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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

PUBLIC REDACTED VERSION

**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**

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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I. BACKGROUND

1. Pursuant to regulation 58 of the Regulations of the Trust Fund for Victims (“Trust Fund”), and in accordance with Trial Chamber II’s (“Trial Chamber”) order instructing the Trust Fund to submit quarterly reports starting with a first report on 17 July 2020,¹ the Trust Fund hereby provides the Trial Chamber with its second quarterly update report concerning the progress in the implementation of the four collective reparations awards ordered in the case of *The Prosecutor v. Germain Katanga*, namely: (i) housing assistance; (ii) educational assistance; (iii) income-generating activities (“IGAs”); and (iv) psychological support.² The present update report gives an overview on developments since the last update reports on the implementation of collective reparations and proposes an alternative method of implementation of the housing assistance modality, 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 2019.³

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 2019,⁴ 26 July 2019⁵,

¹ *Ordonnance enjoignant au Fonds au profit des victimes de déposer des rapports trimestriels sur l’exécution des réparations et au représentant légal des victimes de déposer des observations à des fins de clarification de ses écritures des 6 et 13 mars 2020*, 3 July 2020, ICC-01/04-01/07-3855-Conf.

² See [Reparations Order](#), para. 304. See also paras 302-303.

³ *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*, 7 February 2019, ICC-01/04-01/07-3825-Conf.

⁴ 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.

⁵ 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.

18 November 2019⁶, 17 July 2020⁷ and 18 September 2020⁸ (“28 February 2019 Update Report”, “26 July 2019 Update Report”, “18 November 2019 Update Report”, “17 July 2020 Update Report”, and “18 September 2020 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,⁹ and where it requested the Trial Chamber’s approval of the implementation of reparations in relation to cattle, small IGAs, and first trimester education assistance,¹⁰ of a proposed alternative method of implementation for the purchase of fish,¹¹ and of the implementation of reparations in relation to motorcycles, fuel and various products.¹²

4. On 24 August 2020, the Trial Chamber issued an order (“Order of 24 August 2020”) instructing the Trust Fund to: (i) present to the LRVs and the Trial Chamber an approximate calendar of the implementation of the collective reparations awards in the form of housing assistance and psychological support in its next quarterly report due on 19 October 2020; (ii) submit a concise report on the implementation of the collective reparations in the form of IGAs, namely the purchase of motorcycles, fuel and various products, by 18 September 2020 at the latest; and (iii) submit observations on paragraphs 45-50 of the order, namely the possibility of converting certain modalities of the collective reparations into monetary compensation, in its next quarterly report due on 19 October 2020.¹³

5. On 18 September 2020, the Trust Fund submitted its 18 September 2020 Update Report.¹⁴

⁶ 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, 18 November 2019, ICC-01/04-01/07-3843-Conf.

⁷ 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.

⁸ 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.

⁹ See [Reparations Order](#), para. 304. See also paras 302-303.

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

¹¹ 18 November 2019 Update Report, paras 29-33.

¹² 17 July 2020 Update Report, paras 59, 67 and 76.

¹³ *Ordonnance relative à la requête du Représentant légal du 17 juillet 2020 et concernant les modalités de réparations collectives restantes dans cette affaire*, 24 August 2020, ICC-01/04-01/07-3860-Conf.

¹⁴ *Supra* fn. 7.

6. On 1 October 2020, the legal representative of victims (“LRV”) submitted his observations on the 18 September 2020 Update Report.¹⁵

IV. REGULATION 58 UPDATE REPORT

7. The Trust Fund hereby submits its second quarterly update report on the implementation of the collective reparations awards and requests the Trial Chamber’s approval for an alternative method of implementation of the housing assistance modality.

A. Educational Assistance

8. Since its 17 July 2020 Update Report, the Trust Fund has paid school fees on an *ad hoc* basis, following the method of implementation applied previously, for three victims for a total of USD 291.66. This brings the total amount paid during the 2019-2020 school year at USD 6,284.13. The analysis of the Trust Fund’s database shows that around 94% of the victims’ budget for educational assistance has been used, with a remainder of USD 2,600.94 to be paid out for 14 victims.

