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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**

**Third 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  
psychological support modality  
with  
Public Redacted Annex A**

**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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**REGISTRY**

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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”), 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,<sup>1</sup> the Trust Fund hereby provides the Trial Chamber with its third 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.<sup>2</sup> The present update report gives an overview of developments since the last update report on the implementation of collective reparations and proposes the implementation of the psychological support 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.<sup>3</sup>

## 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 and its annex 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,<sup>4</sup> 26 July 2019<sup>5</sup>,

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<sup>1</sup> *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.

<sup>2</sup> See [Order for Reparations](#), para. 304. See also paras 302-303.

<sup>3</sup> *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.

<sup>4</sup> 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.

<sup>5</sup> 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 2019<sup>6</sup>, 17 July 2020<sup>7</sup>, 18 September 2020<sup>8</sup> and 19 October 2020<sup>9</sup> (“26 July 2019 Update Report”, “18 November 2019 Update Report”, “17 July 2020 Update Report”, and “19 October 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,<sup>10</sup> 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,<sup>11</sup> of a proposed alternative method of implementation for the purchase of fish,<sup>12</sup> of the implementation of reparations in relation to motorcycles, fuel and various products,<sup>13</sup> and of a proposed alternative method of implementation of the housing assistance modality (“Housing Request”).<sup>14</sup>

4. On 2 November 2020, the legal representative of victims (“LRV”) submitted his observations on the 19 October 2020 Update Report (“LRV Observations of 2 November 2020”).<sup>15</sup>

5. On 10 December 2020, the Trial Chamber issued an order (“Order of 10 December 2020”) instructing the LRV to submit new observations on the Trust Fund’s Housing Request, after consultation with his clients, on 1 February 2021 at the latest.<sup>16</sup>

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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, 19 October 2020, ICC-01/04-01/07-3865-Conf.

<sup>10</sup> See [Order for Reparations](#), para. 304. See also paras 302-303.

<sup>11</sup> 26 July 2019 Update Report, paras 45-46.

<sup>12</sup> 18 November 2019 Update Report, paras 29-33.

<sup>13</sup> 17 July 2020 Update Report, paras 59, 67 and 76.

<sup>14</sup> 19 October 2020 Update Report, para. 48.

<sup>15</sup> *Observations du Représentant légal sur le rapport du Fonds au profit des victimes ICC-01/04-01/07-3865-Conf*, 2 November 2020, ICC-01/04-01/07-3867-Conf.

<sup>16</sup> *Ordonnance relative à la requête du Fonds au profit des victimes du 19 octobre 2020 sollicitant l’approbation de la Chambre du mode de mise en œuvre concernant l’aide au logement*, 10 December 2020, ICC-01/04-01/07-3868-Conf.

6. On 14 January 2021, the LRV submitted his observations on the impossibility to collect the necessary information to implement reparations and consequential request (“LRV Request of 14 January 2021”).<sup>17</sup>

#### **IV. REGULATION 58 UPDATE REPORT**

7. The Trust Fund hereby submits its third quarterly update report on the implementation of the collective reparations awards and requests the Trial Chamber’s approval for the implementation of the psychological support modality.

##### **A. Security Situation**

8. As mentioned by the LRV in his Observations of 2 November 2020,<sup>18</sup> [REDACTED] recommended, on 26 October 2020, the suspension of all implementation activities for at least a week, due to the deteriorating security situation in and around Bunia and confrontations between the Armed Forces of the Democratic Republic of the Congo (“FARDC”) and the militia between Tchomia, Kasenyi and Bogoro.<sup>19</sup>

9. On 3 November 2020, the [REDACTED] informed the Trust Fund that the situation in Bunia had improved, allowing for the relaunch of the distribution of motorcycles only for victims residing in Bunia and with the required security support.<sup>20</sup>

10. Following a meeting with [REDACTED] and a visit to the fuel station on respectively 5 and 6 November 2020, [REDACTED] also approved the implementation of the purchase of fuel for victims residing in Bunia.<sup>21</sup>

11. On 12 November, a meeting was held by the Trust Fund together with [REDACTED] and the LRV to provide further information on the relaunch of activities, since the LRV had expressed his concerns about the security situation.<sup>22</sup>

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<sup>17</sup> *Observations du Représentant légal relatives à l'impossibilité de collecter les informations nécessaires à la mise en œuvre des réparations et requête consécutive*, 14 January 2021, ICC-01/04-01/07-3869-Conf.

<sup>18</sup> LRV Observations of 2 November 2020, para. 13.

<sup>19</sup> [REDACTED]

<sup>20</sup> [REDACTED]

<sup>21</sup> [REDACTED]

<sup>22</sup> [REDACTED]

12. At the time of filing, the security situation has not improved, with several militia groups targeting civilians and the FARDC on the outskirts of Bunia and even in some neighbourhoods of Bunia itself, leading to the security recommendation to only conduct reparation activities in the centre of Bunia and only for victims residing in the city.<sup>23</sup> Accordingly, the Trust Fund cannot ask victims to travel to Bunia to receive reparations. All activities remain suspended except those in Bunia centre for victims from Bunia. The Trust Fund's planning for the coming weeks is based on the current security situation.

