

**Cour
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**International
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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

Confidential

**Update report on the implementation of the income generating activities modality of the collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims
and
Request for approval of one proposed alternative implementation modality**

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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**Victims Participation and Reparations
Section**

Mr Philipp Ambach

I. BACKGROUND

1. Pursuant to regulation 58 of the Regulations of the Trust Fund for Victims (“Trust Fund”), the Trust Fund hereby provides Trial Chamber II (“Trial Chamber”) with an update report concerning the progress in the implementation of income generating activities (“IGAs”) within the framework of the collective reparations award ordered in the case of *The Prosecutor v. Germain Katanga*. The present update report gives an overview of the implementation of reparations in relation to cattle, small and large IGAs, and proposes an alternative method of implementation for the purchase of fish, for which the Trial Chamber’s approval is requested herein, in accordance with the Trial Chamber’s instructions set out in its order issued on 7 February 2019 (“Order of 7 February 2019”).¹

II. 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 as confidential in line with the Trial Chamber’s classification of the orders and decisions upon which the present report is based.

III. RELEVANT PROCEDURAL HISTORY

3. The Trust Fund recalls the procedural history set out in the update reports on the implementation of collective reparations awards, submitted on 28 February 2019² and 26 July 2019³ (“28 February 2019 Update Report” and “26 July 2019 Update Report”, respectively) where it described the progress made and its proposed planning in relation to the four collective reparations awards ordered by the Trial Chamber, namely: (i) housing assistance; (ii) educational assistance; (iii) income generating activities; and (iv) psychological support,⁴ and where it

¹ Ordonnance enjoignant au Fonds de déposer un rapport sur l'état d'avancement de la mise en œuvre des réparations et sur les prochaines étapes et activités prévues, ICC-01/04-01/07-3825-Conf.

² Update report on the implementation of collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims, 28 February 2019, ICC-01/04-01/07-3826-Conf.

³ 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, with Confidential, *ex parte* Annexes A and B, available only to the Trust Fund for Victims, 26 July 2019, ICC-01/04-01/07-3836-Conf.

⁴ See [Reparations Order](#), para. 304; *see also* paras 302-303.

requested the Trial Chamber's approval of the implementation of reparations in relation to cattle, small IGAs, and first trimester education assistance ("First Request").⁵

4. On 2 August 2019, the legal representatives of victims ("LRV" and "OPCV LRV", jointly referred to as "LRVs") expressed their support for the Trust Fund's implementation proposals set out in the 26 July 2019 Update Report and the First Request.⁶

5. On 5 August 2019, the Trial Chamber approved the Trust Fund's First Request.⁷

6. On 7 August 2019, the LRV filed additional observations on the Trust Fund's 26 July 2019 Update Report.⁸

7. Additional procedural history relevant to each collective modality is contained in the relevant section and not produced here to avoid duplication.

IV. UPDATE REPORT ON THE IMPLEMENTATION OF INCOME GENERATING ACTIVITIES

A. The provision of cattle

8. At the outset, the Trust Fund wishes to express its gratitude to the LRVs for the valuable collaboration during all stages of the process, which enabled an effective and timely implementation of the cattle award. The Trust Fund updated the database and planning in collaboration with the LRVs in order to prioritise the most vulnerable victims and to plan members of the same family together. Additionally, the LRVs organised a meeting with victims in Bunia and Bogoro to inform them about the steps undertaken with regard to the cattle modality and about the development of a calendar, dividing them into groups for their visit to the cattle market.

9. Based on the calendar, the LRVs and the Trust Fund, with the LRVs' approval, would then contact the victims a few days beforehand to invite them to the market in Bunia.⁹ Victims

⁵ 26 July 2019 Update Report, paras 45-46.

⁶ LRV, *Réponse du Représentant légal à la demande d'approbation formulée dans le rapport du Fonds au profit des victimes du 26 juillet 2019 (ICC-01/04-01/07-3836-Conf, § 45 et 46)*, 2 August 2019, ICC-01/04-01/07-3837-Conf, para. 14; OPCV LRV, *Observations concernant le « 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 »*, 2 August 2019, ICC-01/04-01/07-3838-Conf, para. 7.

⁷ Email from the Trial Chamber to the Trust Fund and LRVs on 5 August 2019 at 10:32.

