

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **5 May 2021**

TRIAL CHAMBER II

Before: Judge Chang-ho Chung, Presiding Judge
Judge Péter Kovács
Judge María del Socorro Flores Liera

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

Confidential

Decision on requests related to the implementation of collective reparations

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

Mr David Hooper

Ms Caroline Buisman

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Trial Chamber II of the International Criminal Court (the 'Chamber'), in the case of *The Prosecutor v. Germain Katanga* (the '*Katanga case*'), having regard to article 75 of the Rome Statute and rule 96 of the Rules of Procedure and Evidence ('Rules'), issues this Decision on requests related to the implementation of collective reparations (the '*Decision*').

I. PROCEDURAL HISTORY

1. On 24 March 2017, the Chamber, in its prior composition, issued the Order for Reparations pursuant to Article 75 of the Statute ('Reparations Order'), awarding reparations to 297 victims. The reparations awarded consisted of a symbolic individual compensation of USD 250 and collective reparations designed to benefit each victim, in the form of support for housing, support for income-generating activities, support for education, and psychological support.¹

2. On 6 March 2020, the Legal Representative of Victims ('LRV') submitted a report on the implementation of collective reparations, *inter alia*, arguing that the confidentiality of the reparation proceedings – long justified for unanimously recognised reasons of safety and welfare – needed to be reviewed in light of the current general context and considering the stage of implementation of a large part of the reparations measures. The LRV submits that the confidentiality of a number of documents could be lifted for pedagogical purposes, in order to share the experience of the successful reparations proceedings in the Katanga case.²

3. On 17 July 2020, the Trust Fund for Victims ('TFV') submitted an Update Report on the implementation of collective reparations, *inter alia*, providing details on the steps undertaken and challenges encountered with the procurement required for the implementation of the housing assistance modality. The TFV also supported the LRV's request to review the confidentiality of the reparations proceedings.³

4. On 19 October 2020, TFV submitted its Second quarterly update report ('Housing Assistance Request') in which it, *inter alia*, elaborated on the multiple challenges relating to

¹ Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, [ICC-01/04-01/07-3728-tENG](#).

² Rapport du Représentant légal relative à l'exécution des réparations collectives ('LRV report on collective reparations'), 6 March 2020, ICC-01/04-01/07-3851-Conf, paras 30-34.

³ Update report on the implementation of the collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims and Request for approval of implementation proposals related to the income-generating activities modality ('TFV Update Report'), 17 July 2020, ICC-01/04-01/07-3857-Conf, paras 16; 30-38.

the housing assistance modality, proposing an alternative approach to implementation, and requesting the Chamber's approval to this effect.⁴

5. On 2 November 2020, the LRV submitted initial observations on the Housing Assistance Request, *inter alia*, requesting the Chamber to be allowed to conduct effective consultations with the victims regarding the TFV's proposal before its approval and suggesting to keep the options open for his clients to shift their budget from the housing assistance to other modalities.⁵ On 10 December 2020, the Chamber directed the LRV to submit new observations on the TFV's proposal regarding the implementation of the housing modality after having consulted with the victims.⁶

6. On 19 January 2021, the TFV submitted its Third quarterly update report ('Third Report'), *inter alia*, reiterating the advances and challenges faced with the implementation of the housing assistance modality and indicating the TFV's flexibility for the beneficiaries to change modalities.⁷

7. On 3 February 2021, the LRV submitted its Observations on the TFV's Third Report, *inter alia*, reiterating the challenges encountered to meet with the victims and expressing the willingness to continue advancing in the meantime with the discussions related to the TFV's proposals for the housing assistance modality.⁸ The LRV also reiterates the increasing inconvenience of maintaining the confidentiality of the reparations proceedings and notes some of the concrete challenges it posed, arguing that a (partial) lifting of confidentiality was in the interests of the victims, the Court, and the TFV, in order to avoid misinformation.⁹

8. On 18 February 2021, the Chamber, in its prior composition, issued a decision, *inter alia*, noting the submissions related to the housing modality and underlying that the flexible

⁴ Second quarterly update report pursuant to regulation 58 of the Regulations of the Trust Fund for Victims and Request for approval of implementation proposal related to the housing assistance modality, 19 October 2020, ICC-01/04-01/07-3865-Conf.

⁵ Observations du Représentant légal sur le rapport du Fonds au profit des victimes ICC-01/04-01/07-3865-Conf, 2 November 2020, ICC-01/04-01/07-3867-Conf.

⁶ Ordonnance relative à la requête du Fonds au profit des victimes du 19 octobre 2020 sollicitant l'approbation de la Chambre du mode de mise en œuvre concernant l'aide au logement, 10 December 2020, ICC-01/04-01/07-3868-Conf.