13. The impact of the security situation on the implementation of the different modalities of collective reparations is described under each specific modality below. Despite the described circumstances, the Trust Fund stays fully committed to implementing the remaining modalities, and will do so as soon as feasible considering the security situation.

## **B. Educational Assistance**

14. Upon receipt of the victims' choices on how to spend the remainder of their budget for this modality,<sup>24</sup> the Trust Fund paid school fees and reimbursed school supplies for a total of USD 2,026.38 for 13 victims. One victim has chosen to shift her remaining budget of nearly USD 400 to the IGA of various products and will be served as soon as the security situation allows, considering that she resides outside of Bunia.

15. The analysis of the Trust Fund's database shows that around 99.6% of the victims' budget for educational assistance has been used, with a remainder of USD 178.15 to be paid out for 2 victims.<sup>25</sup> As soon as this modality is fully implemented, the Trust Fund will share its database with the LRVs and the Trial Chamber.<sup>26</sup>

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<sup>23</sup> [REDACTED]

<sup>24</sup> Emails from the OPCV LRV to the Trust Fund on 21 October 2020 at 09.45 and on 12 November 2020 at 13.48; email from the LRV to the Trust Fund on 23 November 2020 at 16.21.

<sup>25</sup> The Trust Fund has received news from the OPCV LRV on the preferences of one of her two clients and is awaiting further news for the other victim (email from the OPCV LRV to the Trust Fund on 13 January 2021 at 11.17).

<sup>26</sup> For ease of reference, the database will be shared in the form of an Excel Spreadsheet by way of an email.

## C. Income-Generating Activities

### 1. Purchase of motorcycles

16. In its 19 October 2020 Update Report, the Trust Fund reported that 19 victims had received 20 motorcycles from the first vendor in October 2020, and that four victims still needed to receive their motorcycles from this vendor.<sup>27</sup> The Trust Fund also reported that it had planned for all 26 victims to pick up their motorcycles from the second vendor in the week of 19 October 2020.<sup>28</sup>

17. In the week of 19 October 2020, the Trust Fund organised the pick-up of one motorcycle for one victim from the first vendor and of 11 motorcycles for 10 victims from the second vendor.

18. On 26 October 2020, all activities were suspended due to the deteriorating security situation in an around Bunia. [REDACTED] informed the Trust Fund, on 3 November 2020, that the situation in Bunia had improved, allowing for the relaunch of the distribution of motorcycles only for victims residing in Bunia. As the remaining victims are all from outside of Bunia, the Trust Fund was not able to deliver the remaining motorcycles.

19. Four motorcycles for three victims are assembled and ready for pick-up at the first vendor's shop, as well as eight motorcycles for as many victims at the second vendor's shop. The Trust Fund intends to organise delivery as soon as these victims are allowed to travel again to Bunia. Both vendors are charging the Trust Fund extra fees for the time they have to keep the motorcycles in stock.

20. As to the remaining nine motorcycles from the second vendor for eight more victims, the second vendor informed the Trust Fund on 21 October 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, for which the vendor provided the technical specifications on 11 November 2020, to replace those.

21. Based on the technical specifications provided, the Trust Fund concluded that the proposed motorcycles are indeed equivalent in power and price to the ones ordered, and currently awaits

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<sup>27</sup> 19 October 2020 Update Report, para. 13.

<sup>28</sup> 19 October 2020 Update Report, para. 14, which wrongfully mentions 25 victims instead of 26.

news from the LRV on whether or not his seven clients agree with receiving the equivalent motorcycles.<sup>29</sup>

22. The Trust Fund intends to organise the delivery of the equivalent motorcycles with the victims who accept the equivalents as soon as the security situation permits. Victims who do not accept the equivalent motorcycles will only receive the motorcycles once the type of motorcycle originally requested is available again on the market. This may take several more months.

### **2. Purchase of fuel**

23. On 13, 19 and 23 November 2020, the Trust Fund was present at a fuel station in Bunia, with the required security support, to distribute the fuel to victims residing in Bunia. As such, the Trust Fund was able to serve seven victims, for a total of around USD 14,800.

24. The Trust Fund intends to serve the remaining 13 victims, for a total of USD 20,005, as soon as the security situation outside of Bunia improves, allowing them to travel to Bunia.

### **3. Purchase of fish, cattle and various products**

25. Due to the security situation and the suspension of all activities for victims from outside of Bunia, the Trust Fund was not able to serve any of the 19 victims concerned by the purchase of fish, cattle or various products, as they reside outside of Bunia.<sup>30</sup>

26. While some victims concerned by the purchase of fish reside in Bunia, the Trust Fund prefers to provide them with cash once the security situation outside of Bunia allows again for them to travel safely to Kasenyi to get fresh and salted fish.

27. The Trust Fund intends to serve all of these victims as soon as the security situation allows.

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<sup>29</sup> The OPCV LRV has informed the Trust Fund by way of email of her client's agreement with the proposed equivalent motorcycle (email from the OPCV LRV to the Trust Fund on 18 November 2020 at 10.44).

