

**Cour
Pénale
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**International
Criminal
Court**

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

Date: 10 July 2017

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding
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

**Joinder to the access request of the Legal Representative
and
Request for an extension of time**

Source:

The Trust Fund for Victims

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Germain Katanga

Mr David Hooper

Ms Caroline Buisman

Legal Representative of Victims

Mr Fidel Nsita Lubengika

Ms. Paolina Massidda

States Representatives

Trust Fund for Victims

Mr Pieter de Baan, Executive Director

REGISTRY

Registrar

Mr Herman von Hebel

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

1. The Trust Fund for Victims (hereinafter “Trust Fund”) joins the 7 July 2017 request of the common legal representative for victims that the Trust Fund be granted access to annex 2 to Trial Chamber II’s « Ordonnance de réparation en vertu de l’article 75 du Statut »¹ (hereinafter “Trial Chamber” and “Order for Reparations”, respectively) and, pursuant to regulation 35 (1) of the Regulations of the Court, respectfully requests an extension of the time limit for the submission of its draft implementation plan by one week, i.e. to Tuesday, 18 July 2017.

I. BACKGROUND

2. On 15 March 2017, the Trial Chamber issued an order, *inter alia*, designating the Office of Public Counsel for Victims as the legal representative of 37 reparations applicants in the case,² with the remainder of the reparations applicants continuing to be represented by the common legal representative of victims, Mr Fidel Nsita (hereinafter: “OPCV Legal Representative”, “Legal Representative”, and “Legal Representatives” collectively).

3. On 24 March 2017, the Trial Chamber issued the Order for Reparations against Mr Katanga, in which it instructed the Trust Fund to submit its draft implementation plan relevant to the Order for Reparations by 27 June 2017,³ which the Trial Chamber subsequently extended by two weeks to 11 July 2017.⁴

4. In the Order for Reparations, the Trial Chamber ordered awards for reparations to 297 victims, comprised of an individual symbolic compensation award⁵ and four collective awards in the form of housing assistance, education assistance, income-generating activities, and psychological rehabilitation.⁶ The Trial Chamber held that the collective reparations awards should be « ciblées au bénéfice de chaque victime de M. Katanga que la Chambre a identifiée »⁷ and also held that :

¹ [ICC-01/04-01/07-3728](#).

² « Décision relative à la requête du Représentant légal commun des victimes du 2 mars 2017 », [ICC-01/04-01/07-3727](#).

³ [Order for Reparations](#), para. 309.

⁴ « Décision accordant une prorogation de délai au Fonds au profit des victimes afin de déposer le projet de plan de mise en œuvre des réparations », 22 June 2017, [ICC-01/04-01/07-3744](#).

⁵ [Order for Reparations](#), pp. 112-113.

⁶ [Order for Reparations](#), para. 306.

⁷ See [Order for Reparations](#), paras 295, 303-307.

[L]a Chambre est également d’avis que les modalités de réparations doivent préserver une certaine flexibilité et garantir un lien de proportionnalité entre les réparations et les préjudices subis par chacune des victimes. Cela peut être réalisé par la création de différentes catégories de bénéficiaires, par exemple selon les types des préjudices subis ou selon l’ampleur des préjudices subis.⁸

5. Regarding the Trial Chamber’s individual assessment of the harms alleged by each individual then victim applicant, the Trial Chamber attached as an *ex parte*, available only to the Legal Representatives and Mr Katanga’s defence team, confidential annex to the Order for Reparations its determinations of the harms that it found to be established for each of the 297 identified beneficiaries (hereinafter: “Annex 2”).

6. With respect to the substance of the draft implementation plan to be submitted, the Trial Chamber stated that it should include « des informations concrètes et précises sur les projets, comportant notamment un descriptif de ces projets, de leurs coûts et de leur modalités d’adoption, de mise en œuvre et de suivi par la Chambre ». ⁹

7. Also on 24 March 2017, in a separate order, the Trial Chamber set a deadline of one month for, *inter alia*, the legal representatives in the present case to obtain the consent of their respective clients for the transmission of their confidential information to the Trust Fund and to propose redactions to the *ex parte*, confidential Annex 2 so that a public redacted version could be made available.¹⁰

8. On 7 July 2017, by way of email communication,¹¹ the Legal Representative requested that the Trust Fund be granted access to Annex 2, stating in relevant part that « [l]e Représentant légal est d’avis que l’accès à l’Annexe II de l’Ordonnance de réparation serait fort utile au Fonds dans la rédaction du Projet de mise en œuvre qu’il doit déposer le 11 juillet 2017 » (hereinafter : “LRV Request”).

9. On 10 July 2017, the OPCV Legal Representative, by way of email communication,¹² informed the Trial Chamber that she has “no objections in the [Trust Fund] being granted access to Confidential [Annex 2]” and that, in her view, “[i]t seems indeed important that the [Trust

⁸ [Order for Reparations](#), para. 305.

