

## Statement of the Women's Initiatives for Gender Justice

### Change in Chambers' Approach to Reparations

#### *The Prosecutor vs. Germain Katanga*

1 September 2014

On 27 August 2014, Trial Chamber II of the International Criminal Court (ICC) issued an order instructing the Registry to report on applications for reparations in the case against Germain Katanga (Katanga).<sup>1</sup>

In the Order, the Chamber instructed the Registry to consult with individual victim 'applicants' regarding 'the harm suffered as a result of the crimes', as well as reparations sought. The Chamber directed the Registry to contact the applicants, in collaboration with the Legal Representative for victims, with a view to submitting a detailed report, which is to include the victims' application number, documents establishing the victims' identity, the harm suffered, and the type and modality of reparations requested. The Chamber noted that the victims' applications for 'participation and/or reparation' were received before April 2009, contain limited information regarding these issues, and need updating.<sup>2</sup>

In reviewing the decision, it is unclear whether the Registry is being instructed to consult with all victim applicants in the Katanga case ('applicants'), or only with those who applied and were formally recognized as victims and therefore participated in the legal proceedings. According to the *Gender Report Card on the ICC 2013* produced by the Women's Initiatives for Gender Justice, as of 30 June 2013, 364 victims were recognized to participate in the Katanga case, including 117 females and 246 males.<sup>3</sup>

Although the Chamber noted that reparations may be granted on an individual basis, a collective basis, or both,<sup>4</sup> the Registry's report, as ordered by the Chamber, is to be based on consultations with individual applicants as opposed to the wider community of Bogoro village, which is the site of the attack for which Katanga was convicted. The Women's Initiatives is concerned that this individualized approach to reparations could disadvantage women victims, considering that only 32% of victims recognized in the case are female.

Overall, more men than women have been recognised as victims in every situation before the ICC and in 15 out of 18 cases.<sup>5</sup>

Based on data in the Katanga case, it is clear that the victims recognised to participate in proceedings to date are not fully representative of the gender of the victims affected by the Bogoro attack. However, it is unclear whether those currently recognised in the case are representative of the victims in relation to other profile factors such as age and type of harm suffered by victims of this incident.

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<sup>1</sup> ICC-01/04-01/07-3508 (Order).

<sup>2</sup> ICC-01/04-01/07-3508, paras 7-8.

<sup>3</sup> *Gender Report Card 2013*, p 185, available at: <http://iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2013.pdf>.

<sup>4</sup> ICC-01/04-01/07-3508, para 9.

<sup>5</sup> *Gender Report Card 2013*, p 185-187, available at <http://iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2013.pdf>.



The Women's Initiatives is concerned that embarking upon individual reparations may limit the potentially positive effect of reparations and introduce an unintended hierarchy of victims within situations under investigation by the ICC. As the funding for reparations in this case will be coming from voluntary contributions and not from the convicted person, utilising these resources collectively may be both more efficient and meaningful, especially in light of the limited pool of funding. In the Katanga case an entire village was attacked, motivated in part by the ethnic profile of the village. In such circumstances, pursuing individual reparatory awards is unlikely to address the multi-dimensional and collective nature of the harm experienced by the community of Bogoro.

Trial Chamber II's approach to reparations in the Katanga case also appears to represent a significant change in the approach taken in the case against Thomas Lubanga. In the Lubanga case, the Chamber instructed the Registry and the Trust Fund for Victims (TFV) to submit a joint report on reparations prior to the verdict.<sup>6</sup> It also invited both the Registry and the TFV to make observations on reparations principles and procedures immediately following the verdict, along with the parties and participants. Furthermore, other individuals and interested parties were invited to seek leave to participate in the reparations proceedings.<sup>7</sup> By contrast, the Katanga Order requests a report on reparations solely from the Registry, and the Registry's report is to be based on consultations with individual applicants. The Order significantly limits the role of the TFV in providing input and advice on the scope, type and modalities of reparations in this case. The TFV administers the voluntary contributions from which any reparations awarded in the Katanga case will be drawn. In addition, thus far, unlike in the Lubanga case, the Chamber has not invited observations from parties and participants, other individuals or interested parties, regarding the reparation scheme to be applied in the Katanga case.

As only the second reparations proceedings embarked upon by the ICC, it is understandable that Chambers may want to explore various options. However, the Women's Initiatives is concerned at the direction suggested by Trial Chamber II and the implications of an individual reparations programme in the context of the Bogoro attack and the wider conflict in eastern DRC, as well as the possible exclusion of female victims in this approach.

### **Case background**

On 7 March 2014, Katanga was convicted by a majority of Trial Chamber II as an accessory to the war crimes of directing an attack against a civilian population, pillaging, and destruction of property, as well as murder as a war crime and a crime against humanity.<sup>8</sup> The Chamber unanimously acquitted Katanga as an accessory to rape and sexual slavery as war crimes and crimes against humanity, as well as of the war crime of using child soldiers.<sup>9</sup> On 9 April 2014, the Prosecution filed a notice of appeal against Katanga's acquittal for the sexual violence charges.<sup>10</sup> On the same day, the Defence filed a notice of appeal against Katanga's

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<sup>6</sup> The Registry and the TFV received the instruction by e-mail dated 16 March 2011. See ICC-01/04-01/06-2806, p 5.

<sup>7</sup> ICC-01/04-01/06-2844, paras 8-9.

<sup>8</sup> ICC-01/04-01/07-3436, p 709-710.

