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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

PUBLIC REDACTED VERSION

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)

Source: **The Trust Fund for Victims**

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

The Office of the Prosecutor

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Legal Representative of Victims

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REGISTRY

Registrar

Mr Peter Lewis

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

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 issued on 24 August 2020 (“Order of 24 August 2020”),¹ the Trust Fund hereby provides the Trial Chamber with an update report concerning the progress in the implementation of three income-generating activities (“IGAs”), part of the collective reparations awards ordered in the case of *The Prosecutor v. Germain Katanga*, namely: (i) the purchase of motorcycles; (ii) the purchase of fuel; and (iii) the purchase of various products.

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.

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 2019,² 26 July 2019³, 18 November 2019⁴ and 17 July 2020⁵ (“26 July 2019 Update Report”, “18 November 2019 Update Report”, and “17 July 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,⁶ and where it requested the Trial Chamber’s approval of the implementation of

¹ *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.

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 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.

⁵ 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.

⁶ See [Reparations Order](#), para. 304. See also paras 302-303.

reparations in relation to cattle, small IGAs, and first trimester education assistance,⁷ of a proposed alternative method of implementation for the purchase of fish,⁸ and of the implementation of reparations in relation to motorcycles, fuel and various products (“Third Request”).⁹

4. On 3 August 2020, the legal representative of victims (“LRV”) submitted his observations on the 17 July 2020 Update Report.¹⁰

5. On the same day, the Trial Chamber issued a decision approving the Trust Fund’s Third Request.¹¹

6. On 24 August 2020, the Trial Chamber issued an order instructing the Trust Fund to 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.¹²

REGULATION 58 UPDATE REPORT

7. The Trust Fund hereby submits an update report on the progress in the implementation of the IGAs of the purchase of motorcycles, fuel and various products.

A. The purchase of motorcycles

8. On 7 August 2020, following the Trial Chamber’s approval, the Trust Fund’s Evaluation Committee recommended the contracts to be awarded to two vendors. The Evaluation Report was then shared with the Procurement Unit for its approval and for processing the purchase of the required motorcycles through Purchase Orders.

9. On 11 and 12 August 2020, the Procurement Unit expressed the need to clarify a number of questions, *inter alia* on the possibility of a tax exemption for the purchase of the motorcycles and on the way of delivery. Consequently, internal consultations between the Registry and the Trust

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

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

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

¹⁰ *Observations du Représentant légal sur le rapport du Fonds au profit des victimes ICC-01/04-01/07-3857-Conf*, 3 August 2020, ICC-01/04-01/07-3858-Conf.

¹¹ *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.

¹² Order of 24 August 2020.

Fund were held, and a request for further clarifications was sent through the Country Office to all five suppliers.

10. On 19 August 2020, the Trust Fund received the responses from all suppliers, who confirmed: (i) the validity of the previously stated price quotations; (ii) the fact that the offered prices are VAT excluded and that no VAT will be presented on the invoices, as the Court is exempted from VAT in the DRC; (iii) the delivery schedule and the DDP (delivery duty paid) delivery option, with all assembled motorcycles to be delivered in Bunia; (iv) the agreement on a split award, *i.e.* the possibility to be awarded a contract for less items while maintaining the prices; and (v) the Terms and Conditions of the Request for Quotations (“RFQ”).

11. Based on this confirmation from all vendors, the Trust Fund shared the revised Evaluation Report with the Procurement Unit on 25 August 2020.

12. Upon acceptance of the revised Evaluation Report and a meeting held on 9 September 2020, the Trust Fund created the relevant Purchase Requisitions in the SAP-system. On 16 September 2020, the two selected vendors, upon receipt of the Purchase Orders, through the Country Office, signed the Purchase Orders and provided their bank details.

13. In preparation of the delivery of the motorcycles to the victims, the Trust Fund held meetings and conversations with the legal representatives of victims (“LRV” and “OPCV LRV”, jointly referred to as “LRVs”), the last meetings held on 17 September 2020. At that meeting, the LRV raised the security situation in Ituri and possible consequences for the victims’ security and that he would contact his clients about this matter. In an email of 18 September 2020 to the LRV, the Trust Fund stressed that the contract with the vendors has been concluded and that the delivery is underway, based on the lists of motorbikes finalised in July and as approved by the Trial Chamber.¹³

14. Furthermore, a preparatory meeting was held with the Country Office on 27 August 2020. At that meeting, the Country Office confirmed that the Trust Fund’s staff will receive all required assistance and security when collecting the motorcycles with the victims at the vendors’ shops.

15. As agreed upon by the Country Office, the LRVs and the selected vendors, the Trust Fund intends to visit the vendors’ shops with smaller groups of victims on 1-2 October and 5-8 October

¹³ Email from the Trust Fund to the LRV on 18 September at 11.35.

2020,¹⁴ in order to collect their motorcycles, and has already arranged for the timely transfer of funds to the field through a miscellaneous obligation document (“MOD”), in cooperation with the relevant finance units of the Registry, to cover the victims’ transportation costs.

