victims Application for Reparation”, 24 February 2016, ICC-01/04-01/07-3660 with one annex, ICC-01/04-01/07-3660-Conf-Exp-AnxA.

¹⁴ “*Sixième Transmission de Demandes en réparation*”, 26 February 2016, ICC-01/04-01/07-3661 and confidential annexes 1 to 78; “*Septième Transmission de Demandes en réparation*”, 29 February 2016, ICC-01/04-01/07-3664 and confidential annexes 1 to 15.

¹⁵ “*Sixième Transmission de Demandes en réparation à la Défense*”, 26 February 2016, ICC-01/04-01/07-3663 and redacted confidential annexes 1 to 78; “*Septième Transmission de Demandes en réparation à la Défense*”, 29 February 2016, ICC-01/04-01/07-3665 and redacted confidential annexes 1 to 15.

10. On 10 and 29 March 2016, the Registry transmitted to the Chamber¹⁶ and the Defence¹⁷ a Corrigendum to annex 9 of batch seven.

11. On 14 March 2016, the Legal Representative submitted 15 applications to resume action, along with the related documents, as redacted confidential annexes (“the Applications to Resume Action”).¹⁸

12. On 18 March 2016, the Registry transmitted an identification document relating to a request for reparations contained in batch seven¹⁹ (“the identification document”).

13. On 25 March 2016, the Defence filed a request (“the Request”) for: (i) an extension of the deadline – to 10 days after receipt of the Registry reports on batches five, six and seven – for submitting observations on the requests for reparations contained in batches four, five, six and seven (“request for an extension of time” and “the second set of batches”, respectively); (ii) the disclosure of unredacted versions of the death certificates contained in the Applications to Resume Action; and (iii) the submission of a list of the family relations between the different applicants for reparations.²⁰

14. On 29 March 2016, the Legal Representative responded to the Request (“the Response”).²¹

15. On 30 March 2016, the Registry transmitted a report concerning batches five, six and seven (“the fifth report”) to the Chamber and the Defence.²²

16. On 5 April 2016, the Defence informed the Chamber that it would not file any observations concerning the Applications to Resume Action.²³

¹⁶ “Corrigendum: Annex 9 to the ‘Septième Transmission de Demandes en réparation’”, 10 March 2016, ICC-01/04-01/07-3664-Conf-Exp-Anx9-Corr.

¹⁷ “Corrigendum: Annex 9 to the ‘Septième Transmission de Demandes en réparation à la Défense’”, 26 March 2016, ICC-01/04-01/07-3664-Conf-Exp-Anx9-Corr2.

¹⁸ “Demande de reprise des actions introduites par les victimes a/0015/09, a/0032/08, a/0057/08, a/0166/09, a/0192/08, a/0225/09, a/0281/08, a/0282/09, a/0286/09, a/0298/09, a/0354/09, a/0361/09, a/0391/09, a/2743/10 et a/30490/15”, dated 14 March 2016 and registered on 15 March 2016, ICC-01/04-01/07-3668-Conf and 15 confidential annexes, as well as 15 redacted annexes.

¹⁹ “Transmission à la Chambre d’un document additionnel concernant une demande en réparation”, 17 March 2016, notified on 18 March 2016, ICC-01/04-01/07-3672 with two confidential annexes.

²⁰ “Defence Requests with relation to the Victims Applications”, dated 25 March 2016 and registered on 29 March 2016, ICC-01/04-01/07-3675.

²¹ “Réponse à la requête de la Défense intitulée ‘Urgent Defence Requests with relation to the Victims Applications’”, 29 March 2016, ICC-01/40-01/07-3676.

²² “Transmission du Rapport concernant les Cinquième, Sixième et Septième Transmissions de Demandes en réparation”, 30 March 2016, ICC-01/04-01/07-3677 with one confidential *ex parte* annex available only to the Registry and the Legal Representative of Victims and one redacted confidential annex.

17. On 8 April 2016, the Legal Representative transmitted to the Chamber and the Defence a document containing the family relations between the applicants.²⁴

18. On 11 April 2016, the Defence submitted observations on the second set of batches.²⁵

II. ANALYSIS

19. The Chamber will examine below the three aspects of the Request.

a. Extension of time for the submission of observations on requests for reparations

20. The Defence submits that it would be more convenient for the parties and the Chamber if it submitted its observations in one filing, after the reports concerning the second set of batches have been transmitted.²⁶ The Defence asserts that the extension requested – 10 days²⁷ – will not extensively delay the proceedings. The Legal Representative does not oppose the request for an extension of time.²⁸

21. The Chamber points out that, pursuant to the first sentence of regulation 35(2) of the Regulations, a chamber may extend a time limit if good cause is shown.

