

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **12 October 2017**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

URGENT

Confidential

**Decision approving the Implementation of Individual Reparations and
instructing the Trust Fund for Victims to Transmit to it Additional Information on
the Implementation of Collective Reparations**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

Legal Representative of Victims

Mr Fidel Nsita Luvengika

Defence for Germain Katanga

Mr David Hooper

Ms Caroline Buisman

Office of Public Counsel for Victims

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

States' Representatives

Government of the Democratic Republic
of the Congo

Government of the Republic of Uganda

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Mr Philipp Ambach

TRIAL CHAMBER II ("Chamber") of the International Criminal Court ("Court"), acting pursuant to article 75 of the Rome Statute ("Statute"), decides as follows:

I. PROCEDURAL HISTORY

1. On 24 March 2017, the Chamber issued an Order for Reparations against Germain Katanga ("Order for Reparations" and "Mr Katanga", respectively), in which, among other things, it directed the Trust Fund for Victims ("TFV") to prepare a draft plan ("Draft Plan") for the implementation of the Order for Reparations to benefit those of Mr Katanga's victims whom the Chamber has identified, and to submit it to the Chamber by 27 June 2017.¹ The Chamber likewise instructed the Legal Representative of Victims ("Legal Representative"), the Office of Public Counsel for Victims ("OPCV") and the Defence team for Germain Katanga ("Defence") to file observations on the Draft Plan by 28 July 2017.²

2. On 25 July 2017, after having been granted two extensions of time,³ the TFV filed its Draft Plan.

3. On 29 August 2017, the Chamber granted an extension of time for the parties to file their observations on the Draft Plan to 11 September 2017.⁴

¹ "Order for Reparations pursuant to Article 75 of the Statute", 24 March 2017, ICC-01/04-01/07-3728-tENG ("Order for Reparations"), paras. 307 and 309, pp. 107 and 108, with one public annex and one confidential annex *ex parte*, Common Legal Representative of the Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga.

² Order for Reparations, p. 119.

³ "Decision granting the Trust Fund for Victims an extension of time for submission of the Draft Implementation Plan", 22 June 2017, ICC-01/04-01/07-3744-tENG, and "Decision Granting the Trust Fund for Victims Access to Document ICC-01/04-01/07-3728-Conf-Exp-AnxII and an Extension of the Time Limit to Submit the Draft Implementation Plan for Reparations", 11 July 2017, ICC-01/04-01/07-3749-tENG.

⁴ "Draft implementation plan relevant to Trial Chamber II's order for reparations of 24 March 2017 (ICC-01/04-01/07-3728)", 25 July 2017, ICC-01/04-01/07-3751-Conf, with one confidential annex, one public annex, one confidential annex *ex parte* Registry only, one confidential annex *ex parte* OPCV Legal Representative only, and one confidential annex *ex parte* Legal Representative only. A redacted version was filed on 25 July 2017 and the redacted French version was filed on 21 August 2017.

4. On 8 September 2017, the Chamber granted the request by the Legal Representative⁵ and authorized the parties to file their observations on the Draft Plan in a document not exceeding 40 pages.

5. On 11 September 2017, the OPCV,⁶ the Legal Representative⁷ and the Defence⁸ submitted their respective observations on the Draft Plan.⁹

6. On 10 October 2017, the Legal Representative and the TFV filed a joint submission ("Joint Submission") with additional observations on the Draft Plan.¹⁰

⁵ "Décision accordant une prorogation de délai afin de déposer des observations sur le projet de plan de mise en œuvre du 25 juillet 2017", 29 August 2017, ICC-01/04-01/07-3759.

⁶ "Requête du Représentant légal des victimes aux fins d'augmentation du nombre de pages autorisé pour ses observations au projet de plan de mise en œuvre du Fonds au profit des victimes (ICC-01/04-01/07-3751-Red)", 7 September 2017, registered on 8 September 2017, ICC-01/04-01/07-3760.

⁷ "Observations sur le Projet de plan de mise en œuvre de l'Ordonnance de réparation déposé par le Fonds au profit des victimes", 11 September 2017, ICC-01/04-01/07-3762, ("OPCV Observations").

⁸ "Observations relatives au projet de plan de mise en œuvre déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/04-01/07-3751-Red)", 11 September 2017, ICC-01/04-01/07-3763-Conf. A public redacted version was filed on 13 September 2017 (ICC-01/04-01/07-3763-Red), ("LRV Observations").

⁹ "Defence Observations on the TFV's Draft implementation plan", 11 September 2017, ICC-01/04-01/07-3764, ("Defence Observations").

¹⁰ "Communication conjointe relative au Projet de plan de mise en œuvre déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/04-01/07-3751-Red)", 9 October 2017, registered on 10 October 2017, ICC-01/04-01/07-3767-Conf.

