

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **3 July 2020**

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

**Order Instructing the Trust Fund for Victims to File Quarterly Reports on the
Delivery of Reparations and Instructing the Legal Representative of Victims to
File Observations to Clarify his Submissions of 6 and 13 March 2020**

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

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Counsel for the Defence of 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

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

TRIAL CHAMBER II ("Chamber") of the International Criminal Court, in the case of *The Prosecutor v. Germain Katanga*, orders the following.

I. Procedural history

1. On 24 March 2017, the Chamber handed down its "Order for Reparations pursuant to Article 75 of the Statute" ("Order for Reparations").¹ In that order the Chamber analysed 341 applications for reparations.² The Chamber found that of those 341 applicants, 297 persons had shown on a balance of probabilities that they had suffered harm as a result of the crimes of which Germain Katanga ("Mr Katanga") was convicted.³ Accordingly, the Chamber determined that those persons were to be awarded the individual and collective reparations approved by the Chamber in the case.⁴

2. On 25 July 2017, after being granted two extensions of time,⁵ the Trust Fund for Victims ("Trust Fund") filed, on the basis of the Order for Reparations, a draft plan for the implementation of the reparations ("Draft Implementation Plan of 25 July 2017").⁶

3. On 12 October 2017, having carefully studied the Draft Implementation Plan of 25 July 2017 and the observations of the Office of Public Counsel for Victims

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

² Order for Reparations, paras. 64-180.

³ Order for Reparations, para. 168.

⁴ Order for Reparations, paras. 281-295.

⁵ "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 and "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.

⁶ "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, translation registered on 21 August 2017, ICC-01/04-01/07-3751-Conf, with a confidential annex, a public annex, a confidential annex *ex parte* Registry, a confidential annex *ex parte* Principal Counsel of the Office of Public Counsel for Victims and a confidential annex *ex parte* Legal Representative of Victims. A redacted version was filed on 25 July 2017 and the redacted French version was filed on 21 August 2017.

("OPCV"),⁷ of the Legal Representative of Victims ("Legal Representative"),⁸ of Mr Katanga's Defence team⁹ and of the Trust Fund,¹⁰ the Chamber issued its "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".¹¹

4. On 5 December 2017, after being granted an extension of time,¹² the Trust Fund filed a report on the implementation of the individual reparations and on part of the additional information requested by the Chamber on the modalities of collective reparations.¹³

5. On 11 May 2018, the Legal Representative filed observations on the status of the process of implementing the reparations.¹⁴

6. On 20 September 2018, the Chamber directed the Trust Fund to file information on the modalities of the collective reparations, in particular a summary of the latest developments; the decision of the Trust Fund's Board of Directors on the

⁷ "Observations on the Trust Fund for Victims' Draft Implementation Plan Relevant to the Order for Reparations", filed by the Trust Fund, 11 September 2017, ICC-01/04-01/07-3762-tENG.

⁸ "*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)*", 11 September 2017, ICC-01/04-01/07-3763-Conf. A public redacted version was filed on 13 September 2017 (ICC-01/04-01/07-3763-Red). See also footnote 10.

⁹ "Defence Observations on the TFV's Draft implementation plan", 11 September 2017, ICC-01/04-01/07-3764 ("Observations of the Defence").

¹⁰ "Joint Submission Concerning the Draft Implementation Plan Filed by the Trust Fund for Victims in Conformity with the Order for Reparations Pursuant to Article 75 of the Statute (ICC-01/04-01/07-3751-Red)", dated 9 October 2017 and registered on 10 October 2017, ICC-01/04-01/07-3767-Conf-tENG.

¹¹ "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.

¹² "Decision Granting the Request for an Extension of Time Filed by the Trust Fund for Victims on 14 November 2017," 30 November 2017, ICC-01/04-01/07-3771-Conf-tENG.

¹³ "Report on the Trust Fund's execution of the payment of the individual reparations awards and additional information regarding the implementation of the collective reparations awards in compliance with Trial Chamber II's decision of 12 October 2017", dated 5 December 2017 and registered on 5 December 2017, ICC-01/04-01/07-3772-Conf with a confidential annex *ex parte* Legal Representative and OPCV.

