

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

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

Date: **12 December 2019**

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
*THE PROSECUTOR v. GERMAIN KATANGA***

Confidential

**Decision on the Requests of the Trust Fund for Victims of 26 July and
18 November 2019 and on the Requests of the OPCV of 2 August 2019**

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

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Counsel for the Defence of Germain

Katanga

Mr David Hooper

Ms Caroline Buisman

Office of Public Counsel for Victims

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

TRIAL CHAMBER II (Chamber) of the International Criminal Court, in the case of *The Prosecutor v. Germain Katanga*, orders the following.

I. Procedural history

1. On 24 March 2017, the Chamber handed down the "Order for Reparations pursuant to Article 75 of the Statute"¹ ("Order for Reparations"). In that Order, the Chamber analysed the 341 dossiers transmitted to it by the Registry, of persons claiming to be victims of the crimes of which Germain Katanga ("Mr Katanga") had been convicted.² The Chamber found that, of those 341 persons, 297 had shown on a balance of probabilities that they had suffered harm as a result of the crimes of which Mr Katanga had been convicted.³ Accordingly, the Chamber determined that those persons were to be awarded the individual and collective reparations approved by the Chamber in the case.⁴

2. On 25 July 2017, after having been granted two extensions of time,⁵ the Trust Fund for Victims ("Trust Fund") submitted its draft plan for the implementation of reparations⁶ ("Draft Implementation Plan of 25 July 2017").

3. On 11 September 2017, after having been granted an extension of time⁷ and leave to file its observations in a 40-page document,⁸ the Office of Public Counsel for

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

² Order for Reparations, paras. 64-180.

³ Order for Reparations, para. 168.

⁴ Order for Reparations, paras. 281-295.

⁵ "Decision granting the Trust Fund for Victims an extension of time for submission of the Draft Implementation Plan", 22 June 2017, ICC-01/04-01/07-3744-tENG and "Decision Granting the Trust Fund for Victims Access to Document ICC-01/04-01/07-3728-Conf-Exp-AnxII and an Extension of the Time Limit to Submit the Draft Implementation Plan for Reparations", 11 July 2017, ICC-01/04-01/07-3749-tENG.

⁶ "Draft implementation plan relevant to Trial Chamber II's order for reparations of 24 March 2017 (ICC-01/04-01/07-3728)", dated 25 July 2017, translation registered on 21 August 2017, ICC-01/04-01/07-3751-Conf, with one confidential annex, one public annex, one confidential annex *ex parte* Registry, one confidential annex *ex parte* Principal Counsel OPCV, and one confidential annex *ex parte* the Legal Representative of Victims. A redacted version was filed on 25 July 2017, and the redacted French version was filed on 21 August 2017.

Victims⁹ ("OPCV"), the Legal Representative of Victims¹⁰ ("Legal Representative") and the Defence team for Mr Katanga¹¹ each filed their observations on the Draft Implementation Plan of 25 July 2017.

4. On 10 October 2017, the Legal Representative and the Trust Fund jointly filed further submissions on the Draft Implementation Plan of 25 July 2017.¹²

5. On 12 October 2017, the Chamber issued the "Decision approving the Implementation of Individual Reparations and instructing the Trust Fund for Victims to Transmit to it Additional Information on the Implementation of Collective Reparations".¹³

6. On 5 December 2017, after having been granted an extension of time,¹⁴ the Trust Fund submitted a report on the implementation of individual reparations and on part of the additional information requested by the Chamber on the modalities of collective reparations¹⁵ ("Trust Fund's Submissions of 5 December 2017"). The

⁷ "Decision Granting an Extension of the Time Limit to File Observations on the Draft Implementation Plan of 25 July 2017", 29 August 2017, ICC-01/04-01/07-3759-tENG.

⁸ "Request by the Legal Representative of Victims for Extension of the Authorized Page Limit for his Observations on the Trust Fund for Victims' Draft Implementation Plan (ICC-01/04-01/07-3751-Red)", dated 7 September 2017 and registered on 8 September 2017, ICC-01/04-01/07-3760-tENG.

⁹ "Observations on the Trust Fund for Victims' Draft Implementation Plan Relevant to the Order for Reparations", 11 September 2017, ICC-01/04-01/07-3762-tENG, ("Observations of the OPCV").

¹⁰ "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), ("Observations of the Legal Representative").

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

¹² "Joint Submission Concerning the Draft Implementation Plan Filed by the Trust Fund for Victims in Conformity with the order for Reparations Pursuant to Article 75 of the Statute (ICC-01/04-01/07-3751-Red)", dated 9 October 2017 and registered on 10 October 2017, ICC-01/04-01/07-3767-Conf-tENG.

¹³ "Decision approving the Implementation of Individual Reparations and instructing the Trust Fund for Victims to Transmit to it Additional Information on the Implementation of Collective Reparations", 12 October 2017, ICC-01/04-01/07-3768-Conf-tENG.

¹⁴ "Decision Granting the request for an Extension of Time Filed by the Trust Fund for Victims on 14 November 2017," 30 November 2017, ICC-01/04-01/07-3771-Conf-tENG.

