

**Cour
Pénale
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**International
Criminal
Court**

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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 REDACTED VERSION

Urgent joint request to the Trial Chamber to consider initiating an exchange of information pursuant to the Court's agreement with the United Nations

Source: The Trust Fund for Victims
Legal Representative of Victims

Office of Public Counsel for Victims Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

Legal Representative of Victims

Mr Fidel Nsita Luvengika

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Herman von Hebel

Division of External Operations

Mr Christian Mahr

1. The Trust Fund for Victims, the Legal Representative of Victims, and the Principal Counsel of the Office of Public Counsel for Victims, acting as legal representative for fourteen reparations beneficiaries in the *Katanga* case (“Trust Fund”, “Legal Representative”, and “OPCV Legal Representative”, the latter collectively referred as “Legal Representatives”), hereby submits this joint urgent request for Trial Chamber II (“Trial Chamber”) to consider initiating an exchange of information and/or other measures it deems appropriate pursuant to the Court’s “Relationship Agreement between the International Criminal Court and the United Nations” (“ICC/UN Relationship Agreement”)¹ or relevant provisions of the Rome Statute (“Statute”) in relation to the implementation of reparations awards in the present case.

2. For ease of readability, the text of the present joint request refers to the Trust Fund, which is to be understood as including the substantive views and positions of the Legal Representatives, except in those sections where it is necessary to make a distinction between the various actors.

I. CLASSIFICATION OF THE PRESENT SUBMISSION

3. The Trust Fund has classified the present filing confidential, *ex parte* pursuant to regulation 23 *bis* (1) of the Regulations of the Court because the information herein relates to security concerns and victim safety surrounding the implementation of the reparations ordered in the present case, a topic which does not concern the rights of Mr Katanga.

II. BACKGROUND

4. On 24 March 2017, the Trial Chamber issued an order for reparations against Mr Germain Katanga, awarding \$1,000,000 in individual and collective reparations to 297 victims in the case (“Reparations Order”).² The modalities of the collective reparations awarded are: 1) housing assistance; 2) educational assistance; 3) income generating activities; and 4) psychological support.³

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third session, The Hague, 6-10 September 2004* (ICC-ASP-3/25), Part III, resolution ICC-ASP/3/Res.1, entered into force on 4 October 2004.

² [ICC-01/04-01/07-3728](#).

³ Reparations Order, para. 304. *See also* paras 302-303.

5. On 31 March 2017, the United Nations Security Council adopted resolution 2348 (*see* Annex 1),⁴ which provides in relevant part for:

- a. an extension of the MONUSCO mandate until 31 March 2018; and
- b. an authorized troop ceiling for MONUSCO during the extension period of 16,215 military personnel, 660 military observers and staff officers, 391 police personnel, and 1,050 personnel of formed police units.

6. In essence, as succinctly summarized by MONUSCO (*see* Annex 2): “The Security Council [on 31 March 2017] extended the mandate of the United Nations mission in the Democratic Republic of the Congo (DRC) for another year but reduced the number of troops.”⁵

7. On 25 July 2017, the Trust Fund filed its draft implementation plan relevant to the Reparations Order (“Draft Implementation Plan”).⁶ With respect to the housing assistance and income generating activities modalities, the Trust Fund proposed specific potential awards, including the construction of a home and the provision of livestock for those engaged in or who wished to engage in animal husbandry economic activities.⁷ For the loss of family members, the Trust Fund proposed to provide each concerned victim with a cow, thereby respecting the Hema cultural tradition with regards to the death of a family member.⁸

8. In the Draft Implementation Plan, the Trust Fund explicitly identified the risk that “the security situation in Bogoro and its surroundings may negatively impact the security and personal safety of victims” and specified the assumptions informing the Draft Implementation Plan to include that “a secure and safe environment will be established and maintained in the programme intervention areas for the duration of the implementation period.”⁹

9. On 20 December 2017, MONUSCO officially announced the closure of four of its military bases located in Ituri district, including the Bogoro military camp (*see* Annex 3).

⁴ Resolution 2348 (2017), adopted unanimously at the 7910th meeting, on 31 March 2017, S/RES/2348 (2017). <http://unscr.com/files/2017/02348.pdf>.

⁵ See <https://monusco.unmissions.org/en/dr-congo-security-council-extends-peacekeeping-mandate-reduces-troop-strength>.

⁶ [ICC-01/04-01/07-3751-Red](#).

