

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/04-01/07**

Date: **3 August 2020**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
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

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

Decision 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*, decides 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 determined 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 The Chamber therefore found 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 being 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 Reparations (“Draft Implementation Plan of 25 July 2017”).⁶
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

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 the 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*, 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.

("OPCV"),⁷ the legal representative of victims ("Legal Representative"),⁸ the Defence team for Mr Katanga⁹ and the Trust Fund,¹⁰ the Chamber issued the "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 information on the 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

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

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, ("Defence Observations").

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.

¹³ Order of 20 September 2018, para. 16.

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.

6. On 12 December 2019, the Chamber issued a decision approving, *inter alia*, the implementation of certain modalities of collective reparations.¹⁶
7. On 3 July 2020, the Chamber issued an order instructing the Trust Fund to file quarterly reports on the delivery of the reparations, the first of which was to be filed on 17 July 2020, and instructing the OPCV and the Legal Representative to file observations in response to the Trust Fund's first report by 14 August 2020.¹⁷
8. On 17 July 2020, the Trust Fund filed a report giving an update on the latest developments in the implementation of the collective reparations since 18 November 2019 ("Trust Fund Report of 17 July 2020").¹⁸ The Trust Fund Report of 17 July 2020 also contains a request seeking approval to implement certain modalities of reparations ("Request of 17 July 2020"). More specifically, the Trust Fund requests the Chamber to approve the modes of implementation of the reparations concerning the purchase of motorcycles, fuel and miscellaneous items.¹⁹
9. On 21 July 2020, the OPCV stated that it did not wish to file a response to the Trust Fund Reports of 17 July 2020.²⁰
10. On 23 July 2020, the Legal Representative stated that he had no objections or comments to make on the Trust Fund's requests for approval by the Chamber of the modes of implementation concerning the purchases of motorcycles, fuel and miscellaneous items.²¹

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. 11.

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.

¹⁹ Trust Fund Report of 17 July 2020, paras. 59, 67, 76 and p. 19.

²⁰ Email from the OPCV to the Chamber on 21 June 2020 at 9.46.

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

II. Analysis

A. Trust Fund's proposals for certain modalities of reparations

(a) Purchase of motorcycles

11. As regards the proposal for the purchase of motorcycles, the Trust Fund first explains that the procurement process launched on 5 July 2019 to select a local motorcycle supplier proved unsuccessful.²² The Trust Fund further explains that it then explored other possibilities to be able to purchase the models of motorcycle chosen by the beneficiaries of the reparations.²³ It states that, for example, in May 2020, suppliers for the United Nations were contacted to obtain a list of pro forma costs so as to determine the most competitive market prices and subsequently to purchase the motorcycles directly from the selected vendors using purchase orders.²⁴ According to the Trust Fund, this approach showed higher prices on most of the models of motorcycle chosen by the beneficiaries.²⁵ It adds that it informed the Legal Representative and the OPCV by email on 5 and 8 June 2020, respectively, of the models of motorcycle available and the prices and delivery times applicable.²⁶ In those emails, the Trust Fund also suggested to the Legal Representative and the OPCV that they consult the beneficiaries concerned to ask whether they might wish to change their choice of motorcycle.²⁷ The Trust Fund reports that, following these consultations, some beneficiaries decided on a less expensive model on account of the increased price of the motorcycles and some chose to forego this reparations modality and instead transfer the money budgeted for that purpose to other modalities.²⁸ The Trust Fund further states that other beneficiaries opted for more expensive models of motorcycle and that it decided to bear the resulting excess costs. In that respect, the Trust Fund stresses that according to the Legal Representative

²² Trust Fund Report of 17 July 2020, paras. 48-50.

²³ Trust Fund Report of 17 July 2020, para. 51.

²⁴ Trust Fund Report of 17 July 2020, para. 51.

²⁵ Trust Fund Report of 17 July 2020, para. 51.

²⁶ Trust Fund Report of 17 July 2020, para. 52.

²⁷ Trust Fund Report of 17 July 2020, para. 52.

