

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: French

No.: ICC-01/04-01/07
Date: 10 December 2020

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

Confidential

**Order on the Request of the Trust Fund for Victims of 19 October 2020 for the
Chamber's Approval of the Mode of Implementation Related to Housing
Assistance**

Order 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 of Germain

Katanga

Mr David Hooper

Ms Caroline Buisman

Office of Public Counsel for Victims

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

TRIAL CHAMBER II ("Chamber") of the International Criminal Court, in the case of the *Prosecutor v Germain Katanga* orders as follows.

I. Procedural history

1. On 24 March 2017, the Chamber handed down its "Order for Reparations pursuant to Article 75 of the Statute" ("Order for Reparations").¹ In that Order, the Chamber analysed 341 applications for reparations.² The Chamber found that of those 341 applications for reparations, 297 persons had shown on a balance of probabilities that they had suffered harm as a result of the crimes of which Germain Katanga ("Mr Katanga") was convicted.³ Accordingly, the Chamber determined that those persons were to be awarded the individual and collective reparations approved by the Chamber in the present case.⁴

2. On 25 July 2017, after it had been granted two extensions of time,⁵ the Trust Fund for Victims ("Trust Fund") filed a draft implementation plan on the basis of the Order for Reparations⁶ ("Draft Implementation Plan of 25 July 2017").

¹ "Order for Reparations pursuant to Article 75 of the Statute", 24 March 2017, ICC-01/04-01/07-3728-tENG, with one public annex (Annex I) and one confidential annex *ex parte* Common Legal Representative of Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga (Annex II).

² Order for Reparations, paras. 64-180.

³ Order for Reparations, para. 168.

⁴ Order for Reparations, paras. 281-295.

⁵ "Decision granting the Trust Fund for Victims an extension of time for submission of the Draft Implementation Plan", 22 June 2017, ICC-01/04-01/07-3744-tENG and "Decision Granting the Trust Fund for Victims Access to Document ICC-01/04-01/07-3728-Conf-Exp-AnxII and an Extension of the Time Limit to Submit the Draft Implementation Plan for Reparations", 11 July 2017, ICC-01/04-01/07-3749-tENG.

⁶ "Draft implementation plan relevant to Trial Chamber II's order for reparations of 24 March 2017 (ICC-01/04-01/07-3728)", dated 25 July 2017, translation registered on 21 August 2017, ICC-01/04-01/07-3751-Conf, with one confidential annex, one public annex, one confidential annex *ex parte* Registry, one confidential annex *ex parte* the Principal Counsel of the Office of Public Counsel for Victims, and one confidential annex *ex parte* Legal Representative of Victims. A redacted version was filed on 25 July 2017 and the redacted French version was filed on 21 August 2017.

3. On 12 October 2017, having closely reviewed the Draft Implementation Plan of 25 July 2017 and the observations of the Office of Public Counsel for Victims ("OPCV"),⁷ the Legal Representative of Victims ("Legal Representative"),⁸ the Defence team for Mr Katanga⁹ and the Trust Fund,¹⁰ the Chamber issued its "Decision approving the Implementation of Individual Reparations and instructing the Trust Fund for Victims to Transmit to it Additional Information on the Implementation of Collective Reparations".¹¹

4. On 20 September 2018, the Chamber directed the Trust Fund to file additional information on modalities of collective reparations.¹² On that occasion, the Chamber stated that it was prepared to approve the implementation of each modality of collective reparations separately so as not to delay the start of implementation further.¹³

⁷ "Observations on the Trust Fund for Victims' Draft Implementation Plan Relevant to the Order for Reparations", 11 September 2017, ICC-01/04-01/07-3762-tENG.

⁸ "*Observations relatives au projet de plan de mise en œuvre déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut*" (ICC-01/04-01/07-3751-Red), 11 September 2017, ICC-01/04-01/07-3763-Conf. A public redacted version was filed on 13 September 2017 (ICC-01/04-01/07-3763-Red). See also footnote 10.

⁹ "Defence Observations on the TFV's Draft implementation plan", 11 September 2017, ICC-01/04-01/07-3764.

¹⁰ "Joint Submission Concerning the Draft Implementation Plan Filed by the Trust Fund for Victims in Conformity with the Order for Reparations Pursuant to Article 75 of the Statute (ICC-01/04-01/07-3751-Red)", dated 9 October 2017 and registered on 10 October 2017, ICC-01/04-01/07-3767-Conf-tENG.

