

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/07
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TRIAL CHAMBER II

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Christine Van den Wyngaert
Judge Olga Herrera Carbuccion

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

Public

**Request to fix a schedule for victims to submit their observations on reparations
(Articles 68, 75 and 76 of the Statute)**

Source: Common Legal Representative of the main group of victims

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

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Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

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Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. SUBJECT AND CONTEXT OF THE REQUEST

1. On 7 March 2014, Germain Katanga was found guilty of crimes against humanity and war crimes.¹ This judgment became final on 25 June 2014 when the Accused and the Prosecution discontinued their appeals.²

2. Since the judgment was handed down, the legal representative has stepped up his consultations with his clients in order to be as well prepared as possible for the reparations stage. Several field missions have been carried out and work on preparing the files has also been stepped up.

3. In the light of the evidence gathered, the Legal Representative considers it necessary to ask the Chamber to provide more definite directions concerning the continuation of the proceedings, including the principles to be applied in the instant case. He is completing a 15-day mission in the field and is considering undertaking another one shortly.

4. Moreover, this request is made against the background of earlier requests set out in his closing submissions³ and in his subsequent additional submissions regarding the application of article 25(3)(d). The Legal Representative requested that, "[TRANSLATION] a schedule [be fixed], pursuant to article 76 of the Statute, in order to obtain the parties' and participants' submissions [...] on the procedural modalities to be adopted for the reparations stage".⁴

¹ "Judgment pursuant to article 74 of the Statute", ICC-01/04-01/07-3436-tENG.

² "Defence Notice of Discontinuance of Appeal against the '*Jugement rendu en application de l'article 74 du Statut*' rendered by Trial Chamber II on 7 April 2014", ICC-01/04-01/07-3497 (and Annex); "Notice of Discontinuance of the Prosecution's Appeal against the Article 74 Judgment of Conviction of Trial Chamber II dated 7 March 2014 in relation to Germain Katanga", ICC-01/04-01/07-3498.

³ "*Conclusions finales*", 16 March 2012, ICC-01/04-01/07-3253-Corr2-Red, p. 99.

⁴ "*Observations du représentant légal quant à la responsabilité de G. Katanga en vertu de l'article 25-3 d) du Statut*", 8 April 2013, ICC-01/04-01/07-3365, p. 34.

II. BASIS FOR THE REQUEST

5. Pursuant to article 68(3) of the Statute,

[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

These views and concerns may be presented by the Legal Representatives of Victims. Rules 89 to 93 of the Rules of Procedure and Evidence (“the Rules”) set out the general principles governing the modalities of victim participation in the proceedings, including in the reparations stage.⁵

6. Where reparations in particular are concerned, article 75 of the Statute provides for the possibility of victims to submit their representations to the Chamber. In accordance with article 76(3) of the Statute, the Chamber shall hear any representations under article 75 during a further hearing (i.e. further to the hearing in which the sentence is determined). In this regard, rule 97 of the Rules explicitly provides for the possibility of victims, through their legal representative, to seize the Chamber and make observations within the context of the assessment of reparations.

7. In the instant case, the Chamber has authorised 353 victims, represented by Mr F. Nsita,⁶ to participate in the proceedings.⁷ These victims stated that they wished to continue to participate in the proceedings. Some of these victims had already filed a request for reparations, either together with their request to participate in the proceedings (at the time, the Court issued two standard forms, one for the request to participate in the proceedings and the other for the request for reparations) or in place of a request to participate in the proceedings. At the time, the Chamber had

⁵ See rule 91(4) of the Rules: “For a hearing limited to reparations under article 75, the restrictions on questioning by the legal representative set forth in sub-rule 3 shall not apply. In that case, the legal representative may, with the permission of the Chamber concerned, question witnesses, experts and the person concerned” [emphasis added].

agreed to treat previously filed requests for reparations as requests to participate in the proceedings.⁸

8. In the meantime, according to the information currently available to the Legal Representative, 14 of these 353 victims have died. The Chamber authorised the resumption of legal action by family members acting on behalf of 7 of these 14 victims.⁹ No successors of the seven other deceased victims¹⁰ have made themselves known or been identified to date.

