

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/07  
Date: 11 September 2017

**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 Observations on the TFV's Draft implementation plan**

**Source:** Defence for Mr Germain Katanga

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

to:

**Legal Representatives of Victims**

Mr Fidel Nsita Luvengika

**Counsel for the Defence for Germain**

**Katanga**

Mr David Hooper Q.C.

Ms Caroline Buisman

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

**Trust Fund for Victims**

Mr Pieter de Baan

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

## INTRODUCTION

1. The defence for Mr Germain Katanga (the ‘defence’) respectfully submits its observations in response to the Trust Fund for Victims’ Draft implementation plan relevant to Trial Chamber II’s order for reparations of 24 March 2017 (ICC-01/04-01/07-3728).<sup>1</sup>

## PROCEDURAL BACKGROUND

2. On 7 March 2014, Trial Chamber II issued its Judgment pursuant to article 74 of the Statute.<sup>2</sup>
3. On 23 May 2014, Trial Chamber II delivered its Decision on Sentence pursuant to article 76 of the Statute.<sup>3</sup>
4. Following several submissions from the parties and participants, on 24<sup>th</sup> March 2017, Trial Chamber II rendered its Order for Reparations pursuant to Article 75 of the Statute (the “Reparation Order”),<sup>4</sup> which is the object of a pending appeal.<sup>5</sup>
5. On 17 May 2017, the Trust Fund for Victims (“TFV”) notified the Trial Chamber of its decision to complement the payment of the individual and collective awards for reparations ordered in the *Katanga* case for the benefit of the 297 victims identified in the Trial Chamber's Reparation Order in the amount of \$1,000,000.<sup>6</sup>
6. On 25 July 2017, the TFV filed its Draft implementation plan relevant to Trial Chamber II's order for reparations of 24 March 2017 (ICC-01/04-01/07-3728).<sup>7</sup>

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<sup>1</sup> ICC-01/04-01/07-3751-Red.

<sup>2</sup> ICC-01/04-01/07-3436-tENG.

<sup>3</sup> ICC-01/04-01/07-3484-tENG.

<sup>4</sup> ICC-01/04-01/07-3728-tENG.

<sup>5</sup> ICC-01/04-01/07-3747-Red; ICC-01/04-01/07-3745-tENG; ICC-01/04-01/07-3746-Red.

<sup>6</sup> ICC-01/04-01/07-3740, Notification pursuant to regulation 56 of the TFV Regulations regarding the Trust Fund Board of Director’s decision relevant to complementing the payment of the individual and collective reparations awards as requested by Trial Chamber II in its 24 March 2017 order for reparations, 17 May 2017.

<sup>7</sup> ICC-01/04-01/07-3751-Red.

## DISCUSSION

### *The Participation of Mr Katanga in the reparations programme*

7. Regarding Mr Katanga's participation in the reparations programme, the TFV notes the following:

*132. The results of these discussions indicates that additional letters, written apologies or public pronouncements do not appear possible at this time in part due to Mr Katanga's continued detention in the DRC.*

*133. The defence recalled Mr Katanga's statements in court at his sentence review hearing where he expressed his regret for causing suffering to the victims and his written statements to that same effect when he terminated his appeal. The defence also suggested the possibility of showing the recorded video message of apology at a venue in Ituri. The defence gave their assurance that Mr Katanga would endeavor to comply with reasonable requests for additional statements or acts of apology and regret. In the Trust Fund's view, it is not clear that there is a desire from the victims for these types of actions, given the views expressed to date regarding the public apologies and statement already expressed by Mr Katanga. The Trust Fund considers that the Legal Representatives may wish to comment upon this offer in their observations.*

*135. The Trust Fund will continue to engage with the Legal Representatives and Mr Katanga's defence team regarding Mr Katanga's possible participation in the reparations modalities. Should a written or video-taped message of apology be of interest to the victims, the Trust Fund will incorporate such a programme into its implementation plan. Should there be any change in Mr Katanga's personal situation or should the DRC government permit him to leave detention to participate in a public ceremony, the Trust Fund will revert to the Trial Chamber with any new information in this regard.*

8. Mr Katanga remains willing to comply with any reasonable request made of him to contribute to the reparation process.<sup>8</sup> However, as noted by the TFV, it is unclear what the view of the victims may be in this respect. The Legal Representative of Victims may consider it appropriate to submit further observations on this issue.