<sup>30</sup> 15 victims are to receive cash for the purchase of fish for a total of around USD 12,400 USD, three victims are to receive cattle or goats for a total of around USD 1,230 and one victim is to receive various products for a total of nearly USD 400 as she has shifted the remainder of her budget for educational assistance towards this IGA (*see supra* para. 14).



## D. Psychological Support

28. The Trial Chamber determined in its Order for Reparations pursuant to Article 75 of the Statute of 24 March 2017 that psychological support is a modality of collective reparations appropriate in this case, stressing the need “[...] that the modalities of reparations must retain some flexibility and ensure that the reparations are commensurate to the harm suffered by each of the victims”.<sup>31</sup> It further determined that “[...] collective reparations must, to the utmost, address the victims as individuals. In that connection it is worth recalling that the concept of collective reparations is an open concept, which places the emphasis on the benefit both to the individual and to the community”.<sup>32</sup>

29. The Trust Fund set out in its Draft Implementation Plan of 25 July 2017 that all the beneficiaries of this case who are present in Ituri should have access to a counsellor trained in trauma-based counselling, who would – before offering counselling sessions – do an intake, explain the available modalities for counselling (“individual and/or group counselling”) and be available to the victims for any counselling.<sup>33</sup> The long-term impact of the reparations programme was identified to be: “[v]ictims have a strengthened ability to cope with the livelihood, financial, and psychological trauma caused by Mr Katanga’s crimes and their aftermath”.<sup>34</sup>

30. The Trial Chamber did not yet adopt the relevant part of the Draft Implementation Plan in 2017, awaiting further details from the Trust Fund.<sup>35</sup> The process applied by the Trust Fund and the role of the LRVs in this process is set out in the 17 July 2020 Update Report.<sup>36</sup>

31. The Trust Fund hereby submits a detailed implementation plan for this modality to the Trial Chamber based on the work carried out by the psychologist contracted by the Trust Fund for this purpose. The psychologist was also an expert in the *Katanga* proceedings and was tasked with devising a content-driven way forward to provide the victims with psychological support, given the amount available for this reparation modality and the general lack of readily available

<sup>31</sup> [Order for Reparations](#), paras 304-305.

<sup>32</sup> [Order for Reparations](#), para. 294.

<sup>33</sup> Draft implementation plan relevant to Trial Chamber II’s order for reparations of 24 March 2017 (ICC-01/04-01/07-3728) (“Draft Implementation Plan”), ICC-01/04-01/07-3751-Conf, para. 119.

<sup>34</sup> Draft Implementation Plan, para. 121.

<sup>35</sup> See *Décision approuvant la mise en œuvre des réparations individuelles et enjoignant au Fonds au profit des victimes de lui transmettre de l’information supplémentaire sur la mise en œuvre des réparations collectives*, 12 October 2017, ICC-01/04-01/07-3768-Conf.

<sup>36</sup> 17 July 2020 Update Report, paras 77-81.

psychologists in Bunia (and more generally Ituri) who could provide counselling sessions to a rather high number of victims (266) who are to receive repeated counselling sessions.

32. In December 2020, the LRV shared with the Trust Fund and the psychologist a table indicating the preferences of victims (family, collective or individual sessions) and their place of residence. At the two meetings held with the LRV in December 2020 in relation to the work of the psychologist, the LRV expressed that this list is based on older data and required updating.

33. The Trust Fund shared the final version of the plan of action for implementing this reparation modality, as drafted by the psychologist, with the LRVs on 12 January 2021,<sup>37</sup> for their input and approval, and presents it hereby to the Trial Chamber by way of an annex (*see* Annex A).

34. The plan of action presents an approach on two levels to address the post-traumatic stress disorder (“PTSD”) from which victims suffer as a result of the crimes of Mr Katanga.

35. The first level consists of, on the one hand, an informative/educational component, with the goal to inform and educate victims and other members of the community on how to identify and recognise PTSD, and, on the other hand, of group and family therapy sessions.

36. The second level consists of counselling sessions of psychoeducation and cognitive-behavioural therapy aimed at informing victims and their families about PTSD and to promote coping mechanisms, in order to replace a person's negative ideas and maladaptive behaviours with thoughts and reactions that are in line with the reality.

37. Since, in the Democratic Republic of the Congo (“DRC”), there is a shortage of qualified staff in the field of mental health, which greatly limits the appropriate management of mental health problems, especially in rural areas, the plan is to strengthen the local capacities available to deal with mental health problems. A local psychologist would identify local people who are well placed to receive a training in the management of PTSD and who would, in return for a small stipend, be in charge of the repeated group and family therapy sessions and the sessions of psychoeducation and cognitive-behavioural therapy, under his supervision. A psychological consultant will guide and supervise the work of the local psychologist throughout the process.

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<sup>37</sup> Email from the Trust Fund to the LRV on 12 January 2020 at 16.48; email from the Trust Fund to the OPCV LRV on 12 January 2020 at 17.00.

