



Original: **French**

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

Date: **1 April 2015**

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

**Order instructing the parties and participants to file observations in respect of
the reparations proceedings**

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 Germain Katanga

Mr David Hooper

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 Fiona McKay

Other

Mr Pieter de Baan (Trust Fund for
Victims)

Trial Chamber II (“the Chamber”) of the International Criminal Court (“the Court”), acting pursuant to article 75 of the Rome Statute (“the Statute”) and rules 97 and 98 of the Rules of Procedure and Evidence (“the Rules”), in the case of *The Prosecutor v. Germain Katanga*, issues this “Order instructing the parties and participants to file observations in respect of the reparations proceedings”.

I. Procedural background

1. On 7 March 2014, the Chamber, ruling in the majority, issued its “Judgment pursuant to article 74 of the Statute” (“the Decision to Convict”).¹
2. On 9 April 2014, acting pursuant to rule 150(1) of the Rules, the Prosecutor and the Defence filed their notices of appeal against the Decision to Convict.²
3. On 23 May 2014, the Chamber, again ruling in the majority, issued its decision on sentence pursuant to article 76 of the Statute (“the Decision on Sentence”), sentencing Germain Katanga to 12 years in prison.³
4. On 25 June 2014, Germain Katanga’s defence team (“the Defence”) and the Office of the Prosecutor (“the Prosecutor”) informed the Chamber that they were both withdrawing their appeals against the Decision to Convict.⁴ The Defence announced at the same time that it did not intend to appeal against the Decision on Sentence.

¹ “Judgment pursuant to article 74 of the Statute”, 7 March 2014, ICC-01/04-01/07-3436 and “Minority Opinion of Judge Christine Van den Wyngaert”, ICC-01/04-01/07-3436-AnxI.

² “Prosecution’s Appeal against Trial Chamber II’s ‘*Jugement rendu en application de l’article 74 du Statut*’”, 9 April 2014, ICC-01/04-01/07-3462; “Defence Notice of Appeal against the decision of conviction ‘*Jugement rendu en application de l’article 74 du Statut*’ rendered by Trial Chamber II, 7th March 2014”, 9 April 2014, ICC-01/04-01/07-3459.

³ “Decision on Sentence pursuant to article 76 of the Statute”, 23 May 2014, ICC-01/04-01/07-3484-tENG and “Dissenting opinion of Judge Christine Van den Wyngaert”, 24 May 2014, ICC-01/04-01/07-3484-AnxI.

⁴ “Defence Notice of Discontinuance of Appeal against the ‘*Jugement rendu en application de l’article 74 du Statut*’ rendered by Trial Chamber II on 7 April 2014”, 25 June 2014, ICC-01/04-01/07-3497 and public annex; “Notice of Discontinuance of the Prosecution’s Appeal against the Article 74 Judgment of Conviction of Trial Chamber II dated 7 March 2014 in relation to Germain Katanga”, 25 June 2014, ICC-01/04-01/07-3498.

5. On 21 August 2014, the Legal Representative of Victims (“the Legal Representative”) moved the Chamber to set a schedule for filing observations on the principles for reparations in the case and on the procedure to be followed.⁵
6. On 27 August 2014, the Chamber directed the Registry to contact victims who had applied for participation and/or reparations in order to receive additional and up-to-date information on the harm suffered and reparations measures sought by the victims, and to file a report thereon.⁶
7. On 15 December 2014, the Registry filed its report, which stated that, in close consultation and collaboration with the Legal Representative, 305 of the 365 victims had been met (“the Report”).⁷
8. On 8 January 2015, the Legal Representative, acting on his own initiative, filed observations on reparations.⁸
9. On 17 March 2015, the Presidency of the Court replaced two judges in Trial Chamber II.⁹

⁵ “*Requête sollicitant la fixation d’un calendrier en vue de permettre aux victimes de soumettre leurs observations sur les réparations (Article 68, 75 et 76 du Statut)*”, 21 August 2014, ICC-01/04-01/07-3507.

⁶ “Order instructing the Registry to report on applications for reparations”, 27 August 2014, ICC-01/04-01/07-3508.

⁷ “Registry Report on Applications for Reparations in accordance with Trial Chamber II’s Order of 27 August 2014”, 15 December 2014, ICC-01/04-01/07-3512, with one confidential annex and two confidential, *ex parte* annexes available only to the Registry, the Legal Representative and the Trust Fund for Victims. A confidential redacted version and a public redacted version of Annex 1 were notified on 21 January 2015 (ICC-01/04-01/07-3512-Conf-Anx1-Red and ICC-01/04-01/07-3512-Anx1-Red2). The French translation of Annex 1 was notified, as a confidential, *ex parte* version, on 6 February 2015, as a confidential version, on 23 February 2015, and as a public version, on 6 February 2015 (ICC-01/04-01/07-3512-Conf-Exp-Anx1-tFRA, ICC-01/04-01/07-3512-Conf-Anx1-tFRA-Red2 and ICC-01/04-01/07-3512-Anx1-tFRA-Red). A redacted confidential version of Annex 2 was notified on 31 March 2015 (ICC-01/04-01/07-3512-Conf-Anx2-Corr-Red).

