

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 November 2018

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding
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

**Request to reclassify documents and proposal of redactions to apply to certain documents
with
five confidential annexes (I – V) and one confidential *ex parte* (VI)**

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

Counsel for Germain Katanga

Mr David Hooper

Ms Caroline Buisman

Legal Representative of Victims

Mr Fidel Nsita Luvengika

Ms Paolina Massidda

States Representatives

REGISTRY

Registrar

Mr Peter Lewis

Victims Participation and Reparations

Section

Mr Phillip Ambach

I. PROCEDURAL HISTORY

1. On 24 March 2017, the Trial Chamber II (“Trial Chamber”) issued an order for reparations against Mr Germain Katanga, awarding USD 1 million for individual and collective reparations to 297 victims of the case (“Reparations Order”).¹ The individual reparation consists in an award of symbolic compensation in the amount of USD 250 for each victim. The modalities of the collective reparations awarded were: (i) housing assistance, (ii) educational assistance, (iii) income generating activities, and (iv) psychological support.²

2. On 25 July 2017, the Trust Fund for Victims (“Trust Fund”) filed its draft implementation plan relevant to the Reparations Order (“Draft Implementation Plan”).³

3. On 11 September 2017, the legal representative of the victims,⁴ the Office of Public Counsel for the Victims in its role as legal representative (“Legal Representative”, “OPCV Legal Representative”; and “Legal Representatives”, jointly),⁵ and the Defence⁶ filed observations on the Draft Implementation Plan.

II. PRELIMINARY REMARKS

4. The Trust Fund wishes to inform the Trial Chamber that it has consulted the Legal Representatives regarding the documents for which it requests reclassification or proposes redactions.⁷ The Trust Fund and the Legal Representative agreed upon the opportunity to publicise the identified developments of the reparation stage in the *Katanga* case, as they no longer constitute a safety or security risk for the victims and do not impact the discreet nature of the planning of the implementation of reparations.

¹ Reparations Order, [ICC-01/04-01/07-3728](#).

² [Reparations Order](#), para. 304. *See also* paras 302-303.

³ Draft Implementation Plan, [ICC-01/04-01/07-3751-Red](#).

⁴ *Observations relatives au projet de plan de mise en œuvre déposé par le Fonds au profit des victimes en exécution de l’Ordonnance de réparation en vertu de l’article 75 du Statut* (ICC-01/04 01/07-3751-Red), [ICC-01/04-01/07-3763-Red](#).

⁵ *Observations sur le Projet de plan de mise en œuvre de l’Ordonnance de réparation déposé par le Fonds au profit des victimes*, [ICC-01/04-01/07-3762](#).

⁶ Defence Observations on the TFV’s Draft implementation plan, [ICC-01/04-01/07-3764](#).

⁷ *See* e-mail sent by the Trust Fund to the Legal Representative and the OPCV Legal Representative on 22 November 2018 (annex I). The Trust Fund has proposed to the OPCV Legal Representative to notify her views to the Trial Chamber.

III. APPLICABLE LAW

5. Article 64 of the Statute provides a ground for the principle of publicity of the proceedings that Chambers shall guarantee. Regulation 23 *bis* (3) of the Regulations of the Court stipulates that, once the reason why a document has been classified as confidential no longer exists, the participant who instigated the classification shall request the Chamber to reclassify the document. Upon request of any other participant or on its own motion, a Chamber may also reclassify a document when the justification for its classification has disappeared.

IV. REQUEST TO RECLASSIFY

6. The reparations implementation stage has been almost integrally confidential for reasons the Trust Fund and the Legal Representatives submitted to the Trial Chamber, and which the Trust Fund henceforth considers no longer exist regarding in particular the implementation of individual reparations. Therefore, the Trust Fund hereby submits a request for reclassification of five documents.⁸

7. The Trust Fund also submits to the Trial Chamber the drafts of public redacted versions of five other documents⁹ that the Trust Fund, the Trial Chamber and the Legal Representatives should file in order to make possible the reclassification requested. The Trust Fund considers that doing so will ensure the publicity of the reparations stage and comply with regulation 23 *bis* (3) of the Regulations of the Court.