38. The implementation plan serves to address the victims individually, provides victims with repeated access to counselling, strengthens local capacities, and provides the family and community with first-hand knowledge about PTSD symptoms, thereby strengthening the ability of victims themselves to cope with the psychological trauma within their daily environment.

39. The result of the work carried out by the psychologist may either serve as a scope of work for a procurement process or form the basis for implementation by the Trust Fund directly through a consultant contracted for this purpose. The latter would be the most cost-efficient and effective way forward and require a very limited amount of travel, as training can also be conducted remotely by the consultant, and would therefore take into account the current security situation and travel restrictions, while nevertheless allowing for a constructive way forward in the matter.

40. The Trust Fund's next step is therefore to contract a consultant to set in motion the drafting of a concrete plan including a budget and ensuring the availability of a local psychologist. The success of such direct implementation by the Trust Fund will depend on the availability of a psychologist in the field who can train the trainers and monitor their work closely. In that regard, the psychologist informed the Trust Fund that she considers that a trained local psychologist is stationed in Bogoro long-term but works and lives there in a different capacity. Should it not be possible to contract this local psychologist, the Trust Fund would have to explore other options, including a procurement process for that purpose.

41. The OPCV LRV informed the Trust Fund, on 14 January 2021, of her approval of the way forward, stressing that it takes her clients' wishes fully into account.<sup>38</sup>

42. The Trust Fund notes the LRV's position that the inability to organise a mission will have an impact on the progress of the implementation process of this modality and that he will submit his observations on the psychological support shortly and directly to the Trial Chamber.<sup>39</sup>

43. The Trust Fund agrees with the LRV that it is important to inform the victims about the forthcoming psychological support available to them and, in particular, to receive information about their latest contact details. The Trust Fund considers that, as soon as a consultant has been contracted to implement this modality, the updated contact information should be transferred to the

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<sup>38</sup> Email from the OPCV LRV to the Trust Fund on 14 January 2021 at 15.23.

<sup>39</sup> LRV Request of 14 January 2021, para.8 and fn. 3; email from the LRV to the Trust Fund on 14 January at 16.31.

Trust Fund and the consultant. The Trust Fund does not consider that such consultation needs to be carried out before the approval of the implementation plan.

44. The Trust Fund observes in that respect that the implementation plan is in line with the LRV's suggestions as to the specific approach to be taken and the use of local resources, expressed both in his earlier observations<sup>40</sup> and during meetings with the psychological expert held in December 2020.<sup>41</sup> More concretely, the Trust Fund recalls that the LRV, in his Observations of 12 March 2020, which the TFV heeded in its actions throughout 2020, pointed out the extreme relevance of the psychological expert's first report, concluding that “[...] *l'experte prône une thérapie de groupe, de soutien individuel et familial qui s'accompagne de mesures de prévention et éducation communautaire, d'un volet informatif et éducatif au niveau communautaire, et d'un renforcement des capacités du personnel sanitaire en matière de détection et de prise en charge des problèmes de santé mentale*”.<sup>42</sup>

45. In addition, any such consultation with the victims should not require them to indicate their preferences in relation to the services provided. Rather, the Trust Fund would like to draw attention to the Draft Implementation Plan referred to above,<sup>43</sup> wherein the Trust Fund set out that intake/explanatory sessions may best be conducted by the psychologist – or, in the circumstances as proposed, the relevant trainers, who are best placed to explain to the victims what they can expect of these sessions and assess whether the victims wish to attend such sessions.

46. As it is currently not possible for the Trust Fund's staff from headquarters or members of the LRV's team stationed outside of the DRC to travel to Bunia due to the COVID-19 quarantine period of 10 days that applies upon entry into the DRC, the Trust Fund suggests to explore with the LRVs and the Bunia Country Office whether and how to conduct virtual consultations with the victims and find other effective ways to contact victims to receive their updated contact details. Remote sessions by the LRV with victims residing in Bunia can be organised by the Trust Fund in the presence of the LRV's team member who is stationed in the DRC and is allowed to travel to Bunia without many restrictions due to COVID-19. The Trust Fund considers that it can arrange

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<sup>40</sup> *Observations du Représentant légal relatives à la mise en œuvre du soutien psychologique au titre de modalité de réparation collective*, 12 March 2020, ICC-01/04-01/07-3853-Conf (“LRV Observations of 12 March 2020”), paras 40-48 and 52-68; LRV Observations of 2 November 2020, paras 29-32.

<sup>41</sup> The Trust Fund organised two meetings with the LRV and the expert to discuss the specifics of the plan of action, on 2 and 14 December 2020.

<sup>42</sup> LRV Observations of 12 March 2020, paras 56-57.

<sup>43</sup> See *supra* para. 29.

for the logistics needed to organise meetings in Bunia with groups of 15 to 20 victims at a time, while still respecting social distancing. The LRVs can participate virtually on a screen to communicate with their respective clients under the coordination of their team members from the DRC who can travel to Bunia.

47. In conclusion, the Trust Fund is confident that the planned implementation responds to the victims' wishes and that further consultations with them on this matter, as well as a mapping exercise as suggested by the LRV,<sup>44</sup> can and should be conducted as part of the next steps, following the approval by the Trial Chamber of the implementation plan.