⁸ LRV, *Observations du Représentant légal relatives au rapport du Fonds au profit des victimes du 26 juillet 2019 (ICC-01/04-01/07-3836-Conf)*, 7 August 2019, ICC-01/04-01/07-3839-Conf.

were informed to bring along their national voter card, a witness with its national voter card and a cattle driver if necessary.

10. In preparation of the first market pilot, the Trust Fund organised a meeting with the support services team in the Field Office to request for administrative and security support for the implementation of this activity. The Trust Fund also held meetings with the *Inspection provinciale de l'agriculture, pêche et élevage*, the *Association des coopératives des éleveurs de l'Ituri*, the *chef de l'abattoir*, who is responsible for the compound, and the *chef du marché*, who is in charge of the cattle market itself. These meetings were aimed at informing them of the Trust Fund's planned activity as well as requesting for administrative support for the process. They provided the Trust Fund with information on the required documentation for the sale, purchase and movement of cattle from one area to the next, an office to receive the victims on every market day in order to brief them about the process, as well as access to power services when it was functional.

11. On the day of each cattle market, one Trust Fund team would be present at the market to receive the victims, verify their identity, provide information on the process and ensure the administrative documentation for the purchase of cattle in a private office to ensure the personal safety of the victims and uphold the confidentiality of the process ("market team"), while another team would be located at a nearby secure and private location with the funds to pay all vendors upon presentation of the documents received at the market ("payment team").¹⁰

12. After briefing the victims, they visited the market independently and negotiated the prices for the cattle of their choice according to their allocated budget. The victims would then return to the market team to complete all the required documents, like the *acte de réception*,¹¹ the *jeton* to be handed over to the vendor as justification for payment,¹² the medical certificate of the animals, the *feuille de mercurial de marché à bétail* to be stored in the archives of the market, and the *feuille de route*, which is a cattle transportation sheet established by the animal health

⁹ Due to the current security situation in the Province of Ituri and poor road networks largely worsened by heavy rainfall, the Trust Fund was not able to visit cattle markets outside of Bunia. All victims were received in Bunia and their transportation costs were covered.

¹⁰ Both teams were accompanied by a security officer and a driver.

¹¹ The *acte de réception* contains all relevant information on the cattle, like the gender, age, weight, price, origin, colour, quality, vendor, buyer, destination and so on.

¹² The *jeton* contains information on the vendor, the number of cattle sold and the price. Different coloured *jetons* were used on different market days to eliminate any chance of fraud from vendors.

inspector as proof that the cattle were in good health and not stolen. The Trust Fund keeps the original *acte de réception*, signed by the victim, his/her witness and the animal health inspector, for financial documentation purposes, and gives a copy to the victim. A first batch of copies of *actes de réception* has also been delivered to the LRVs in The Hague.¹³ The victim keeps the original *feuille de route*, as it is a legal proof of ownership of the cattle, of which the Trust Fund keeps a copy.

13. When the vendor receives the *jeton*, signed by the Trust Fund, the vendor and the *chef du marché*, he/she is informed about the location of payment and is provided with a transportation fee to get there. The market team sends pictures of the *jeton* and the vendor's voter card to the payment team, so they can carry out a double verification of the required documents and prepare the payments beforehand. Upon payment, the payment team keeps the *jeton* as proof of payment.

14. On 2 September 2019, the first pilot visit to the cattle market took place with a smaller group of six victims in order to test and, if necessary, adjust the adopted approach. With no incidents and the general satisfaction of victims and vendors, the process showed to be efficient, enabling the Trust Fund to invite larger groups between eight and thirteen victims for subsequent market days.

15. Except for five visits to the cattle market which had to be cancelled due to the delayed transfer of financial resources, all market visits took place as planned. The victims' reactions have been overwhelmingly positive. By 18 November, in accordance with the Trust Fund's planning, the cattle award, involving 187 victims and a total number of 912 cattle head, for a total value of nearly 341,000 USD, was fully implemented.¹⁴

B. Small IGAs

16. As set out in the 26 July 2019 Update Report, for IGA activities with a value below 10,000 EUR,¹⁵ the Trust Fund adopted a direct implementation modality via MODs, whereby

¹³ Email from Trust Fund staff to LRV on 22 October 2019 at 19:02 and email from LRV to Trust Fund acknowledging receipt on the same date at 19:43; email from Trust Fund staff to OPCV LRV on 24 October 2019 at 15:33 and email from OPCV LRV to Trust Fund acknowledging receipt on 25 October 2019 at 14:51.