¹⁴ "*Rapport du Représentant légal relatif à l'avancement du processus de mise en œuvre des réparations*", 11 May 2018, ICC-01/04-01/07-3792-Conf with two confidential annexes (Annex 1 and Annex 2) ("Observations of the Legal Representative of 11 May 2018"). On 18 May 2018, a public redacted version was filed with a public redacted version of Annex 2.

question of payment of support costs; the updated budget; and a specification of the processes planned and the entities/persons to be responsible for giving effect to the reparations modalities as well as the expected implementation schedule.¹⁵

7. On 1 October 2018, the Legal Representative filed observations on the award of individual and collective reparations.¹⁶

8. On 3 October 2018, after being granted an extension of time,¹⁷ the Trust Fund filed information on the modalities of collective reparations¹⁸ ("Trust Fund's Report of 3 October 2018").

9. On 22 November 2018, the Legal Representative filed observations on the Trust Fund's Report of 3 October 2018, in which he expressed concern at the lack of progress in implementing all the modalities of collective reparations, with the exception of the education assistance modality, and at the absence of a delivery schedule.¹⁹

10. On 6 December 2018, the Trust Fund filed a further report on the implementation of the reparation in the form of education assistance ("Trust Fund's Report of 6 December 2018").²⁰ The Trust Fund also informed the Chamber that it was continuing its preparations for the next phase of implementation and that it

¹⁵ "Order Directing the Trust Fund for Victims to File Information on the Modalities of Collective Reparations", 20 September 2018, ICC-01/04-01/07-3809-Conf-tENG, para. 15.

¹⁶ "*Rapport sur l'octroi des réparations individuelles et collectives et dépôt d'un projet de mémorandum de collaboration entre le Représentant légal et le Fonds au profit des victimes*", 1 October 2018, ICC-01/04-01/07-3810-Conf.

¹⁷ Email sent from the Chamber to the Trust Fund on 28 September 2018 at 12.48. Email sent from the Trust Fund to the Chamber on 28 September 2018 at 8.00.

¹⁸ "Information relevant to the modalities of implementation of collective reparations With Confidential annex A: Revised budget", dated 2 October 2018 and registered on 3 October 2018, ICC-01/04-01/07-3811-Conf with one confidential annex ("Trust Fund Submissions of 2 October 2018").

¹⁹ "*Soumission du Représentant légal relative à la mise en œuvre des réparations collectives*", 22 November 2018, ICC-01/04-01/07-3815-Conf, with four confidential annexes.

²⁰ "Update report on the implementation of the education assistance modality of the collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims", 6 December 2018, ICC-01/04-01/07-3818-Conf.

would file a report containing more detailed information in that respect in early 2019.²¹

11. On 14 December 2018, the Legal Representative filed submissions expressing the beneficiaries' concern about the status of the implementation of the collective reparations, and appended a letter from the beneficiaries to the Trust Fund and the Chamber, and a reply from the Legal Representative to that letter.²²

12. On 28 February 2019, pursuant to the Chamber's order of 7 February 2019,²³ the Trust Fund filed a status report on the implementation of the collective reparations ("Trust Fund's Report of 28 February 2019").²⁴

13. On 11 March 2019, the Legal Representative filed his observations on the Trust Fund's Report of 28 February 2019.²⁵

14. On 23 May 2019, the Legal Representative filed observations on a field mission undertaken not only for the purpose of meeting with the victim beneficiaries to update their choices regarding the modalities of collective reparations but also for the purposes of closely monitoring the implementation of the modalities of the collective reparations in the process of being put into effect and working with the Trust Fund on preparations for the modalities that are to be implemented.²⁶

15. On 3 July 2019, the Trust Fund filed a status report on the implementation of the collective reparations ("Trust Fund's Report of 3 July 2019").²⁷

²¹ Trust Fund's Report of 6 December 2018, para. 33.

²² "Communication du Représentant légal relative aux vœux et préoccupations des victimes bénéficiaires de réparation", 14 December 2018, ICC-01/04-01/07-3819-Conf.

