

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 April 2022**

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 the LRV's request pursuant to rule 99 of the Rules of Procedure and
Evidence and additional matters**

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

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States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

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Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

OTHERS

The Presidency

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 ('Statute') and regulation 117 of the Regulations of the Court ('Regulations') issues this Decision on the LRV's request pursuant to rule 99 of the Rules of Procedure and Evidence and additional matters (the 'Decision').

I. PROCEDURAL HISTORY

1. On 24 March 2017, the Chamber issued the Order for Reparations pursuant to Article 75 of the Statute ('Reparations Order'), awarding symbolic individual compensation and collective reparations to 297 victims.¹
2. On 8 March 2018, the Appeals Chamber issued its Judgment on the appeals, confirming, to a large extent, the Reparations Order.²
3. On 10 March 2022, the Legal Representative for Victims ('LRV') filed a request, *inter alia*, asking the Chamber to take the necessary measures, pursuant to rule 99 of the Rules of Procedure and Evidence ('Rules'), to ensure that Mr Katanga complies with the Reparations Order, in light of his current financial situation (the 'Request').³
4. On 18 March 2022, the Office of the Public Counsel for Victims ('OPCV') filed a response, *inter alia*, requesting the Chamber to grant the Request and to reclassify a Registry Report on the financial situation of Mr Katanga.⁴
5. On 21 March 2022, the Trust Fund for Victims ('TFV') filed its observations, *inter alia*, endorsing the Request.⁵

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

² Appeals Chamber, 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" ('Judgment on Reparations Order'), 8 March 2018, [ICC-01/04-01/07-3778-Red](#), paras 258-260.

³ Requête fondée sur la règle 99 du Règlement de procédure et de preuve ('LRV Request'), 10 March 2022, ICC-01/04-01/07-3898-Conf, para. 1.

⁴ Response to the "Requête fondée sur la règle 99 du Règlement de procédure et de preuve" ('OPCV Response'), 17 March 2022, ICC-01/04-01/07-3899-Conf, para. 1.

⁵ Observations in response to the "Requête fondée sur la règle 99 du Règlement de procédure et de preuve" ('TFV Observations'), 21 March 2022, ICC-01/04-01/07-3900-Conf, para. 12.

II. ANALYSIS

A. Registry Report on the financial situation of Mr Katanga

6. In its response, the OPCV requests the Chamber to reclassify a Registry Report on the financial situation of Mr Katanga ('Report'), together with its two annexes,⁶ which is currently inaccessible to both legal representatives due to its classification as confidential and *ex parte*, only available to the Registry and the Prosecution. The OPCV submits that, if reclassified as confidential, the legal representatives would be able to access information that has an impact on the possibility to represent the interests of the victims concerned for reparations purposes.⁷

7. In its Observations, the TFV submits that, when reparations awards are made through the TFV, it should be informed of the content of any enforcement proceedings and related filings.⁸

8. The Chamber recalls that in response to an order on reclassification,⁹ the Registry filed a public redacted version of the Report, in which the parts relating to the financial situation of Mr Katanga are fully redacted.¹⁰ The Registry also submitted that the information in the two annexes is used in the ongoing monitoring of the financial situation of Mr Katanga pursuant to rule 117 of the Regulations and that their disclosure would hinder the enforcement of the Reparations Order.¹¹ In a subsequent decision, the Chamber was satisfied that the basis for the classification of the Report and its annexes continued to exist and ordered it to be maintained.¹²

9. Having assessed the current arguments of the OPCV and the TFV, the Chamber hereby directs the Registry to justify the need to maintain the current classification in relation to the LRV, the OPCV, and the TFV or otherwise to reclassify the Report and its annexes as confidential.

⁶ Registry's report on the financial situation of Germain Katanga, with Annexes I and II, 17 October 2016, ICC-01/04-01/07-3717-Conf-Exp, ICC-01/04-01/07-3717-Conf-Exp-Anx1, ICC-01/04-01/07-3717-Conf-Exp-Anx2.