9. With the start of the 2020-2021 school year on 12 October and the preparation of the school fee payments for the remaining victims, the Trust Fund reached out to the LRVs,¹⁶ in order to indicate if their clients would like for the Trust Fund to continue the payments of school fees or school supplies, bearing in mind that basic education in public primary schools and in the first two years of secondary schools has become free,¹⁷ and, if so, for which students.

10. In case a victim does not wish for the Trust Fund to continue payments for this modality, the victim has been given the opportunity to shift his/her remaining budget towards an IGA, such as the purchase of various products.

¹⁵ *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.

¹⁶ This was discussed with the LRV during a meeting on 9 October 2020; email from the Trust Fund to the OPCV LRV on 15 October 2020 at 16.39.

¹⁷ 17 July 2020 Update Report, paras 39, 41-43.

B. Income-Generating Activities

1. Purchase of motorcycles

11. As set out in its previous update report of 18 September 2020, the Trust Fund intended to visit the vendors' shops with smaller groups of victims on 1-2 October and 5-8 October 2020, in order to collect their motorcycles.¹⁸

12. Only one of the two selected vendors had the motorcycles ready for delivery on 1 October 2020. Moreover, this vendor indicated, on 30 September 2020, that two types of motorcycles, ordered by the Trust Fund in accordance with the victims' choices, are currently not available in the market for COVID-19 related reasons, and proposed two other types of motorcycles, equivalent in power and price to the ones ordered, to replace those. The victims were given the choice to agree with receiving an equivalent motorcycle.

13. On 1-2 and 14-16 October 2020, the Trust Fund visited the first vendor, thereby delivering 20 motorcycles to 19 victims. Four victims still have to receive their motorcycles from this vendor, one of which did not agree to receive the equivalent of their chosen motorcycle and prefers to wait until it is available again on the market, and one for which the Trial Chamber has to first decide on the *repreneur* of the deceased victim. Only then can the relevant person receive the motorcycle. The two other victims are scheduled to receive their motorbikes in the week of 19 October 2020.

14. The second vendor informed the Trust Fund on 15 October 2020 that the required motorcycles would be ready for delivery on 20 October 2020. At the time of filing, the Trust Fund expects to be able to serve all 25 victims for this vendor in the week of 19 October 2020. The Trust Fund will report on this in its next update report.

15. The Trust Fund wishes to express its gratitude to the LRVs for their continuous collaboration and swift communication with their respective clients, often on short notice, during this final stage of the implementation process, which have allowed, so far, for the successful implementation of this modality.

¹⁸ 18 September 2020 Update Report, para. 15.

2. Purchase of fuel

16. The Trust Fund recalls that it sought, on 16 September 2020, guidance from the Procurement Unit on how to initiate and proceed with the procurement activities for the purchase of fuel.¹⁹

17. Based on the Procurement Unit's conclusion that the fuel cannot be purchased through a procurement process,²⁰ the Trust Fund has initiated, with the relevant units of the Registry, the transfer of funds to the field, both for purchasing the fuel and for covering the victims' transportation costs (to Bunia and for the transport of the fuel). The Trust Fund is currently expecting the arrival of the funds and intends to start the implementation, in coordination with the LRV, in the week of 26 October 2020.

3. Purchase of various products

18. The Trust Fund recalls that it had identified vendors at the Bunia market who agreed to be paid at a secure location after the delivery of the products to the victims at the market and that the LRVs had agreed to this method.²¹

19. Following further consultation, one vendor accepted for his warehouse to be used as the place of implementation, to which other vendors could bring their products as well. In this way, the Trust Fund itself was able to provide most of the victims with their desired products (rice, sugar, salt, peanut oil and soap) at the warehouse. For other, less demanded products, a small number of victims went to the market to select their products and receive an invoice from the vendor, and were then paid out in cash by the Trust Fund at the warehouse upon presentation of the invoice, to subsequently buy their products directly at the market.