48. The Trust Fund hereby respectfully requests the Trial Chamber's approval for the proposed way of implementation as summarised above and as set out in Annex A, taking into account that it has diligently carried out consultations with the LRVs and has provided the Trial Chamber with as much detailed information as is realistic and possible.

49. If the Trial Chamber decides to approve the planned implementation, the Trust Fund will contract a consultant and will work on a detailed budgetary overview for all different steps proposed and ensure the availability of the local psychologist.

### **E. Housing Assistance**

50. In its 19 October 2020 Update Report, the Trust Fund requested the Trial Chamber to approve the implementation of the housing assistance modality [REDACTED]. The Trust Fund expressed its agreement with the importance of the LRV consulting with the victims on the change in the modality and proposed a four-step process on how to implement this modality. The first step proposed, upon approval, was: [REDACTED].<sup>45</sup>

51. In the LRV Observations of 2 November 2020, the LRV requested the Trial Chamber to first be allowed to conduct effective consultations with the victims before such a change in modalities be approved by the Trial Chamber.<sup>46</sup> The LRV also stressed that victims should have the opportunity to convert the housing modality into other modalities for reparations.<sup>47</sup>

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<sup>44</sup> 14 January 2021 LRV Request, fn. 3.

<sup>45</sup> 19 October 2020 Update Report, para. 44.

<sup>46</sup> LRV Observations of 2 November 2020, para. 28.

<sup>47</sup> LRV Observations of 2 November 2020, para. 22, 26-27.

52. On 10 December 2020, the Trial Chamber, taking into account the request of the LRV to first consult with the beneficiaries, ordered the LRV to file by 1 February 2021 his submissions on the housing modality after giving the beneficiaries the opportunity to express themselves on the change of this modality.<sup>48</sup>

53. On 14 January 2021, the LRV informed the Trial Chamber that the planned joint mission to Bunia of the LRV team and the Trust Fund was not approved due to the need to quarantine for 10 days upon arrival in the DRC (at the port of entry into the DRC),<sup>49</sup> and requested the Trial Chamber to postpone the deadline of 1 February to allow him to effectively carry out his mandate and to order the Registry to find alternative measures (to the 10-day quarantine) that would allow the LRV team to carry out their work in the field.<sup>50</sup>

54. The LRV also informed the Trial Chamber that he recently was in contact with one of the architects who had proposed the housing plans in 2018 and who expressed that it remains possible to construct the homes within the foreseen budgets as the costs of the materials have only minimally increased.<sup>51</sup> The LRV also informed the Trial Chamber that he will continue to exchange with the architectural firm in order to obtain a series of guarantees both on the company itself and on the feasibility of the construction work under the conditions agreed at the time.<sup>52</sup>

*Request of the LRV to postpone the deadline and request the Registry for alternative measures*

55. As set out in the LRV Request of 14 January 2021, the Trust Fund and the LRV planned and submitted a request for a joint mission to be held during the second half of January 2021, which was rejected because of the strict COVID-19 measures, imposing a quarantine of 10 days for travellers upon arrival at the port of entry into the DRC (*i.e.* in Kinshasa), making the organisation of any mission thereby extremely difficult and resource intensive.<sup>53</sup> It is the Trust Fund's understanding that as long as a quarantine of 10 days is upheld, neither the Trust Fund nor the LRV team are in a position to send staff members on mission. In line with this understanding, the LRV has not requested that the Registry cover the costs of the quarantine, but that the Registry find alternative measures to the quarantine of 10 days.

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<sup>48</sup> Order of 10 December 2020.

<sup>49</sup> LRV Request of 14 January 2021, para. 4.

<sup>50</sup> LRV Request of 14 January 2021, p. 8.

<sup>51</sup> LRV Request of 14 January 2021, paras 8-9.

<sup>52</sup> LRV Request of 14 January 2020, para. 10.

<sup>53</sup> LRV Request of 14 January 2021, paras 1, 3-4.

56. The Trust Fund, in organising the joint mission, expressed the hope that the quarantine could be substituted in early January by other measures, e.g. by rigorous testing. The Trust Fund organised a meeting in December with the LRV and staff of the Country Office in charge of security and quarantine measures to allow all those involved to be on the same line in terms of information. At that time, the staff of the Country Office explained that using [REDACTED] for the LRV team to stay was not a viable option and did not make any promises as to whether the quarantine period could be shortened or substituted by e.g. repeated testing. Thereafter, the second wave of COVID-19 hit the Netherlands, Belgium and, more recently, the DRC.<sup>54</sup>

57. The quarantine period as applicable during the previous months has been confirmed in early January by the Court. Accordingly, the Registry denied the LRV's mission request. The most recent recommendations from the Joint Threat Assessment Group ("JTAG") also confirmed that "[a]ll travellers to Bunia are required to reside and sleep at the Bunia Field Office compound [...]"<sup>55</sup>

58. On 12 January 2021, the LRV informed the Trust Fund that [REDACTED].<sup>56</sup> In the morning of 14 January 2021, the Trust Fund addressed the LRV by way of email to deplore that the joint mission cannot be conducted and to propose exploring together remote ways of holding meetings with victims, e.g. in the presence of the LRV's team member based in the DRC and the Trust Fund.<sup>57</sup>

59. The Trust Fund continues to fully support the need to consult with the victims to ensure that they are properly informed about the change in modality. As already set out in the 19 October 2020 Update Report, a consultation of both the LRV and the Trust Fund is necessary to take full stock of the victims' needs [REDACTED].<sup>58</sup> The Trust Fund would also be in a position to explain that beneficiaries would have to ensure that they have the [REDACTED].