II. INTRODUCTION

7. The Chamber recalls that, in its Order for Reparations, it laid down its requirements for the content of the Draft Plan:

The Draft Plan shall set out a programme, describing the reparations projects which the TFV intends to develop to give effect to the present order. The TFV shall, in crafting the Draft Plan, rely on the modalities determined by the Chamber. The Chamber directs the TFV to impart to it concrete particulars of the projects, *inter alia*, a description of the projects, their costings, and the modus operandi for their adoption and implementation, and for their oversight by the Chamber. The Chamber points out in this connection that the TFV must heed the victims' views and proposals regarding the projects which they see as the most appropriate.¹¹

8. The Chamber also expressed its expectations as to the content of a draft implementation plan for reparations in an order of 9 February 2016 in *The Prosecutor v. Thomas Lubanga Dyilo*,¹² in which the Chamber

instruct[ed] the TFV to present to it the specific terms of reference of each programme for which it is considering issuing a request for proposals or directly negotiating a contract. Each programme must include a precise evaluation of its cost, as well as provisions that allow the Chamber to fulfil the duty of monitoring assigned to it by the Appeals Chamber. The time limits for the implementation of each programme must be mentioned.¹³

9. The Chamber observes that the victims eligible for reparations in these proceedings (the list of whom it supplied as Annex II to its Order for Reparations),¹⁴ informed their legal representatives that they wished to receive the reparations to which they were entitled as swiftly as possible.¹⁵ The Chamber recalls, moreover, that the acts of which Mr Katanga was convicted by the Court were committed in 2003 and that more than 14 years have elapsed since those events. It reiterates that the victims who were acknowledged by the Court as being eligible for reparations in the case at bar have a legitimate right to benefit from them as quickly as possible.

¹¹ Order for Reparations, para. 309 (footnotes not reproduced).

¹² "Order instructing the Trust Fund for Victims to supplement the draft implementation plan", 9 February 2016, ICC-01/04-01/06-3198 ("Order of 9 February 2016").

¹³ *Ibid.*, para. 22.

¹⁴ ICC-01/04-01/07-3728-Conf-Exp-AnxII. A public redacted version was filed on 3 August 2017.

¹⁵ LRV Observations, para. 12.

On that matter, the Chamber underscores the joint responsibility of the Court and the TFV.

10. It is the Chamber's view that the Draft Plan submitted by the TFV on 25 July 2017 provides a solid basis for the work of the TFV, the parties and the Chamber. It notes that the awards proposed by the TFV are consistent with the modalities of reparations that it had ordered. Furthermore, the Chamber considers that the TFV has worked closely with the legal representatives, enabling it to produce a Draft Plan that essentially responds to the needs of the victim beneficiaries, and urges it to pursue this constructive dialogue with them. Lastly, the Chamber is satisfied with the TFV's proposal to adopt a holistic and flexible approach to be able to deliver awards that take account of the beneficiary victims' current situations.

11. The Chamber nevertheless points out the shortcomings in the Draft Plan on certain points. First, the Chamber notes that the Draft Plan fails to provide time limits for the various steps of the implementation, save for the proposal that the reparations programme be limited to two years, and that the TFV makes no commitments on those points. This omission is particularly detrimental with respect to individual reparations, which are highly anticipated by the victims for both symbolic and practical reasons.¹⁶

12. Second, with regard to collective reparations, the Chamber does not consider that the Draft Plan complies with the instructions of the Order for Reparations insofar as it only provides an outline of a consultation process with local partners – who, moreover, are not identified – on the proposals they would be able to submit to the TFV for each of the reparations modalities that have been determined. The Chamber is also of the view that the Draft Plan fails to give a comprehensive explanation of the nexus between the consultation with victims and the definition of the awards expected from the local partners.

¹⁶ LRV Observations, para. 43.

13. The Chamber points out that the TFV had offered to submit information to it, stating that it was committed to providing “further details in as prompt a manner as possible, should the Trial Chamber or the parties consider that any aspect of the draft implementation plan is unclear or insufficiently described” and, likewise, that it stood prepared to “implement in a prompt manner any modifications, additions, or adjustments”.¹⁷ The Chamber wishes to derive the maximum advantage from the TFV’s offer.

14. Accordingly, the Chamber sets forth in this decision the preparatory work it considers necessary for the Draft Plan to meet its expectations in terms of clarity, specificity and schedules. The Chamber asks the TFV to carry out such work for the purposes of expediting and clarifying the implementation process of the reparations programme and to set specific time limits that are binding with respect to the victims.