¹¹ "Decision approving the Implementation of Individual Reparations and instructing the Trust Fund for Victims to Transmit to it Additional Information on the Implementation of Collective Reparations", 12 October 2017, ICC-01/04-01/07-3768-Conf-tENG.

¹² "Order Directing the Trust Fund for Victims to File Information on the Modalities of Collective Reparations", 20 September 2018, ICC-01/04-01/07-3809-Conf-tENG, para. 15 ("Order of 20 September 2018").

¹³ Order of 20 September 2018, para. 16.

5. On 5 August 2019, the Chamber granted the Trust Fund's request of 26 July 2019,¹⁴ insofar as it approved the implementation of the collective reparations concerning the purchase of livestock, certain income-generating activities and education support.¹⁵
6. On 12 December 2019, the Chamber issued a decision stating the reasons that had warranted approval of the implementation relating to the purchase of livestock, income-generating activities with a value below EUR 10,000 and the payment of school fees for the first term of the 2019-2020 school year.¹⁶
7. On 3 July 2020, the Chamber issued an order instructing the Trust Fund to file quarterly reports on the delivery of reparations, and instructing the OPCV and the Legal Representative to file observations in response to those reports within two weeks of notification of each new report.¹⁷
8. On 3 August 2020, the Chamber granted the Trust Fund's request of 17 July 2020¹⁸ after having considered the observations of the OPCV¹⁹ and of the Legal Representative,²⁰ approving the Trust Fund's proposals relating to the purchase of motorcycles, fuel and miscellaneous items for the collective reparations modality in the form of income-generating activities.²¹

¹⁴ "Update report on the implementation of the collective reparations awards and Request for approval of implementation proposals pursuant to regulation 58 of the Regulations of the Trust Fund for Victims", 26 July 2019, ICC-01/04-01/07-3836-Conf, paras. 45-46.

¹⁵ Email from the Chamber on 5 August 2019 at 10.32.

¹⁶ "Decision on the Requests of the Trust Fund for Victims of 26 July and 18 November 2019 and on the Requests of the OPCV of 2 August 2019", 12 December 2019, ICC-01/04-01/07-3846-Conf-tENG.

¹⁷ Order Instructing the Trust Fund for Victims to File Quarterly Reports on the Delivery of Reparations and Instructing the Legal Representative of Victims to File Observations to Clarify his Submissions of 6 and 13 March 2020", 3 July 2020, ICC-01/04-01/07-3855-Conf-tENG, paras. 26-30 and p. 10.

¹⁸ "Update report on the implementation of the collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims and Request for approval of implementation proposals related to the income-generating activities modality", 17 July 2020, ICC-01/04-01/07-3857-Conf, paras. 59, 67, 76 and p. 19.

¹⁹ Email from OPCV to the Chamber on 21 June 2020 at 9.46.

²⁰ Email from the Legal Representative to the Chamber on 21 July 2020 at 14.53.

²¹ "Decision on the Request of the Trust Fund for Victims of 17 July 2020 seeking the Chamber's Approval of the Modes of Implementation Concerning Purchases of Motorcycles, Fuel and Miscellaneous Items", 3 August 2020, ICC-01/04-01/07-3859-Conf.

9. On 24 August 2020, the Trial Chamber granted the Legal Representative's request of 17 July 2020,²² instructing: (i) the Trust Fund to present to the Legal Representative, the OPCV and the Chamber a tentative schedule for the implementation of collective reparations in the form of housing assistance and psychological support in the next quarterly report expected on 19 October 2020; (ii) the Trust Fund to submit a brief report on the implementation of the collective reparations modalities in the form of income-generating activities i.e., the purchase of motorcycles, fuel and miscellaneous items, by 18 September 2020; (iii) the Trust Fund to file observations on the matter of converting certain collective reparations modalities into monetary compensation, in its quarterly report expected on 19 October 2020; and (iv) the Legal Representative and the OPCV to file observations on this particular point of the Trust Fund's quarterly report of 19 October 2020, by 2 November.²³

10. On 18 September 2020, in compliance with the Chamber's instructions, the Trust Fund submitted a report with updates on the implementation of the collective reparations, in particular regarding the purchase of motorcycles, fuel and miscellaneous items ("Trust Fund Report of 18 September 2020").²⁴

11. On 1 October 2020, the Legal Representative filed observations on the Trust Fund Report of 18 September 2020 ("Legal Representative's Observations of 1 October 2020").²⁵

12. On 19 October 2020, in compliance with the Chamber's instructions the Trust Fund filed another quarterly report with updates on the implementation of collective

²² "Observations du Représentant légal en application de l'Ordonnance ICC-01/04-01/07-3855-Conf", 17 July 2020, ICC-01/04-01/07-3856-Conf.