60. This information would allow the Trust Fund to pursue the next steps (steps 2 to 4) in the process,<sup>59</sup> and e.g. to discuss with the LRV [REDACTED].

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<sup>54</sup> Email from the Coordination and Planning Unit to the Trust Fund on 13 January 2021 at 12.01.

<sup>55</sup> Email from the JTAG to the Trust Fund on 19 January 2021 at 10.44.

<sup>56</sup> Email from the LRV to the Trust Fund on 12 January 2021 at 11.26.

<sup>57</sup> Email from the Trust Fund to the LRV on 14 January 2021 at 09.22.

<sup>58</sup> 19 October 2020 Update Report, paras 42-45.

<sup>59</sup> See 19 October 2020 Update Report, para. 44.

61. Considering that the aim of this modality remains – as set out in the Order for Reparations – to support housing for the beneficiaries (a “housing support measure”),<sup>60</sup> the Trust Fund wishes to proceed proactively and without any delay. The Trust Fund thereby proposes that the consultation process of the about [REDACTED] beneficiaries be conducted in steps and through one or several joint missions as soon as the circumstances allow. In the meantime, consultations could be conducted remotely, with the agreement of the LRV.

*Contact with architect*

62. The Trust Fund takes note of the information contained for the first time in the LRV Request of 14 January 2021 that the LRV recently reached out to one of the architects who designed the housing plans in 2018.<sup>61</sup> The Trust Fund recalls in this context that these architects did not respond to the Expression of Interest that the Trust Fund published in 2019 in order to allow local construction companies to apply. The Trust Fund is accordingly surprised that the LRV wishes to get “guarantees” from these architects<sup>62</sup> and does not fully understand the purpose of this planned interaction.

63. The Trust Fund recalls that it expressed in its 19 October 2020 Update Report that the four different budgets as originally allocated would suffice to build or renovate the houses as originally planned, [REDACTED].<sup>63</sup> The Trust Fund considers that the architect confirms that the different housing models as chosen by the victims can still be constructed within their limited budgets.<sup>64</sup> The Trust Fund recalls, more concretely, that this manner of implementation [REDACTED].<sup>65</sup>

64. The architect’s confirmation regarding the budgetary needs does, however, not change the fact, as set out in the 19 October 2020 Update Report, that the applicable procurement rules and standards, on the one hand, and the high construction fees for construction partners who would be able to meet the required standards,<sup>66</sup> on the other hand, make it impossible for the Trust Fund to

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<sup>60</sup> [Order for Reparations](#), paras 302-304.

<sup>61</sup> LRV Request of 14 January 2021, para. 8.

<sup>62</sup> LRV Request of 14 January 2021, para. 10.

<sup>63</sup> 19 October 2020 Update Report, para. 41

<sup>64</sup> LRV Request of 14 January 2021, para. 9.

<sup>65</sup> 19 October 2020 Update Report, para. 41

<sup>66</sup> For instance, the United Nations Office for Project Services (“UNOPS”) in the DRC, who raised clear concerns as to whether the victims’ allocated budgets, based on the original drawings by the architect, would be sufficient for the implementation of this activity (*see* 19 October 2020 Update Report, para. 37). UNOPS indicated during a meeting with the Trust Fund that it would cost approximately USD 500 per square metre of construction. With the victims’ budgets ranging between USD 1650 and USD 3450, those constructions fees would allow for the construction of



find a construction partner who would be able to construct and renovate homes as envisioned by the victims and in accordance with their budgets.<sup>67</sup>

65. The Trust Fund will, however, once it has taken stock, together with the LRV, of the needs and individual situations of the beneficiaries, consider together with the LRV, whether there is need for a company to advise or assist beneficiaries who are not in a position to organise the building process themselves, *i.e.* the Trust Fund will have to assess whether a more in-depth monitoring role is required and whether it would be possible to procure the services of a company for that purpose.

66. The Trust Fund notes the LRV's suggestion to find a flexible solution for the procedural constraints, which has led to the successful implementation of other modalities of collective reparations,<sup>68</sup> but wishes to point out that the construction and renovation of houses is far more complex, for instance in terms of liability and technical requirements, than the purchase of livestock, fuel, various products (such as rice, flour and oil), motorcycles and fish.

