



Original: **French**

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

Date: **16 March 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**

**Order Instructing the Legal Representative of Victims and the Defence Team for  
Germain Katanga to File Submissions Further to the Appeals Chamber Judgment  
on Reparations of 8 March 2018**

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

**Legal Representatives of Victims**

Mr Fidel Nsita Luvengika

**Defence Counsel for Germain Katanga**

Mr David Hooper

Ms Caroline Buisman

**Office of Public Counsel for Victims**

Ms Paolina Massidda

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**TRIAL CHAMBER II** (“Chamber”) of the International Criminal Court, acting pursuant to article 75 of the Rome Statute, issues the following order.

## I. PROCEDURAL HISTORY

1. On 24 March 2017, the Chamber issued its Order for Reparations against Germain Katanga (“Order for Reparations” and “Mr Katanga”, respectively), finding that 297 of the 341 applicants for reparations in the instant case had shown to the standard of proof of a balance of probabilities that they were victims of the crimes of which Mr Katanga had been convicted.<sup>1</sup> Accordingly, the Chamber decided to award reparations in the case at hand to the 297 victims.<sup>2</sup> The Chamber determined that, with regard to five of the applicants whose applications for reparations it rejected, although they “in all likelihood, [were] 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.”<sup>3</sup>

2. On 8 March 2018, the Appeals Chamber issued its judgment on the appeals<sup>4</sup> against the Order for Reparations (“Judgment on Reparations”).<sup>5</sup> The Appeals Chamber rejected the four grounds of appeal raised by the Defence (“Defence”), the one ground of appeal raised by the Office of Public Counsel for Victims (“OPCV”) and the second ground of appeal raised by the Legal Representative of Victims

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<sup>1</sup> “Order for Reparations pursuant to Article 75 of the Statute”, 24 March 2017, ICC-01/04-01/07-3728-tENG, with one public annex and one confidential annex *ex parte*, Legal Representative of Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga, p. 118.

<sup>2</sup> Order for Reparations, p. 118.

<sup>3</sup> Order for Reparations, para. 134.

<sup>4</sup> “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.

<sup>5</sup> “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 issued on 9 March 2018.

("Legal Representative").<sup>6</sup> With regard to the first ground raised by the Legal Representative in her appeal against the Chamber's decision not to recognize the transgenerational harm suffered by the five applicants, the Appeals Chamber considered that the Chamber:

erred in failing to properly reason its decision in relation to the causal nexus between the attack on Bogoro and the harm suffered by the Five Applicants. This makes it impossible for the Appeals Chamber to assess the reasonableness of the Trial Chamber's finding that the causal nexus had not been established to a balance of probabilities.<sup>7</sup>

3. The Appeals Chamber also determined that "bearing in mind that the number of applications alleging transgenerational harm is low, the Appeals Chamber considers it appropriate that these applications be reassessed."<sup>8</sup> The Appeals Chamber thus decided that it was:

appropriate to reverse the Trial Chamber's findings in relation to the Five Applicants and to remand the matter to the Trial Chamber, which has detailed knowledge of the case, for it to reassess the question of the causal nexus between the crimes for which Mr Katanga was convicted and their psychological harm and whether they should be awarded reparations.<sup>9</sup>

4. In the light of the foregoing, the Chamber instructs the Legal Representative and the Defence to file submissions on the matter that was remanded by the Appeals Chamber, i.e. to reassess the causal nexus between the psychological harm suffered by the five applicants and the crimes of which Mr Katanga was convicted, and to determine, on the basis of the findings of this reassessment, whether one or more of the applicants concerned should be awarded reparations. The Chamber is also of the view that, should it decide in favour of one or more of the applicants concerned, it is appropriate to instruct the Legal Representative and the Defence to file submissions on the possible consequences thereof on Mr Katanga's liability in reparations and on the draft implementation plan presented by the Trust Fund for Victims on 25 July 2017.<sup>10</sup>

<sup>6</sup> Judgment on Reparations, paras. 92, 127, 149, 186, 191, 220.

<sup>7</sup> Judgment on Reparations, para. 239.

<sup>8</sup> Judgment on Reparations, para. 260.

<sup>9</sup> Judgment on Reparations, para. 260.

<sup>10</sup> "Draft implementation plan relevant to Trial Chamber II's order for reparations of 24 March 2017

5. Considering the *circumscribed* task given by the Appeals Chamber to reassess the causal nexus between the psychological harm suffered by the five applicants and the crimes of which Mr Katanga was convicted, and to determine whether victim status for the purpose of reparations is established for the applicants concerned, the Chamber instructs the Legal Representative and the Defence to present their submissions in a document not exceeding 30 pages.

6. In that respect, the Chamber notes that, in its Judgment on Reparations, the Appeals Chamber makes reference to paragraph 134 of the Order for Reparations, in which this Chamber concluded that while five applicants “*in all likelihood*, [were] 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.” [Emphasis added].<sup>11</sup> The Chamber observes that in the English translation of the Order for Reparations to which the Appeals Chamber refers, the word “*vraisemblablement*” is translated by “in all likelihood”.<sup>12</sup> The Chamber considers that this translation does not reflect the conclusions it drew from the evidence with which it was presented. In its view, the phrase “in all likelihood” evokes a higher degree of probability, which in French might be rendered as “*selon toute vraisemblance*”, whereas the Chamber’s use of the word “*vraisemblablement*” was intended to describe “a probability” or simply “a possibility”.

7. The Chamber sees its necessary to raise this point of translation with the Legal Representative and the Defence because of its legal impact on the matter that the Appeals Chamber has remanded to this Chamber.

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(ICC-01/04-01/07-3728)”, 25 July 2017, ICC-01/04-01/07-3751-Conf, with one confidential annex, one public annex, one confidential *ex parte* annex available only to the Registry, one confidential *ex parte* annex available only to the Principal Counsel of the OPCV, and one confidential *ex parte* annex available only to the Legal Representative of Victims. A redacted version was filed on 25 July 2017.

<sup>11</sup> Order for Reparations, para. 134.

<sup>12</sup> “Order for Reparations pursuant to Article 75 of the Statute”, dated 24 March 2018 and English translation registered on 17 August 2017, ICC-01/04-01/07-3728-tENG, para. 134.

**FOR THESE REASONS**, the Chamber

**INSTRUCTS** the Legal Representative to file submissions, as set out in paragraphs 4-7 of this order, by 13 April 2018; and

**INSTRUCTS** the Defence to file submissions, as set out in paragraphs 4-7 of this order, by 13 April 2018.

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

[signed]

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**Judge Marc Perrin de Brichambaut**

**Presiding Judge**

[signed]

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**Judge Olga Herrera Carbuccion**

[signed]

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**Judge Péter Kovács**

Dated this 16 March 2018

At The Hague, Netherlands