⁷ OPCV Response, ICC-01/04-01/07-3899-Conf, para. 11.

⁸ TFV Observations, ICC-01/04-01/07-3900-Conf, para. 18.

⁹ Decision on requests related to the implementation of collective reparations, 5 May 2021, ICC-01/04-01/07-3881-Conf, para. 27.

¹⁰ Public Redacted Version of the "Registry's report on the financial situation of Germain Katanga", 7 June 2021, [ICC-01/04-01/07-3717-Red](#).

¹¹ Registry Submissions related to the Decision on requests related to the implementation of collective reparations, 7 June 2021, ICC-01/04-01/07-3882-Conf-Exp, para. 30.

¹² Corrigendum of 'Order on the reclassification of documents', 10 February 2022, [ICC-01/04-01/07-3897-Corr](#), para. 6.

**B. Requests related to the Presidency's monitoring of the financial situation of
Mr Katanga, pursuant to regulation 117 of the Regulations**

a) Submissions

10. In its Request, the LRV notes that, on 16 March 2020, Mr Katanga was released from prison following a peace agreement between the government of the Democratic Republic of Congo ('DRC') and *Force de Resistance Patriotique de l'Ituri*. In the submission of the LRV, after his release, Mr Katanga has served in his rank as Brigadier General of the National Army in various roles for the President of the DRC, including as a peacemaker in a task force created in 2021 with the goal of, *inter alia*, sensitising the leaders of different armed groups to adhere to the peace process.¹³ In this capacity, the LRV argues, Mr Katanga receives a 'non-negligible remuneration'.¹⁴

11. The LRV further submits that, pursuant to rule 99 of the Rules, the Chamber should seize the Court's Presidency to conduct an investigation, in accordance with Regulations 116 and 117 of the Regulations, regarding Mr Katanga's financial situation and order him to, at least partly, contribute to the enforcement of the Reparations Order.¹⁵ In addition, the LRV submits that, insofar as the DRC authorities granted Mr Katanga his public mandate, in the absence of a direct contribution, they should cooperate in the investigation of Mr Katanga's assets and income.¹⁶

12. In its response, the OPCV concurs with the LRV in that, due to his rank as Brigadier General and his important responsibilities for the DRC President for more than two years, Mr Katanga might have salaries, military rank benefits, and other forms of state welfare.¹⁷ Therefore, the OPCV requests the Chamber to take the necessary measures, through the Court's Presidency, in accordance with regulation 117 of the Regulations. In particular, the OPCV requests the Chamber to obtain, via the Court's Presidency and the Registrar, relevant information in the form of a request for cooperation from the DRC Government, and to contact Mr Katanga and his counsel to inquire as to the financial situation of the latter.¹⁸

¹³ LRV Request, ICC-01/04-01/07-3898-Conf, paras 25-28.

¹⁴ LRV Request, ICC-01/04-01/07-3898-Conf, para. 32.

¹⁵ LRV Request, ICC-01/04-01/07-3898-Conf, paras 1, 38.

¹⁶ LRV Request, ICC-01/04-01/07-3898-Conf, para. 45.

¹⁷ OPCV Response, ICC-01/04-01/07-3899-Conf, para. 13.

¹⁸ OPCV Response, ICC-01/04-01/07-3899-Conf, para. 15.

13. In its Observations, the TFV endorses the Request for Mr Katanga to contribute with any sum to the TFV.¹⁹ The TFV however submits that Mr Katanga might not currently be in a position to make any payments, referring to a media report whereby Mr Katanga is allegedly held hostage by the militia of the *Coopérative pour le développement du Congo* armed group.²⁰ The TFV further submits that the Presidency's monitoring obligation, as per regulation 117 of the Regulations, may assist it in deciding when to request a State's cooperation in the enforcement of the awards and which measures to request.²¹

b) Chamber's determination

14. The Chamber notes that the Request seeks that the Chamber seize the Presidency to conduct an investigation into Mr Katanga's financial situation, in accordance with regulations 116 and 117 of the Regulations.²²