#### *Alternative modalities*

67. Lastly, with respect to the LRV's comment to keep the option open for his clients to shift their budget for the housing assistance modality to other modalities, should there be victims who cannot themselves implement the housing assistance modality or do not want to.<sup>69</sup> The Trust Fund's approach to all modalities since the Draft Implementation Plan has been one of flexibility; *i.e.* that beneficiaries may change modalities; this remains true also for the housing modality. As part of the consultations with victims, the Trust Fund would have to inform the victims of the consequences of any such decisions and of the time frame required to open up certain modalities.

## **F. Other Matters**

#### *Meetings*

68. The Trust Fund and the LRV have met in November and December 2020 on a weekly basis at remote meetings in order to ensure transparent collaboration, taking into account that neither the

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houses between merely 3.3 and 6.9 square metres, as opposed to the way larger models designed by the architect ranging between approximately 13.5 and 43.8 square metres; The same budgetary concerns were expressed during a meeting with the *Deutsche Gesellschaft für Internationale Zusammenarbeit* ("GIZ"), by their representative in the DRC. GIZ is running projects to promote peace and stability in Eastern DRC.

<sup>67</sup> 19 October 2020 Update Report, para. 40.

<sup>68</sup> LRV Request of 14 January 2021, para. 12.

<sup>69</sup> LRV Observations of 2 November 2020, paras 22, 26-27.

Trust Fund's legal staff nor the LRV team has been able to travel to Bunia since March 2020 and therefore could not be present during the implementation of reparations carried out by the Trust Fund's Programme Manager and Associate Field Programme Officer in Bunia and with the close cooperation of the Country Office staff in Bunia.<sup>70</sup> The Trust Fund wishes to take this opportunity to express its gratefulness for the full support of the staff of the Country Office and the Registry as a whole in the implementation of these reparations.

69. The Trust Fund also ensures that the OPCV LRV is fully informed of the progress made in respect of the implementation of reparations, in particular by way of email.

#### *Monitoring and Evaluation*

70. The Trust Fund is currently closing the procurement process for evaluation providers and expects to conclude the contract in February 2021. Thereafter, an evaluation process of the *Katanga* reparation process will commence. The Trust Fund will report on the timeline in its next quarterly update report. The Trust Fund informed the LRV of the upcoming evaluation process during a meeting on 4 December 2020.

#### *Procurement*

71. 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 contribute to more efficient and expeditious procurement procedures, in order to limit, in the future, considerable delays caused by cumbersome procedures.<sup>71</sup> The Trust Fund welcomes this invitation.

72. The Trust Fund recalls in this regard that pursuant to Article 110.12 of the Court's Financial Regulations and Rules, "[P]rocurement functions include all actions necessary for the acquisition, purchase or lease, of property, including products and real property, and of services, including works". This provision has been applied in the *Katanga* case for all actions that the Trust Fund took in implementing reparations directly by itself. According to the applicable procedures, before allowing the Trust Fund to directly pay for certain products (rice, fuel etc.) e.g. through a

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<sup>70</sup> Since its 19 October 2020 Update Report alone, the Trust Fund and LRV have held 6 meetings. The first meeting of the year was planned for 14 January 2021, but was canceled as the Trust Fund had to use its time efficiently to incorporate its response to the LRV Request of 14 January 2021 into this filing, in addition to its response to the LRV Observations of 2 November.

<sup>71</sup> *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.

miscellaneous obligation document (MOD), the Trust Fund needs to exclude the possibility that those products could be procured, including through a purchase order.

73. The Trust Fund considers that, in particular in a case where the Trust Fund implements reparations directly, such as in the case of *Katanga*, procurement matters arise in respect not only of each modality of reparations but of all goods and services made available to the beneficiaries. Addressing those matters appropriately requires time and resources, not only of the Trust Fund but also e.g. of the Court's Procurement Unit, the Finance Section and the Registry's Legal Office. The Trust Fund is grateful for the support provided by these parts of the Registry.

74. The Trust Fund mobilised an STA post for an Associate Procurement Officer as of November 2019. The Registrar and the Executive Director decided in early 2020 to establish a Procurement Task Force in charge of overseeing the procurement of all pending procurement actions of the Trust Fund and to improve capacity and analyse and solve procurement blockages in relation the Trust Fund's specific procurement needs. This led to completion of all Trust Fund procurement actions that required completion in 2020.

75. As also reported in the Updated Management Brief of October 2020 of the Secretariat to the Board of Directors,<sup>72</sup> in early September 2020, the Procurement Task Force submitted to the Registrar and Executive Director a report that advised by reference to the processes applicable for UN organisations that the Court's standard procurement process should be primarily applicable only to commercial partners and may not be best suited and applicable to the selection of Trust Fund implementing partners for reparations awards and assistance programmes. Following that, the Executive Director, supported by the Registrar, requested the Trust Fund's Legal Adviser to explore in more detail an alternative or amended procedure for the Trust Fund to select implementing partners. The Trust Fund's Legal Adviser is in the process of developing a project plan that ensures that consultations are held within the Trust Fund, with the relevant Registry units and outside stakeholders.

76. The Trust Fund will continue to report on progress made in relation to procurement matters in its next Update Reports, insofar as new information arises.