III. INDIVIDUAL REPARATIONS

15. In the operative part of its Order for Reparations, the Chamber ordered “individual reparations, namely compensation in the form of a symbolic award of USD 250”.¹⁸ The Chamber is of the opinion that priority should be given to individual reparations to ensure that the USD 250 is paid to each of the eligible victims. It is likewise of the view that these reparations are independent and may not be connected to collective reparations when they are implemented. With the contribution of the Netherlands,¹⁹ which has enabled the TFV Board to agree to implement individual reparations,²⁰ the Chamber finds it crucial that this aspect of the Order for Reparations be implemented forthwith, without its being contingent

¹⁷ Draft Plan, para. 51.

¹⁸ Order for Reparations, p. 118.

¹⁹ Draft Plan, para. 48.

²⁰ “Notification pursuant to regulation 56 of the TFV Regulations regarding the Trust Fund Board of Director’s decision relevant to complementing the payment of the individual and collective reparations awards as requested by Trial Chamber II in its 24 March 2017 order for reparations”, 17 May 2017, ICC-01/04-01/07-3740.

on the progress of the collective reparations. The TFV is therefore instructed to maintain the implementation of individual reparations separate from that of collective reparations.

16. The Chamber also recalls from its Order for Reparations that “the victims would be able to take their own decisions on the basis of their needs.”²¹ It is therefore of the view that, given the small amount of the payment in question, it should be paid to each victim beneficiary without any contingent conditions. In that regard, it notes the Legal Representative’s request that the victim beneficiaries be given complete freedom to do as they wish with their individual reparation awards.²² The Chamber therefore rules out the obligatory involvement of a financial adviser,²³ which might be seen as an attempt to sway victim beneficiaries.²⁴

17. In its Order for Reparations, the Chamber refers to studies which highlight the effectiveness of money transfers as a method of delivering humanitarian aid and the existence of highly effective modalities for money transfers in the instant case.²⁵ The Chamber notes that the TFV and the Legal Representative contend in their Joint Submission of 10 October 2017 that the option of a transfer by mobile telephone is to be discounted owing to potentially high costs and security issues that may arise.²⁶ Alternatively, the TFV and the Legal Representative propose paying the award into a bank account with a mobile bank – an account that would be set up for that sole purpose – while maintaining the option of payments in person in certain cases.²⁷ They specify, moreover, that the TFV would cover all the fees associated with opening and closing an account and with the victim beneficiaries’ travel to Bunia.²⁸ The Chamber finds the proposal of the Legal Representative and the TFV reasonable

²¹ Order for Reparations, para. 300.

²² LRV Observations, paras. 56-57.

²³ Draft Plan, para. 115.

²⁴ LRV Observations, paras. 42 and 56-57.

²⁵ See the references in the Order for Reparations, footnote 450.

²⁶ Joint Submission, para. 11.

²⁷ *Ibid.*, paras. 12-19.

²⁸ *Ibid.*, paras. 13-14 and 19.

and suited to the situation of the victims, regardless of whether they reside in the Democratic Republic of the Congo (DRC), the Republic of Uganda (Uganda), Europe or the United States of America (United States).

18. The Chamber approves the implementation of individual reparations, having taken into account the symbolic nature of individual reparations, the availability of funds to ensure their payment and the expectations expressed by the victims. Accordingly, the Chamber instructs the TFV to pay the sum of USD 250, by 1 December 2017, according to the method proposed in the Joint Submission of 10 October 2017.

19. In this respect, the Chamber notes that the TFV will take all the measures necessary to ensure that the victim beneficiaries themselves will receive the payment, regardless of their gender or age, unless they have decided to proceed otherwise. The TFV will also see to it that "the modes of distribution permit female victims to not only have the same access, but also retain control over, the benefits that are preferable to them."²⁹ It is paramount that these measures are applied throughout the entire implementation process of the individual and collective reparations programme. The Chamber expects the procedure to be effective, simple and discreet, and each victim to be invited to confirm receipt of the sum that will be transferred to him or her. The TFV will handle specific problems without creating obstacles to transfers to other victims. Lastly, the TFV is directed to provide information on the implementation status of the individual reparations by 15 December 2017.

²⁹ Draft Plan, para. 115. See also OPCV Observations, para. 9. See further, Order for Reparations, paras. 30 and 310.