22. The Chamber recalls that, on 29 March 2016, it granted the request for an extension of time. On that occasion, it also stated that, in due course, it would issue a formal decision specifying the exact nature of the extension of time and addressing the other aspects of the Request.²⁹

23. The Chamber notes that, on 31 March 2016, the Registry transmitted to the Defence a report concerning the second set of batches. As previously indicated,³⁰ the Chamber considers that the report may be of use to the Defence for submitting

²³ Email sent to the Chamber on 5 April 2016, at 9.52.

²⁴ “Addendum à la ‘Réponse à la requête de la Défense intitulée ‘URGENT Defence Requests with relation to the Victims Applications’”, 7 April 2016, ICC-01/04-01/07-3680, with one confidential annex, ICC-01/04-01/07-3680-Conf-Anx.

²⁵ “Second Defence Observations on the Victims Application for Reparation”, 11 April 2016, ICC-01/04-01/07-3681 with one *ex parte* confidential annex ICC-01/04-01/07-3681-Conf-Exp-AnxA and one public annex ICC-01/04-01/07-3681-AnxB.

²⁶ Request, ICC-01/04-01/07-3675, paras. 12, 15, 17, 22 and 29.

²⁷ Request, ICC-01/04-01/07-3675, para. 23.

²⁸ Response, ICC-01/40-01/07-3676, para. 2.

²⁹ E-mail sent to the Defence on 29 March 2016, at 17.12.

³⁰ “Decision granting extension of time to submit Defence observations on requests for reparations”, 1 February 2016, ICC-01/04-01/07-3645-tENG.

observations and that the fact that the report had yet to be notified to the Defence constituted good cause for the extension of the original time limit.

b. Transmission of unredacted versions of the death certificates contained in the Applications to Resume Action

24. The Defence notes that the death certificates of the 15 victims who died during the proceedings have been heavily redacted and asserts that these redactions are not justified and were not authorised by the Chamber.³¹ The Defence also points out that the death certificates contained in the requests for reparations transmitted to it were not redacted³² and accordingly asks the Chamber to order the Legal Representative to transmit the death certificates contained in the Applications to Resume Action in unredacted form.

25. The Legal Representative asserts that the two categories of death certificates require different treatment.³³ He submits that the non-redaction of the death certificates contained in the requests for reparations is justified by the need to be able to establish the harm linked to the death of a close relative or friend during the attack on Bogoro on 24 February 2003 and the causal link with the crimes of which Mr Katanga has been convicted.³⁴ The Legal Representative adds that this measure ordered by the Chamber is intended to enable the Defence to exercise its rights.³⁵ With regard to the death certificates of the participating victims who died during the proceedings, the Legal Representative submits that they do not constitute documentation provided in support of a request for reparations.³⁶ The Legal Representative further submits that the redactions applied concerned information relating to the place of residence of the victims or successors, in line with the practices of the Chamber.³⁷

26. The Chamber notes that, in connection with the case at hand, the Applications to Resume Action filed during the trial³⁸ and during the reparations stage,³⁹ along with

³¹ Request, para. 25.

³² Request, para. 25.

³³ Response, para. 5.

³⁴ Response, para. 6.

³⁵ Response, para. 6.

³⁶ Response, para. 7.

³⁷ Response, para. 7.

³⁸ See, for example, "Decision on the disclosure of the identity of victims to the parties and order to the Prosecutor and the Defence to submit additional observations in respect of certain deceased victims", 11 April 2011, ICC-01/04-01/07-2827-tENG, para. 27.

the relevant supporting documentation, were transmitted to the Defence in redacted form. With regard to the Applications to Resume Action that have been submitted to the Chamber for consideration, the Chamber recalls that the identities of the applicants for reparations, and of the members of their families requesting authorisation to resume the action that their relatives initiated before the Court, have been disclosed to the Defence. The Chamber considers that the redactions applied to the Applications to Resume Action and the related supporting documentation are justified and do not unduly affect the Defence's ability to submit observations in an informed manner. The Chamber consequently dismisses this aspect of the Request.

c. Submission of a list summarising the family relations between the applicants for reparations

27. The Defence submits that it is finding it difficult to pinpoint the family relations between the applicants since the children do not necessarily bear the same surname as their parents. It further notes in this regard that the identification documents contain several errors and do not necessarily give the full name of the applicants' relatives.⁴⁰ The Defence considers that a list of the family relations would be in the interest of the administration of justice, as this would prevent Mr Katanga from being held financially liable for the same harm more than once.⁴¹

28. The Chamber notes that the Legal Representative has included in the file a list of the family relations between the applicants, and it therefore considers that this aspect of the Request has become moot.

³⁹ 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, p. 7.

⁴⁰ Request, para. 27.

⁴¹ Request, para. 28.

FOR THESE REASONS, the Chamber

GRANTS the request for an extension of time;

DECLARES the Defence's request relating to access to a list of the family relations between applicants to be moot; and

DISMISSES the remainder of the Request.

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 14 April 2016

At The Hague, the Netherlands