B. The purchase of fuel

16. The Trust Fund recalls that it followed a UN procurement process as per Rule 110.18 (a) of the Court’s Financial Regulations and Rules to solicit the services of the provider of fuel to the UN in Bunia (“the provider”) through a sole sourcing procedure.

17. After sending an RFQ to the provider inviting it to submit its quotation, as reported on 17 July 2020, the provider submitted its *pro forma* quotation on 5 August 2020.

18. On 7 August 2020, the provider further clarified that, since the fuel has to be dispensed to the beneficiaries over a period of time (maximum one month), it would be forced to issue a product that is locally available and taxed. The provider indicated as well that it would be able to import tax-free fuel should the Court have storage to receive the fuel in bulk delivery, as the provider itself does not have additional storage space to hold the required fuel.

19. On 25 August 2020, the provider informed the Procurement Unit that the local subcontractor, through which it would supply the fuel to the victims, declined to share the price exclusive of VAT. As an alternative, the provider proposed to import the fuel itself, dispense it into drums and deliver it at the Court’s compound in Bunia for distribution to the victims. Upon consultation with the Country Office, this option proved not to be viable, as it is not possible due to security reasons for the Country Office to store flammable goods at its premises or at another rented location.

20. Following a request for additional clarification on the possibility for victims to collect their fuel at a local gas station in Bunia, the provider indicated, on 15 September 2020, [REDACTED] Accordingly, the Trust Fund concluded that the provider’s delivery conditions are not responsive to the technical requirements set out in the RFQ.

21. Furthermore, the price proposed by the provider at USD 1.25 per litre exceeded the Trust Fund’s cost estimation based on the local market. As such, buying the fuel and gasoline at the

¹⁴ The vendors confirmed that the motorcycles will be ready for delivery on 1 October 2020 at the latest. These dates might be adapted if the vendors receive an earlier delivery or in light of the changing security situation in Ituri.

proposed price would have eroded the income-generating value of this reparative activity for the victims, since the victims would only be able to resell the fuel at a considerably lower price than the purchase price.

22. Therefore, the Trust Fund sought, on 16 September 2020, guidance from the Procurement Unit on how to initiate and proceed with the procurement activities in order to obtain comparable offers and to secure the principles for solicitation. Should the Procurement Unit propose to proceed by way of an MOD, the Trust Fund will do so as follows:

23. The Trust Fund intends to collect the fuel and gasoline at local fuel stations in Bunia with smaller groups of victims starting around mid-November 2020,¹⁵ after the completion of the purchase of various products. By this time, the Trust Fund will have arranged for the timely transfer of funds to the field through an MOD, in cooperation with the relevant finance units of the Registry, to cover the victims' transportation costs and costs for the purchase of the fuel and gasoline.

24. As the delivery method is as such the same as proposed in the 17 July 2020 Update Report and approved by the Trial Chamber, and no further steps are required to proceed, the Trust Fund will only revert to the Trial Chamber with a request for approval if the MOD is not the proposed way forward. In that case, a further procurement process with a Purchase Order would be required.

C. The purchase of various products

25. Following the Trial Chamber's approval to proceed by way of an MOD for the purchase of various products, the Trust Fund has worked closely together with the relevant units of the Registry to ensure the timely transfer of funds to the field, both for purchasing the products and for covering the victims' transportation costs.

26. On 27 August, during a preparation meeting with staff from the DRC Country Office and Bunia Field Office, the Associate Field Security Officer, bearing in mind the current security situation in Bunia and in particular at the market, made it clear that the Court's staff members cannot accompany victims to the local market while making their choices. This security instruction applies equally to all staff members, whether they carry cash money or not.

27. Consequently, two options were discussed for the implementation of this activity: (i) the victims choose the products at the market, present the bill to the Trust Fund's staff at a different,

¹⁵ These dates might be adapted in light of the changing security situation in Ituri.

secure location, where the Trust Fund provides them with the cash money for the victims to return to the market to pay for and collect their items; and (ii) the Trust Fund identifies a limited number of vendors who issue receipts in order to comply with the financial documentation needs of the MOD, and who agree to be paid at a secure location after the delivery of the products to the victims at the market. After consultation on 31 August 2020, both LRVs indicated their preference for the second option. Therefore, the Trust Fund has identified suitable vendors at the market for this type of implementation and has consulted with them on the proposed way of payment.

28. The Trust Fund intends to implement this modality from 28 September until 30 September, and from 9 October 2020 onwards,¹⁶ after completion of the purchase of motorcycles. Victims will be served by the vendors in groups of five and once they have completed their selection of goods, they will come together with the vendor to the agreed secure payment location with the list of items and bill to take care of the payment. Victims will then also be reimbursed for the transportation costs for their goods.

¹⁶ These dates might be adapted in light of the changing security situation in Ituri.

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests the Trial Chamber to take note of the present report and will apprise the Trial Chamber of any further relevant developments in its next three-monthly report due on 19 October 2020.



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 18 September 2020)
At The Hague, The Netherlands