IV. COLLECTIVE REPARATIONS

A. Analysis of disputed beneficiary categories and awards proposed for each category

1. Categories by harm suffered

a. Introduction

20. The Chamber carefully scrutinized the proposals in the Draft Plan concerning the five categories and the three sub-categories of victim beneficiaries established by the TFV. Given that individual and collective reparations are to be implemented independently of each other, the five categories and the three sub-categories may be summarized as follows:

Category 1 – *Loss of home and livestock (plus psychological harm connected to the experience of the attack on Bogoro on 24 February 2003 ("Bogoro attack"));*

Category 2 – *Loss of home or equivalent material loss (plus psychological harm connected to the experience of the Bogoro attack);*

Category 3 – *Loss of an immediate family member (plus psychological harm connected to the experience of the Bogoro attack);*

Category 4 – *Loss of personal affairs and minor material loss (plus psychological harm connected to the experience of the Bogoro attack);*

Category 5 – *Only psychological harm connected to the experience of the Bogoro attack;*

Sub-category 1: *Loss of an immediate family member in addition to other harm falling within the standard categories;*

Sub-category 2: *Extensive loss of multiple immediate family members; and*

Sub-category 3: *Loss of a family home.*

21. The Chamber takes note that the Legal Representative and the OPCV have concurred on the use of victim beneficiary categories.³⁰

22. In its Order for Reparations, the Chamber held that, "in order for reparations to be collective in character, they must benefit a group or category of persons who have suffered shared harm."³¹ The Chamber also found, "per its definition laid down above, the victims in the case to be a group which suffered shared harm at the time of the attack on Bogoro."³² The Chamber recalls therefore that the definition of the different victim beneficiary categories must be in line with the characteristics specific to the group of victims of the Bogoro attack who suffered shared harm.

23. The Chamber considers that the categories are consistent with the harm acknowledged in the files in Annex II to the Order for Reparations and with paragraph 305 of that Order regarding flexibility and the proportionality between the reparations and the harm suffered by each victim. The Chamber also finds that the sub-categories serve to concede the scope of the harm suffered by the victims and thereby provide for an augmentation corresponding to the harm suffered. Grouping victims into categories is unlikely to undermine the coherence of the group of victims of the Bogoro attack as a whole. Indeed, although a distinction is made between victims, these categories in fact allow the specific harm that each of them suffered to be taken into account while reflecting the shared harm endured by the victims of the Bogoro attack. The same holds true for the category of psychological harm connected to the experience of the Bogoro attack, recognized for all the victim beneficiaries.

24. While the Chamber approves the use of victim beneficiary categories, it would like to make the following modifications to the definitions proposed by the TFV.

³⁰ LRV Observations, para. 27; OPCV Observations, para. 8. The Chamber notes that the Defence made no representations on this matter.

³¹ Order for Reparations, para. 275.

³² *Ibid.*, para. 288.

b. Category 3 and Sub-category 1

25. The Legal Representative objects to Category 3 and Sub-category 1, contending that they are limited to the loss of an "immediate" family member – in the sense of the definition established by the Chamber in the Order for Reparations – i.e. "near relative", which it considers excludes more distant relatives.³³ He submits that the concept of "near relative" cannot be equated with that of immediate family and requests that the categories in question encompass the broader notion of "family member", which covers both near relatives (spouses, parents, children, grandparents, grandchildren) and "more distant relatives". He asks that no distinction be made within this category and sub-category according to the family relationship with the deceased relative.³⁴

26. The Chamber recalls that it has acknowledged that the loss of a family member is a traumatizing experience, whether the deceased person was a near or distant relative.³⁵ It considered that, once the death of a direct victim was established, so too was the psychological harm, regardless of whether the relative was near or distant.³⁶ Accordingly, the Chamber's stance is that victims who lost a near relative and those who lost a distant relative must be treated equally, which would obviate any feeling of injustice between the victims whose family situations might be very different. The Chamber thus instructs the TFV to maintain in Category 3 and Sub-category 1 the loss of a family member, but with no other qualifier.

c. Sub-category 2

27. The Chamber first points out that the solution put forward for the previous point concerning the inclusion of near and distant relatives applies *mutatis mutandis* to Sub-category 2.

³³ LRV Observations, paras. 27 and 29.

³⁴ *Ibid.*, paras. 28 and 29.

³⁵ Order for Reparations, para. 121.

³⁶ *Ibid.*, para. 122.

28. The Chamber notes that Sub-category 2 concerns the loss of more than five immediate family members in the Bogoro attack. The TFV explains that, “[g]iven the extensive degree of loss suffered by these victims”, they should receive a special augmentation.³⁷ The Legal Representative argues that an analysis of the victim files selected by the TFV in this category reveals that comparable situations are not handled in the same manner, as the criteria used for the selection are vague. He is critical of the complex mechanism proposed and asks that this sub-category be excluded.³⁸

29. The Chamber observes the difficulty of establishing a threshold to define extensive family loss and trigger the application of a special augmentation. It is of the view that the TFV’s decision to set this threshold at five or more relatives, despite its lack of justification, can be applied in the context of the Bogoro attack and agrees with the relevance of this sub-category. To avoid creating conflicts or inequities, the TFV is instructed to consult with the Legal Representative and the OPCV on the specific situation of each victim beneficiary.

