

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **01 March 2023**

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 Requête du Représentant légal en vue d'une de la situation sécuritaire
des victimes dans le cadre de l'exécution des réparations**

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

Trust Fund for Victims

Ms Franziska Eckelmans

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

Trial Chamber II of the International Criminal Court (the 'Chamber'), in the case of *The Prosecutor v. Germain Katanga*, having regard to articles 43(6), 68(1)-(2), and 75 of the Rome Statute ('Statute') and rules 17(2)(a)(i)-(ii), 87, and 88 of the Rules of Procedure and Evidence ('Rules'), and regulation 23 *bis* (3) of the Regulations of the Court, issues this Decision on the Requête du Représentant légal en vue d'une de la situation sécuritaire des victimes dans le cadre de l'exécution des réparations (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, awarding reparations to 297 victims. The reparations consisted of a symbolic individual compensation and collective reparations, in the form of support for housing, income-generating activities, education, and psychological.¹

2. On 19 January 2023, the Trust Fund for Victims ('TFV') submitted its Eleventh quarterly update report pursuant to regulation 58 of the Regulations of the Trust Fund for Victims ('Eleventh Report'),² *inter alia*, informing the Chamber about the security situation and the advances on the implementation of the collective reparations, including the psychological support. No responses were submitted to the Eleventh Report.

3. On 27 January 2023, the Legal Representative of Victims ('LRV') filed the Requête du Représentant légal en vue d'une de la situation sécuritaire des victimes dans le cadre de l'exécution des réparations ('LRV Request'),³ *inter alia*, asking the Chamber to instruct the Registry's Victims and Witnesses Unit ('VWU') to assess the security situation in the village of Bogoro and its surroundings, in order to determine the type and extent of threat it poses on the victims.

4. On 8 February 2023, the Registry submitted its observations on the LRV Request ('Registry Observations'),⁴ *inter alia*, arguing that the LRV's request falls outside the VWU's mandate.

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

² Public Redacted version of the "Eleventh Quarterly Report pursuant to regulation 58 of the Regulations of the Trust Fund for Victims" ('Eleventh Report'), 19 January 2023, [ICC-01/04-01/07-3908-Red](#).

³ Requête du Représentant légal en vue d'une de la situation sécuritaire des victimes dans le cadre de l'exécution des réparations ('LRV Request'), 27 January 2023, ICC-01/04-01/07-3909-Conf.

⁴ Registry's observations on the « Requête du Représentant légal en vue d'une de la situation sécuritaire des victimes dans le cadre de l'exécution des réparations » (sic) (ICC-01/04-01/07-3909-Conf) ('Registry Observations'), 8 February 2023, ICC-01/04-01/07-3910-Conf (with Confidential Annex, ICC-01/04-01/07-3910-Conf-Anx).

5. On 9 February 2023, the TFV submitted its observations on the LRV Request ('TFV Observations'), *inter alia*, providing further information on the psychological support.⁵

II. ANALYSIS

6. In its Request, the LRV submits that different sources have recently confirmed the aggravation of the security situation around the village of Bogoro, which is currently surrounded by three militias.⁶ In the argument of the LRV, the continuous movement of armed men creates a climate of fear with direct impact on the safety and well-being of victims and on the implementation of the reparations programmes, particularly the psychological support.⁷ The LRV stresses that no protective measures towards the population have been taken by the Congolese authorities and that there is no indication of a possible return to a minimum context of security.⁸

7. The LRV posits that the deterioration of the security situation has a two-fold impact on the implementation of the psychological support.⁹ First, the organisation of the psychological support activities expose victims to a high risk, as it requires holding sensitive activities.¹⁰ Second, the feeling of threat experienced by the victims has a significant impact on their psychological state.¹¹

8. In light of the above, pursuant to articles 68(1) and (2) of the Statute, rules 17(2)(a)(ii), 87, and 88 of the Rules, the LRV requests the Chamber to: i) instruct the VWU to undertake an evaluation of the security situation in Bogoro and of the risks related with the implementation of reparations in the case; and ii) define, in cooperation with the TFV and the LRV, the appropriate measures to ensure the security of the victims.¹²

9. In its Observations, the Registry submits that, in accordance with articles 43(6) and 68(1) of the Statute and rule 17(2)(a)(i) of the Rules, the VWU's protection mandate is triggered when there exists a link between the risk of witnesses, victims, and others *because of their interactions with the Court*.¹³ In the Registry's assessment, there is no link between the

⁵ Observations in response to the "Requête du Représentant légal en vue d'une de la situation sécuritaire des victimes dans le cadre de l'exécution des réparations" ('TFV Observations'), 09 February 2023, ICC-01/04-01/07-3911-Conf.

⁶ LRV Request, ICC-01/04-01/07-3909-Conf, paras 1, 5-9.

⁷ LRV Request, ICC-01/04-01/07-3909-Conf, para. 1.

