

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 15 July 2016

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

**Order instructing the parties and the Trust Fund for Victims to file observations
on the monetary value of the alleged harm**

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

Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Éric MacDonald

Counsel for Germain Katanga

Mr David Hooper
Ms Caroline Buisman

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Other

Mr Pieter De Baan

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court”, respectively), acting pursuant to article 75 of the Rome Statute (“the Statute”) and rule 97(2) of the Rules of Procedure and Evidence (“the Rules”), decides the following.

I. Procedural history

1. On 8 May 2015, the Chamber ordered the common Legal Representative of victims (“the Legal Representative”), in consultation with the Registry, to transmit to the Chamber and, in redacted form, to the Defence for Mr Katanga (“the Defence”) all applications for participation initially presented by victims authorised to participate in the trial against Germain Katanga (“Mr Katanga”), the requests for reparations already submitted to the Chamber together with relevant supporting documentation, and any new request for reparations¹ (“the Decision of 8 May 2015”).

2. Between 12 November 2015 and 29 February 2016, the Legal Representative transmitted the requests for reparations through the Registry to the Chamber² (“the Requests for Reparations”) and, in redacted form, to the Defence team.³

¹ “Decision on the ‘*Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve*’ and future stages of the proceedings,” 8 May 2015, ICC-01/04-01/07-3546-tENG, p. 9.

² “*Transmission de demandes en réparation*”, 12 November 2015, ICC-01/04-01/07-3614 and 43 confidential annexes; “*Seconde transmission de demandes en réparation*”, 20 November 2015, ICC-01/04-01/07-3617 and 19 confidential annexes; “*Troisième transmission de demandes en réparation*”, 27 November 2015, ICC-01/04-01/07-3621 and 33 confidential annexes; “*Quatrième Transmission de Demandes en réparation*”, 2 February 2016, ICC-01/04-01/07-3646 and 35 confidential annexes; “*Cinquième Transmission de Demandes en réparation*”, 18 February 2016, ICC-01/04-01/07-3656 and 85 confidential annexes; “*Sixième Transmission de Demandes en réparation*”, 26 February 2016, ICC-01/04-01/07-3661 and 78 confidential annexes; “*Septième Transmission de Demandes en réparation*”, 29 February 2016, ICC-01/04-01/07-3664 and 15 confidential annexes.

³ “*Transmission de demandes en réparation à la Défense*”, 24 November 2015, ICC-01/04-01/07-3619 and 43 confidential, redacted annexes; “*Seconde transmission de demandes en réparation à la Défense*”, 27 November 2015, ICC-01/04-01/07-3622 and 19 confidential, redacted annexes; “*Troisième Transmission de Demandes en réparation à la Défense*”, 27 November 2015, ICC-01/04-01/07-3624 and 33 confidential, redacted annexes; “*Quatrième Transmission de Demandes en réparation à la Défense*”, 2 February 2016, ICC-01/04-01/07-3648 and 35 confidential, redacted annexes; “*Transmission de Demandes en réparation à la Défense en versions moins expurgées en application de l’Ordonnance du 12 février 2016 (ICC-01/04-01/07-3653-Corr)*”, 17 February 2016, ICC-01/04-01/07-3655; “*Cinquième Transmission de Demandes en réparation à la Défense*”, 19 February 2016, ICC-01/04-01/07-3659 and 85 confidential, redacted annexes; “*Sixième Transmission de Demandes en réparation à la Défense*”, 26 February 2016,

3. On 24 February and 11 April 2016, the Defence filed general observations on the redacted versions of the Requests for Reparations, and specific observations on each request⁴ (“the First Observations” and “the Second Observations”, respectively).

4. On 13 May 2016, the Legal Representative filed a report on the implementation of the Decision of 8 May 2015,⁵ with a summary table setting out the links between crimes and harm suffered⁶ (“the Table describing links between crimes and harm suffered”).