15. In its Reparations Order, the Chamber set Mr Katanga's liability for reparations at 1.000.000 USD.²³ The Chamber recalls that, in light of Mr Katanga's indigence and his consequent inability to comply with the Reparations Order forthwith,²⁴ the Chamber seized the Presidency to act, with the assistance of the Registrar, pursuant to its obligations under regulation 117 of the Regulations.²⁵ In this context, the Chamber also recalled that States Parties have a duty of full cooperation with the Court.²⁶ The Presidency's role was also confirmed by the Appeals Chamber, which stated that it was for the Presidency, with the assistance of the Registrar, to monitor Mr Katanga's financial situation pursuant to regulation 117 of the Regulations, on an ongoing basis.²⁷ The Appeals Chamber also clarified that in accordance with rule 217 of the Rules, it is for the Presidency, and not a trial chamber, to seek the assistance of States Parties in respect of cooperation and measures for the enforcement of fines, forfeiture, or reparations orders.²⁸

16. The Chamber further notes that the Presidency's role pursuant to regulation 117 of the Regulations entails an ongoing monitoring obligation which does not require periodic renewal by the Chamber. Nevertheless, the Chamber takes the opportunity to draw the Presidency's

¹⁹ TFV Observations, ICC-01/04-01/07-3900-Conf, para. 12.

²⁰ TFV Observations, ICC-01/04-01/07-3900-Conf, para. 12.

²¹ TFV Observations, ICC-01/04-01/07-3900-Conf, para. 17.

²² LRV Request, ICC-01/04-01/07-3898-Conf, paras 1, 38.

²³ Reparations Order, [ICC-01/04-01/07-3728-tENG](#), paras 264, 326.

²⁴ Reparations Order, [ICC-01/04-01/07-3728-tENG](#), paras 327-330.

²⁵ Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 329.

²⁶ Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 329.

²⁷ Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 190.

²⁸ Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 190.

attention to this decision and its underlying submissions, to the extent that they may assist it in its ongoing monitoring activities pursuant to regulation 117 of the Regulations.

C. Requests related to the possibility of additional contribution of Mr Katanga to the reparations

a) Submissions

17. In its Request, the LRV submits that initiating a procedure for identifying the assets of Mr Katanga would be relevant, given that the implementation of reparations is drawing to an end as the majority of victims have received a significant part of their reparations.²⁹ The LRV requests that Mr Katanga makes a symbolic contribution to the forthcoming psychological support component of reparations, to enhance their relevance and effectiveness.³⁰

18. In its response, the OPCV submits that if it turns out that the financial situation of Mr Katanga changed, the Reparations Order should be amended to grant additional reparations to the victims, as the reparations awarded by the Chamber and the reparations programme implemented by the TFV have 'always been distinct and totally separated from Mr Katanga's personal liquidity'.³¹

19. In its observations, TFV submits informs that: i) to its knowledge, Mr Katanga has not, to date, acted in relation to his financial liability, no money has been channelled through the Court to the TFV, and consequently, the implementation of reparations has exclusively been funded from the TFV's 'other resources'; ii) there is no prescription period for the enforcement of the reparations award against Mr Katanga, irrespective of the TFV's implementation of reparations; iii) the fact that Mr Katanga's funds may be channelled to the TFV now or in future does not have an impact on the Reparations Order, which is final.³² Nevertheless, the TFV endorses the Request for Mr Katanga to contribute with any sum to the TFV, which at this point in time, given the implementation of the psychological component, may have additional beneficial effects for the victims.³³

²⁹ LRV Request, ICC-01/04-01/07-3898-Conf, paras 34-35.

³⁰ LRV Request, ICC-01/04-01/07-3898-Conf, para. 34.

³¹ OPCV Response, ICC-01/04-01/07-3899-Conf, paras 16-17.

³² TFV Observations, ICC-01/04-01/07-3900-Conf, paras 13-17, 19-20.