⁷ See [Draft Implementation Plan](#), Section B, “Detailed explanation of the proposed projects within each modality of reparations awarded”.

⁸ [Draft Implementation Plan](#), para. 96.

⁹ [Draft Implementation Plan](#), paras 122-123.

10. In early February, [REDACTED].

11. According to local authorities, there have been numerous incidents of pillaging, acts of physical violence, and the burning of homes in the affected areas, beginning in late November 2017 and regularly occurring with increasing intensity until the present.¹⁰

12. On 29 January 2018, following consultations and planning meetings, the Trust Fund and the Legal Representatives began a 6 week joint mission in order to specify the concrete reparations awards choices of each victim. The victim consultations comprise two parts: first, a group meeting of victims, whereat the Trust Fund and the respective Legal Representative give a presentation and conduct an open question and answer session in regards to the Reparations Order, the Draft Implementation Plan, and an overview of the concrete choices that the victims will have in regards to the latter (“Group Victim Consultation”). Second, individual interviews of approximately one hour are then held with each victim whereat he or she, *inter alia*, makes known which of the concrete activities available under the various reparations modalities correspond best to his or her current situation and desires (“Individual Victim Consultation”).¹¹

13. On 31 January and 1-2 February 2018, the Trust Fund and the Legal Representative conducted Group Victim Consultations in Bogoro, Bunia, and Kasenyi.

14. During the Bogoro Group Victim Consultation, concerns were expressed regarding what security measures would be in place to prevent a repetition of the very crimes (and harms) at issue in the *Katanga* case, namely the pillaging of the livestock and the destruction of homes now proposed to be provided as reparations awards for the harms suffered on 24 February 2003.

15. During the first week of Individual Victim Consultations, several victims expressed their appreciation for the provision of a cow as symbolic recognition of the loss of family members in line with the Hema cultural tradition, but nonetheless sought to not accept this reparation for fear it would be promptly pillaged. In a similar manner, another victim expressed that, even if it were feasible budgetarily, he did not want basic furnishings in a newly constructed home due to the risk that such furnishings would be pillaged. Even with regard to the construction of a home, concern

¹⁰ See Annex 3.

¹¹ The mission is organised in the following manner: first with the clients of the Legal Representative and then with the clients of the OPCV Legal Representative. The Trust Fund hopes to have completed the consultations with the victims represented by the Legal Representative by the first week of March and those represented by the OPCV Legal Representative by mid-March.

has been expressed that it will be destroyed and pillaged or that the victim may need to flee the area for an extended period of time due the current unrest and instability.

16. These concerns are echoed by several victims represented by the OPCV who were contacted by their Legal Representative between 9 and 11 February 2018 to verify their availability to discuss the implementation of the reparations awards in the coming weeks.

17. Also during the first week of the Individual Victim Consultations, news agencies reported that Hema villages in the area surrounding Bogoro were attacked, resulting in the burning of homes and pillaging of property. These attacks are seen to be a part of the quickly escalating ethnical Hema-Lendu tensions in Ituri. It has been suggested by victims and community members with whom the Trust Fund is in contact that Bogoro proper was not attacked because of the current MONUSCO presence.

18. On 6 February 2018, in the context of the *Ntaganda* case, the Registry filed its Ninth Report about the situation of victims including the observations by the Common Legal Representative of the victims of the attacks allegedly committed by the *Union de patriotes congolais and the Forces patriotiques pour la libération de Congo* (“*Ntaganda* CLR2”) regarding, *inter alia*, his clients’ concerns about the security situation in Ituri district.¹² The *Ntaganda* CLR2 reported that “the situation remain[s] volatile and continue[s] to be one of the main concerns of the victims” and noted that “MONUSCO recently announced the closure of its military base in Bogoro, situated 25 km from Bunia – a decision that gave rise to security concerns from the civilian population.”¹³

19. Over the past two weeks, numerous government, non-government and media sources have commented on the escalation of Lendu-Hema inter-ethnical conflict, particularly in Djugu province, which has resulted in a mass influx of fleeing displaced persons arriving in Bunia, which in turn has raised concerns about the potential destabilisation of Bunia itself, where a sizeable number of the *Katanga* case victims currently reside.¹⁴

¹² Registry, *The Prosecutor v. Bosco Ntaganda*, Ninth Periodic Report on Victims in the Case and their General Situation, ICC-01/04-02/06-2212 (“*Ntaganda* CLR2 Report”).