d. Sub-category 3

30. The TFV proposes a sub-category for which the maximum amount may be increased in proportion to the number of victims included within the family unit.³⁹ The Legal Representative disputes the merits of this sub-category, which he perceives as discriminatory since it provides for an increased amount to families where several persons have come forth as applicants and disregards those where that is not the case.⁴⁰

31. The Chamber recalls that when the harm was assessed it ensured that compensation would not be awarded in respect of one home several times for several different victims. It notes that the loss of a home is covered in the TFV’s

³⁷ Draft Plan, para. 88.

³⁸ LRV Observations, paras. 30-32.

³⁹ Draft Plan, para. 89.

⁴⁰ LRV Observations, para. 34.

Categories 1 and 2. It stands to reason that there is no need for an additional category which would raise thorny issues of assessment in the choice of the cases accepted.

2. Victim beneficiaries currently residing in Uganda

32. The TFV acknowledges that, despite its efforts, at the time the Draft Plan was being finalized it did not have sufficient information regarding what was programmatically feasible for the 17 victims currently residing in a refugee camp in Uganda.⁴¹

33. The Chamber notes that the TFV proposes implementing two separate collective reparations programmes for the victims residing in the DRC and in Uganda, to avoid delaying the collective reparations programme in the former.⁴² The Chamber understands that the programmes that will be implemented in Uganda and in the DRC will, in principle, be identical, but handled by different local partners.⁴³ On that matter, the Chamber notes that the TFV and the Legal Representative intend to conduct a joint mission in October 2017 to identify these victims and their needs.⁴⁴ The TFV and the Legal Representative are directed to apprise the Chamber of the progress of this undertaking by 15 November 2017.

3. Awards proposed by the TFV

a. Proposed awards and procedure for eligibility

34. The Chamber finds that the awards proposed in paragraphs 124 *et seq.* of the Draft Plan are generally in compliance with the modalities of reparations it has ordered. The Chamber nevertheless instructs the TFV to adapt the content of its proposals according to the victims' requests and the local context, wherever

⁴¹ Draft Plan, para. 64.

⁴² The Chamber takes note that the Legal Representative has no objections (LRV Observations, para. 25).

⁴³ Draft Plan, para. 66.

⁴⁴ *Ibid.*, para. 67. See also, Joint Submission, para. 18.

possible.⁴⁵ In particular, in the light of the fact that individual and collective reparations will be implemented independently, the Chamber instructs the TFV to revise its proposal whereby the victim beneficiary will have the option to put the symbolic individual compensation towards one of the modalities of collective reparations.⁴⁶

35. On the basis of the information in the Draft Plan, the Chamber is of the understanding that each victim beneficiary will be given the choice of various awards he or she will be entitled to depending on his or her category and/or sub-category.⁴⁷

36. The Chamber accepts the legitimacy of this measure, which allows for the flexibility it had required in its Order for Reparations.⁴⁸ It notes that victims will be able to make their choices known during an intake procedure in which the Legal Representative and the OPCV may participate, and that their choices will be entirely of their will, as the Legal Representative so wished.⁴⁹ Once these consultations have been completed, victim beneficiaries will each draw up a list of the awards they request in consideration of the rights they are entitled to according to their victim category.

37. For that purpose, and as the Legal Representative has suggested,⁵⁰ the Chamber is of the opinion that these interviews should be conducted before the final selection of implementing partners is made, as the decisions of the victim beneficiaries will determine the content of the programme and, therefore, will enable appropriate partners to be selected for the implementation of the reparations. At the end of the consultations, the TFV will have an overview of the reparations the victim

⁴⁵ See, in particular, LRV Observations, paras. 64-85.

⁴⁶ Draft Plan, para. 102. On this matter, see LRV Observations, paras. 42-44.

⁴⁷ Draft Plan, paras. 100, 114-119 and 124-131.

⁴⁸ Order for Reparations, para. 305. See also, LRV Observations, para. 45, and OPCV Observations, para. 8.

⁴⁹ Draft Plan, paras. 114 and 117. LRV Observations, paras. 42 and 45. Joint Submission, para. 22.