20. This form of direct implementation by the Trust Fund at a secure warehouse allowed for larger groups of victims to be invited on a daily basis than originally foreseen. On 28 September 2020, the first victims received their products, and by 12 October 2020, all 62 victims, who had originally chosen this modality, had successfully received their products for a total amount of nearly USD 96,100.

¹⁹ 18 September 2020 Update Report, para. 22.

²⁰ Email from the Procurement Unit to the Trust Fund on 2 October 2020 at 15.31.

²¹ 18 September 2020 Update Report, para. 27.

21. The Trust Fund wishes to reiterate its gratitude to the LRVs for their continuous collaboration and swift communication with their respective clients, often on short notice, during this final stage of the implementation process, which allowed for the successful implementation of this modality.

22. The Trust Fund also wishes to stress the essential support of the Country Office in the implementation of both the purchase of motorcycles and various products and expresses its gratitude for this support.

4. Purchase of fish

23. The Trust Fund recalls that it proposed an alternative way of implementation for the purchase of fish, i.e. to provide the concerned victims with cash as an intermediate step to purchase fish directly around Lake Albert. It was considered best that this would happen towards the end of the reparation implementation phase to avoid frustrations, tensions and changes of choice among the other victims.²²

24. On 12 December 2019, the Trial Chamber approved this request.²³

25. Bearing in mind that the implementation of IGAs is nearing its end, the LRV and the Trust Fund agreed that the timing is appropriate to implement this activity. In light of this, the Trust Fund has initiated, with the relevant units of the Registry, the transfer of funds to the field and intends to start the implementation in the week of 2 November 2020. One victim already received the relevant amount for buying fish, as he/she appeared at the warehouse during the implementation of the various products.

5. Conversion of motorcycles into other IGAs

26. As set out in its 17 July 2020 Update Report, some victims opted for a motorcycle at a lower price than their budget or decided that they no longer wanted a motorcycle because of the increase in prices and chose to use the remaining or unused amounts of their budgets for other IGAs instead.²⁴

²² 18 November 2019 Update Report, paras 24-33.

²³ *Décision relative aux requêtes du Fonds au profit des victimes du 26 juillet et du 18 novembre 2019 et aux demandes du BCPV du 2 août 2019*, 12 December 2019, ICC-01/04-01/07-3846-Conf, paras 46-49.

²⁴ 17 July 2020 Update Report, para. 54; The Trust Fund will report on the level of implementation for those victims who have opted for other IGAs in its next update report.

27. Three of those victims have opted for the purchase of cattle or goats. Accordingly, the Trust Fund has initiated, with the relevant units of the Registry, the transfer of funds to the field and intends to visit the cattle market with these victims on 29 October 2020.

C. Psychological Support

28. The Trust Fund recalls that it reached out, on 10 July 2020, to the psychological expert appointed by the Trial Chamber in September 2015, with a view to hire her as a consultant to draft the Call for Expressions of Interest (“EOI”) and Scope of Work (“SOW”) for the psychological support programme.²⁵

29. Consequently, the Trust Fund was able to agree with the expert on the terms of reference of her appointment and has shared them with the Human Resources Section,²⁶ in charge of reviewing and finalising the contract.

30. The Trust Fund expects the expert to start by the end of October 2020 and deliver the materials by the end of December 2020, enabling the initiation of the procurement process for this award.

D. Housing Assistance

31. Since the issuance of the Reparations Order, the Trust Fund has explored several options as to the implementation of the housing assistance component.

32. At first, the Trust Fund intended to carry out a direct procurement process and, for that purpose, had gathered lists of construction companies from the relevant UN cluster groups that could be eligible for single sourcing.²⁷ After a thorough review of these lists, the Trust Fund concluded that it was not a viable approach because the majority of the listed companies did not do residential housing construction and the majority of the local housing construction companies operating in Bunia were not contained on the lists.²⁸

²⁵ 17 July 2020 Update Report, para. 81.

²⁶ Email from the Trust Fund to the Human Resources Section on 7 October 2020 at 14.43.