⁹ [Order for Reparations](#), para. 309 (footnotes omitted).

¹⁰ Ordonnance enjoignant aux parties de soumettre des propositions d’expurgations et aux victimes de donner leur consentement à la communication au Fonds au profit des victimes de leurs coordonnées, [ICC-01/04-01/07-3729](#).

¹¹ Email communication from the Legal Representative to the Trial Chamber, sent at 11:39.

¹² Email communication from the OPCV Legal Representative to the Trial Chamber, sent at 8:36.

Fund] has access to said document in order to fully appreciate the assessment of the Chamber and better tailor its implementation plan to the needs of the persons concerned”.

II. REQUEST FOR A VARIATION OF THE TIME LIMIT

10. For the reasons set out below, the Trust Fund joins the LRV Request and submits that good cause exists for it to be granted a limited extension of one week, i.e. until 18 July 2017, for the submission of its draft implementation plan in the *Katanga* case.

11. First, the Trust Fund notes that, due to certain unavoidable delays, the Legal Representatives have not been able to obtain the consent of all of the reparations beneficiaries that they represent and that, to date, no public redacted version of Annex 2 has been made available. In this regard, the Trust Fund recalls that it does not have access to the *ex parte*, confidential Annex 2. In short, this means that the Trust Fund does not have access to any information relevant to the Trial Chamber’s determinations of the harms that it found to be established for each of the 297 identified beneficiaries.

12. Second, over the past three months the Trust Fund has worked diligently to ensure that it complied with the Trial Chamber’s instructions in the Order for Reparations in terms of ensuring that the proposed awards within each of the collective modalities maintained a proportional link between the reparations and the harms suffered by each victim beneficiary¹³ and that the draft implementation plan contains sufficient information relevant to the concrete activities of the proposed projects, including their anticipated costs.¹⁴ The Trust Fund has continuously consulted with the Legal Representatives in this regard.

13. Based on the victim information provided by the Legal Representatives and the Victims Participation and Reparations Section, the Trust Fund has been able to develop the contours of a proposed victim categorization scheme, as indeed suggested by the Trial Chamber in its Order for Reparations,¹⁵ as well as the details of the scope of activities proposed for each awarded modality and within each beneficiary category.

14. However, the Trust Fund is not able to finalize this proposal absent access to the information contained in Annex 2. First, the Trust Fund considers that, while it has and continues

¹³ *Supra* para. 4.

¹⁴ *Supra* para. 6.

¹⁵ *Supra* para. 4.

to consult with the Legal Representatives regarding the harm categorizations of their respective clients, the Trust Fund has an independent obligation and a requirement of due diligence on its part to conduct the proposed beneficiary categorizations in terms of the harms established by the Trial Chamber in Annex 2. The Trust Fund submits that it has this responsibility as the body ultimately responsible to the Trial Chamber, and equally importantly to the victims, for the substance of the draft implementation plan and the actual implementation of the awards contained in the Order for Reparations as set out in that plan.

15. Second, the Trust Fund considers that, once it has access to Annex 2, it needs a relatively short amount of time to discuss the proposed categorizations with the Legal Representatives.

16. Finally, the Trust Fund submits that it unfortunately cannot comply with the level of detail requested by the Trial Chamber, particularly in terms of proposed costs, until it is able to finalise the beneficiary categorization process, as the costs associated with each category differ and will accordingly be affected by the actual number of beneficiaries within each category. In this respect, the Trust Fund is mindful that the Trial Chamber set the amount of Mr Katanga's liability for the awards for reparations at \$1,000,000 USD, which represents the maximum ceiling of funds that can be apportioned across the various categories, and which equally impacts upon the scope of activities that can realistically be proposed therein from a financial perspective. In sum, this can only be finalised to the degree of detail requested by the Trial Chamber once the Trust Fund has access to the critical information in this regard that is solely contained in Annex 2 to the Order for Reparations.

17. As already mentioned, the Trust Fund has worked diligently for the past three months to comply with the Trial Chamber's instructions and, due in large part to the very helpful collaboration of the Legal Representatives, has made a great deal of progress in this regard. The Trust Fund therefore considers that it will be able to quickly finalise the draft implementation plan once it has access to Annex 2.

18. Accordingly, the Trust Fund joins the LRV Request that the Trust Fund be granted access to Annex 2 to the Order for Reparations and respectfully requests that it be granted an extension of the time limit of one week, i.e. to Tuesday, 18 July 2017, to submit its draft implementation plan. The Trust Fund submits that good cause within the meaning of regulation 35 (1) of the Regulations of the Court exists for the requested extension for the reasons set out above.

FOR THE FOREGOING REASONS

The Board of Directors of the Trust Fund for Victims respectfully submits this joinder with the LRV Request and its request for an extension of the time limit for the submission of its draft implementation plan by one week, i.e. to Tuesday 18 July.



Pieter W.I. de Baan
Executive Director of the Secretariat of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 10 July 2017

At The Hague, The Netherlands