²⁸ Trust Fund Report of 17 July 2020, para. 54.

and the OPCV, none of the beneficiaries considers the Trust Fund's proposal to be at odds with the principle of equal treatment.²⁹ The Trust Funds also states that the selected motorcycle vendors confirmed that they would maintain the prices quoted to the Trust Fund until 15 August 2020.³⁰

12. Additionally, the Trust Fund explains that it will prepare purchase orders pending a decision from the Chamber.³¹ Furthermore, it intends to implement this modality of reparations by: grouping the beneficiaries and establishing a schedule for the purchase of the motorcycles and their delivery to the beneficiaries concerned; obtaining a security assessment and updated recommendations from the country office in Bunia to choose a location for the implementation of this modality of reparations; continuing consultations with the Court's Occupational Health Unit to take all the necessary precautions in relation to the COVID-19 pandemic and the Ebola epidemic in Ituri; notifying the Legal Representative and the OPCV of the implementation schedule to obtain their input; contacting the beneficiaries concerned in advance, with the consent of the Legal Representative, to inform them of the schedule and logistical details and, where necessary, to confirm their specific choices; and providing the selected motorcycle vendors with a list of the total number and models of the motorcycles chosen as well as any other relevant information to enable them to take the necessary steps and arrangements.³² The Trust Fund also states that a copy of the *acte de reception* [acknowledgment of receipt] will be given to each beneficiary after he or she has signed it,³³ and that the Trust Fund will retain the original for administrative purposes.³⁴ Lastly, the Trust Fund indicates that it will bear the transportation costs incurred by the beneficiaries.³⁵

²⁹ Trust Fund Report of 17 July 2020, para. 55.

³⁰ Trust Fund Report of 17 July 2020, para. 56.

³¹ Trust Fund Report of 17 July 2020, para. 56.

³² Trust Fund Report of 17 July 2020, para. 57.

³³ Trust Fund Report of 17 July 2020, para. 58.

³⁴ Trust Fund Report of 17 July 2020, para. 58.

³⁵ Trust Fund Report of 17 July 2020, para. 58.

(b) Purchase of fuel

13. As regards the proposal for the purchase of fuel, the Trust Fund explains that the procurement process launched on 5 July 2019 to select a local fuel supplier was also unsuccessful, as the sole bidder had quoted an amount well over the market rate.³⁶ After consulting with the Procurement Unit, the Trust Fund sent a request for a quotation to the fuel supplier for the United Nations in Bunia.³⁷ The Trust Fund explains that if the supplier accepts the Trust Fund's proposal, it intends to proceed with the implementation by issuing a coupon in the amount budgeted for this modality to each of the beneficiaries who, over a five-day period, will travel in small groups and with their own barrels to collect the fuel from the supplier by redeeming the coupon.³⁸ The Trust Fund will bear the transportation costs incurred by the beneficiaries.³⁹ The Trust Fund states that it will retain the redeemed coupons and the *actes de réception*, signed by the beneficiaries, and will provide copies to the Legal Representative, the OPCV and the beneficiaries.⁴⁰

14. The Trust Fund goes on to say that it intends to organize a meeting with the supplier to discuss the implementation of this modality,⁴¹ and that the Legal Representative and the OPCV will be consulted at the conclusion of this meeting.⁴² Lastly, the Trust Fund specifies that it will contact the beneficiaries concerned in advance, with the consent of the Legal Representative and the OPCV, to inform them of the schedule and logistical details and, where necessary, to confirm their specific choices.⁴³

(c) Purchase of miscellaneous items

15. As regards the proposal for the purchase of miscellaneous items, the Trust Fund explains that its field staff encountered difficulties while preparing the Scope of

³⁶ Trust Fund Report of 17 July 2020, paras. 60-62.

³⁷ Trust Fund Report of 17 July 2020, para. 63.

³⁸ Trust Fund Report of 17 July 2020, para. 64.

³⁹ Trust Fund Report of 17 July 2020, para. 64.