³³ TFV Observations, ICC-01/04-01/07-3900-Conf, para. 12.

b) Chamber's determination

20. At the outset, the Chamber underlines that, as noted by the TFV,³⁴ after having been confirmed by the Appeals Chamber,³⁵ the Reparations Order is final.

21. The Chamber further reiterates that the convicted person's financial situation, and whether a person is found to be indigent, is irrelevant to the determination of the scope of the person's liability for reparations.³⁶ As noted by the Appeals Chamber, 'when determining the amount a convicted person is liable to pay for reparations, the primary consideration is the extent of the harm and cost it takes to repair that harm'.³⁷ Therefore, the personal liquidity of Mr Katanga at the time of the Reparations Order, or nowadays, has no impact on the reparations awarded. In effect, contrary to the LRV's and the OPCV's submissions, any available funds will not result in additional reparations being awarded to victims beyond what was already granted in the Reparations Order.³⁸

22. Similarly, the Chamber disagrees with the OPCV's understanding that reparations awarded by the Chamber and the reparations programme implemented by the TFV are distinct and separated from Mr Katanga's financial liability. Mr Katanga's indigence at the time of the Reparations Order and his inability to comply with the Reparations Order at the time, only made it necessary for the Chamber to request the TFV to consider complementing the award and had no impact on the reparations granted.³⁹ In effect, in light of Mr Katanga's indigence, the Chamber held that the implementation of reparations would fall on the TFV, subject to the TFV's Board of Directors' decision.⁴⁰ The TFV's Board of Directors then decided to complement the award ordered against Mr Katanga to the full amount of 1.000.000 USD.⁴¹

³⁴ TFV Observations, ICC-01/04-01/07-3900-Conf, para. 20.

³⁵ Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), p. 4.

³⁶ See Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#), para. 97; Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, 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 ('*Lubanga* Judgment on Principles'), 3 March 2015, [ICC-01/04-01/06-3129](#), paras 104, 105.

³⁷ Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 184.

³⁸ Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 306.

³⁹ Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 330.

⁴⁰ Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), paras 330, 342.

⁴¹ Notification pursuant to regulation 56 of the TFV Regulations regarding the Trust Fund Board of Director's decision relevant to complementing the payment of the individual and collective reparations awards as requested by Trial Chamber II in its 24 March 2017 order for reparations, 17 May 2017, [ICC-01/04-01/07-3740](#), paras 48, 50.

Consequently, if it turns out that Mr Katanga is no longer indigent, any funds that may become available must be channelled to reimburse the TFV for the costs incurred.⁴²

23. Notwithstanding the above, the Chamber recalls that Mr Katanga remains liable and calls him to pay any sum to the TFV, contributing to the effective implementation of the reparations in the case, which, at this point in time, may have an important symbolic significance for the victims of the crimes for which he was convicted.⁴³

D. Publicity of the proceedings

24. Lastly, in line with its previous instructions,⁴⁴ the Chamber directs the LRV, the OPCV, and the TFV to review their submissions underlying this decision and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 19 April 2022.

⁴² *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 5, 115. *See also* TFV Observations, ICC-01/04-01/07-3900-Conf, para. 14.

⁴³ *See* LRV Request, ICC-01/04-01/07-3898-Conf, paras 34-35; TFV Observations, ICC-01/04-01/07-3900-Conf, para. 12.

⁴⁴ Decision on requests related to the implementation of collective reparations, 5 May 2021, ICC-01/04-01/07-3881-Conf, para. 27.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

DIRECTS the Registry to justify the need to maintain the current classification of its Report and its annexes, in relation to the LRV, the OPCV, and the TFV, or otherwise to reclassify them as confidential;

DRAWS the Presidency's attention to this decision and its underlying submissions, to the extent that it may assist it in its ongoing monitoring activities pursuant to regulation 117 of the Regulations;

RECALLS that Mr Katanga remains liable and calls him to pay any sum to the TFV, contributing to the effective implementation of the reparations in the case; and

DIRECTS the LRV, the OPCV, and the TFV to review their submissions underlying this decision and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 19 April 2022.

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 Monday, 11 April 2022

At The Hague, The Netherlands