⁶ With regard the appointment of the Legal Representative, see: “Order on the organisation of common legal representation of victims”, 22 July 2009, ICC-01/04-01/07-1328; Registry, “*Désignation définitive de Maître Fidel Nsita Luvengika comme représentant légal commun du groupe principal de victimes et affectation des victimes aux différentes équipes*”, 22 September 2009, ICC-01/04-01/07-1488.

⁷ Pre-Trial Chamber I, “Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08”, 2 April 2008, ICC-01/04-01/07-357; “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”, 10 June 2008, ICC-01/04-01/07-578-Conf; “Decision on the Application for Participation of Witness 166”, 23 June 2008, ICC-01/04-01/07-631-Conf; Trial Chamber II, “Corrigendum of Operative part of the Decision on the 345 applications for participation as victim in the proceedings”, 31 July 2009, ICC-01/04-01/07-1347-Corr-tENG; “Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims”, 23 September 2009, ICC-01/04-01/07-1491-Red-tENG; “Operative Part of the Second Decision on the Applications by Victims for Participation in the Proceedings”, 23 November 2009, ICC-01/04-01/07-1669-tENG; “*Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*”, 22 December 2009, ICC-01/04-01/07-1737; “*Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure*”, 17 March 2010, ICC-01/04-01/07-1967; “*Cinquième décision relative à 2 demandes de participation de victimes à la procédure*”, 9 February 2011, ICC-01/04-01/07-2693; “Decision on the maintenance of participating victim status of Victims a/0381/09 and a/0363/09 and on Mr Nsita Luvengika’s request for leave to terminate his mandate as said victims’ Legal Representative”, 7 July 2011, ICC-01/04-01/07-3064-tENG.

⁸ “Decision on the treatment of applications for participation”, 26 February 2009, ICC-01/04-01/07-933-tENG, paras. 55 and 56.

⁹ The victims in question are a/0025/08, a/0051/08, a/0197/08, a/0207/08, a/0120/09, a/0253/09 and a/0311/09; see: “Operative Part of the Second Decision on the Application by Victims for Participation in the Proceedings”, 23 November 2009, ICC-01/04-01/07-1669-tENG; “*Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure*”, 16 March 2010, ICC-01/04-01/07-1967; “Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09”, 14 June 2011, ICC-01/04-01/07-3018-tENG; “Corrigendum of the decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08 and a/0311/09”, 24 October 2011, ICC-01/04-01/07-3185-Corr-tENG; “Decision on the application to resume action, submitted by a family member of deceased Victim a/0253/09”, 10 June 2013, ICC-01/04-01/07-3383-tENG.

¹⁰ The victims in question are a/0175/08, a/0117/09, a/0166/09, a/0321/09, a/0354/09, a/0373/09 and a/0376/09; see: “*Cinquième soumission du représentant légal relative à la notification du décès de cinq victimes, à la reprise des dossiers de certaines victimes décédées et à la divulgation de l’identité de victimes et/ou de repreneurs d’action de certaines victimes*”, 15 February 2011, ICC-01/04-01/07-2706; “*Observations du représentant légal sur la liste des victimes participant à la procédure*”, 12 April 2013, ICC-01/04-01/07-3368.

9. Aside from these 353 victims, 14 additional victims filed requests, during the trial stage, for participation in the proceedings and/or reparations. For reasons specific to each of the 14 victims, their requests could not be filed within the time limit established by the Chamber at that time for participation in the substantive stage of the proceedings.¹¹ However, the victims all stated that they wished, at the very least, to participate in the reparations proceedings. They also stated that they wished to be represented by Mr Nsita.

10. Thus far, a total of 367 victims have expressed their desire to participate in the reparations proceedings before the Court. Pursuant to article 68 of the Statute, and in view of the fact that their personal interests are particularly affected, the victims wish to be able to present to the Chamber, through their legal representative, their views and concerns regarding the question of reparations.