⁸ LRV Request, ICC-01/04-01/07-3909-Conf, paras 6, 10.

⁹ LRV Request, ICC-01/04-01/07-3909-Conf, paras 11-12.

¹⁰ LRV Request, ICC-01/04-01/07-3909-Conf, para. 12.

¹¹ LRV Request, ICC-01/04-01/07-3909-Conf, paras 12, 13.

¹² LRV Request, ICC-01/04-01/07-3909-Conf, paras 2, 14-20.

¹³ Registry Observations, ICC-01/04-01/07-3910-Conf, para. 7. [emphasis added].

reparations activities and the ongoing inter-ethnic conflict in Ituri.¹⁴ Consequently, the Registry submits that the LRV Request falls outside its mandate.¹⁵ Nevertheless, although not pertaining to the Registry's mandate, the VWU offered to advise the TFV about good practices to be implemented in the field to avoid that victims are targeted because they are perceived as recipients of financial assistance.¹⁶

10. The Chamber notes that, in the Eleventh Report, the TFV indeed reports on the volatile and unpredictable security situation in Ituri and its impact on the provision of services.¹⁷ In particular, the TFV indicates that, among 30 victims that refused to participate as beneficiaries of counselling, a common reasoning to decline the service was the proximity with the conflict, which still frightens beneficiaries.¹⁸ However, the TFV indicates that meetings were scheduled to assess progress of those who accepted the treatment, and discuss mitigation measures and the appropriate way forward regarding the victims impacted by the conflict.¹⁹

11. In their Observations, the TFV informs that during a meeting held in January 2023, the locally-based psychologists concluded that they were able to continue providing psychological support, despite the deterioration of the security situation.²⁰ However, mitigating measures would be taken, such as actively alerting beneficiaries of the potential danger of travelling to certain areas, refraining from unnecessary travels or from working at certain days and times.²¹ The TFV also informs that additional evaluation meetings are scheduled to take place at the end of February, and that it remains in close contact to with the Field Security Officer of the Registry.²²

12. The TFV further informs that it remains in close contact with the psychologists who will be particularly attentive to the possible experience of acute adverse effects in beneficiaries due to the security situation.²³ Meanwhile, the psychologists have continued normally with the counselling sessions.²⁴ The TFV also welcomes the VWU proposal of sharing good practices with the TFV, which could reinforce the good practices already in place.²⁵

¹⁴ Registry Observations, ICC-01/04-01/07-3910-Conf, paras 8-9.

¹⁵ Registry Observations, ICC-01/04-01/07-3910-Conf, para. 8.

¹⁶ Registry Observations, ICC-01/04-01/07-3910-Conf, para. 10.

¹⁷ Eleventh Report, [ICC-01/04-01/07-3908-Red](#), paras 10-12.

¹⁸ Eleventh Report, [ICC-01/04-01/07-3908-Red](#), para. 25.

¹⁹ Eleventh Report, [ICC-01/04-01/07-3908-Red](#), paras 25-27.

²⁰ TFV Observations, ICC-01/04-01/07-3911-Conf, para. 14.

²¹ TFV Observations, ICC-01/04-01/07-3911-Conf, para. 14.

²² TFV Observations, ICC-01/04-01/07-3911-Conf, paras 14-15.

²³ TFV Observations, ICC-01/04-01/07-3911-Conf, para. 16.

²⁴ TFV Observations, ICC-01/04-01/07-3911-Conf, para. 17.

²⁵ TFV Observations, ICC-01/04-01/07-3911-Conf, para. 20.

13. At the outset, the Chamber notes with concern the degradation of the security situation in Ituri, as reported by the parties and participants.²⁶ The Chamber regrets the impact that the current volatile situation may have on the victims' mental health and commends the LRV concerns with the situation of their clients and the mitigating measures taken by the TFV.

14. However, as noted by the Registry, the VWU's mandate relates to the protection of victims, witnesses, and others who may be at risk because of their interaction with the Court. The current risk of the victims relates to the overall instability in the region, independently to their interactions with the Court and the implementation of reparations. As such, the LRV Request shall be rejected.

15. Lastly, in line with its previous instructions,²⁷ the Chamber directs the LRV, the Registry, and the TFV to review their underlying submissions and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential within five days from the notification of the present Decision.

²⁶ Eleventh Report, [ICC-01/04-01/07-3908-Red](#), paras 10-12; LRV Request, ICC-01/04-01/07-3909-Conf, paras 5-10; Annex of the Registry Observations, ICC-01/04-01/07-3910-Conf-Anx, paras 1-3, 7.

²⁷ 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,

REJECTS the LRV Request; and

DIRECTS the LRV, the Registry, and the TFV to review their underlying submissions and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential within five days from the notification of the present Decision.

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

20 21 22

Judge Chang-ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated this Wednesday, 01 March 2023.

At The Hague, The Netherlands.