²⁷ 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. 30.

²⁸ 28 February 2019 Update Report, para. 41.

33. Therefore, as a next step, the Trust Fund determined to conduct an open tender to enable local housing construction companies to apply, specifically from Bunia and surroundings. To that end, the Trust Fund prepared a Call for EOI, which was advertised on the websites of the Court and the United Nations Global Market Place and circulated by the Bunia-based Associate Field Programme Officer to local companies throughout Ituri.²⁹

34. As, at first, none of the respondents met all requirements, the Trust Fund requested them to complete their EOI by including all required documents, to which seven organisations responded. Five were selected after another technical evaluation and were to receive a Request for Proposals document with a detailed SOW as part of the next phase of the procurement process.³⁰

35. The Trust Fund was ultimately not able to develop a complete SOW and a Bill of Quantities that were detailed enough for the selected organisations to develop a full proposal, as it only possessed drawings of several models of houses designed by an architect in 2018, without technical specifications relevant to the construction materials and to the quantity needed.³¹ The Trust Fund attempted engaging this architect to develop a Bill of Quantities and SOW as a basis for a procurement process, but was not successful.

36. At the same time, the Trust Fund also explored the possibility of using a simplified procurement process by relying on a UN procurement process. In that regard, [REDACTED] recommended a local construction company that has been implementing several construction projects for [REDACTED]. However, the Trust Fund was not able to proceed with this company as its services were only used for Quick Impact Projects and other less formal engagement instruments such as Low Value Acquisitions, which did not constitute a formal UN procurement procedure.³²

37. Consequently, following consultation with the Procurement Unit, the Trust Fund held a meeting with the [REDACTED] in the Democratic Republic of the Congo (“DRC”) to discuss the specific housing support needs. [REDACTED] raised concerns as to whether the victims’ allocated budgets, based on the original drawings by the architect, would be sufficient for the implementation

²⁹ 26 July 2019 Update Report, para. 50.

³⁰ 17 July 2020 Update Report, paras 31-32.

³¹ 17 July 2020 Update Report, para. 33.

³² 17 July 2020 Update Report, paras 34-35.

of this activity, but would endeavor to get in contact in this respect with local constructing partners operating in and around Bunia, primarily with a view to providing construction materials.³³

38. Further to the concerns as to the victims' limited budgets, another concern raised in the course of these discussions related to the real estate property rights.³⁴ [REDACTED], on the one hand, usually builds large constructions on specific designated places of land, for which it negotiates with the government in order to obtain the necessary legal documentation to have ownership of the land. The Trust Fund, on the other hand, needs to construct houses on different land lots belonging to different people, spread throughout different localities. Many of these land lots are located outside the city centre of Bunia, or in rural areas, for which official documentation cannot be obtained as these areas have not been yet put into the cadastral plans. Customary law applies to these areas, which is that a so called *fiche parcellaire* is produced by the community as the only official document showing that a person has the right to have a home at a specific location. This document is used to show a right similar to ownership. The Trust Fund would consider this as sufficient to build the houses, and discussed with the LRVs that the burden would lie on the victims to prove to the Trust Fund, with a *fiche parcellaire*, that the land lot on which construction or renovation needs to be done is theirs and not contested. For land lots in areas that are already in the cadastral plans, it should be possible to obtain official documentation like a *contrat de location de terre*. Such documentation provides for the right to build a sustainable house within a certain number of years.³⁵

39. Following the consultation with [REDACTED], the Trust Fund also looked into the possibility of purchasing construction materials and focused on finding an organisation that could supervise the building of the houses, e.g. that these houses would be built with the construction materials provided and be finalised. The Trust Fund focused on international organisations and could not detect any such organisation, which is active in Bunia/Ituri and which monitors the construction of houses as needed by the Trust Fund.

40. Due to all of the above, the Trust Fund has to conclude, after having exhausted all available options, that, with the limitations in place, a construction partner, who would be able to construct

³³ 17 July 2020 Update Report, paras 36-37.

³⁴ 17 July 2020 Update Report, para. 38.