### *The participation of the DRC government in facilitating the implementation of the reparations awards*

9. It remains the defence view that a traditional, public ceremony of reconciliation in which the local communities can participate – and which Mr Katanga could attend – would help heal the rifts caused by the war. The defence supports the TFV's proposal

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<sup>8</sup> ICC-01/04-01/07-3751-Anx2.

to “[a]llow Mr Katanga to participate, under strict security conditions and if desired by the victims, in a public or private apology ceremony (Ministry of Justice)” (para. 70). As suggested by the defence, this could be the occasion of a “meeting between community leaders, drawn from both the Hema and the Ngiti/Lendu communities, when statements of mutual respect were declared. [...] [T]his traditional ceremony [of expiation and forgiveness] could take place at Bogoro and would involve Mr Katanga himself, together with the elders and sages of both Hema and Ngiti communities and would help heal the rift between the communities and be a positive act of reparation for the victims.”<sup>9</sup>

10. The defence supports the remaining concrete requests proposed for the DRC government authorities at para. 70 – with the exception of the proposal regarding the seizure of his salary (see *infra*). The defence agrees with the TFV’s suggestion “that the DRC government be invited to submit observations on the present draft implementation plan, particularly in terms of the above areas where it has been requested to consider undertaking concrete actions” (para. 71). As already mentioned, the defence considers that it is in the interest of all the DRC inhabitants that the DRC authorities participate in the reparation process because they are the first concerned by the well-being of their population. Their involvements could favor a long term, sustainable, implementation of the measures envisaged by the TFV.

### *Seizure of salary*

11. Among the concrete requests for consideration by the DRC authorities, the TFV suggests “[t]he release of any outstanding back salary due to Mr Katanga to go towards the payment of the reparations awards (Ministry of Justice and Ministry of Defence)” (para. 70.)
12. The defence respectfully disagrees with such a proposal. It should be stressed that since his arrest in 2005 Mr Katanga has not received the army salary to which he was and remains entitled. Indeed, his co-accused, Matthieu Ngudjolo, had no difficulty in continuing to receive his salary but all efforts for and on behalf of Mr Katanga led

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<sup>9</sup> ICC-01/04-01/07-3751-Anx2, Defence correspondence regarding Mr Katanga's potential participation.

only to promises of payment by the DRC authorities that were not kept. While in detention, be it in The Hague or in Kinshasa, Mr Katanga was not given the possibility to work to obtain even a small income, contrary to the practice in numerous countries. Therefore, he has had no means to support himself and his large family who remain dependent upon him. The receipt of his back pay has been an expectation not only for Mr Katanga, but also for his family and those who have supported them over the years. It would be unfair to take all of the outstanding money from him and his family and would constitute a further punishment in addition to that set by the court.

13. In addition, having completed his ICC sentence, Mr Katanga remains detained by the DRC authorities in controversial circumstances – allegedly on account of further charges, albeit similar to those that he faced at the ICC. He needs legal representation to contest those allegations but receives no legal aid to do so. Any legal advice and help he has received in respect of the DRC charges has been largely pro bono. His receipt of back pay and future income constituted an expectation that he would have funds and remains a necessity if he is to be able to defend himself before the Congolese *Haute Cour Militaire*.

***Harms that fall outside of the order for reparations***

14. Regarding the harms that fall outside of the Reparation Order, the TFV submits that:

*78. Based on the above, the Trust Fund cannot at this point in time state with certainty and in detail which projects and associated services will be a part of its DRC assistance mandate activities during the time frame of the Katanga reparations programme. Notwithstanding this uncertainty, to the extent that the selected new assistance mandate projects address the types of harms suffered by the victims, but which fall outside of the scope of the Order for Reparations, the Trust Fund assures the Trial Chamber that it has taken note of these harms and will to the extent feasible refer these individuals to the relevant assistance mandate projects.*

15. The defence submits that the Trial Chamber should encourage anew the TFV to support programmes linked to the harm mentioned but not retained in the Reparation Order, *i.e.* the harm suffered by the victims of sexual crimes and the child soldiers. However, the defence submits that the Trial Chamber should encourage the TFV to support the Ngiti/Lendu and other communities that all suffered significantly in the

war and which are not mentioned in the TFV plan or otherwise supported by the court. Support for all the communities is necessary to avoid the tension which will otherwise arise where only one side is favoured.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D Hooper', with a long horizontal flourish extending to the left.

David Hooper Q.C.

Dated this 11 September 2017,  
London.