²³ "Ordonnance enjoignant au Fonds de déposer un rapport sur l'état d'avancement de la mise en œuvre des réparations et sur les prochaines étapes et activités prévues", 7 February 2019, ICC-01/04-01/07-3825-Conf.

²⁴ "Update report on the implementation of collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims", 28 February 2019, ICC-01/04-01/07-3826-Conf.

²⁵ "Observations du Représentant légal sur le rapport du Fonds au profit des victimes du 28 février 2019 (ICC-01/04-01/07-3826-Conf)", 11 March 2019, ICC-01/04-01/07-3827-Conf.

²⁶ "Rapport du Représentant légal relatif à l'exécution des réparations collectives", 23 May 2019, ICC-01/04-01/07-3832-Conf.

²⁷ ICC-01/04-01/07-3834-Conf.

16. On 15 July 2019, the Legal Representative filed observations on the Trust Fund's Report of 3 July 2019.²⁸

17. On 26 July 2019, the Trust Fund filed a status report on the implementation of the collective reparations ("Trust Fund's Report of 26 July 2019").²⁹ In that report the Trust Fund requested the Chamber to approve the implementation of collective reparations in respect of the purchase of livestock, a number of income-generating activities and education assistance ("Trust Fund's Request of 26 July 2019").³⁰

18. On 5 August 2019, the Chamber granted the Trust Fund's Request of 26 July 2019 in so far as it approved implementation of the collective reparations relating to the purchase of livestock, a number of income-generating activities and education assistance.³¹

19. On 7 August 2019, the Legal Representative filed observations on the Trust Fund's Report of 26 July 2019.³² The Legal Representative highlighted that in view of the difficulties on the ground, it was necessary to consider converting certain modalities of collective reparations into financial compensation.³³

20. On 18 November 2019, the Trust Fund filed a status report on the implementation of the collective reparations ("Report of 18 November 2019").³⁴

²⁸ "Observations du Représentant légal sur le rapport du Fonds au profit des victimes du 3 juillet 2019 (ICC-01/04-01/07-3834-Conf)", 15 July 2019, ICC-01/04-01/07-3835-Conf.

²⁹ "Update report on the implementation of the collective reparations awards and Request for approval of implementation proposals pursuant to regulation 58 of the Regulations of the Trust Fund for Victims", 26 July 2019, ICC-01/04-01/07-3836-Conf.

³⁰ Trust Fund's Report of 26 July 2019, paras. 45-46.

³¹ Email sent by the Chamber on 5 August 2019 at 10.32.

³² "Observations du Représentant légal relatives au rapport du Fonds au profit des victimes du 26 juillet 2019 (ICC-01/04-01/07-3836-Conf)", 7 August 2019, ICC-01/04-01/07-3839-Conf ("Observations of the Legal Representative of 7 August 2019").

³³ Observations of the Legal Representative of 7 August 2019, para. 22.

³⁴ "Update report on the implementation of the income generating activities modality of the collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims and Request for approval of one proposed alternative implementation modality", 18 November 2019, ICC-01/04-01/07-3843-Conf.

21. On 12 December 2019, the Chamber handed down a decision in which it approved, *inter alia*, the implementation of a number of modalities of collective reparations.³⁵

22. On 6 March 2020, the Legal Representative filed submissions on the delivery of the collective reparations ("Submissions of 6 March 2020").³⁶

23. On 13 March 2020, the Legal Representative filed further submissions on the implementation of the collective reparations in the form of psychological support ("Submissions of 13 March 2020").³⁷

II. Conclusions of the Chamber

A. Status report on the delivery of the collective reparations

24. The Chamber notes that the most recent report from the Trust Fund giving an update on the latest developments in the implementation of the collective reparations is dated 18 November 2019. The Chamber also notes that by an email of 8 June 2022 sent to the OPCV, the Trust Fund reported difficulties that have arisen and have slowed its activities on the ground.³⁸

25. The Chamber recalls that the Trust Fund is required to keep the Chamber informed at regular intervals of progress made, difficulties or obstacles encountered that might slow the work undertaken, and any other relevant information concerning the implementation of the reparations.³⁹ That information enables the Chamber to discharge in full its role of monitoring and overseeing the implementation of

³⁵ "Décision relative aux requêtes du Fonds au profit des victimes du 26 juillet et du 18 novembre 2019 et aux demandes du BCPV du 2 août 2019", 12 December 2019, ICC-01/04-01/07-3846-Conf.

