

**Cour
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**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-01/07
Date: **6 December 2018**

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***

Confidential

Update report on the implementation of the education assistance modality of the collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims

Source: The Trust Fund for Victims

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

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1. Pursuant to regulation 58 of the Regulations of the Trust Fund for Victims (“TFV Regulations” and “Trust Fund”, respectively), the Trust Fund hereby provides an update report on progress in the implementation of the collective reparations education award ordered in the case of *The Prosecutor v. Germain Katanga*, namely to report to Trial Chamber II (“Trial Chamber”) on the completion of the first trimestral payments of school fees, as well as the ongoing payments for the associated school related materials.

I. CLASSIFICATION OF THE PRESENT SUBMISSION

2. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund has classified this report confidential in line with the classification given by the Trial Chamber to the orders and decisions upon which the present report is based. The Trust Fund respectfully submits that, in its view, the present submission could be reclassified as public, with redactions as necessary, without endangering the safety, security or wellbeing of any concerned victims and would accordingly request that the Trial Chamber consider ordering such reclassification.

II. STATEMENT OF APPRECIATION FOR THE SUPPORT PROVIDED FROM THE RELEVANT SECTIONS AND UNITS OF THE REGISTRY

3. At the outset, the Trust Fund wishes to express its sincere gratitude to the various sections and units of the Registry, both in the Hague and the DRC field offices (Kinshasa and Bunia), for the exemplary support and assistance provided to the Trust Fund in the implementation of the education assistance reparations awards. Even if not explicitly stated herein, the Trust Fund wishes to acknowledge that this support touches all aspects of the following report. The Trust Fund looks forward to continuing to work in the same collaborative and mutually supportive manner with the Registry in order to accomplish the shared aim of making reparations a concrete and tangible reality for victims.

III. RELEVANT PROCEDURAL HISTORY

4. On 24 March 2017, the Trial Chamber issued an order for reparations against Mr Germain Katanga, awarding USD 1 million for individual and collective reparations to

297 victims of the case (“Reparations Order”).¹ The individual reparation consists in an award of symbolic compensation in the amount of USD 250 for each victim. The modalities of the collective reparations awarded were: (i) housing assistance; (ii) educational assistance; (iii) income generating activities; and (iv) psychological support.²

5. Beginning on 29 January 2018, the Trust Fund conducted a six-week joint mission with one of the legal representative of victims in the case (“LRV”) to specify the concrete collective reparations choices of each victim he represents and, from 28 to 31 August 2018,³ a joint mission was conducted with the second legal representative of victims (“OPCV LRV”, jointly with the LRV referred to as “LRVs”) in relation to the choices of the victims that she represents.

6. In respect of the first modality to be implemented, namely the education assistance modality, in August and September 2018, the Trust Fund’s staff in Bunia, Democratic Republic of the Congo (“DRC”), and the Hague-based legal staff participating in the field missions, prepared the practical aspects of the implementation.

7. From 6 to 17 August 2018, a joint mission was undertaken with the LRV to clarify certain choices with a select group of victims.

8. During this mission, an introductory meeting with all directors of schools was held in Bunia in order to notify them orally of the upcoming school fees payment and to provide them with information on the fact that these payments were part of the Reparations Order (as opposed to a measure proposed by an NGO or executed within the assistance mandate of the Trust Fund). At the end of the meeting, the phone contact details of the directors of schools were collected.

9. Additionally, a draft letter to the directors of schools was prepared by the Trust Fund’s field staff and shared with the LRV. A draft script for the proposed telephone calls to victims (“*Guide d’entretien*”), for the purposes of verifying/updating the relevant school information in light of the fact that some children may have changed schools for the new year and an

¹ Reparations Order, ICC-01/04-01/07-3728.

² Reparations Order, para. 304. *See also* paras 302-303.

³ 2 October Submission, ICC-01/04-01/04-3811-Conf, paras 19-20. As recalled in the 2 October Submission, the joint Trust Fund/OPCV collective reparations choices missions was suspended pending resolution of the appeal proceedings and the Trial Chamber’s consideration of the OPCV Legal Representative’s request for reconsideration.

explanation of what documentation would be needed for the uniform/school kit reimbursements, were also prepared and shared with the LRV.⁴