11. During the course of the proceedings, in keeping with his duties as a lawyer and the directions of the Chamber,¹² the Legal Representative has kept in close contact with the victims (including by undertaking several field missions). He has also been working steadily to prepare his clients' files. It should be recalled that, when he was appointed, he inherited the files without having had the opportunity to analyse them in advance or meet his clients to discuss them.

12. To date, the Legal Representative has been able to meet a total of 151 victims individually. A significant number of these victims were met specifically with a view to addressing questions related to reparations. It should be noted that this opportunity to meet victims individually was largely dependent on the effective conduct of the proceedings and the work priorities arising from them, as well as the resources (both human and technical) assigned to the Legal Representative's team, the opportunities to travel to the field (which depended, *inter alia*, on security

¹¹ "Decision on the treatment of applications for participation", 26 February 2009, ICC-01/04-01/07-933-tENG, para. 27.

¹² "Order on the organisation of common legal representation of victims", 22 July 2009, ICC-01/04-01/07-1328, para. 10(a): "To that end, the Chamber considers it of utmost importance that there is a steady and reliable flow of information about the proceedings to the victims and that there is real involvement by the victims in terms of instructing the legal representatives on how their interests should be represented."

considerations), and the logistics of working in the field (in particular with regard to the arranging of meetings and the opportunities for victims to be present). In recent months, however, the pace at which individual interviews are held has significantly increased. Between January and August 2014, 79 victims were met.

13. These individual interviews were an opportunity to prepare the victims for the reparations stage by discussing their expectations, talking about the various possibilities that may be envisaged at this stage and taking note of their concerns.

14. Aside from these individual meetings, numerous collective meetings have been held with the victims. The purpose of these meetings was to keep them informed of developments in the proceedings and to gather their views and concerns in relation to these developments. During the meetings, however, the issue of reparations was sometimes addressed, in particular after questions had been raised by the victims. Accordingly, over the past few years, the Legal Representative has been able to collect a number of comments, questions and opinions expressed by victims on the subject of reparations. The most recent field missions have increasingly focused on the question of reparations. During the most recent mission, which has just ended, the collective meetings were essentially devoted to the subject of reparations. A total of 153 victims participated in the collective meetings held in August 2014.

15. Under articles 64, 75 and 76 of the Statute and rule 97 of the Rules, and in view of the information gathered and the victims' reactions, the Legal Representative wishes to submit observations on the principles that the Chamber may decide to apply to reparations in the instant case, in particular with regard to eligibility criteria (the definition of "victim" and/or "beneficiary of reparations" and the concept of "harm"), the evidence required, the status of the requests for reparations, and the procedure that might be followed.

16. If the Chamber were to issue a decision on these principles, victims could be provided with more precise explanations of the reparations process in the instant case and given greater assistance with the formulation of their requests in regard to

the types of reparations that they might wish to receive. Moreover, directions from the Chamber on the above-mentioned principles may help not only to limit the number of victim consultations but also, if need be, to address, from the current consultation and information stage onwards, certain expectations that victims have of reparations.

17. At this stage, however, the Legal Representative does not propose to address the specific types of reparations that may be granted in the instant case. In his view, preparatory outreach activities and victim consultations should be carried out before submissions are made on the types of reparations that victims might wish to receive.

FOR THESE REASONS, the Legal Representative **RESPECTFULLY REQUESTS** the Chamber to:

1. **GRANT** this request and, consequently,
2. **DETERMINE** a schedule for the purpose of hearing the Legal Representative and the parties on the principles that may be applied to reparations in the instant case, as well as the procedure that should be followed (as set out in paragraphs 15 and 17 above).

[signed]

Mr Fidel Nsita Luvengika

Common Legal Representative
of the main group of victims

Dated this 21 August 2014 at Bunia (Democratic Republic of the Congo)