

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **1 March 2018**

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***

Confidential

***EX PARTE* Trust Fund for Victims, Legal Representative of Victims, Office of
Public Counsel for Victims, Registry, Office of the Director, Division of External
Operations, and Presidency only**

**Decision on the Joint Request to Initiate an Exchange of Information with the
United Nations**

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

Legal Representative of Victims

Mr Fidel Nsita Luvengika

Counsel for Germain Katanga

Office of Public Counsel for Victims

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

Presidency

Judge Silvia Fernández de Gurmendi,

President

Judge Joyce Aluoch, First Vice-President

Judge Kuniko Ozaki, Second

Vice-President

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Detention Section

Victims Participation and Reparations

Section

Others

Mr Christian Mahr

TRIAL CHAMBER II of the International Criminal Court ("Chamber" and "Court", respectively) decides the following:

1. On 24 March 2017, the Chamber issued an Order for Reparations against Germain Katanga ("Order for Reparations" and "Mr Katanga", respectively), in which, among other things, it directed the Trust Fund for Victims ("Trust Fund") to prepare a draft plan for the implementation of the Order for Reparations to benefit those of Mr Katanga's victims whom the Chamber identified.¹
2. On 25 July 2017, after having been granted two extensions of time,² the Trust Fund filed its draft implementation plan.³
3. On 12 October 2017, after having instructed the Trust Fund to implement the individual reparations independently of the collective reparations, the Chamber, *inter alia*, approved the implementation of the individual reparations and instructed the Trust Fund to submit additional information on the draft implementation plan for the collective reparations.⁴
4. On 20 February 2018, the Trust Fund, the Office of Public Counsel for Victims and the Legal Representative of Victims ("Applicants") filed a joint request ("Request") in which they requested the Chamber to consider initiating an exchange

¹ "Order for Reparations pursuant to Article 75 of the Statute", 24 March 2017, ICC-01/04-01/07-3728-tENG ("Order for Reparations"), paras. 307 and 309, and pp. 118-119, with one public annex (Annex I) and one confidential annex *ex parte* Legal Representative of Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga only (Annex II).

² "Decision granting the Trust Fund for Victims an extension of time for submission of the Draft Implementation Plan", 22 June 2017, ICC-01/04-01/07-3744-tENG; "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", 11 July 2017, ICC-01/04-01/07-3749-tENG.

³ "Draft implementation plan relevant to Trial Chamber II's order for reparations of 24 March 2017 (ICC-01/04-01/07-3728)", 25 July 2017, ICC-01/04-01/07-3751-Conf, French translation filed on 21 August 2017, as well as a confidential annex 1, a public annex 2, a confidential annex 3 *ex parte* Registry only, a confidential annex 4 *ex parte* OPCV Principal Counsel only and a confidential annex 5 *ex parte* Legal Representative of Victims only. A redacted version was filed on 25 July 2017 and the redacted French version was filed on 21 August 2017.

⁴ "Decision approving the Implementation of Individual Reparations and instructing the Trust Fund for Victims to Transmit to it Additional Information on the Implementation of Collective Reparations", 12 October 2017, ICC-01/04-01/07-3768-Conf-tENG, pp. 24-25.

of information pursuant to the Negotiated Relationship Agreement between the International Criminal Court and the United Nations (“Agreement”).⁵

5. The Applicants submitted that there was a risk that the alarming security situation in Bogoro and in the region could have an impact on the safety of the victims and, as a result, on the proper implementation of reparations.⁶ Moreover, the Applicants informed the Chamber that since late November 2017, and to date, the region has been confronted with a growing number of incidents of pillaging, violence and burning of homes due to inter-ethnic tensions between Hema and Lendu.⁷ The Applicants also explained that the beneficiaries of reparations might, in some cases, refuse to accept cows or basic furnishings out of fear that they would then become targets of pillaging or retaliation.⁸

6. In this regard, the Applicants pointed out that resolution 2348 adopted by the United Nations Security Council extends, for the moment, the mandate of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUSCO) to 31 March 2018, but reduces the number of troops.⁹ In addition, on 20 December 2017, MONUSCO officially announced that it was closing four military bases in Ituri, including the Bogoro military camp.¹⁰ The Applicants were informed that attacks on Bogoro had been avoided¹¹ owing to the presence of MONUSCO and that the closure of the MONUSCO base in Bogoro, as well as the withdrawal of troops, could well jeopardize the implementation of the reparations awarded by this Chamber.¹²

7. Accordingly, the Applicants requested the Chamber to initiate a process of information exchange with the United Nations pursuant to the Agreement and to

⁵ “Urgent joint request to the Trial Chamber to consider initiating an exchange of information pursuant to the Court’s agreement with the United Nations”, 20 February 2018, ICC-01/04-01/07-3775-Conf-Exp.

⁶ Request, paras. 8 and 19.

⁷ *Ibid.*, para. 11.

⁸ *Ibid.*, para. 15.

⁹ *Ibid.*, paras. 5-6.

¹⁰ *Ibid.*, para. 9.

¹¹ *Ibid.*, para. 17.

¹² *Ibid.*, para. 21.

determine the most appropriate manner in which such information could be provided to the United Nations.¹³

8. As a preliminary remark, the Chamber notes that the purpose of the Agreement is to define the “terms on which the United Nations and the Court shall be brought into relationship.”¹⁴ The Chamber also notes that article 3 of the Agreement provides for close cooperation “with a view to facilitating the effective discharge of their respective responsibilities” and that the parties are to “consult each other on matters of mutual interest.” In addition, article 5(1) of the Agreement provides that “the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest.” Under Section b(i) of the same article, the Registrar of the Court must provide information “relating to [...] orders of the Court in cases which may be of interest to the United Nations generally”.¹⁵

9. The Chamber considers that the information submitted by the Applicants in the matter at hand constitutes information within the meaning of article 5(1)(b)(i) of the Agreement and may prove useful to the United Nations, in particular with regard to the renewal of MONUSCO’s mandate, which is to be decided in the near future. The Chamber nevertheless observes that the Court’s external relations with international organizations, as well as the States Parties, are managed by the Presidency. In that regard, the Chamber recalls, for example, regulation 107 of the Regulations of the Court, which provides that all arrangements and agreements on cooperation are to be negotiated under the authority of the President of the Court and concluded by him or her.¹⁶ The Chamber further notes that articles 4(3) and 17(2) of the Agreement set out specific roles for the President in matters of cooperation between the Court and the United Nations. In the light of the foregoing, the Chamber

¹³ Request, para. 30. See also p. 11.

¹⁴ Article 1 of the Agreement. In this respect, paragraph 5 of the Preamble to the Agreement refers to “a mutually beneficial relationship whereby the discharge of respective responsibilities [...] may be facilitated”.

¹⁵ Article 5(1)(b)(i) of the Agreement.

¹⁶ See also paragraph 8 of the Preamble to the Agreement.

finds that it is appropriate to address the Request to the Presidency for its consideration and any follow-up it sees necessary.

FOR THESE REASONS, the Chamber

ORDERS the Registrar to address the Request to the Presidency of the Court for its consideration and any follow-up it sees necessary.

Done in 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 March 2018

At The Hague, Netherlands