¹⁴ The Trust Fund intends to share a detailed database with the Trial Chamber and the LRVs in the course of this week.

¹⁵ Activities under this category include the setup of small restaurants, butcher's shops, bakery businesses, tailoring, cereal and grain milling, logging, carpentry, the sale of clothes and the sale of pharmaceutical products.

payment for services were made directly to the identified vendors by the Trust Fund on dates on which no regular cattle markets take place (Tuesday, Wednesday and Friday).¹⁶

17. As with the implementation of the cattle modality, the Trust Fund wishes to express its gratitude to the LRVs, who, through a valuable collaboration with the Trust Fund and a clear communication with their victims, helped to ensure the successful implementation of this modality. The LRVs provided their input on the Trust Fund's database and calendar and contacted their victims to invite them for the implementation of the activity.

18. On the days of implementation, the Trust Fund first briefed the victims about the process, after which they would go independently to the identified stores, from which *pro forma* merchandise costs had been collected, to choose and collect their requested items. The Trust Fund was present during this process and paid the vendors directly once the victims had made their choice. Upon receiving the items, the victims and a witness signed an *acte de réception*, which is kept by the Trust Fund for financial documentation purposes. A copy was shared immediately with the victim, as well as later in The Hague with the LRVs.¹⁷

19. On 4 September 2019, the first victims received their items for small IGAs, and by 13 September 2019, all 26 victims had successfully received their items for a total amount of nearly 27,500 USD.¹⁸

C. Large IGAs

20. In respect of the IGAs which involve a large number of beneficiaries and allocated budgets totalling over 10,000 EUR per type of IGA,¹⁹ the Trust Fund is required by the Court's Financial Rules and Regulations to pass through an open tender process.

21. With regard to the provision of fuel and motorcycles, after the closure of the Expressions of Interest on 8 August 2019, the Trust Fund conducted the technical evaluation of the bids and

¹⁶ See 26 July 2019 Update Report, paras 35, 41-43.

¹⁷ Email from Trust Fund staff to LRV on 22 October 2019 at 19:02 and email from LRV to Trust Fund acknowledging receipt on the same date at 19:43; email from Trust Fund staff to OPCV LRV on 24 October 2019 at 15:33 and email from OPCV LRV to Trust Fund acknowledging receipt on 25 October 2019 at 14:51.

¹⁸ The Trust Fund intends to share a detailed database with the Trial Chamber and the LRVs in the course of this week.

¹⁹ Activities under this category include the sale of fish, the sale of fuel, the sale of various products and the transportation of people or goods by motorcycle taxi.

shared the results with the Procurement Unit,²⁰ which will proceed to select the bidder that is most competitive in terms of price and specifications indicated by the victims.

22. With regard to the provision of various products, the Trust Fund has been consulting with the Procurement Unit to identify the appropriate procurement modality, in which multiple options have been considered. The Trust Fund is currently preparing a Statement of Work and a Policy Guide Letter, to be shared with the Procurement Unit for final advice enabling the operationalisation of this award.

23. The provision of fish is a distinct situation which is discussed in the next section.

D. The provision of fish

24. The Trust Fund recalls that the Trial Chamber expressed in its Reparations Order that reparations, although collective in nature, must respond to “the needs and current situation of individual victims in the group.”²¹ In line with this reasoning, the Trust Fund has noted that “there is an ongoing need for the maximum degree of flexibility to be accorded to each individual in their collective award choices, in order for the reparations awards to be of meaningful reparative value,”²² insofar as these choices follow from consultations with the victims and their legal representatives.

25. The Trust Fund has found that there is a distinct circumstance related to the award of the provision of fish that, unless addressed, could diminish its reparative value. This situation concerns a modest component of the reparations awards, at a value of nearly 14,000 USD, benefiting a limited number of victims living nearby Lake Albert for whom buying fish from the Bunia market is impracticable.