8. The Trust Fund respectfully submits hereinafter the reasons why it requests reclassification of the following documents, as agreed with the Legal Representative.

9. The Trust Fund has thoroughly analysed documents ICC-01/04-01/07-3767-Conf, ICC-01/04-01/07-3770-Conf, ICC-01/04-01/07-3771-Conf, ICC-01/04-01/07-3772-Conf without its annex, and ICC-01/04-01/07-3777-Conf-Exp. As agreed with the Legal Representative, the Trust Fund submits that these documents should be reclassified as public considering the following alternative or cumulative motives:

⁸ ICC-01/04-01/07-3767-Conf, ICC-01/04-01/07-3770-Conf, ICC-01/04-01/07-3771-Conf, ICC-01/04-01/07-3772-Conf, ICC-01/04-01/07-3777-Conf-Exp.

⁹ ICC-01/04-01/07-3768-Conf, ICC-01/04-01/07-3773-Conf, ICC-01/04-01/07-3775-Conf with its annexes 1, 2 and 3, ICC-01/04-01/07-3809-Conf, and ICC-01/04-01/07-3811-Conf without its annex.

- i. there is no impact on the discreet nature of the implementation planning of reparations;
- ii. there is no longer a security or safety risk for the victims that could justify its classification as confidential;
- iii. the Trial Chamber has already ruled on the merits; and
- iv. the reclassification/redaction of the confidential documents it refers to is requested/proposed in the present submission.

10. The Trust Fund has agreed with the Legal Representative, after rigorous verification, on public redacted versions that could be filed by the Trust Fund, the Legal Representatives and the Trial Chamber in regards to documents ICC-01/04-01/07-3768-Conf,¹⁰ ICC-01/04-01/07-3773-Conf,¹¹ ICC-01/04-01/07-3775-Conf-Exp¹² with its annexes 1, 2 and 3,¹³ ICC-01/04-01/07-3809-Conf,¹⁴ and ICC-01/04-01/07-3811-Conf¹⁵ without its annex; with the purpose of enabling the Trial Chamber to reclassify the documents in accordance with the abovementioned reasons.

V. CONCLUSION

11. The Trust Fund strongly believes that the information contained in these documents is of great interest and may be of importance to other Trial Chambers to bear in mind in ongoing and future reparations proceedings, to the parties debating in front of them and to the Trust Fund itself.

12. The Trust Fund would greatly appreciate it if its request could be granted at the earliest.

¹⁰ Annex II.

¹¹ Annex III.

¹² Annex VI.

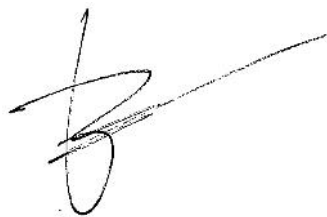
¹³ There is no confidential information in these annexes.

¹⁴ Annex IV.

¹⁵ Annex V.

FOR THE FOREGOING REASONS

The Board of Directors of the Trust Fund for Victims respectfully requests the Trial Chamber to reclassify the aforementioned documents as public, taking into account the public redacted versions the Trust Fund, as agreed with the Legal Representative, proposes to be filed (ICC-01/04-01/07-3768-Conf, ICC-01/04-01/07-3773-Conf, ICC-01/04-01/07-3775-Conf-Exp with its annexes 1, 2 and 3, ICC-01/04-01/07-3809-Conf, and ICC-01/04-01/07-3811-Conf without its annex) as soon as the Trial Chamber orders the reclassification of documents ICC-01/04-01/07-3767-Conf, ICC-01/04-01/07-3770-Conf, ICC-01/04-01/07-3771-Conf, ICC-01/04-01/07-3772-Conf without its annex, and ICC-01/04-01/07-3777-Conf-Exp.



Pieter W.I. de Baan

Executive Director of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 22 November 2018

At The Hague, The Netherlands