

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **25 August 2017**

Appeal Chamber

Before: Judge Howard Morrison, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Sanji Monageng
Judge Christine Van den Wyngaert
Judge Piotr Hofmánski

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF**

THE PROSECUTOR v. GERMAIN KATANGA

Public document

Request for leave to file observations

Source:

The Trust Fund for Victims

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

The Office of the Prosecutor

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Trust Fund for Victims

Mr Pieter de Baan, Executive Director,
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REGISTRY

Registrar

Mr Herman von Hebel

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

1. BACKGROUND

1. On 24 March 2017, Trial Chamber II (“Trial Chamber”) issued an order for reparations against Mr Katanga.¹
2. On 27 June 2017, the legal representative of victims² and the Office of the Public Counsel for Victims (“OPCV”)³ submitted their appeals against the order for reparations pursuant to article 82 (4) of the Statute.
3. On 29 June 2017, Mr Katanga submitted his appeal brief.⁴
4. On 25 July 2017, the Trust Fund for Victims (“Trust Fund”) submitted its draft implementation plan relevant to the Trial Chamber’s order for reparations.⁵
5. On 7 August 2017, the Appeals Chamber issued “Directions on the conduct of the appeals proceedings”, requesting that the Trust Fund indicate whether it seeks to submit observations on the appeals, including on which particular issues, by 25 August 2017.⁶

2. APPLICATION FOR LEAVE TO SUBMIT OBSERVATIONS

6. The Trust Fund recalls that it is the implementing body for Court-ordered reparations orders issued under article 75 of the Statute. Pursuant to regulation 54 of the Regulations of the Trust Fund (“TFV Regulations”), the Trust Fund is tasked with preparing a draft implementation plan on the basis of a Trial Chamber’s order for reparations,⁷ which has already occurred in the present case. The Trust Fund also recalls that, pursuant to regulation 56 of the Regulations of the Trust Fund, its Board of Directors (“Board”) may decide to complement the payment of awards for reparations ordered by the Court against a convicted person.

¹ [ICC-01/04-01/07-3728](#).

² [ICC-01/04-01/07-3745-tENG](#).

³ [ICC-01/04-01/07-3746-Red](#) (“OPCV Appeal Brief”).

⁴ [ICC-01/04-01/07-3747-Red](#) (“Defence Appeal Brief”).

⁵ Draft implementation plan relevant to Trial Chamber II’s order for reparations of 24 March 2017 ([ICC-01/04-01/07-3728](#)) with five annexes, [ICC-01/04-01/07-3751-Red](#).

⁶ [ICC-01/04-01/07-3753](#).

⁷ See regulation 54 of the Regulations of the Trust Fund, providing that “When the Court orders that an award for reparations against a convicted person be deposited with the Trust Fund or made through the Trust Fund in accordance with rule 98, sub-rules 2 to 4, of the Rules of Procedure and Evidence, the Secretariat shall prepare a draft plan to implement the order of the Court, to be approved by the Board of Directors.”

7. Bearing these roles in mind, the Trust Fund considers that its interest in the present appellate reparations proceedings is primarily limited to issues raised on appeal that may impact upon the implementation of the order for reparations, specifically in terms of any potential amendment or modification that may be required of the draft implementation plan, as well as issues that directly relate to the TFV Regulations and the scope of authority granted therein to the Trust Fund's Board. Accordingly, the Trust Fund respectfully seeks leave to submit limited observations on the following two topics:

1. The potential procedural and substantive impact of the parties' requested relief on the draft implementation plan submitted in the *Katanga* case

8. The Trust Fund notes that the OPCV requests that "the Appeals Chamber, pursuant to rule 153 of the Rules, [] fulfil the Court's reparations responsibilities under article 75 of the Statute *in lieu* of the Trial Chamber"⁸ and that the Appeals Chamber "implement reparations proceedings pursuant to article 75" for its clients.⁹ The Trust Fund also notes that Mr Katanga requests "that the financial liability of [Mr Katanga] be reduced".¹⁰ The Trust Fund understands these requested reliefs to potentially involve the Appeals Chamber acting pursuant to its amendment authority under rule 153 of the Rules, as opposed to remanding these matters for a new determination to the Trial Chamber that rendered the impugned order for reparations.

9. The Trust Fund observes that both of these requested reliefs would substantively alter the order for reparations upon which its draft implementation plan is premised or potentially result in the issuance of a separate order for reparations pursuant to article 75 of the Statute for OPCV's clients. The Trust Fund wishes to clarify that it does not seek leave to make observations on whether these requested reliefs should be granted. Rather, the Trust Fund seeks leave to make observations concerning the procedural uncertainties that could arise should the relief be granted and the consequences this might have for the *Katanga* draft implementation plan.

⁸ [OPCV Appeals Brief](#), para. 49.

⁹ [OPCV Appeals Brief](#), p. 21.

¹⁰ [Defence Appeals Brief](#), para. 87.

10. In this regard, the Trust Fund notes that, while Rule 153 of the Rules includes provisions for the Appeals Chamber to amend an order for reparations, neither the Rules nor the TFV Regulations lay out the procedure for the adjustment or modification of a draft implementation plan, including to which chamber such a plan would be submitted. Therefore, if granted leave, the Trust Fund's observations would focus on potential instructions or clarifications that the Appeals Chamber may wish to include in its eventual judgment in order to prevent any unnecessary procedural confusion or delay in the implementation of the (amended) order for reparations, particularly in relation to any subsequent procedures involving the submission of an amended (or new) draft implementation plan.

2. Whether the Trust Fund can assume a "share of the reparations burden" outside of or beyond the amount of liability imposed on the convicted person in the order for reparations


11. The Trust Fund notes that in his submissions relevant to proportionate liability, Mr Katanga asserts that "[his] proposed approach would merely alter the proportionate relationship between Mr Katanga's share of the reparation burden on the one hand, and the share of the [Trust Fund] on the other [...]".¹¹ While not entirely clear, the Trust Fund understands this submission to refer to the Board's complement authority under regulation 56 of the TFV Regulations.

12. The Trust Fund submits that it has an interest, distinct from that of the other parties in the proceedings, in this issue because it appears to be premised on the notion that the Trust Fund's Board has the authority and discretion to decide to provide (and pay for) reparations beyond those ordered against the convicted person and beyond the monetary amount of liability imposed on the convicted person. Furthermore, to the extent that this issue relates to an interpretation of the TFV Regulations, the Trust Fund submits that it is appropriate for it to be permitted to make observations on its understanding of its own Regulations.

¹¹ [Defence Appeals Brief](#), para. 85.

FOR THE FOREGOING REASONS

The Board of Directors of the Trust Fund for Victims respectfully submits this request to seek leave to file observations in the present appellate proceedings on the two above-mentioned issues.



Pieter W.I. de Baan
Executive Director of the Secretariat of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 25 August 2017

At The Hague, The Netherlands