⁴⁰ Trust Fund Report of 17 July 2020, para. 65.

⁴¹ Trust Fund Report of 17 July 2020, para. 66.

⁴² Trust Fund Report of 17 July 2020, para. 66.

⁴³ Trust Fund Report of 17 July 2020, para. 66.

Work and conducting a market survey, which affected the overall procurement procedure.⁴⁴ The Trust Fund further explains that it accordingly consulted the Procurement Unit,⁴⁵ which advised it to consider the disbursement method used by the Trust Fund for the implementation of some income-generating activities (i.e. via Miscellaneous Obligation Documents),⁴⁶ which would enable it to purchase the selected items directly from the vendors.⁴⁷ The Trust Fund states that to prepare for the implementation, it will: group the beneficiaries and establish a schedule for the purchase of selected foodstuffs and items; arrange the transfer of funds through the disbursement method advised by the Registry; obtain a health security assessment and updated recommendations from the country office in Bunia on the proposed payment method; continue consultations with the Court's Occupational Health Unit to take all the necessary precautions in relation to the COVID-19 pandemic and the Ebola epidemic; notify the Legal Representative and the OPCV of the proposed schedule and the groups to obtain their input; contact the beneficiaries concerned in advance, with the consent of the Legal Representative and the OPCV, to inform them of the schedule and logistical details and, where necessary, to confirm their specific choices.⁴⁸ The Trust Fund indicates that, where beneficiaries need travel assistance, it will contact the Legal Representative, the OPCV and the beneficiaries to find an appropriate solution.⁴⁹

16. As regards the practical aspects of the implementation, the Trust Fund indicates: that it will accompany the small beneficiary groups to the market so that they may directly collect the selected foodstuffs or items depending on their allocated budgets;⁵⁰ that it intends to have each beneficiary sign an *acte de réception*;⁵¹ and that it will bear the costs of delivery.⁵² The Trust Fund adds that a

⁴⁴ Trust Fund Report of 17 July 2020, para. 69.
⁴⁵ Trust Fund Report of 17 July 2020, paras. 70-71.
⁴⁶ Trust Fund Report of 17 July 2020, para. 72.
⁴⁷ Trust Fund Report of 17 July 2020, para. 72.
⁴⁸ Trust Fund Report of 17 July 2020, para. 73.
⁴⁹ Trust Fund Report of 17 July 2020, para. 73.
⁵⁰ Trust Fund Report of 17 July 2020, para. 74.
⁵¹ Trust Fund Report of 17 July 2020, para. 75.
⁵² Trust Fund Report of 17 July 2020, para. 75.

system of *bon de retrait* [withdrawal order] could be put in place in cases where beneficiaries are unable to store all the foodstuffs and items for want of space or if they are perishable. The beneficiaries could then collect the remainder of the items or foodstuffs from the vendor at their convenience.⁵³ A monitoring system will be introduced to keep track of which beneficiary has withdrawn his or her items, in part or in full.⁵⁴

17. The Trust Fund concludes by stating that it has consulted the relevant sections and units of the Registry in addition to the Legal Representative and the OPCV in order to develop proposals for the purchase of motorcycles, fuel and miscellaneous items.⁵⁵

B. Determination of the Chamber

18. Before examining the Trust Fund Request of 17 July 2020, the Chamber recalls that it instructed the Legal Representative and the OPCV to file any observations on the Trust Fund Report of 17 July 2020 by 14 August 2020. The Chamber points out, however, that to be able to take advantage of the prices that will be fixed by the motorcycle vendors until 15 August 2020,⁵⁶ the Trust Fund asked the Chamber to approve the implementation of this modality of reparations before the expiry of that time limit. In that connection, the Chamber notes that in response to an email from the Trust Fund seeking the support of the legal representatives in this approach,⁵⁷ the OPCV replied that it did not want to file observations on the Trust Fund Report of 17 July 2020.⁵⁸ The Chamber notes that the Legal Representative, on the other hand, responded that it intended to file observations on that report but had no objections or comments to make on the Trust Fund's requests for approval by the Chamber of the modes of implementation for the purchase of motorcycles, fuel or miscellaneous

⁵³ Trust Fund Report of 17 July 2020, para. 75.