10. On 16 August 2018, the Trust Fund staff met with the field security officers to discuss the most secure method of organising the payments to the schools. The possibility to have the Trust Fund's staff go directly to the schools to proceed to the payment under the protection of a security dispositive was discussed. However, it was noted that important security measures were likely to attract undue attention to the beneficiaries and the schools. It was indeed noted that this system could attract the attention of militias stationed closely to certain schools (within approximately 5 kilometres, in the areas of Bogoro and Nyakeru for instance) and lead to attacks on the schools, due to the belief that they store cash. It was also noted that it could impact negatively on the feasibility of future missions of other Court's units (by creating a situation in which local population believe that Court's visitors come with cash). It was then elected to proceed to the payment by way of two methods deemed to be more secure, *i.e.* on the one hand, payment by bank transfer and on the other hand, by inviting heads of schools in small groups to a secured confidential location in Bunia. These methods were considered to be the most secure ones to preserve the well-being of the victim beneficiaries (not being identified as having "victim" status), the safety of the schools themselves to guard against robbery if it were known that cash was being brought to the school as well as Court's future activities. Following this security consultation, schools were contacted by phone to determine whether they had bank accounts and in order to obtain their bank details. During these phone calls, the importance of confidentiality was emphasised.

11. In advance of and during the August mission, Trust Fund's headquarters and field staff, with the support of the DRC field offices and the relevant finance units of the Registry, organised the transfer of funds necessary for the school fee payments. Specifically, the money was first transferred from The Hague to the ICC bank account in Kinshasa. Upon verifying that a sufficient amount of cash was available in the would-be partner bank in Bunia, the money was then transferred from Kinshasa to Bunia, which required advance coordination and support from the Registry.

⁴ Email from Trust Fund staff to LRV team on 27 August at 9:12 and on 31 August at 17:19.

12. By 4 September 2018, Trust Fund's field staff had retrieved the total required amount, *i.e.* USD 25, 000, in two batches, in Bunia. The money was then stored securely in the vault of the Bunia field office. This operation mobilised resources in The Hague, Kinshasa (with the support of the field office) and Bunia for approximately one week. It also required the support of the field security officer.

13. At the completion of the August mission, a detailed calendar for the implementation of the education assistance by the start of the school year (beginning of September 2018) was prepared and shared with the LRV.⁵ However, due to the LRV's refusal to permit the Trust Fund to contact his clients outside his physical presence and in light of the deteriorating security situation, the timing of activities had to be adjusted.

14. In September 2018, the lists of students were verified and updated in the course of the joint mission with the LRV (in Bogoro and Bunia). Specifically, on 24 September 2018, the Trust Fund and the LRV held a collective meeting in Bogoro, followed by individual interviews with those victims relevant for the education assistance modality. The same was done in Bunia on 25 September 2018. At the completions of this two-day mission, Trust Fund staff updated the list of students.

15. Additionally, an *acte de réception des frais de soutien scolaire au titre de la réparation collective dans l'affaire Le Procureur c. Germain Katanga* ("Act") was prepared and shared for comments with the LRV together with the proposed method (signature – and stamps, when available – of the Trust Fund's staff and the school director in the presence of one witness, containing a detailed break-down of the payment made).⁶ This same information was shared with the OPCV LRV in a meeting following the conclusion of the collective choices joint mission. Lastly, a database was prepared recording all relevant information for each victim (including what types of fees were paid, the names of the student/s and associated school/s, etc.).

⁵ Email from Trust Fund Staff to LRV team on 16 August at 14:11.

⁶ Email from Trust Fund staff to LRV team on 28 September 2018 at 18 :20.

16. On 20 September 2018, the Trial Chamber issued an order⁷ instructing the Trust Fund to file information relevant to the modalities of implementation of the collective reparations awards ordered in the present case.

17. On 2 October 2018, the Trust Fund submitted the requested information (“2 October Submission”).⁸ In respect of the education assistance modality, the Trust Fund indicated that the payment of the school fees was going to take place immediately following the submission and would last for about two weeks.⁹

18. On the evening of the 2 October Submission, the Trust Fund was informed of the latest Joint Threat Assessment Group’s (“JTAG”)¹⁰ recommendations, according to which: (i) all non-essential missions to Bunia had to be suspended; (ii) all movements to Ebola outbreak areas (including Tchomia, for instance) had to be suspended; and (iii) all movements outside Bunia were to be limited (“Recommendation” or “JTAG Recommendation”) ¹¹ The Recommendation was maintained for the month of November.¹²

19. The Trust Fund hereby submits an update report on the implementation of the education assistance modality, including the strategies deployed as a result of the Recommendation, which ultimately enabled the payment of the school fees of 313 students of reparations beneficiaries in this case and the payment of vocational training courses (under the education modality) for 3 reparations beneficiaries (out of a total of 316 such choices) to take place.

IV. TFB REGULATION 58 REPORT TO THE TRIAL CHAMBER

A. Implementation of the reparations education assistance award

20. The Trust Fund recalls that, in its 2 October Submission, it explained that the payments of the school fees would be done by trimester, as agreed with the LRVs, and stated that the

⁷ *Ordonnance enjoignant au Fonds au profit des victimes de déposer des informations sur les modalités de réparations collectives*, ICC-01/04-01/07-3809-Conf.