⁸ “*Observations des victimes sur les réparations (Article 68(3) et 75 du Statut; Règles 89 à 93 et 97 du Règlement de procédure et de preuve)*”, 8 January 2015, ICC-01/04-01/07-3514-Conf. A public redacted version was notified on 27 January 2015 (ICC-01/04-01/07-3514-Red).

⁹ Judges Christine Van den Wyngaert and Silvia Fernández de Gurmendi were assigned to the Appeals Chamber and were replaced by Judges Marc Perrin de Brichambaut and Péter Kovács (“Decision replacing two judges in Trial Chamber II”, 17 March 2015 (decision notified on 18 March 2015), ICC-01/04-01/07-3530).

II. Analysis

10. This Order sets a schedule for the filing of observations in the proceedings provided for by article 75 of the Statute. The Chamber invites the parties and the Registry, in particular, as well as the Prosecutor and the Trust Fund for Victims to submit their observations on (a) the principles for reparations and (b) the scope and extent of any damage, loss or injury to, or in respect of, victims as well as the appropriate types and modalities of reparations.

a. Principles for reparations

11. The Chamber notes that the Appeals Chamber has explicitly stated,

Principles should be general concepts that, while formulated in light of the circumstances of a specific case, can nonetheless be applied, adapted, expanded upon, or added to by future Trial Chambers.¹⁰

12. The Chamber therefore requests the parties and the Registry, as well as the Prosecutor and the Trust Fund for Victims, to submit observations on the applicability of the principles established by the Appeals Chamber in the case of *The Prosecutor v. Thomas Lubanga Dyilo* to the facts of the present case and on any modifications or additions which might be required in the light of the particular circumstances of this case.

b. The scope and extent of any damage, loss or injury to, or in respect of, victims as well as the appropriate types and modalities of reparations

13. Under article 75 of the Statute, the Chamber may issue an order for reparations, which, in accordance with a decision of the Appeals Chamber, must contain, at a minimum, five essential elements:

1) it must be directed against the convicted person; 2) it must establish and inform the convicted person of his or her liability with respect to the reparations awarded in the order; 3) it must specify, and provide reasons for, the type of reparations ordered, either collective, individual or both, pursuant to rules 97 (1) and 98 of the Rules of Procedure and Evidence; 4) it must define the harm caused to direct and indirect victims as a result of the crimes for which the person was convicted, as well as identify the modalities of reparations that the Trial Chamber considers appropriate

¹⁰ *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “Order for reparations”, 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 5.

based on the circumstances of the specific case before it; and 5) it must identify the victims eligible to benefit from the awards for reparations or set out the criteria of eligibility based on the link between the harm suffered by the victims and the crimes for which the person was convicted.¹¹

14. The Chamber considers the Appeals Chamber's order of 3 March 2015¹² an appropriate starting point and wishes to garner the views of the recipients of this order on the following matters in the present case:

- i. Victims and groups of victims eligible to benefit from reparations;
- ii. Identification of victims;
- iii. Harm;
- iv. Standard of causation;
- v. Scope of Mr Germain Katanga's liability for reparations;
- vi. Modalities and forms of reparations;
- vii. Objective of reparations;
- viii. Transmission of requests for reparations to the Trust Fund for Victims;
and
- ix. Draft implementation plan.

15. The Chamber thus invites the parties, the Registry, the Prosecutor and the Trust Fund for Victims to submit observations on each of the subjects identified at paragraph 14, should they so wish.

16. The observations filed by the recipients of this Order may also address any other matter relating to the case before this Chamber, including the procedure to be adopted.

¹¹ *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012", 3 March 2015, ICC-01/04-01/06-3129, para. 32.

¹² *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, "Order for reparations", 3 March 2015, ICC-01/04-01/06-3129-AnxA, pp. 12-20.

FOR THESE REASONS, TRIAL CHAMBER II

INVITES the Defence, the Legal Representative, the Registry, the Trust Fund for Victims and the Prosecutor to submit observations, limited to 50 pages, on the matters identified in this Order, by 4 p.m. on 30 April 2015; and

ORDERS the Defence, the Legal Representative and the Registry to file any consolidated response to such observations, limited to 50 pages, by 4 p.m. on 29 May 2015.

Done in both English and French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 1 April 2015

At The Hague, the Netherlands