¹³ *Ntaganda* CLR2 Report, para. 10.

¹⁴ <https://www.radiookapi.net/2018/02/11/actualite/securite/conflit-intercommunautaire-djugu-les-jeunes-appelles-ne-pas-se-laisser>
<https://www.radiookapi.net/2018/02/11/actualite/securite/conflit-intercommunautaire-djugu-les-jeunes-appelles-ne-pas-se-laisser>.

20. According to information received from one of the chiefs of Bogoro, a Chiefs meeting is currently being organised for 15 February 2018 in relation to the MONUSCO withdrawal between the Hema, Lendu, and Bira communities.

III. REQUEST FOR THE TRIAL CHAMBER TO CONSIDER INITIATING AN EXCHANGE OF INFORMATION PURSUANT TO THE ICC/UN RELATIONSHIP AGREEMENT OR OTHER MEASURES

21. The Trust Fund considers that the current instability in Ituri district and MONUSCO's planned withdrawal from the Bogoro military camp has direct and serious implications on the ultimate success, and even the very feasibility, of the implementation of the reparations awarded by the Trial Chamber in its Reparations Order. The security situation and MONUSCO's announcement has contributed to a palpable sense of panic, recalling the traumatic events experienced last decade and triggering fears of their reoccurrence. An environment of instability and fear is not conducive to the successful implementation of reparations.

22. More broadly and fundamentally, however, the Trust Fund notes that reparations are but one part of the uniquely victim-centred Rome Statute system. In this respect, the Court's concern for and commitment to the well-being, safety, and dignity of victims under the Court's jurisdiction is reflected in the work of all the sections of the Court- work which has as a goal not only the prosecution of crimes committed against victims and the repair of the harms caused to victims by those crimes, but also the prevention of any such crimes being committed in the first place. The Trust Fund fully shares these goals. It is in this spirit that the Trust Fund feels compelled to address this matter beyond the scope of its specific mandate with the Rome Statute system. Put simply, the Trust Fund's concern is not solely whether it is able to deliver reparations to the victims in the *Katanga* case, but also that they feel and are at risk of imminent and serious harm.

23. The Trust Fund is of the view that the ICC/UN Relationship Agreement, which also extends to the activities of the Trust Fund for Victims, is one of the relevant instruments to provide a possible avenue to address the current situation and the implications stemming therefrom, also considering that said situation has an impact on other ongoing cases before the Court, including in the *Lubanga* case, which is also at the reparations stage.

24. Indeed, while article 17 of the ICC/UN Relationship Agreement provides for cooperation between the United Nations Security Council and the Court for scenarios under other provisions of the Statute than the ones dealing with reparations, article 2t, entitled “Principles”, and specifically sub-paragraph (3) - provides that: “The United Nations and the Court respect each other’s status and mandate”. The Trust Fund submits that this provision can be read as extending the possibility of cooperation between the two entities to any matter affecting their mandate. In this regard, awarding reparations to victims of crimes under the Court’s jurisdiction, and their successful implementation by the Trust Fund, is a core part of the Court’s mandate.¹⁵ More generally, the Trust Fund submits that, as an order for reparations is a judicially issued decision of a Trial Chamber of the Court, the Court has a responsibility to take steps to ensure that Court-issued orders are enforced as envisioned by the relevant Trial Chamber.

25. The Trust Fund also notes that article 15 (2) of the ICC/UN Relationship Agreement, contained in Chapter III entitled “Cooperation and Judicial Assistance”, provides that: “The United Nations or its programmes, funds and offices concerned may agree to provide to the Court other forms of cooperation and assistance compatible with the provisions of the [UN] Charter and the [Rome] Statute”. Finally, the Trust Fund observes that article 3, entitled “Obligation of cooperation and coordination”, provides in relevant part that: “The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest [...]”.

26. The Trust Fund submits that repairing the harm caused by the crimes committed in Bogoro in 2003 and taking steps to ensure that any reparative action is not itself harmful is a matter of mutual interest to the Court as a whole and the United Nations and that consultation on this matter could facilitate the effective discharge of the Court’s responsibilities in regards to the victims of the *Katanga* case.