⁷ Third quarterly update report pursuant to regulation 58 of the Regulations of the Trust Fund for Victims and Request for approval of implementation proposal related to the psychological support modality (with Confidential Annex A), 19 January 2021, ICC-01/04-01/07-3870-Conf.

⁸ Observations du Représentant légal relatives au rapport du Fonds au profit des victimes « Third quarterly update report pursuant to regulation 58 of the Regulations of the Trust Fund for Victims and request for approval of implementation proposal related to the psychological support modality with Confidential Annex A » (ICC-01/04-01/07-3870-Conf) ('3 February 2021 LRV's Observations'), 3 February 2021, ICC-01/04-01/07-3871-Conf, paras 40-43.

⁹ 3 February 2021 LRV's Observations, ICC-01/04-01/07-3871-Conf, paras 45-47.

approach to the execution of the different modalities of reparations should be maintained. The Chamber also took note of the LRV's observations on the need for a partial lifting of confidentiality of the proceedings, indicating that the issue would be decided in due course.¹⁰

9. On 6 April 2021, after being granted extensions,¹¹ the LRV submitted observations ('Observations on Housing Assistance Request') containing the victims' views on the housing assistance modality.¹²

10. On 19 April 2021, the TFV submitted its Fourth Update Report ('Fourth Report'), *inter alia*, responding to the LRV's Observations on Housing Assistance Request.¹³

11. On 30 April 2021, the LRV and the TFV filed their Joint submissions on the housing assistance modality ('Joint Submissions') presenting the Chamber with the result of their joint efforts to draft a detailed plan for the implementation of the housing assistance modality.¹⁴

12. On 4 May 2021, the LRV submitted observations to the Fourth Report ('Observations to the Fourth Report'), *inter alia*, indicating that there were no specific comments regarding the stage of implementation of the various modalities, while providing some updates on the implementation of the housing assistance.¹⁵

II. ANALYSIS

A. As to the housing assistance modality of collective reparations

a) Submissions

13. The TFV submits that, since the issuance of the Reparations Order, it has explored several options for the implementation of this component of the collective reparations. Concretely, the TFV attempted to carry out a direct procurement process, conducted an open

¹⁰ Décision relative à la requête du représentant légal des victimes du 14 janvier 2021 ainsi qu'à la requête du Fonds au profit des victimes du 19 janvier 2021 portant approbation du mode de mise en œuvre concernant le soutien psychologique ('18 February 2021 Decision'), 18 February 2021, ICC-01/04-01/07-3872-Conf, paras 26-44, 25.

¹¹ E-mail from the Chamber on 25 January 2021, at 13:07; 18 February 2021 Decision, ICC-01/04-01/07-3872-Conf, para. 43; Décision faisant droit à la demande de prorogation de délai du représentant légal des victimes du 4 mars 2021 aux fins de déposer de nouvelles observations sur la proposition du Fonds au profit des victimes relative au soutien au logement, 10 March 2021, ICC-01/04-01/07-3874-Conf.

¹² Observations déposées en exécution de l'Ordonnance relative à la requête du Fonds au profit des victimes du 19 octobre 2020 sollicitant l'approbation de la Chambre du mode de mise en œuvre concernant l'aide au logement (ICC-01/04-01/07-3868-Conf), 6 April 2021, ICC-01/04-01/07-3877-Conf.

¹³ Fourth quarterly update report pursuant to regulation 58 of the Regulations of the Trust Fund for Victims ('Fourth Report'), 19 April 2021, ICC-01/04-01/07-3878-Conf.

¹⁴ Joint submission on the housing assistance modality, 30 April 2021, ICC-01/04-01/07-3879-Conf (with Confidential Annex A).

¹⁵ Observations relatives au Fourth quarterly update report pursuant to regulation 58 of the Regulations of the Trust Fund for Victims (ICC-01/04-01/07-3878-Conf), 4 May 2021, ICC-01/04-01/07-3880-Conf.

tender to enable local housing construction companies to apply, explored the possibility of using a simplified procurement process by relying on a UN procurement process, and looked into the possibility of purchasing construction materials and find an organisation that could supervise the building of the houses.¹⁶ For various reasons, none of the options turned out to be viable. Accordingly, and after having exhausted all available options, the TFV reports that a construction partner who may be able to construct and renovate homes as envisioned by the victims, in accordance with their needs and in a timely manner, could not be found.¹⁷

14. TFV submits that the only way to provide victims with housing promptly, and in accordance with their individual needs, is to ensure that they receive the financial resources for the construction or renovation of homes within their allocated budgets.¹⁸ As the TFV elaborates, the construction materials would likely be bought and the houses be constructed within the community, thereby supporting the local market and local craftsmen, while the originally allocated budgets would still suffice to build or renovate the houses.¹⁹