⁵⁰ LRV Observations, paras. 62-63. See also, paras. 64-85.

beneficiaries prefer, and will be able to establish an accurate and comprehensive list of the specific activities and awards (for example, the number of houses to be built and improved), which could necessitate a procurement process.⁵¹

38. The Chamber therefore approves the proposal of the Legal Representative and the TFV to determine which awards each victim beneficiary may select, from among those available to them at the time they receive individual reparations.⁵²

b. Value of awards

39. The Chamber takes note that the TFV used as a basis the monetary assessments corresponding to the harm suffered by each victim beneficiary recognized in its Order for Reparations, and that the TFV proposes, as a guideline, a maximum monetary value for each award presented.⁵³

40. The Chamber observes that, in Category 4, the TFV proposes maximum values per reparations awards package.⁵⁴ The Legal Representative disagrees with these values, arguing that they are much higher than those that he had put forward and proposes returning to a range within USD 150.⁵⁵ The Chamber accepts the TFV's proposals, which are consistent with those given for the other categories and should prevent discrimination.

41. The Chamber moreover notes that, for victims settled in Europe and the United States, the TFV proposes providing them – on an exceptional basis – with a symbolic monetary sum instead of the awards envisaged for victims in the DRC, even though the Chamber did not approve this modality for collective reparations.⁵⁶ The TFV likewise proposes providing the same symbolic monetary award to victim beneficiaries with refugee status who are currently on a waiting list to be resettled in Europe or the United States, should they be resettled before they are able to access

⁵¹ Draft Plan, para. 110.

⁵² Joint Submission, paras. 20-23. See above, para. 17.

⁵³ Draft Plan, para. 94.

⁵⁴ *Ibid.*, para. 99.

⁵⁵ LRV Observations, para. 37.

⁵⁶ Draft Plan, para. 61.

some or all of the reparations awards to which they are entitled.⁵⁷ The TFV proposes that these sums be transferred to them directly by the TFV, in coordination with the relevant Registry financial sections.⁵⁸ It is the Legal Representative's opinion that the sums proposed by the TFV are insufficient and therefore asks it to put forward alternative proposals that are comparable to those made for the victim beneficiaries in the DRC.⁵⁹

42. The Chamber observes that the TFV does not give any explanation about the proposed sums. It therefore instructs the TFV to provide justification for the amounts it proposes by 15 November 2017.

43. With respect to the other values, the Chamber notes that the Legal Representative and the Defence do not object to them.⁶⁰ Accordingly, the Chamber considers that the assessments proposed by the TFV can be useful as a reference for determining the cumulative value of reparations to which each victim beneficiary is entitled.

c. Mr Katanga's participation in the reparations modalities

44. Regarding the possible participation of Mr Katanga in a reconciliation ceremony or a public or private ceremony at which he would offer his apologies, the Chamber notes that the TFV is continuing dialogue with the Legal Representative, the OPCV and the Defence, and that it will submit a proposal to the Chamber once it has obtained all the relevant information.⁶¹

B. Implementation of collective reparations, selection of implementing partners, programme support costs and procurement

45. The Chamber takes note that, to facilitate the implementation of collective reparations, the TFV proposes calling on a consortium of partners, coordinated by

⁵⁷ Draft Plan, para. 63.

⁵⁸ *Ibid.*, para. 62.

⁵⁹ LRV Observations, paras. 21, 25 and 39-41.

⁶⁰ *Ibid.*, paras. 36-39.

⁶¹ Draft Plan, paras. 70 and 135.

one lead partner.⁶² The Legal Representative thereby submits that “[TRANSLATION] the proposed project seems disproportionate to the monetary amount of the reparations and the limited nature of the modalities envisaged.”⁶³ He contends that it is not necessary to systematically use intermediaries to carry out certain tasks relating to the implementation of reparations and maintains that some awards, such as the individual compensation, the management of education and higher education assistance, as well as support for the purchase of occupational materials, could be handled directly by the TFV.⁶⁴

46. The Chamber is of the view that the TFV, owing to its experience in the field under its assistance mandate, is well placed to determine the appropriate methods for implementing the modalities of collective reparations. It nonetheless instructs the TFV to do its utmost to limit programme support costs and to dispel any distrust that some organizations may create, as the Legal Representative has relayed.⁶⁵ Taking that perspective, the Chamber opines that the measure decided upon for providing these reparations must be simple and pragmatic. On that point, the Chamber has noted with interest the Legal Representative's comments on the Draft Plan in paragraphs 64-85 of his Observations concerning the implementation of each of the collective reparations modalities. It directs the TFV to carefully heed these observations, since they reflect the views of the victim beneficiaries and knowledge of the local context. The Chamber notes the discussions between the TFV and the Legal Representative to identify implementation methods for education and training support, as well as the ongoing housing assistance,⁶⁶ and urges the TFV, the Legal Representative and the OPCV to pursue such discussions. As underscored by the TFV,⁶⁷ it is likewise crucial that the individual and collective reparations programmes are implemented with the highest degree of discretion to shield the

⁶² Draft Plan, paras. 109-110.

⁶³ LRV Observations, paras. 47-49.