⁸ Information relevant to the modalities of implementation of collective reparations, ICC-01/04-01/07-3811-Conf, with one confidential annex.

⁹ 2 October Submission, ICC-01/04-01/04-3811-Conf, para. 22.

¹⁰ The JTAG is a multi-organ body which its mandate is to review and provide advice on the operations of the International Criminal Court in the field.

¹¹ JTAG update received by email on 1 October 2018.

¹² JTAG recommendations as of 1 November 2018 received by email on 1 November 2018 at 15:54.

first quarterly payment of the school fees was aimed to take place during weeks 41 and 42, by area.¹³ As indicated above,¹⁴ due to the security situation and following the advice and consultation with the DRC security officers, the Trust Fund planned to invite the heads of school to Bunia for this purpose, and to pay other schools via bank transfer.

21. The JTAG Recommendation had a tremendous impact on the Trust Fund's operations in that it prevented the Trust Fund from carrying out the payment of the school fees as it had initially planned. In practice, the envisioned arrival of additional staff to support the implementation of the payment had to be cancelled due to the suspension of the missions to Bunia, and the Trust Fund staff members that were already in Bunia were prevented from travelling outside of the city or from inviting the heads of school from the Ebola outbreak areas to Bunia.

22. Despite this challenging environment, the Trust Fund's associate field programme officers were able to identify creative and proactive solutions to complete the payments, with less than two weeks of delay. Mitigating measures were also implemented to address this slight delay.

23. Following the JTAG Recommendation, the Trust Fund was made aware of the fact that certain students were being excluded from attending school as a result of the non-payment of the school fees, as is the standard practice in the DRC. The Trust Fund proceeded to systematically call all heads of schools concerned to inform them that options were being explored for the payment to be carried out shortly. Heads of schools were urged to re-integrate students, pending imminent payment. Simultaneously, all other heads of schools (106 in total) were contacted by phone and informed of the delayed payment and of its cause.

24. Subsequently, the Trust Fund considered the option of paying all the fees via bank transfer. Three schools already had a bank account in US dollars, and the fees were paid through this method. The Trust Fund then explored the option of assisting other schools to open bank accounts. However, following investigation, this proved impracticable in light of the lengthy and cumbersome process it requires, for instance a large number of documents

¹³ 2 October Submission, ICC-01/04-01/04-3811-Conf, paras 22, 24.

¹⁴ Paragraph 10. *See also*, 2 October Submission, ICC-01/04-01/04-3811-Conf, para. 24.

must be produced and subsequently certified by the bank in Kinshasa, Accordingly, other options had to be explored.

25. The Trust Fund then elected to proceed with paying in cash those schools located in Bunia (84 educational institutions). The Trust Fund's staff went, in a discreet manner, to each of these schools and, upon verifying the names of the students as well as the *registre des fréquentations*, proceeded with the payment of the school fees for the first trimester 2018 as well as any outstanding arrears that, following consultations with the parents (victims in the case) they had elected to have included in their reparations award.¹⁵ The importance of confidentiality was emphasised anew during the payment.

26. In respect of the 14 schools surrounding Bunia (an area within 25 kilometres maximum outside Bunia, including Bogoro and Nyakeru), the Trust Fund elected to invite the heads of school to a location where hygienic procedures and infrastructure had been adjusted with respect to the Ebola outbreak and related health protocols (systematic use of antiseptic is required for all visitors, for instance). These heads of school were paid in cash, upon verification of the *registre des fréquentations*. The importance of confidentiality was emphasised anew.

27. With regard to schools located in the Ebola affected area (seven schools around Kasenyi and Tchomia), and one school located in a village not accessible due to security reasons, the Trust Fund could neither physically travel there nor invite their heads of school, as per the JTAG recommendations. The Trust Fund therefore elected to map these schools and to determine to which educational network they belong (for instance the network of *écoles conventionnées anglicanes*, the Protestants networks, the 82nd Africa Inland church and 39th Emmanuel community, among others). The Trust Fund then proceeded to identify their "headquarters" (*coordination scolaire*) in Bunia and to find the relevant contact details. Each headquarter was then paid in cash or *via* mobile money transfer the appropriate amount of money to be redistributed to the schools of their respective network. The money was then transferred to each school by the headquarters in the presence of Trust Fund staff (for

¹⁵ In the course of its field work, Trust Fund's staff attention was drawn to the fact that certain beneficiaries had not fully paid the school fees for the school year 2017-2018. In order to ensure continuity of attendance, the Trust Fund covered those arrears, in addition to the fees for the first trimester 2018.

instance, by Airtel or m-pesa/Vodacom), who also ensured that the relevant school confirmed receipt of the payment. The importance of confidentiality was emphasised anew.