15. After having consulted with the victims, the LRV indicates that of the 76 victims consulted (representing 78 beneficiaries), 60 beneficiaries confirmed their choice to continue pursuing the housing assistance modality, whereas for various reasons, 17 beneficiaries manifested their intention to opt for another modality of reparations.²⁰ In addition, one of the victims has already built her own house and, due to her old age and health issues, is no longer able to perform an income generating activity (IGA), and therefore requests cash money to pay for her medical expenses and subsistence.²¹ Within the group of victims who confirmed their choice for the housing modality, the consultations revealed that they have different needs. They may require improvement or finalisation of existing constructions, a new construction on a land that they already possess, the purchase of a land to be included in the budget for the housing modality, or the reimbursement of construction costs already incurred.²²

¹⁶ Housing Assistance Request, ICC-01/04-01/07-3865-Conf, paras 32-39.

¹⁷ Housing Assistance Request, ICC-01/04-01/07-3865-Conf, para. 40.

¹⁸ Housing Assistance Request, ICC-01/04-01/07-3865-Conf, para. 41.

¹⁹ Housing Assistance Request, ICC-01/04-01/07-3865-Conf, para. 41.

²⁰ Observations on Housing Assistance Request, ICC-01/04-01/07-3877-Conf, paras 19-22; Confidential annex *ex parte* to the Legal Representative and the Trust Fund for Victims, 6 April 2021, ICC-01/04-01/07-3877-Conf-Exp-Anx.

²¹ Observations on Housing Assistance Request, ICC-01/04-01/07-3877-Conf, para. 19.

²² Observations on Housing Assistance Request, ICC-01/04-01/07-3877-Conf, paras 24-27.

16. The LRV also stresses that, in order to ensure that proposed housing modality can properly fulfil its objective, it is essential that victims are assisted and supported in the execution of the projects in the most appropriate way.²³

17. In its Fourth Report, the TFV reiterates its flexible approach, allowing for the 17 beneficiaries to change reparations modality and endeavours to implement these different modalities as soon as the LRV provides it with the relevant information. With regard to the beneficiary who wishes to receive cash money for medical expenses and subsistence, the TFV requests the Chamber's approval for this proposal.²⁴

18. In the Joint Submissions, the LRV and the TFV present the details of a joint plan aimed at ensuring that the beneficiaries of housing assistance receive meaningful and appropriate assistance with their construction and renovation projects and there is proper monitoring of the activities and building projects.²⁵ In particular, the TFV will provide beneficiaries with separate amounts of money divided in phases. The specific situation of each beneficiary will be taken into account in order to plan the different phases and payments. Three phases are proposed for beneficiaries who have a land and can start building immediately. Those who still need to acquire a land will first receive the amount required and the necessary assistance for the purchase.²⁶

19. It is contemplated to rely on (i) intermediaries – neutral and independent who will work in close collaboration with the Manager of the TFV's programs and its team – for monitoring the advances of the building projects and authorise payments accordingly; and (ii) constructors identified by the victims for the building activities. The TFV will organise briefing sessions with them to, *inter alia*, establish clear roles and provide them with the required technical expertise. The execution itself and the launch of payments and monitoring process will commence with the least complex cases, namely, the purchase of land and reimbursement for improvements. Priority should be given to urgent cases, as identified by the LRVs, and to the (re)construction of buildings in Bogoro.²⁷

20. In the Observations to the Fourth Report, the LRV notes that contacts have been made in recent days with the victims and authorities of Bogoro to make progress on the issue of land

²³ Observations on Housing Assistance Request, ICC-01/04-01/07-3877-Conf, paras 32-36.

²⁴ Fourth Report, ICC-01/04-01/07-3878-Conf, paras 12-16.

²⁵ Joint Submissions, ICC-01/04-01/07-3879-Conf, para. 10.

²⁶ Annex A to the Joint Submissions, ICC-01/04-01/07-3879-Conf-AnxA, pp. 1-2.