⁶⁴ *Ibid.*, paras 47, 48 and 51. See also, paras. 64-85.

⁶⁵ *Ibid.*, para. 45.

⁶⁶ Joint Submission, paras. 24-25.

⁶⁷ Draft Plan, paras. 115 and 123.

victim beneficiaries from any security risks. The Chamber also instructs the TFV to optimize its supervision team in the field, i.e. the Programme Manager and the two Associate Field Programme Officers.⁶⁸

47. The Chamber recalls that the TFV proposes to begin with a pre-selection of implementing partners.⁶⁹ It is of the opinion that this pre-selection could take place during the same period as the interviews with the victims.

48. The Chamber notes that the TFV proposes that the collective reparations programme be spread over a maximum of two years.⁷⁰ The Legal Representative takes the view, however, that one single time limit does not, in any case, seem appropriate in the situation.⁷¹ The Chamber takes into consideration the Legal Representative's submission but counters that it is in the victims' interests to set a single time limit to prevent the programme from continuing indefinitely. Given the lack of justification by the TFV on the set duration, the Chamber cannot rule on this point for the time being and therefore instructs the TFV to justify its position on this issue by 15 November 2017.

49. The Chamber takes note of the TFV's envisaged plan to monitor and evaluate the modalities of reparations,⁷² as well as the Legal Representative's concerns⁷³ on that matter. The Chamber is of the view that this plan pertains to the TFV's internal management and, accordingly, it is for the TFV to decide on the evaluation measure it sees fit in this specific case, so long as it puts in place appropriate steps to enable the Chamber to supervise and monitor the implementation of the reparations. In these circumstances, the Chamber accepts the TFV's proposal to provide an update every six months on the implementation of the collective reparations. The Chamber

⁶⁸ Draft Plan, para. 146.

⁶⁹ *Ibid.*, para. 110.

⁷⁰ *Ibid.*, para. 116.

⁷¹ LRV Observations, para. 77.

⁷² Draft Plan, paras. 136-149.

⁷³ LRV Observations, paras. 93-95.

will determine in due course the date on which the first report will have to be submitted.

50. The Chamber shares the Legal Representative's concerns about the need to set a ceiling on the sums intended for managing the awards.⁷⁴ It takes particular note of the questions raised by the Legal Representative on the legitimacy of drawing upon resources allocated for reparations to meet programme support costs.⁷⁵ The Chamber considers that these costs are unavoidable and inherent to the distribution of reparations, but that holding the convicted person liable for them raises significant legal and factual questions. In this regard, the Chamber observes that the sums made available to the TFV for reparations are limited and should be used – as a priority and in their best interests – to satisfy the recognized rights of victims. The Chamber agrees with the point made by the Legal Representative that the practices related to the TFV's assistance mandate are not meant to apply automatically to its reparations mandate, which is attendant upon a judicial activity overseen by a Chamber of the Court.⁷⁶ Accordingly, the Chamber instructs the TFV to provide it with its reasoning for holding Mr Katanga liable overall for programme support costs related to the distribution of awards to the victims. It also instructs the TFV to provide it with explanations as to how it reached the 15 per cent figure given as a standard of reference pertaining to those costs, by 15 November 2017.

51. Lastly, the Chamber wishes to review the content of the tender procedures that will be launched by the TFV. The Chamber recalls that the victim beneficiaries have been identified in the instant case, and thus considers that the tender procedures must include a precise and targeted definition of the awards for each reparations modality, according to the choices expressed by the victim beneficiaries during consultations, as well as the implementation modalities of the awards which take into account the contributions that will be made in the coming months. The TFV

⁷⁴ LRV Observations, para. 50.

⁷⁵ *Ibid.*, paras. 52-55.

⁷⁶ *Ibid.*, para. 95.

is therefore instructed to present to it, by 1 February 2018, the content of the tender procedures with the specific terms of reference of each collective reparations modality and the related awards. Each of the modalities must comprise a precise assessment of its cost, its programme support costs, its implementation modalities and provisions that allow the Chamber to fulfil its duty. The time limits for the implementation of each award must also be given. After reviewing the content of the call for bids, the Chamber will be suited to approve the implementation of the collective reparations programme. The Chamber would like the full implementation of the collective reparations programme to start no later than 1 April 2018.

C. ASSISTANCE MANDATE

52. The Chamber recalls that, in its Order for Reparations, it had invited the TFV to give consideration as part of its assistance mandate to the harm suffered by victims with regard to whom the Chamber was not in a position to act in the case.⁷⁷ That being so, the Chamber reiterates that the activities conducted as part of the TFV's assistance mandate are within its exclusive competence.