²³ "Ordonnance relative à la requête du Représentant légal du 17 juillet 2020 et concernant les modalités de réparation collectives restantes dans cette affaire", 24 August 2020, ICC-01/04-01/07-3860-Conf.

²⁴ "Update report on the implementation of the collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims and in accordance with the *Ordonnance relative à la requête du Représentant légal du 17 juillet 2020 et concernant les modalités de réparations collectives restantes dans cette affaire* (ICC-01/04-01/07-3860-Conf)" 18 September 2020, ICC-01/04-01/07-3861-Conf.

²⁵ "Observations du Représentant légal sur le rapport du Fonds au profit des victimes ICC-01/04-01/07-3861-Conf", 1 October 2020, ICC-01/04-01/07-3863-Conf.

reparations concerning in particular: (i) housing assistance; (ii) education support; (iii) income-generating activities; and (iv) psychological support ("Trust Fund Report of 19 October 2020").²⁶ The Trust Fund Report of 19 October 2020 also contains a request for the approval of the proposed alternative method of implementation of the collective reparation modality in the form of housing assistance ("Request").²⁷

13. On 2 November 2020, the Legal Representative filed observations on the Trust Fund Report of 19 October 2020 and on the Request.²⁸

II. Analysis

A. Preliminary remarks on progress made by the Trust Fund regarding certain collective reparations modalities

14. The Chamber wishes first to commend the Trust Fund for the ground it has covered in implementing collective reparations. It notes, in particular, the progress made in the provision of miscellaneous items and education support. These modalities are either completed²⁹ or close to completion.³⁰ On this point, the Legal Representative of Victims commends the cooperation with the Trust Fund which has allowed for continuous monitoring of operations, most of which have now come to an end in the conditions that were stated to the beneficiaries.³¹

15. The Chamber also notes the ground covered regarding the implementation of the purchase of motorcycles and fuel, in spite of the difficulties that the Trust Fund

²⁶ "Second quarterly update report pursuant to regulation 58 of the Regulations of the Trust Fund for Victims and Request for approval of Implementation proposal related to the housing assistance modality", 19 October 2020, ICC-01/04-01/07-3865-Conf.

²⁷ Trust Fund Report of 19 October 2020, paras. 31-48 and p. 9.

²⁸ "*Observations du Représentant légal sur le rapport du Fonds au profit des victimes ICC-01/04-01/07-3865-Conf*", 2 November 2020, ICC-01/04-01/07-3867-Conf ("Legal Representative's Observations of 2 Novembre 2020").

²⁹ Trust Fund Report of 19 October 2020, para. 20.

³⁰ Trust Fund Report of 19 October 2020, paras. 8-10.

³¹ Legal Representative's Observations of 2 November 2020, paras. 19-20.

encountered, which caused either an interruption or a delay in the activities.³² The Chamber also notes that the Trust Fund plans to roll out the purchase of fish in accordance with the mode of implementation approved by the Chamber, considering the advanced stage of the implementation of collective reparations.³³ The Chamber notes that the Trust Fund hopes to complete the implementation of the purchase of motorcycles by the end of October 2020³⁴ and is waiting for the transfer of funds in order to start rolling out the purchase of fuel and fish.³⁵ The Chamber also notes that, according to the Legal Representative, in some cases the delivery of motorcycles unexpectedly led to the delivery of equivalents, thereby sparking a number of disputes and causing dissatisfaction among certain beneficiaries.³⁶

16. Regarding psychological assistance, the Chamber notes that the Trust Fund hopes to have finalized the contract with the expert psychologist and to begin rolling out that modality before the end of 2020.³⁷ The Legal Representative states that he is counting on continued and transparent interaction with the Trust Fund and the expert at all stages of the procedure, for the successful implementation of the modality.³⁸

17. Further, the Chamber notes that in the Trust Fund Report of 19 October 2020, at the request of the Chamber, the Trust Fund expressed its views on the potential conversion of the housing assistance and psychological support modalities – the implementation of which had been affected by the local security and health situation – into monetary compensation.³⁹ Regarding psychological assistance, the Chamber notes that the Trust Fund is not in favour of converting this modality because, since

³² "Trust Fund Report of 18 September 2020, paras. 18-21 (concerning the difficulties encountered which caused the delay in the implementation of the purchase of fuel)". See also Trust Fund Report of 19 October 2020, paras. 12-14 (concerning the delay in the implementation of the purchase of motorcycles).