³⁶ "Rapport du Représentant légal relatif à l'exécution des réparations collectives", 6 March 2020, ICC-01/04-01/07-3851-Conf.

³⁷ "Observations du Représentant légal relatives à la mise en œuvre du soutien psychologique au titre de modalité de réparation collective", dated 12 March 2020 and registered on 13 March 2020, ICC-01/04-01/07-3853-Conf.

³⁸ Email sent from the Trust Fund to the OPCV on 8 June 2020 at 16.12.

³⁹ Order for Reparations, para. 313.

reparations⁴⁰ and facilitates communication and collaboration between the Chamber, the Legal Representative, the OPCV and the Trust Fund.

26. With a view to improving, streamlining and structuring the manner in which that information is communicated, the Chamber sees fit to direct the Trust Fund to put before it concise quarterly status reports on the implementation of the reparations. The Trust Fund is directed to file the first report by 16.00 on 17 July 2020.

27. Further, to ensure that the wishes and concerns of the beneficiaries of the reparations are properly taken into account and to prevent any unwarranted delay in delivering the reparations, the Chamber sees fit also to instruct the Legal Representative and the OPCV to file any observations that may be appropriate in response to the reports of the Trust Fund.

28. The Legal Representative and the OPCV are therefore instructed to file observations on the Trust Fund's Report of 17 July 2020 by 16.00 on 14 August 2020. Thereafter, for subsequent reports, the Legal Representative and the OPCV are instructed to file their observations within two weeks of notification of each new report.

B. The Legal Representative's Submissions of 6 and 13 March 2020

29. The Chamber notes that, in his submissions of 6 and 13 March 2020, the Legal Representative set out his observations and proposals regarding the steps envisaged to implement the reparations in the form of income-generating activities, housing assistance and psychological support. The Chamber wishes first of all to thank the Legal Representative for keeping it informed regularly about developments that have taken place and questions arising in connection with the implementation of the reparations.

30. The Chamber also notes that the Legal Representative concluded his submissions of 6 March 2020 as follows: "[TRANSLATION] May it please the [...]"

⁴⁰ Order for Reparations, para. 308.

Chamber to admit 'this report, the proposals and requests contained herein, in particular in paragraphs 52, 53 and 56 [...]'.⁴¹

31. The Chamber notes however that the Legal Representative does not make any explicit requests in those paragraphs. It is therefore not clear to the Chamber whether the Legal Representative is seeking any action on the part of the Chamber or merely informing the Chamber of the proposals currently being studied by the Trust Fund.

32. The Legal Representative is therefore instructed to file observations to clarify the Submissions of 6 and 13 March 2020 or to file any request there may be, by 16.00 on 17 July 2020.

⁴¹ Submissions of 6 March 2020, p. 17.

FOR THESE REASONS, the Chamber

INSTRUCTS the Trust Fund to file concise quarterly status reports on the implementation of the reparations, the first of which must be filed by 16.00 on 17 July 2020;

INSTRUCTS the Legal Representative and the OPCV to file observations in response to the Trust Fund's status report of 17 July 2020 on the implementation of the reparations, by 16.00 on 14 August 2020;

INSTRUCTS the Legal Representative and the OPCV to file observations in response to future quarterly status reports on the implementation of the reparations within two weeks of notification of each new report; and

INSTRUCTS the Legal Representative to file observations to clarify the Submissions of 6 and 13 March 2020 or to file any request there may be, by 16.00 on 17 July 2020.

Done in both English and French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccia

[signed]

Judge Péter Kovács

Dated this 3 July 2020

At The Hague, Netherlands