



Original: **French**

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

Date: **21 August 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***

Public Document

**Decision on the Prosecution Request for Access to the Decision of 19 July 2018 on
the Transgenerational Harm Alleged by Some Applicants for Reparations**

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

Mr David Hooper

Ms Caroline Buisman

Office of Public Counsel for Victims

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

TRIAL CHAMBER II (“Chamber”) of the International Criminal Court (“Court”), in accordance with articles 54(1)(b) and 68(1) of the Rome Statute (“Statute”) and regulation 42(1) of the Regulations of the Court, decides as follows.

1. On 24 March 2017, the Chamber handed down its Order for Reparations against Germain Katanga (“Order for Reparations” and “Mr Katanga” respectively), in which it found that 297 of the 341 applicants for reparations in the case had demonstrated to the standard of proof of a balance of probabilities that they were victims of the crimes of which Mr Katanga was convicted.¹ Consequently, the Chamber decided that those 297 victims were eligible for the reparations awarded in the case.² Among the applications for reparations that it dismissed, the Chamber found in respect of five applicants that, although they “are, in all likelihood, suffering from transgenerational psychological harm [...], no evidence is laid before the Chamber to establish on a balance of probabilities the causal nexus between the trauma suffered and the attack on Bogoro [of 24 February 2003]”.³

2. On 8 March 2018, the Appeals Chamber delivered its judgment on the appeals⁴ against the Order for Reparations (“Appeals Judgment on Reparations”).⁵ The Appeals Chamber rejected the four grounds raised by the Defence team (“Defence”), the only ground raised by the Office of Public Counsel for Victims and the second ground raised by the Legal Representative of Victims (“Legal

¹ “Order for Reparations pursuant to Article 75 of the Statute”, 24 March 2017, ICC-01/04-01/07-3728-tENG p.118 and a public annex and a confidential annex *ex parte*, Legal Representative of Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga, ICC-01/04-01/07-3728-Conf-Exp-AnxII (“Annex II”).

² Order for Reparations, ICC-01/04-01/07-3728-tENG, p. 118.

³ Order for Reparations, ICC-01/04-01/07-3728-tENG, para. 134.

⁴ “Defence Notice of Appeal against the ‘*Ordonnance de réparation en vertu de l’article 75 du Statut*’”, 26 April 2017, ICC-01/04-01/07-3738; “Notice of Appeal against the Reparations Order and its Annex II issued in accordance with article 75 of the Statute on 24 March 2017”, 26 April 2017, ICC-01/04-01/07-3739; “Notice of Appeal against the ‘*Ordonnance de réparation en vertu de l’article 75 du Statut*’ and its Annex II”, 25 April 2017, ICC-01/04-01/07-3737-tENG.

⁵ “Confidential Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled ‘Order for Reparations pursuant to Article 75 of the Statute’”, 8 March 2018, ICC-01/04-01/07-3778-Conf. A public redacted version of the judgment was filed on 9 March 2018, ICC-01/04-01/07-3778-Red.

Representative”) in their appeals.⁶ Consequent to the Legal Representative’s first ground of appeal concerning the Chamber’s decision not to recognize the transgenerational harm suffered by some applicants (“Applicants Concerned”), the Appeals Chamber remanded to this Chamber the matter of reassessing the causal nexus between the psychological harm suffered by the Applicants Concerned and the crimes of which Mr Katanga was convicted.⁷

3. On 19 July 2018, the Chamber filed a confidential version and a public redacted version of its decision on the transgenerational harm alleged by the Applicants Concerned (“Decision of 19 July 2018”).⁸ After having reassessed the question of the causal nexus between the psychological harm suffered and the crimes of which Mr Katanga was convicted, the Chamber dismissed for a second time the applications for reparations submitted by the Applicants Concerned.⁹

4. On 1 August 2018, the Prosecution filed a request to be granted access to the unredacted version of the Decision of 19 July 2018 (“Request”).¹⁰ The Prosecution submitted that the decision – which is the Court’s first ruling on applications for reparations claiming transgenerational harm and on the standard of causation applicable to this type of harm – would be useful to the Prosecution, first because it would enable the Prosecution to make informed, judicious submissions in future reparations proceedings and second – given the decision’s wider impact and relevance to other proceedings – because it would enlighten the Prosecution as to the standard of causation applicable at the Court.¹¹

5. The parties filed no responses to the Request.

⁶ Appeals Judgment on Reparations, ICC-01/04-01/07-3778-Red, paras. 92, 127, 149, 191, 220, 257.

⁷ Appeals Judgment on Reparations, ICC-01/04-01/07-3778-Red, para. 260.

⁸ “Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgment of 8 March 2018”, 19 July 2018, ICC-01/04-01/07-3804-Conf-tENG. A public redacted version of the decision was filed that same day (ICC-01/04-01/07-3804-Red-tENG).

⁹ Decision of 19 July 2018, para. 61.

¹⁰ “Prosecution’s request to be provided with an unredacted version of the Trial Chamber’s decision of 19 July 2018 (ICC-01/04-01/07-3804-Red)”, 1 August 2018, ICC-01/04-01/07-3805.

¹¹ Request, paras. 3-6.

6. The Chamber considers that, although the Prosecution is not a party to the reparations proceedings, it has valid reasons that justify granting it access to the unredacted version of the Decision of 19 July 2018, so that it can be apprised of the complete assessment of the applications for reparations and of the standard of causation applicable to this type of harm.

7. The Chamber takes note in this regard of the Prosecution's obligations with regard to the protection of witnesses and victims pursuant to articles 54(1)(b) and 68(1) of the Statute. The Chamber also notes that under regulation 42(1) of the Regulations of the Court:

Protective measures once ordered in any proceedings in respect of a victim [...] shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded, subject to revision by a Chamber.

8. The Chamber therefore instructs the Prosecution to observe the protective measures ordered in respect of the applicants for reparations in the case, in particular the absolute necessity of not disclosing the identities of the Applicants Concerned or any other information that could be used to identify them. Furthermore, the Chamber stipulates that these measures shall continue to have full force and effect in relation to any other proceedings before the Court.

FOR THESE REASONS, the Chamber

GRANTS the Request;

INSTRUCTS the Registry to give the Prosecution access to the unredacted version of the Decision of 19 July 2018; and

INSTRUCTS the Prosecution to comply with the protective measures ordered in respect of the applicants for reparations in the case.

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 21 August 2018

At The Hague, Netherlands