³³ Trust Fund Report of 19 October 2020, paras. 23-25.

³⁴ Trust Fund Report of 19 October 2020, paras. 13-14.

³⁵ Trust Fund Report of 19 October 2020, paras. 17, 25.

³⁶ Legal Representative's Observations of 2 November 2020, para. 20.

³⁷ Trust Fund Report of 19 October 2020, paras. 30, 53.

³⁸ Legal Representative's Observations of 2 November 2020, para. 32.

³⁹ Trust Fund Report of 19 October 2020, para. 50.

such services are not available in Ituri and in the Democratic Republic of the Congo generally, the beneficiaries would be unable to obtain appropriate psychological assistance on the local market. It follows that monetary compensation would not contribute to achieving the objective of this collective reparations modality.⁴⁰ Regarding housing assistance, the Trust Fund states that, as set out in the Request, it was proposing an alternative for the implementation of this modality for the Chamber's approval.⁴¹

18. Furthermore, the Chamber notes that the Legal Representative expresses his regret that he was not consulted before certain beneficiaries were photographed against a backdrop of Trust Fund posters. He states that the confidentiality of these operations required prior consultation with the Legal Representative to ensure that the beneficiaries fully understood the purpose of the photographs, which information had not always been provided to the relevant beneficiaries.⁴² The Legal Representative highlights the great caution with which information about reparations must be handled, considering the security situation in Ituri.⁴³ On this topic, the Chamber states that the Trust Fund had informed it by email that it would address the matter in its next report.⁴⁴ The Chamber therefore states that it will consider the matter at that time if necessary.

19. Lastly, the Chamber notes the clarifications on the local security situation made in the Legal Representative's Observations of 1 October 2020. The Legal Representative states that the prevailing insecurity has affected the way in which beneficiaries were to organize themselves to receive reparations.⁴⁵ The Legal Representative reports that the beneficiaries expressed disapproval with the timing of the implementation of reparations considering the prevailing security situation, although none was willing

⁴⁰ Trust Fund Report of 19 October 2020, para. 52.

⁴¹ Trust Fund Report of 19 October 2020, para. 51. See also paras. 20-23 below.

⁴² Legal Representative's Observations of 2 November 2020, para. 16.

⁴³ Legal Representative's Observations of 2 November 2020, para. 18.

⁴⁴ Email from the Trust Fund to the Chamber on 5 November 2020 at 16.29.

⁴⁵ Legal Representative's Observations of 1 October 2020, paras. 12-13.

to postpone the implementation given the delay in the process.⁴⁶ The Chamber notes that the Legal Representative remains attentive to this matter and hopes that monitoring and constant communication with the Trust Fund will protect beneficiaries from direct exposure to danger during the implementation of reparations modalities.⁴⁷

B. Request

a) Trust Fund's proposal

20. Having considered several scenarios, the Trust Fund concluded that it could not find a local partner capable of constructing and renovating homes as envisioned by the beneficiaries, in accordance with their needs and within a reasonable timeframe.⁴⁸ The Trust Fund believes, therefore, that the only way of rolling out the housing assistance in accordance with the specific wishes of the beneficiaries is to provide them with the necessary financial resources to enable them to build or renovate their homes themselves.⁴⁹ The Trust Fund maintains that in spite of inflation caused by the COVID-19 pandemic, the budgets originally allocated will be sufficient for the construction and/or renovation of homes.⁵⁰

21. Conscious of the importance of consulting the beneficiaries on such a change in modality, the Trust Fund requests the Chamber's approval to proceed as follows: (i) ensure, together with the Legal Representative, that all the beneficiaries concerned are informed of such a change and draw up a schedule of meetings with the beneficiaries (ii) allow sufficient time for the beneficiaries to give some thought to the implementation of the new modality and prepare accordingly (iii) arrange for the financial resources to be delivered to the beneficiaries close to the site of the construction or renovation works; and (iv) monitor the implementation of this

⁴⁶ Legal Representative's Observations of 1 October 2020, para. 12.