26. The Province of Ituri, with Lake Albert on the border between Uganda and the Democratic Republic of the Congo (“DRC”), is an important provider of various species of fish in the DRC. Due to temperature constraints, fresh fish is sold very early in the morning (04:00-06:00) or late in the evening (18:00-20:00) at specific sale points in the fishermen’s camps around Lake Albert and in the commercial centres of Tchomia and Kasenyi. Then, some fish is

²⁰ Email from Trust Fund staff to the Procurement Unit on 23 October 2019 at 18:55.

²¹ [Reparations Order](#), para. 280.

²² Information relevant to the modalities of implementation of collective reparations, With Confidential annex A: Revised budget, 2 October 2018, ICC-01/04-01/07-3811-Conf, para. 13.

transported using a freezer or ice-cold boxes to the market in Bunia, a measure which naturally increases the price at which the fish is sold.

27. During the victim interviews held in February 2018, 17 victims expressed their wish to receive support for an IGA in the form of the purchase of fish (fresh, salted and smoked). During the joint interviews with the LRVs in March and April 2019, these victims -who generally live in the vicinity of the Lake or travel there regularly- made clear that they preferred buying fish directly around Lake Albert, Kasenyi or Tchomia, as do all fish traders in Bunia and surroundings. They explained that, at these locations, they can supervise the process of smoking and salting fish, which is done by specialised people around the lake, and that there is a larger selection of fish which can be purchased at wholesale prices. By contrast, acquiring fish from Bunia's market would impede making a profit with its resale.

28. As a result, the Trust Fund faces two inter-related challenges regarding the implementation of this IGA as initially envisaged. On the one hand, the Trust Fund cannot itself buy – or facilitate the purchase of – fish directly at Lake Albert because it is sold outside the hours in which Trust Fund staff is allowed to travel outside of Bunia. On the other hand, while the Trust Fund would be able to facilitate the purchase of fish at the market in Bunia, its higher price will erode the income generating value of this reparative activity.

29. In light of these specific circumstances and in order for every victim to receive real and meaningful reparations, the Trust Fund respectfully requests the Trial Chamber's approval for an alternative method of implementation of this IGA activity, which is recalled to be in relation to a modestly sized component of the reparations awards as well as a limited number of victim beneficiaries.

30. The proposed method consists of providing the concerned victims with cash for the specific purpose of purchasing fish directly around Lake Albert. This method includes a monitoring system for the Trust Fund to verify that the amounts disbursed to these victims are used exclusively for this activity.

31. The proposed method foresees to organise a meeting with this group of victims to discuss their respective individual budgets for the IGA, to explain the constraints the Trust Fund faces in the direct implementation of the activity, as well as the alternative method of implementation, including a detailed explanation of the monitoring system:

- i. Upon receipt of the cash, the victim and a witness have to sign an “*acte de réception du matériel*”;
- ii. Immediately after each purchase of fish, the victim has to deliver a proof of purchase to the Trust Fund, keeping the copy of the receipt;
- iii. The Trust Fund and LRV will follow up on the progress of the activity and the success, failures or difficulties by means of a weekly phone call with the victims;
- iv. The Trust Fund will closely monitor and document all activities performed in Bunia, such as the actual sale of fish by means of photos, success stories and witnesses.

32. The proposed alternative method of implementation has been discussed with and agreed upon by the LRVs, who also recommended that all exceptional cases of cash in lieu of IGAs should happen at the end of the reparations to avoid frustrations, tensions and changes of choice among the other victims.²³

33. At the base of this request is the Trust Fund’s belief that the proposed alternative method of implementation of the fish award respects the parameters of the Reparations Order. The alternative method does not constitute a conversion of the IGA activity into monetary compensation, as the provision of cash only represents an intermediate step to enable the purchase of fish. Instead, it constitutes an adaptation towards a more effective and efficient implementation modality of this particular IGA award.

²³ Email from the Trust Fund to the LRV on 27 June 2019 at 17:35 and response from the LRV to the Trust Fund on 10 July 2019 at 13:36.

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests the Trial Chamber to:

- Take note of the successful implementation of reparations in relation to cattle and small IGAs;
- Take note of the progress reported in relation to the large IGAs;
- Take note of the fact that the originally envisaged modality of implementation of the IGA concerning the provision of fish, and therefore achieving the goal it pursues, has been found to be impracticable for a limited amount of victims;
- Approve the proposed alternative method of implementation for the purchase of fish, as set out above.



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 18 November 2019

At The Hague, The Netherlands