³⁵ This information is based on a meeting with the relevant authorities in Ituri on 1 July 2020.

and renovate homes as envisioned by the victims, in accordance with their needs and in a timely manner, cannot be found.

41. Therefore, the Trust Fund believes that the only way to provide the victims with housing promptly and in accordance with their individual and original wishes is to [REDACTED]

42. During its most recent meeting of 9 October 2020, the Trust Fund has discussed this possibility with the LRV,³⁶ who expressed that there will be a need to clearly and personally communicate with the victims about this change in the modality. He stressed that it would be necessary for him to be able to talk to the victims. [REDACTED]

43. The Trust Fund agrees with the LRV on the importance of consulting with the victims on this change in the modality.

44. Taking into account the concerns of the LRV, the Trust Fund therefore proposes to proceed as follows:

- a. To ensure together with the LRV that the concerned victims are properly informed, the Trust Fund will consult with the LRV and the Country Office on how to best reach out to the victims and meet them; for this purpose a schedule will be developed;
- b. [REDACTED];
- c. [REDACTED];
- d. [REDACTED].

45. [REDACTED].

46. The Trust Fund considers that, in this way, the victims will be able to benefit from support for housing, including the required renovations, as a part of the collective reparations ordered by the Trial Chamber.

47. If the Chamber approves this modality, the Trust Fund will further discuss with the LRV on how and when to arrange meetings with the victims, taking into account any updates on the security and health situation, and will seek the support of the Registry, including the Country Office, [REDACTED].

³⁶ The OPCV LRV does not represent victims concerned by this modality.

48. The Trust Fund hereby respectfully requests the Trial Chamber's approval for the proposed way of implementation as set out above.

E. Observations regarding whether certain modalities could be converted into monetary compensations

49. In its Order of 24 August 2020, the Trial Chamber expressed its appreciation for the progress made by the Trust Fund, the LRVs and the Registry in the implementation of reparations, noting that a significant number of victims have received some or all of the collective reparations to which they are entitled.³⁷

50. That said, in light of the current security and public health conditions that make the implementation of collective reparations even more delicate and difficult, and the rise in prices, the Trial Chamber has asked the Trust Fund to provide its view on potentially converting the housing assistance and psychological support modalities of the collective awards, noting that both modalities still involve several steps before their actual implementation, into compensation, to allow for the concerned victims to receive their reparations as soon as possible.³⁸

51. [REDACTED]

52. Concerning the psychological support, the Trust Fund recalls that there is a serious lack of available services in Ituri and the DRC generally.³⁹ As such, it is highly unlikely that victims would be able to procure the appropriate psychological assistance in the local market, which would defeat the purpose of this award, as a monetary compensation would not appear to adequately address the psychological harm suffered by the victims and would thus not provide the reparative value intended by this award ordered by the Trial Chamber.

53. Moreover, the Trust Fund is confident that, with the psychological expert on board, it will be able to start the procurement process for the psychological programme at the start of 2021.

F. Other matters

54. The Trust Fund notes that the Trial Chamber has invited it to consider the extent to which it could benefit from lessons learned in the present case or in other cases before the Court, and

³⁷ Order of 24 August 2020, para. 45.

³⁸ Order of 24 August 2020, paras 45-49.

³⁹ 28 February 2019 Update Report, para. 52.

contribute to more efficient and expeditious procurement procedures, in order to limit, in the future, considerable delays caused by cumbersome procedures.⁴⁰ The Trust Fund welcomes this invitation and will report on the lessons learned in its next update report.

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests the Trial Chamber to take note of the present report and to approve the proposed alternative method of implementation of the housing assistance modality, as set out in section D.



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 21 June 2021
(Date of original 19 October 2020)
At The Hague, The Netherlands

⁴⁰ *Décision relative à la requête du Fonds au profit des victimes du 17 juillet 2020 sollicitant l'approbation de la Chambre des modes de mise en œuvre concernant les achats de motos, carburant et produits divers*, 3 August 2020, ICC-01/04-01/07-3859-Conf.