¹⁵ See Appeals Chamber, *The 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, ICC-01/04-01/06-3129, para. 67 and fn. 81, noting that, according to a commentator on the drafting of rule 150 of the Rules of Procedure and Evidence, orders for reparations under article 75 of the Statute were placed under this rule because of the view that orders for reparations “should be classified as a ‘fundamental’ decision, treated in the same manner as a decision of conviction, acquittal or sentence”.

27. In regard to article 3 of the ICC/UN Relationship Agreement, the Trust Fund notes that article 5 also addresses ‘matters of mutual interest’, providing that “the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest”, tasking the Registrar to provide “information and documentation relating to [...] orders of the Court in cases which may be of interest to the United Nations generally”.

28. The Trust Fund notes that [REDACTED].

29. The Trust Fund respectfully submits that it may not be only of mutual interest, but indeed to the benefit of the Court and the United Nations if, at a minimum, information relevant to the Trial Chamber’s Reparations Order, including the types of activities contemplated in the Draft Implementation Plan and approved by the Trial Chamber, as well as the potential timing and geographic locations where they will be implemented, were provided pursuant to article 5 (1) (b) of the ICC/UN Relationship Agreement to the United Nations prior to any such decisions being taken.

30. The Trust Fund considers it appropriate to inform the Trial Chamber of its concerns – fully shared by the Legal Representatives – and of the above view for it to explore through which means reparations awarded in this case could be timely implemented as planned in a way which will not further harm the victims concerned and be effective in the present extremely volatile security situation in Ituri. Therefore, the Trust Fund respectfully requests the Trial Chamber to urgently evaluate the opportunity to initiate such an exchange of information and determine the most appropriate manner in which said information could be provided.

31. The Trust Fund wishes to assure the Trial Chamber of its willingness and commitment to provide any additional information deemed necessary as quickly as possible, bearing in mind in particular the urgency of the situation and the Trust Fund’s hope that a solution can be found where the safety and wellbeing of the victims and their communities is ensured in a manner which does not delay the long awaited reparations in the *Katanga* case. Further, the Legal Representative of Victims is in constant contact with the all of the area chiefs and receives regular updates on initiatives undertaken by the community in regards to this matter. The Field Counsel within the OPCV Legal Representative team is also constantly in contact with the victims that the Office represents and with relevant stakeholders who may provide useful information and regular updates

about the situation on the ground. Any new or additional relevant information in this regard will be promptly conveyed to the Trial Chamber.

32. The Trust Fund notes that the other cited provisions of the ICC/UN Relationship Agreement, as well as several provisions of Part 9 of the Statute or alternatively rule 217 of the Rules of Procedure and Evidence in conjunction with Part 9 of the Statute may also be of relevance. However, the Trust Fund leaves it to the Trial Chamber's considered determination whether it would be appropriate to seek other forms of cooperation with the United Nations under said provisions.

33. In this same regard, the Trust Fund notes that certain ICC States Parties who are also member states of the United Nations/UN Security Council may have a particular interest in this matter and leaves to the Trial Chamber's discretion whether a communication of information directly to those States Parties may also be appropriate.

IV. OTHER STEPS TO BE UNDERTAKEN BY THE TRUST FUND

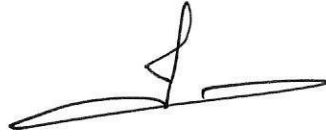
34. The Trust Fund wishes to inform the Trial Chamber that, based on its consistently positive experiences of assistance and preliminary discussions of future collaboration in other reparations proceedings before the Court, it intends to undertake discussions with the relevant sections of the Registry (in The Hague and in the DRC), thereby making use of these sections specialized expertise and knowledge, to explore the possibility of acquiring regular *ad hoc* security assessments, including potentially on the topics of ICC staff and reparations beneficiaries' safety and programme feasibility, taking into account the forms of reparations at issue in the *Katanga* case, as well as the timing and locations of their implementation. If this is feasible, the Trust Fund intends to request that the information be provided to it, the Legal Representatives, and the Trial Chamber.

FOR THE FOREGOING REASONS

The Trust Fund for Victims and the Legal Representatives of Victims respectfully submit this urgent request for the Trial Chamber to consider initiating an exchange of information pursuant to the Court's agreement with the United Nations or undertake other measures it deems appropriate for the implementation of reparations in this case.



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



Fidel Nsita Luvuvika,
Legal Representative of Victims



Paolina Massidda,
OPCV Legal Representative
of Victims

Dated this 21 June 2021

(Date of original: 20 February 2018)

At The Hague, The Netherlands