53. The Chamber points out that, under this mandate, the TFV programme officer will discuss with each victim to provide referrals, if necessary, to qualified organizations.⁷⁸

54. In order to better define the awards considered by the TFV under the assistance mandate, given the obstacles to implementing such a process and finding local partners, the Chamber asks the TFV to provide further details on the activities it intends to conduct, in the field and in the region, which might have an impact on the individual and collective reparations ordered in the present case, along with information on the relations it has established or will seek to establish with local stakeholders.

⁷⁷ Order for Reparations, paras. 343-344.

⁷⁸ Draft Plan, para. 118.

V. MEMORANDUM FOR THE DRC GOVERNMENT

55. The Chamber notes that, in accordance with the Order for Reparations, the TFV has contacted the DRC Government about its possible cooperation in giving effect to and implementing the reparations. It welcomes the joint mission undertaken by the TFV and the Legal Representative from 12 to 16 June 2017 to meet with these officials.⁷⁹

56. The Chamber accepts the TFV's proposals, specifically those to request the DRC authorities to provide land in Bunia and Bogoro.⁸⁰

57. The Chamber notes, in particular, that the TFV wishes to propose to the DRC the "release of any outstanding back salary due to Mr Katanga to go towards the payment of the reparations awards".⁸¹ On this matter, the Chamber reiterates its instruction in the Order for Reparations directing the Presidency, with the assistance of the Registrar, to monitor Mr Katanga's financial situation on an ongoing basis in accordance with regulation 117 of the Regulations of the Court.⁸² This matter is still pending for this Chamber.

58. The Chamber endorses the Legal Representative's recommendation that a memorandum be sent to the DRC authorities with detailed and specific requests for their involvement to urge them to give their support in implementing reparations.⁸³ Accordingly, the Chamber instructs the TFV to provide it with a copy of this memorandum and to transmit it to all the authorities in the DRC concerned, by 1 December 2017.

59. Lastly, the Chamber invites the TFV to engage in continuous dialogue with the relevant interlocutors from the DRC Government to foster a situation conducive

⁷⁹ Draft Plan, para. 68.

⁸⁰ *Ibid.*, para. 70. It notes that the OPCV supports this proposal (OPCV Observations, para. 13).

⁸¹ Draft Plan, para. 70.

⁸² Order for Reparations, para. 329.

⁸³ LRV Observations, para. 86.

to the implementation of reparations and to secure contributions that would facilitate them. The TFV will inform the DRC Government every three months of its progress, under the supervision of the Chamber, in defining and implementing the Draft Plan.

FOR THESE REASONS, the Chamber

INSTRUCTS the TFV to implement individual reparations independently of collective reparations;

APPROVES the implementation of individual reparations;

INSTRUCTS the TFV to pay the sum of USD 250, by 1 December 2017, according to the method proposed in the Joint Submission of 10 October 2017;

INSTRUCTS the TFV to provide an update, by 15 December 2017, on the implementation status of the individual reparations;

BROADENS Category 3 and Sub-category 1 of victim beneficiaries proposed by the TFV to encompass all family members;

REJECTS Sub-category 3 proposed by the TFV;

INSTRUCTS the TFV to provide, by 15 November 2017, specific reparations proposals for victims who are refugees in Uganda;

INSTRUCTS the TFV to conduct interviews with the victim beneficiaries to determine the specific awards they would prefer from among those proposed when individual reparations are implemented, as discussed in paragraphs 34-37 of this decision;

INSTRUCTS the TFV to provide it, by 15 November 2017, with the reasons justifying the amounts it proposes granting victims settled in Europe and the United States, rather than the awards established for the collective reparations modalities;

INSTRUCTS the TFV to take account of the Legal Representative's comments in paragraphs 64-85 of his Observations and to pursue its discussions with the Legal Representative and the OPCV on the implementation of collective reparations;

INSTRUCTS the TFV to provide it, by 15 November 2017, with the reasons which, in its opinion, justify designing an implementation programme for collective reparations limited to two years;

INSTRUCTS the TFV to provide it, by 15 November 2017, with the reasons for which it considers it can hold Mr Katanga liable overall for programme support costs related to the distribution of awards to the victims;

INSTRUCTS the TFV to provide it, by 15 November 2017, with explanations on the 15 per cent figure for programme support costs;

INSTRUCTS the TFV to submit, by 1 February 2017, the content of the procurement processes, as indicated in paragraph 51 of this decision;

INSTRUCTS the TFV to provide it, by 1 December 2017, with a copy of the memorandum sent to the DRC Government authorities; and

INVITES the TFV to engage in continuous dialogue with the relevant interlocutors from the DRC Government.

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

[signed]

Judge Marc Perrin de Brichambaut

Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 12 October 2017

At The Hague, Netherlands