### *Photographs and Data Protection*

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<sup>72</sup> [Updated Management Brief 2/2020](#).

77. The Trust Fund wishes to briefly address the issue raised by the LRV in his Observations of 2 November 2020 on the taking of photographs without consultation.<sup>73</sup>

78. During the delivery of various products and motorcycles in October 2020, the Trust Fund has taken photographs of victims with their received reparations for, on the one hand, internal documentation purposes, and, on the other hand, the possibility to use the photographs at a later stage for educational or informative purposes. It was the understanding of the Trust Fund that the latter would only be possible with the agreement of the LRV and upon the lifting of confidentiality of the identity of the relevant victim. In doing so, the Trust Fund followed the process agreed with the LRV during the implementation of the cattle component of IGAs, which is to get the written and informed consent of victims before taking photographs.

79. On 22 October 2020, the LRV addressed the Trust Fund in an email about this matter.<sup>74</sup>

80. On the same day, the Trust Fund acknowledged in writing that it had omitted to specifically inform the LRV of this process of taking photographs and explained that it had relied on the previously agreed process.<sup>75</sup>

81. As such, the Trust Fund's DRC Programme Manager and Associate Field Programme Officer presented the consent form to each victim individually, thereby fully explaining its content, and sometimes translating it into the local language in case victims did not understand French. Most victims were happy to have their photographs taken, and those who did not consent to it, were not photographed.

82. On 23 October 2020, the Trust Fund shared all signed consent forms with the LRVs for their respective clients.<sup>76</sup>

83. The Trust Fund, in taking the photographs, had the victims' best interest at heart, and duly followed the process required by data protection principles. In this regard, the Trust Fund consulted with the Court's data protection officer, who expressed the opinion that the Trust Fund followed the applicable data protection principles.

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<sup>73</sup> LRV Observations of 2 November 2020, paras 16-18.

<sup>74</sup> Email from the LRV to the Trust Fund on 22 October 2020 at 16.38.

<sup>75</sup> Email from the Trust Fund to the LRV on 22 October 2020 at 20.24.

<sup>76</sup> Emails from the Trust Fund to the LRV on 23 October 2020 at 14.02, 14.12, 14.19 and 14.28; email from the Trust Fund to the OPCV LRV on 23 October 2020 at 20.34.

84. At the meeting of 12 November 2020, the LRV expressed that the consent form as shared by the Trust Fund did not mirror exactly his comments of autumn 2019.

85. Consequently, the Trust Fund drew up two different forms, one for internal documentation purposes,<sup>77</sup> and one for public informative and educational purposes, which it shared with the LRV, on 27 November 2020, for his comments, which the Trust Fund did not yet receive.<sup>78</sup> The Trust Fund has not taken photographs of the implementation activities as of 23 October 2020.

86. At a meeting with the Trust Fund, the LRV addressed the issue of the end of his mandate once the reparations process will be concluded, which would not make it possible for him to agree at a later stage to the use of the photographs. Such a later agreement of the LRV is only required for the form intended for public informative and educational purposes and not for the form for internal documentation purposes. The Trust Fund fully respects the concerns raised by the LRV and will further engage with both LRVs on the question of consent after the implementation of reparations, including by asking for the advice of the Court's data protection officer. The Trust Fund considers that it can agree with the LRVs that it is either necessary to revert to the beneficiaries themselves or that a further agreement of the beneficiaries will not anymore be required once the confidentiality is lifted. This matter had not been addressed in the form used as of 2019 and also not yet in the new draft circulated by the Trust Fund and therefore requires resolution.

87. Pending the resolution of this open matter that is relevant to the use of photographs in the public sphere (public informative and educational purposes), the Trust Fund, in implementing reparations, will continue its practice of taking photographs but only with the consent form for internal documentation purposes. Should the Trust Fund wish to use such a photograph for public informative and educational purposes, the Trust Fund will need to get a new full consent from the beneficiary through their legal representative, if still in function. Such a step would only be possible once the confidentiality on the beneficiary's identity is lifted.

88. Lastly, the Trust Fund agrees with the LRV that any form of publicity of these photographs would need to be accompanied by the necessary precautions,<sup>79</sup> but wishes to stress, once more, that

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<sup>77</sup> The wording used in the form is as follows: “[...] exclusivement à des fins de documentation interne du Fonds ou comme documentation du travail du Fonds accessible en accès restreint à la Chambre ou aux donateurs du Fonds sans être rendue publique, accessoirement également accessible aux tiers intéressés”.

<sup>78</sup> Email from the Trust Fund to the LRV on 27 November 2020 at 12.09.

<sup>79</sup> LRV Observations of 2 November 2020, para. 17.

it has no intention of using the photographs without prior agreement of the LRV and only if the Trial Chamber decides to lift the confidentiality.

**FOR THE FOREGOING REASONS**

The Trust Fund respectfully requests the Trial Chamber to take note of the present report and to approve the implementation of the psychological support modality, as set out in section D and Annex A.



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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 24 September 2021  
(Date of original 19 January 2021)  
At The Hague, The Netherlands