<sup>9</sup> ICC-01/04-01/07-3436, p 710.

<sup>10</sup> ICC-01/04-01/07-3462.



conviction.<sup>11</sup> On 25 June, Katanga's Defence Counsel and the Prosecution both filed notices withdrawing their appeals of the judgement.<sup>12</sup>

Katanga was tried jointly with Mathieu Ngudjolo Chui (Ngudjolo), constituting the Court's second trial, as well as the second case, after the Lubanga case, arising from the DRC Situation.<sup>13</sup> It was the first case in which crimes of sexual violence, including rape and sexual slavery, had been charged. During the trial, the case centred on Katanga and Ngudjolo's alleged indirect co-perpetration in orchestrating an attack on the village of Bogoro in the region of Ituri on 24 February 2003, as commanders of the Ngiti combatants from Walendu-Bindi and the Lendu combatants from Bedu-Ezekere, respectively.<sup>14</sup> On 21 November 2012, the majority of Trial Chamber II severed the case against Katanga and Ngudjolo and notified the parties of a potential recharacterisation of the mode of liability with which Katanga was charged.<sup>15</sup> On 18 December 2012, the Chamber acquitted Ngudjolo of all charges.<sup>16</sup> Following the judgement issued on 7 March 2014,<sup>17</sup> Katanga was sentenced to 12 years' imprisonment by a majority of Trial Chamber II, on 23 May 2014.<sup>18</sup> In the same decision, the Trial Chamber also ordered that the six years and eight months Katanga had already spent in ICC detention, since 18 September 2007, were to be deducted from his sentence.

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For more information about this case please see:

- The statement by the Women's Initiatives for Gender Justice on the withdrawal of the Defence and Prosecution's appeals in the Katanga case, 26 June 2014, available at: <http://www.iccwomen.org/documents/Katanga-Appeals-Statement.pdf>
- The first Special Issue of the Legal Eye on the ICC on the Katanga judgement, available at: <http://www.iccwomen.org/WI-LegalEye5-14/LegalEye5-14.html>
- The statement by the Women's Initiatives for Gender Justice on the sentencing of Katanga, 23 May 2014, available at: <http://www.iccwomen.org/documents/Statement-Katanga-Sentencing.pdf>

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<sup>11</sup> ICC-01/04-01/07-3459.

<sup>12</sup> ICC-01/04-01/07-3497; ICC-01/04-01/07-3498.

<sup>13</sup> The cases were joined on 10 March 2008. ICC-01/04-01/07-257.

<sup>14</sup> The Prosecution had charged and the Pre-Trial Chamber had confirmed that at the time of the attack, Katanga and Ngudjolo were the alleged commanders of the *Force de résistance patriotique en Ituri* (FRPI) and the *Front de nationalistes et intégrationnistes* (FNI), respectively.

<sup>15</sup> ICC-01/04-01/07-3319. In this decision, the majority of Trial Chamber II (Judge Van den Wyngaert dissenting) notified the parties and participants, pursuant to Regulation 55 of the Regulations of the Court, of a potential recharacterisation of the facts underlying the form of criminal responsibility with which Katanga was charged, from indirect co-perpetration pursuant to Article 25(3)(a) of the Statute to accessory liability under Article 25(3)(d).

<sup>16</sup> ICC-01/04-02/12-3-tENG, p 197.

<sup>17</sup> ICC-01/04-01/07-3436.

<sup>18</sup> ICC-01/04-01/07-3484.



- The statement by the Women’s Initiatives for Gender Justice on the conviction of Katanga, 7 March 2014, available at:  
[http://www.iccwomen.org/news/berichtdetail.php?we\\_objectID=215](http://www.iccwomen.org/news/berichtdetail.php?we_objectID=215)
- *Gender Report Card 2013*, p 92-104, available at:  
<http://www.iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2013.pdf>
- *Gender Report Card 2012*, p 240-242, available at:  
<http://www.iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2012.pdf>;
- *Gender Report Card 2011*, p 225-234, available at:  
<http://www.iccwomen.org/documents/Gender-Report-Card-on-the-International-Criminal-Court-2011.pdf>;
- *Gender Report Card 2010*,<sup>19</sup> p 160-178, available at:  
[http://www.iccwomen.org/news/docs/GRC10-WEB-11-10-v4\\_Final-version-Dec.pdf](http://www.iccwomen.org/news/docs/GRC10-WEB-11-10-v4_Final-version-Dec.pdf);
- *Gender Report Card 2009*, p 93-140, available at:  
[http://www.iccwomen.org/news/docs/GRC09\\_web-2-10.pdf](http://www.iccwomen.org/news/docs/GRC09_web-2-10.pdf);
- *Gender Report Card 2008*, p 52-91, available at:  
[http://www.iccwomen.org/news/docs/GRC08\\_web4-09\\_v3.pdf](http://www.iccwomen.org/news/docs/GRC08_web4-09_v3.pdf);
- Read the statement by the Women’s Initiatives for Gender Justice on the opening of the trial against Katanga and Ngudjolo, 23 November 2009, available at:  
<http://www.iccwomen.org/news/docs/Katanga-Statement.pdf>

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<sup>19</sup> For a description of the Prosecution’s opening statements in this case, see *Gender Report Card 2010*, p 161, available at [http://www.iccwomen.org/news/docs/GRC10-WEB-11-10-v4\\_Final-version-Dec.pdf](http://www.iccwomen.org/news/docs/GRC10-WEB-11-10-v4_Final-version-Dec.pdf).

