2017 INTERNATIONAL CRIMINAL COURT, Prosecutor v. Germain Katanga, Order awarding individual and collective reparations, 24 March 2017, Case no. ICC-01/04-01/07-3728

On March 7 2014, Trial Chamber II of the International Criminal Court (ICC) found Germain Katanga guilty of being an accessory through a contribution made “in any other way” to the commission of several serious crimes committed from November 2002 to 24 February 2003, during an attack on the village of Bogoro, in the Ituri district of the Democratic Republic of the Congo (DRC). Specifically, Mr Katanga was convicted for:

* Murder as a crime against humanity under article 7(1)(a) ICC Statute;
* Murder as a war crime under article 8(2)(c)(i) ICC Statute;
* Attack against a civilian population as such or against individual civilians not taking direct part in hostilities, as a war crime under article 8(2)(e)(i) ICC Statute;
* Destruction of enemy property as a war crime under article 8(2)(e)(xii) ICC Statute;
* Pillaging as a war crime under article 8(2)(e)(v) ICC Statute.

It was, however, found that these crimes were committed as part of a criminal purpose shared by many persons, without it being established that Mr Katanga was present in person at the crime scenes.

The Trial Chamber acquitted Katanga of the charges as an accessory to the crimes of rape and sexual slavery as crimes against humanity under article 7(1)(g) ICC Statute and rape and sexual slavery as war crimes under article 8(2)(e)(vi) ICC Statute. Also the Trial Chamber found him not guilty of the war crime of using children under the age of 15 years to participate actively in hostilities laid down in article 8(2)(e)(vii) ICC Statute.

On 23 May 2014, Trial Chamber II sentenced Mr Katanga to 12 years imprisonment (para 170) [No need to insert sentence as there should be a link to this case in the summary; Marjolein to Kate: the judgment of 7 March 2014 does not contain the Court’s decision on sentence which is laid down in a separate document of 23 May ’14]. The judgment is final, as no appeals against the conviction or sentence were pursued. From these 12 years, the time spent in detention was deducted and after having served two-thirds of his sentence, Katanga prompted a judicial review of his remaining term which resulted in the decision to reduce Katanga’s sentence by three years and eight months, leading to his release in January 2016.

**Reparations for Katanga’s victims**

*No reparations for child soldiers*

366 persons were authorised to participate in the trial as victims (judgment para 36). However, since Katanga was not found guilty of using children under 15 in the attack, the group of former child soldiers was not able to claim reparations and did not take part in the reparations proceedings.

In August 2014, Trial Chamber II issued an ‘Order instructing the Registry to report on applications for reparations’ (insert link), requesting – among others things - detailed information as to the victims’ identity, the harm they suffered as a result of the crimes and the reparations measures sought. Trial Chamber II also stressed the importance of managing victims’ expectations with respect to reparations, by informing them about the types and scope of reparations available in this case and about the fact that reparations may be rewarded on an individual and/or on a collective basis (paras. 7-9).

*Symbolic compensation sum*

On 24 March 2017, Trial Chamber II issued an “Order awarding individual and collective reparations to Katanga’s victims” (Kate: only available in French but by the end of June an English version will be made available on the ICC website – So let’s wait for that before uploading / Marjolein: agree! ). A total of 297 victims were awarded with a symbolic compensation of USD 250 per victim as well as collective reparations in the form of support for housing, support for income‑generating activities, education aid and psychological support. As Katanga does not currently have resources to pay, the Trust Fund for Victims was invited [only ‘invited – not requested?] to consider using its resources for the reparations and to present an implementation plan by 27 June 2017. [Repayment by Katanga later, not required?]

The Reparations Order includes a confidential ex parte Annex II, containing the individual assessment of each application for reparations. According to the Reparations Order, 14 out of the 37 applicants represented by the Principal Counsel were granted reparations, in full or in part, while 23 applications were rejected. Considering that the victims concerned by the Reparations Order submitted their claims in 2008 and 2009, the Principal Counsel is facing serious difficulties in establishing contact with them and has appealed the Reparations Order and its Annex II, requesting the Appeals Chamber to reverse or amend the Reparations Order and its Annex II and to grant reparations to all 37 victims (paras 2-6/ insert link Kantanga notice of appeal).

In April 2017, the Defence filed an appeal against the reparation order (insert pdf link defence order of appeal), claiming that:

* The Trial Chamber applied a wrong standard of proof when assessing the harm alleged by the applicants;
* The Trial Chamber has given too broad an interpretation of a parent whose death warrants reparations to the remaining children;
* The Trial Chamber ruled *ultra petita* by allocating compensation exceeding several applicants’ claims;
* The Trial Chamber erred in issuing an order for reparations of 1,000,000 USD against Mr Katanga because it is not proportionate to, and does not fairly reflect the part played by the accused in the crimes.