5. On 6 July 2016, the Legal Representative submitted tables presenting an overview of the harm alleged by the requesters.⁷

II. Analysis

6. In order to establish Mr Katanga’s responsibility and inform him of it, the Chamber recalls that it must determine the extent of the harm caused to victims, after having examined their status as victims eligible for reparations.⁸

7. The Chamber also recalls that, pursuant to article 75(3) of the Statute, it may “invite and shall take account of representations from or on behalf of the

ICC-01/04-01/07-3663 and 80 confidential, redacted annexes; “*Septième Transmission de Demandes en réparation à la Défense*”, 29 February 2016, ICC-01/04-01/07-3665 and 15 confidential, redacted annexes; “Corrigendum: Annex 9 to the ‘*Septième Transmission de Demandes en réparation*’”, 10 March 2016, ICC-01/04-01/07-3664-Conf-Exp-Anx9-Corr; “*Transmission à la Chambre d’un Document additionnel concernant une Demande en réparation*”, 17 March 2016, notified on 18 March 2016, ICC-01/04-01/07-3672 with two confidential annexes.

⁴ “Defence Observations on the Victims Applications for Reparation”, 24 February 2016, ICC-01/04-01/07-3660-Conf (a public redacted version was filed 8 March 2016); “Second Defence Observations on the Victims Application for Reparation”, 11 April 2016, ICC-01/04-01/07-3681-Conf, with one confidential, *ex parte* annex and one public annex.

⁵ “Report on the implementation of Decision No. 3549, including the identification of harm suffered by victims as a result of crimes committed by G. Katanga (article 75(1) of the Statute and regulation 38(1)(f) of the Regulations of the Court)”, 13 May 2016, ICC-01/04-01/07-3687 and four public annexes (“the Report”).

⁶ Annex 4 to the Report, ICC-01/04-01/07-3687-Anx4.

⁷ “*Transmission des tableaux récapitulatifs des préjudices des demandeurs en réparation*”, 6 July 2016, ICC-01/04-01/07-3701 with one confidential, *ex parte* annex available to the Legal Representative only and one confidential, redacted annex.

⁸ Article 75(1) of the Statute; *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2”, 3 March 2015, ICC-01/04-01/06-3129, paras. 1 and 183.

convicted person, victims, other interested persons or interested States". The Chamber further recalls that, pursuant to rule 97(2) of the Rules of Evidence and Procedure, it may "[...] appoint appropriate experts to assist it in determining the scope, extent of any [...] injury to, or in respect of victims".

8. The Chamber observes that the requesters allege having suffered material, physical and psychological harm.⁹ The Chamber notes that, in the Second Observations, the Defence presents information on the current prices of goods or property the requesters allegedly lost during the Bogoro attack of 24 February 2003.¹⁰

9. Albeit mindful of the difficulty of such an exercise and in order to help determine the extent of the harm caused to victims in the instant case, the Chamber instructs the Legal Representative, the Defence and the Trust Fund for Victims – in view of its extensive knowledge of the context in Ituri – to file additional observations on what they consider a fair monetary value for each type of harm, be it material, physical or psychological, suffered by the requesters. For a list of the types of harm alleged, the Legal Representative, the Defence and the TFV may *inter alia* consult the Table describing links between crimes and harm suffered.¹¹

⁹ See the various requests for reparations.

¹⁰ Second Observations, paras. 36-38.

¹¹ Annex 4 to the Report, ICC-01/04-01/07-3687-Anx4.

FOR THE FOREGOING REASONS, the Chamber

INSTRUCTS the Legal Representative, the Defence and the Trust Fund for Victims to file additional observations – not to exceed 30 pages – on the monetary value they consider fair for each type of harm alleged by the requesters, by 15 September 2016.

INSTRUCTS the Legal Representative and the Defence to transmit to the Chamber consolidated responses to the observations filed on 15 September 2016 – not to exceed 20 pages – by 29 September 2016.

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 15 July 2016

At The Hague, the Netherlands