⁴⁷ Legal Representative's Observations of 1 October 2020, para. 14.

⁴⁸ Trust Fund Report of 19 October 2020, para. 40.

⁴⁹ Trust Fund Report of 19 October 2020, para. 41.

⁵⁰ Trust Fund Report of 19 October 2020, para. 41.

modality throughout and provide the Chamber with a final report.⁵¹ The Trust Fund states that where beneficiaries are unable to implement this modality, it will be converted into monetary compensation and the Trust Fund will inform the Trial Chamber in that respect.⁵²

22. The Trust Fund states that should the Chamber approve this implementation modality, it will approach the Legal Representative to schedule meetings with the beneficiaries, with due respect for health and safety measures. The Trust Fund will liaise with the Registry and the Country Office for the secure transfer of funds to the beneficiaries.⁵³

23. The Trust Fund therefore requests the Trial Chamber's approval for its proposed alternative for the implementation of the housing assistance modality.⁵⁴

b) Legal Representative's observations

24. In view of the Trust Fund's discontinuation of the housing assistance modality, the Legal Representative points out that the proposed alternative solution differs intrinsically from the initial solution that was presented to the beneficiaries and that such a change could trigger in them a feeling of disillusionment, abandonment or even betrayal.⁵⁵ He therefore expressed the importance of initiating dialogue with the beneficiaries to (i) inform them that it is not possible for the Trust Fund to implement the housing assistance and (ii) explore alternatives with them, bearing in mind the difficulties encountered by the Trust Fund.⁵⁶ In that regard, he emphasized that although the option of allocating funds to the beneficiaries for them to rebuild or renovate their own homes was the alternative proposed by the Trust Fund, it need not

⁵¹ Trust Fund Report of 19 October 2020, paras. 43-44, 48.

⁵² Trust Fund Report of 19 October 2020, para. 45.

⁵³ Trust Fund Report of 19 October 2020, para. 47.

⁵⁴ Trust Fund Report of 19 October 2020, para. 48 and p. 15.

⁵⁵ Legal Representative's Observations of 2 November 2020, para. 24.

⁵⁶ Legal Representative's Observations of 2 November 2020, para. 25.

be the only possible option and that the possible use of other implementation modalities should not be ruled out.⁵⁷

25. The Legal Representative of Victims also draws the attention of the Trust Fund and the Chamber to the need to keep the other collective reparations modalities open, especially considering the changes to be made to housing assistance, as well as to his desire to maintain the option, for victims, to convert to those modalities.⁵⁸

26. Pending the Registry's decision on a possible mission in the coming weeks, the Legal Representative requests the Chamber to stay any decision on housing assistance until the beneficiaries have been consulted.⁵⁹

c) Determination of the Chamber

27. The Chamber notes that the Legal Representative expresses reservations about the Trust Fund's proposal, highlighting in particular that it differs fundamentally from that initially proposed to the beneficiaries, and that such a change could trigger in them a feeling of disillusionment, abandonment, or even betrayal.⁶⁰ Therefore, the Chamber concludes that it requires all the relevant information, i.e. the views of the victims, before ruling on the proposal.

28. Consequently, the Chamber instructs the Legal Representative to file further observations on the Trust Fund's proposal concerning housing assistance, following consultation with the beneficiaries, by 31 January 2021. After having received those observations, the Chamber will rule on the Trust Fund's proposal.

29. The Chamber notes that this Decision will not affect the process of implementing housing assistance. In fact, this Decision affords the beneficiaries an opportunity to express their views on this key collective reparations modality in respect of which the

⁵⁷ Legal Representative's Observations of 2 November 2020, paras. 26-27.

⁵⁸ Legal Representative's Observations of 2 November 2020, para. 22.

⁵⁹ Legal Representative's Observations of 2 November 2020, para. 28.

⁶⁰ Legal Representative's Observations of 2 November 2020, para. 24.

Trust Fund is contemplating significant changes. The Chamber therefore concludes that it is crucial to seek the opinion of the beneficiaries before ruling on the Request.

FOR THESE REASONS, the Chamber

INSTRUCTS the Legal Representative to file further observations on the Trust Fund's proposal concerning housing assistance, after having consulted the beneficiaries, by 1 February 2021.

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

[signed]

Judge Marc Perrin de Brichambaut

Presiding Judge

Judge Olga Herrera Carbuccion

Judge Péter Kovács

Dated this 10 December 2020

At The Hague, Netherlands