⁵⁴ Trust Fund Report of 17 July 2020, para. 75.

⁵⁵ Trust Fund Report of 17 July 2020, paras. 59, 67, 76.

⁵⁶ Trust Fund Report of 17 July 2020, para. 56.

⁵⁷ Email from the Trust Fund to the OPCV and the Legal Representative on 20 July 2020 at 18.28.

⁵⁸ Email from the OPCV to the Chamber on 21 June 2020 at 9.46.

items.⁵⁹ In view of the responses from the OPCV and the Legal Representative to the Trust Fund Request of 17 July 2020, the Chamber sees appropriate to rule on these three modalities of reparations before the set time limit of 14 August 2020 to file observations on the Trust Fund Report of 17 July 2020 so as to avoid further delaying the implementation of these reparations.

19. Turning to the merits of the Trust Fund Request of 17 July 2020, the Chamber regrets, firstly, that the beneficiaries concerned have yet to receive the products selected even after at least one year of work on these reparations modalities. The Chamber is nonetheless aware of the challenges with which the Trust Fund is confronted in The Hague and in the Democratic Republic of the Congo (DRC), not least owing to the global COVID-19 pandemic and the Ebola epidemic in northern DRC.

20. Regardless, the Chamber cannot but concur with the Legal Representative in his observations on the unsuitability of some of the procurement procedures used at the Court for selecting suppliers and services for the implementation of the reparations.⁶⁰ The Chamber notes with concern that the use of these procedures – whether it be for the collection of relevant information to prepare the necessary documents, the submission of those documents to the Procurement Unit, or the calls for tenders or invitations to tender and the outcomes of these processes – has significantly delayed the implementation of the reparations. On that matter, the Chamber underscores the need to adapt these procedures to allow for more effective and swifter implementation and also to take account of the specific circumstances and of the changing, or even unstable, conditions that characterize the areas where the reparations are delivered. These adjustments or accommodations are indispensable in the interest of not only the victims, naturally – whose entitlement to reparations has been or will be recognized – but also of the Court because of its singular reparations mandate. In this context, the Chamber invites the Trust Fund to

⁵⁹ Email from the Legal Representative to the Chamber on 21 July 2020 at 14.53.

⁶⁰ “*Rapport du Représentant légal relatif à l’exécution des réparations collectives*”, 6 March 2020, ICC-01/04-01/07-3851-Conf, para. 48.

look into the extent to which it can take advantage of the lessons learned from the present case or other cases before the Court and to contribute to making the procurement procedures for selecting suppliers and services more effective and swifter so as to pre-empt significant delays arising from burdensome processes that lead to gridlocks.

21. Notwithstanding, the Chamber wishes to highlight the efforts made by the Trust Fund to resolve the difficulties encountered and most notably from the financial perspective, in addition to the Legal Representative's consistently relevant recommendations, which bear witness to the in-depth knowledge of the context in which the reparations in this case are being implemented.

22. After having reviewed the Trust Fund's proposals on the purchase of motorcycles, fuel and miscellaneous items for the income-generating activities modality of reparations, the Chamber considers that the information submitted is sufficiently detailed and in accordance with the Chamber's instructions. It also notes that the OPCV and the Legal Representative have no objection to the Trust Fund's proposals. Accordingly, it considers it appropriate to approve their implementation in the manner recommended by the Trust Fund.

FOR THESE REASONS, the Chamber

GRANTS the Request of 17 July 2020; and

APPROVES the Trust Fund's proposals concerning the purchase of motorcycles, fuel and miscellaneous items for the income-generating activities modality of reparations.

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

_____ [signed] _____

Judge Marc Perrin de Brichambaut

Presiding Judge

_____ [signed] _____

Judge Olga Herrera Carbuccia

_____ [signed] _____

Judge Péter Kovács

Dated this 3 August 2020

At The Hague, Netherlands