



Original: **French**

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

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

**Observations on the Trust Fund for Victims' Draft Implementation Plan Relevant
to the Order for Reparations**

Source: Office of Public Counsel for Victims

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

Office of the Prosecutor

Counsel for the Defence

Mr David Hooper

Ms Caroline Buisman

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Ms Paolina Massidda

Office of Public Counsel for Victims

Ms Paolina Massidda

Ms Bibiane Bakento

Mr Orchlón Narantsetseg

Mr Alexis Larivière

**Office of Public Counsel for the
Defence**

States' Representatives

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

I. PROCEDURAL HISTORY

1. On 15 March 2017, Trial Chamber II (“Chamber”) issued an order whereby it, *inter alia*, appointed the Office of Public Counsel for Victims (“OPCV”) as the legal representative of 37 applicants for reparations whose previously appointed Counsel had applied for termination of the representation agreement.¹

2. On 24 March 2017, the Chamber issued the “Order for Reparations pursuant to Article 75 of the Statute,” in which, for the purposes of reparations, it accorded the *locus standi* of victim to two hundred and ninety-seven applicants, including 14 victims represented by the OPCV, and awarded both individual and dedicated collective reparations (“Order for Reparations”).²

3. In the Order for Reparations, the Chamber directed the Trust Fund for Victims (“Trust Fund”) to prepare by 27 June 2017 a draft implementation plan, including a description of the projects it intended to develop, and directed observations from the Legal Representatives and the Defence regarding the draft plan by 28 July 2017.³ At the request of the Trust Fund,⁴ the Chamber extended the time limit for submitting the draft plan to 25 July 2017.⁵ The time limit for the parties to submit

¹ “Decision on the Application made by the Common Legal Representative of Victims on 2 March 2017”, Trial Chamber II, 15 March 2017, ICC-01/04-01/07-3727-tENG, para. 14.

² “Order for Reparations pursuant to Article 75 of the Statute”, Trial Chamber II, 24 March 2017, ICC-01/04-01/07-3728-tENG, (“Order for Reparations”). See also Annex II to the Order for Reparations.

³ Order for Reparations, pp. 118-119.

⁴ “Request for an extension of time”, 20 June 2017, ICC-01/04-01/07-3743, and “Joinder to the access request of the Legal Representative and Request for an extension of time”, 10 July 2017, ICC-01/04-01/07-3748.

⁵ “Decision granting the Trust Fund for Victims an extension of time for submission of the Draft Implementation Plan”, Trial Chamber II, 22 June 2017, ICC-01/04-01/07-3744-tENG and the “Decision Granting the Trust Fund for Victims Access to Document ICC-01/04-01/07-3728-Conf-Exp-AnxII and an Extension of the Time Limit to Submit the Draft Implementation Plan for Reparations”, Trial Chamber II, 11 July 2017, ICC-01/04-01/07-3749-tENG.

observations was also extended, first to 18 August, then to 4 September and lastly to 11 September 2017.⁶

4. On 25 July 2017, the Trust Fund filed the Draft Implementation Plan relevant to the Order for Reparations (“Draft Plan”).⁷

5. The Principal Counsel of the OPCV – acting as the Legal Representative of the 14 victims who were awarded reparations (“Legal Representative”) – notes the confidential classification of the document filed by the Trust Fund as well as the public redacted version, and considers that the instant submission may be filed as “public” since it contains no confidential information. The Legal Representative notes, therefore, that the Trust Fund submission should also be reclassified as “public”.⁸

II. OBSERVATIONS ON THE TRUST FUND’S DRAFT IMPLEMENTATION PLAN

6. As a preliminary remark, the Legal Representative reiterates the pressing need for reparations to enable victim beneficiaries to rebuild their lives as individuals and as a community, and hence to go beyond the survival mindset into which many of them lapsed as a result of the events in the instant case. In fact, not only does personal exposure to violence leave individual psychological scars, it seriously

⁶ “Decision granting the Trust Fund for Victims an extension of time for submission of the Draft Implementation Plan”, Trial Chamber II, 22 June 2017, ICC-01/04-01/07-3744-tENG and the “Decision Granting the Trust Fund for Victims Access to Document ICC-01/04-01/07-3728-Conf-Exp-AnxII and an Extension of the Time Limit to Submit the Draft Implementation Plan for Reparations”, Trial Chamber II, 11 July 2017, ICC-01/04-01/07-3749-tENG p. 5 and p. 6 respectively. See also, “Decision Granting an Extension of the Time Limit to File Observations on the Draft Implementation Plan of 25 July 2017”, Trial Chamber II, 29 August 2017, ICC-01/04-01/07-3759-tENG, p. 5.

⁷ “Draft implementation plan relevant to Trial Chamber II’s order for reparations of 24 March 2017 (ICC-01/04-01/07-3728)” (“Draft Plan”), 25 July 2017, ICC-01/04-01/07-3751-Conf+Anxs, (a public redacted version was filed on the same day).

⁸ Trust Fund’s remark in the Draft Plan, para. 41.

ruptures the social fabric.⁹ The aftermath of the conflict is at the centre of the victims' lives and it must be noted that its ramifications are felt on several levels: economic, human and medical, cultural and environmental.

7. The Legal Representative notes in this connection that, in the Draft Plan, the Trust Fund adopts a holistic and flexible approach which indeed appears to address the above-mentioned needs.