28. To date, the school fees of 316 students out of the 316 fees choices made by the reparations beneficiaries (313 students from kindergarten to university as well as the fees for three vocational training courses)¹⁶ have been paid for the first trimester 2018.

29. In addition to the above, the Trust Fund wishes to inform the Trial Chamber about particular practical challenges encountered in the implementation process. For instance, some of the children had registered at school by indicating names different from the ones given to the Trust Fund and the LRVs by their parents, making it difficult to identify them.¹⁷ On many occasions, the indicated classes or school names were not correct, or children had changed schools in the meantime.¹⁸ The Trust Fund's staff was also contacted by parents who wished to allow more children, who had not been previously indicated during the collective choices interviews, to benefit from their associated school fee budget. Considering the limited ability of movement in respect of the JTAG Recommendation, an immeasurable amount of time was spent to get in contact with the heads of schools in order to resolve these issues and more.

30. In respect of the proof of payment, the Trust Fund will provide the relevant victims beneficiary (*i.e.* the parent of a minor or the adult victim themselves as applicable) with a copy of the receipt of payment. The Act is being stored in The Hague for the Trust Fund's administration and the original versions of the receipt of payment will be handed over to the

¹⁶ In respect of two victims' beneficiaries involved in vocational trainings, the totality of the training was paid.

¹⁷ For instance, one victim beneficiary elected to use the education assistance modality for 5 children of her family, whose names she communicated to the Trust Fund and the LRV during the individual interview. Those children subsequently elected to register at school under the last name of their father. In other instances, the name given during the individual interview slightly differed from that given to the school (in that the spelling is different or a post name was added). These discrepancies are explained by the fact that the victim beneficiary with whom the Trust Fund held the individual interview was not necessarily the family member who registered the student at the school. In all these cases, the Trust Fund had to verify the identity of the student during the payment.

¹⁸ The Trust Fund recalls in this respect that the majority of the collective choice interviews were carried out in February 2018, meaning during the 2017 school year, and thus some of the schools identified were no longer applicable for the following school year as the parents had ultimately decided to enroll their child(ren) in a new school. Further, due to the outbreak of violence, several parents relocated, thus also affecting the relevance of the school previously indicated. In another situation, a victim beneficiary indicated a school name to the Trust Fund that turned out to be a colloquial name. Trust Fund staff then corroborated the actual official name of the school.

Finance Section of the Registry in accordance with the applicable financial rules and regulations governing the Trust Fund's use of resources.¹⁹

31. In respect of the payment of uniforms and school kits, as indicated in the 2 October Submission,²⁰ the Trust Fund has put in place a system of refunding the parent victims upon production of an appropriately detailed receipt. So far, 31 families have been refunded these costs from their education assistance reparations budget.

32. Lastly, the Trust Fund will share its database with the LRVs and the Trial Chamber.²¹ It contains the name of the victim, his or her victim code as well as the amount (and the percentage of the total budget allocated for the education assistance modality that it represents) spent for the first trimester. As is apparent in the database, in four instances, the budget initially allocated by the beneficiaries to the education assistance modality was increased, with the agreement of the beneficiary, in order to cover the totality of the fees due. Additionally, to facilitate the Chamber's oversight of the financial report, the Trust Fund will also share with the Chamber a supplementary database providing the break-downs of expenditures by student.

B. Planning regarding the implementation of further modalities

33. As indicated in the 2 October Submission,²² the Trust Fund is currently preparing the next phase of implementation and will provide the Chamber with an update report in early 2019, which will provide further details and new steps taken from those already set out in the 2 October Submission.

¹⁹ Trust Fund's field staff personally brought the original Act to The Hague.

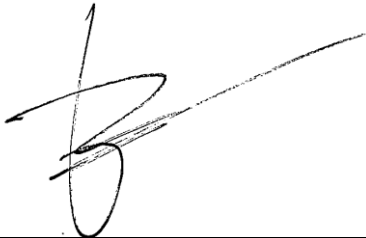
²⁰ 2 October Submission, ICC-01/04-01/04-3811-Conf, para. 22.

²¹ For ease of reference, the database will be shared in the form of an Excel Spreadsheet by way of an email.

²² 2 October Submission, ICC-01/04-01/04-3811-Conf, paras 25-34.

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests the Trial Chamber to take note of the present report and undertakes to appraise the Chamber of any further relevant developments.



Pieter W.I. de Baan

Executive Director of the Trust Fund for Victims, on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 6 December 2018

At The Hague, The Netherlands