²⁷ Annex A to the Joint Submissions, ICC-01/04-01/07-3879-Conf-AnxA, pp. 1-5.

titles.²⁸ The LRV however reiterates his concerns regarding the monitoring of the implementation of the housing support and the impact of the security situation on its progress.²⁹ The LRV further stresses that the joint action plan insists on the need for flexibility of the process, noting that the progress to be made in the coming months will be decisive in determining more precisely the contours of a support process that is effective and meets the pursued objectives.³⁰

b) Chamber's determination

21. At the outset, the Chamber notes with concern that the housing component of collective reparations is yet to be implemented. Due to the passage of time and the volatile situation in Ituri, many of the victims have either opted out of housing support altogether because they have built a house in the meantime, wish to switch to other reparations modalities that are not likely to be destroyed due to the ongoing attacks, or are faced with greater needs that they need to satisfy.³¹ The Chamber acknowledges the multiple challenges faced by the TFV but stresses that the lack of implementation of the housing modality until the present day defies the principle of prompt reparations that the Chamber iterated in its Reparations Order.³²

22. Nevertheless, the Chamber notes that the majority of victims wish to maintain the housing assistance modality, although due to their personal situation they currently have different needs regarding its materialisation. The Chamber commends the collaborative work between the LRV and the TFV and that they have come up with a reasonable plan to provide victims with the required support and monitor their activities and building projects.³³

23. Taking into account that both the LRV and the TFV agree on the alternative implementation modality in relation to the housing assistance as well as on the system of support for the victims and monitoring of the building activities, and that the victims themselves have been consulted and agreed on this modality, the Chamber hereby approves the TFV's proposal and directs the TFV to proceed with its implementation, as soon as possible, in consultation and coordination with the LRV.

24. In addition, the Chamber notes that 18 victims wish to opt out of housing support altogether and would like to opt for another reparations modality, with one victim opting for

²⁸ Observations to the Fourth Report, ICC-01/04-01/07-3880-Conf, para. 17.

²⁹ Observations to the Fourth Report, ICC-01/04-01/07-3880-Conf, para. 18.

³⁰ Observations to the Fourth Report, ICC-01/04-01/07-3880-Conf, para. 20.

³¹ Observations on Housing Assistance Request, ICC-01/04-01/07-3877-Conf, para. 21.

³² Order for Reparations, ICC-01/04-01/07-3728-tENG, paras 15, 267.

³³ Joint Submissions, ICC-01/04-01/07-3879-Conf.

receiving money in cash for medical expenses and subsistence. In addition, the Chamber notes that the TFV stands ready to accommodate the wishes of the 17 victims as soon as the LRV provides it with the relevant information, as well as that it requests the Chamber's approval with regard to the one victim who opts for cash assistance.

25. The Chamber commends the TFV's flexible approach to respond to the victims' needs with regard to reparations, and in turn, considers that all victims' requests to switch to other modalities of reparations are justified. Accordingly, the victims decisions to opt for other modalities should be accommodated, as long as they generally fall within the parameters of the Reparations Order and the Chamber's subsequent decisions approving the implementation of the different modalities of reparations. Additionally, given her advanced age and health conditions, the Chamber considers that the victim in need of cash assistance for medicine and subsistence should be prioritised, in that her corresponding needs shall be fulfilled as a matter of priority.

B. Publicity of Reparations Proceedings

26. The Chamber notes the arguments put forward by the LRV in support of a partial lifting of the confidentiality of the reparations proceedings, considering that, in light of the general context and given the stage of implementation of a large part of the reparations measures, the concerns regarding the safety and well-being of victims, which justified the confidentiality of proceedings, may no longer apply.³⁴ The Chamber also recalls the TFV's support for the LRV's proposal to review the confidentiality of the reparations proceedings.³⁵

27. Noting the submissions above, and in order to give full effect to the principle of publicity of the reparations proceedings enshrined in rule 96 of the Rules, the Chamber hereby orders the parties, the Registry, and the TFV to review the underlying submissions to this Decision and generally all their previous submissions in the case record of the reparation proceedings and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification of all their filings and annexes currently classified as confidential or confidential *ex parte*, by 7 June 2021, at the latest. For future filings, the parties, the Registry, and the TFV are directed to file their documents publicly, to

³⁴ LRV Report on collective reparations, ICC-01/04-01/07-3851-Conf, paras 30-34; 3 February 2021 LRV's Observations, ICC-01/04-01/07-3871-Conf, paras 45-47

³⁵ TFV Update Report, ICC-01/04-01/07-3857-Conf, para. 16.

the extent possible, or file public redacted versions of confidential documents as expeditiously as possible, preferably simultaneously.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

APPROVES the implementation of the alternative housing modality as requested in the Housing Assistance Request and the Fourth Report and detailed in the Joint Submissions;

DIRECTS the TFV to accommodate all victims' requests to switch to another reparations modality as well as prioritise the reparations of the victim in need of cash assistance for medicine and subsistence due to her advanced age and health conditions;

ORDERS the parties, the Registry, and the TFV to review the underlying filings to this Decision and all their previous submissions in the case record of the reparation proceedings and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification of filings and annexes currently classified as confidential or confidential *ex parte*, by 7 June 2021, at the latest.

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



Judge Chang-ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated this Wednesday, 5 May 2021

At The Hague, The Netherlands