8. In particular, the Legal Representative supports the Trust Fund's approach to the identification of beneficiary categories¹⁰ as well as the forms of concrete reparations proposed ("awards packages") in each category.¹¹ She notes that the proposed reparations address the demands of the current situations of the victims whom she represents. With respect to her clients, the Legal Representative confirms the psychological dimension of the harm which they continue to endure and which is associated with the extreme violence of the realities they faced and the loss of their loved ones, on the one hand, and, on the other, the material loss which forced some victims to leave their village and settle elsewhere. Additionally, the victims welcome the flexibility included in the Draft Plan because it will allow them to choose solutions which best address their needs.¹²

9. The Legal Representative also supports the Trust Fund's approach to victimized women.¹³ In fact, this approach is becoming a fundamental factor to be taken into account in connection with reparations. Reparations have to be consistent

⁹ Commission on Human Rights, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Final report submitted by Mr Theo van Boven, Special Rapporteur, E/CN.4/Sub.2/1993/8, 2 July 1993, pp. 12-13. This document is available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G93/141/59/PDF/G9314159.pdf?OpenElement>

¹⁰ Draft Plan, footnote 7 above, paras. 56, 80-98.

¹¹ *Ibid.*, para. 99.

¹² *Ibid.*, paras. 100-104.

¹³ *Ibid.*, para. 114.

with reality (or different realities), the cultural specificities of the communities affected and the resultant specific needs of victims. To achieve this, the involvement of victim beneficiaries in the implementation of reparations from a gender-inclusive perspective should guarantee reparations that are tailored and aimed at integration, and that will enable the affected communities and each stakeholder to offer a fair chance to all female victims concerned.

10. The Legal Representative also shares the objectives that the Trust Fund identifies as the overarching goal of the implementation plan, in particular, the long-term impact of the reparations programme on the ability of the victims concerned to cope with the harm caused by Mr Katanga in terms of livelihood and financial and psychological trauma.¹⁴

11. Furthermore, the projected lasting peace – in respect of which the commitment of the State concerned is crucial – is intrinsically linked to the implementation of effective reparations,¹⁵ above and beyond justice itself, which will be seen to be rendered only as a function of the measures taken to assist each of the victims involved to resume a stable life and guarantee non-recurrence of the crimes of which Mr Katanga was convicted. As stated in the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence:

[t]he core function of guarantees of non-recurrence is preventive in nature. It is one to which truth, justice and reparation are themselves supposed to contribute: criminal justice mainly through deterrence; truth commissions through disclosure, clarification and the formulation of recommendations with a preventive intent; and reparations by strengthening the hand of victims to claim redress for the past and future violations and to enforce their rights more assertively.¹⁶

¹⁴ Draft Plan, footnote 7 above, para. 121.

¹⁵ S. Chen, N.V. Loayza and M. Reynal-Querol, *The Aftermath of Civil War* (September 2006). This document is available at:

<http://siteresources.worldbank.org/INTCONFLICT/Resources/EventStudyChenLoayzaReynalQuero.pdf>

¹⁶ United Nations General Assembly, Human Rights Council, Thirtieth session, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff, 7 September 2015, A/HRC/30/42, para. 24. This document is available, only in English, at:

12. In this regard, the Legal Representative emphasizes the need for the Democratic Republic of the Congo (DRC) to support the reparations process and be directly involved, as urged by both the Trust Fund and the Common Legal Representative.¹⁷

13. On that matter, the Legal Representative supports the concrete requests submitted to the Congolese authorities, as well as the Trust Fund's suggestion that the Chamber invite the DRC to submit its observations on the Draft Plan,¹⁸ in particular on the issues raised in paragraph 70 of the Plan. The Legal Representative regrets that she was not involved in the action taken by the Trust Fund and the Common Legal Representatives concerning meetings with the Congolese authorities.¹⁹ The Legal Representative will contact the Trust Fund and the Common Legal Representative for further information concerning that action, and with a view to being involved in all subsequent action aimed at involving the DRC in the implementation plan for reparations.

14. Lastly, the Legal Representative supports the Trust Fund's approach to harm that falls outside the scope of the Order for Reparations – in particular, physical harm – and the Trust Fund's willingness to refer victims, as appropriate, to certain organizations identified under its assistance mandate, and which could address said harm.²⁰

15. Whereas reparations in general are meant, to the extent possible, to restore victims to the *status ante quo* had the crime of which they were a victim not been

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/202/04/PDF/G1520204.pdf?OpenElement>.

¹⁷ Draft Plan, footnote 7 above, paras. 68-69.

¹⁸ *Ibid.*, footnote 7 above, paras. 70-71.

¹⁹ *Ibid.*, para. 68, referring to a joint mission.

²⁰ *Ibid.*, paras. 76-79.

committed, they can also improve the current situation of victims with a view to helping them rebuild their lives.²¹

16. The Legal Representative states that she is ready and willing to cooperate with the Trust Fund to ensure the successful implementation of the Draft Plan and considers that the time frame proposed by the Trust Fund for submitting progress reports to the Chamber (every six months) is appropriate, as is the possibility of submitting *ad hoc* issues to the Chamber.²²

17. In conclusion, the Legal Representative supports the Trust Fund's Draft Plan in its entirety and wishes to state that the victims she represents hope that it will be implemented as quickly as possible.

[signed]

Paolina Massidda

Principal Counsel

Dated this 11 September 2017

At The Hague, Netherlands

²¹ British Institute of International and Comparative Law (BIICL) and Protect Education in Insecurity and Conflict (PEIC), *Education and the Law of Reparations in Insecurity and Armed Conflict*. This document is available at: http://www.biicl.org/documents/204_6755_reparations_report21.pdf

²² Draft Plan, footnote 7 above, paras. 152-153.