¹⁵ "Report on the Trust Fund's execution of the payment of the individual reparations awards and additional information regarding the implementation of the collective reparations awards in compliance with Trial Chamber II's decision of 12 October 2017", dated 5 December 2017 and registered on 5 December 2017, ICC-01/04-01/07-3772-Conf with one confidential annex *ex parte* Legal Representative and OPCV.

Trust Fund further requested an extension of time until 15 December 2017 in which to provide the outstanding information.¹⁶ The Trust Fund furthermore stated that, as a result of the changes made to the Draft Implementation Plan of 25 July 2017, it would submit a revised budget on 15 December 2017.¹⁷

7. On 14 December 2017, the Legal Representative filed observations on the Trust Fund's Submissions of 5 December 2017.¹⁸ The Legal Representative indicated, *inter alia*, that the time limit for filing a revised budget should be extended until 5 January 2018 at the earliest to afford it sufficient time to put its proposals to the Trust Fund.¹⁹

8. On 11 May 2018, the Legal Representative filed observations on the status of the process of implementing the reparations.²⁰

9. On 20 September 2018, the Chamber directed the Trust Fund to file information on the modalities of collective reparations, in particular a summary of the latest developments; the decision of the Trust Fund's Board of Directors on the question of assumption of support costs; the updated budget; and a specification of the processes planned and the entities/persons to be responsible for putting into effect the reparations modalities as well as the implementation schedule contemplated.²¹

¹⁶ Trust Fund's Submissions of 5 December 2017, para. 48.

¹⁷ Trust Fund's Submissions of 5 December 2017, para. 49.

¹⁸ "*Observations relatives au Rapport du Fonds au profit des victimes du 4 décembre 2017 (ICC-01/04-01/07-3772-Conf)*", dated 13 December 2017 and registered on 14 December 2017, ICC-01/04-01/07-3773-Conf ("*Observations of the Legal Representative of 14 December 2017*").

¹⁹ Observations of the Legal Representative of 14 December 2017, para. 33.

²⁰ "*Rapport du Représentant légal relatif à l'avancement du processus de mise en œuvre des réparations*", 11 May 2018, ICC-01/04-01/07-3792-Conf with two confidential annexes (Annex 1 and Annex 2) ("*Observations of the Legal Representative of 11 May 2018*"). On 18 May 2018, a public redacted version was filed with a public redacted version of Annex 2.

²¹ "Order Directing the Trust Fund for Victims to File Information on the Modalities of Collective Reparations", 20 September 2018, ICC-01/04-01/07-3809-Conf-tENG, para. 15.

10. On 1 October 2018, the Legal Representative filed observations on the award of individual and collective reparations.²²

11. On 3 October 2018, after having been granted an extension of time,²³ the Trust Fund submitted information on the modalities of implementation of collective reparations²⁴ ("Report of 3 October 2018").

12. On 22 November 2018, the Legal Representative filed observations on the Report of 3 October 2018, in which he expressed concern at what he considered to be a lack of progress in the implementation of all the modalities, with the exception of the education assistance modality, and at the absence of a delivery schedule.²⁵

13. On 6 December 2018, the Trust Fund submitted an update report on the implementation of the education assistance modality²⁶ ("Trust Fund's Report of 6 December 2018"). The Trust Fund also informed the Chamber that it was continuing its preparations for the next phase of implementation and that it would submit a report containing more detailed information in that respect in early 2019.²⁷

14. On 14 December 2018, the Legal Representative filed submissions expressing the beneficiaries' concern about progress in the implementation of the collective reparations, and appended a letter from the beneficiaries to the Trust Fund and the Chamber, and a reply from the Legal Representative to that letter.²⁸ The

²² *"Rapport sur l'octroi des réparations individuelles et collectives et dépôt d'un projet de memorandum de collaboration entre le Représentant légal and le Fonds au profit des victimes"*, 1 October 2018, ICC-01/04-01/07-3810-Conf.

²³ Email from the Chamber to the Trust Fund on 28 September 2018 at 12.48. Email from the Trust Fund to the Chamber on 28 September 2018 at 8.00.

²⁴ "Information relevant to the modalities of implementation of collective reparations With Confidential annex A: Revised budget", dated 2 October 2018 and registered on 3 October 2018, ICC-01/04-01/07-3811-Conf with one confidential annex ("Trust Fund Submissions of 2 October 2018").

²⁵ *"Soumission du Représentant légal relative à la mise en œuvre des réparations collectives"*, 22 November 2018, ICC-01/04-01/07-3815-Conf, with four confidential annexes.

²⁶ "Update report on the implementation of the education assistance modality of the collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims", 6 December 2018, ICC-01/04-01/07-3818-Conf.

²⁷ Trust Fund's Report of 6 December 2018, para. 33.

²⁸ *"Communication du Représentant légal relative aux vues et préoccupations des victimes bénéficiaires de réparation"*, 14 December 2018, ICC-01/04-01/07-3819-Conf.

Legal Representative's submission also contained further points relating to the implementation of reparations.

15. On 28 February 2019, pursuant to the Chamber's order of 7 February 2019,²⁹ the Trust Fund filed an update report on the implementation of collective reparations³⁰ ("Report of 28 February 2019").

16. On 11 March 2019, the Legal Representative filed his observations on the Report of 28 February 2019.³¹

17. On 23 May 2019, the Legal Representative filed observations on a field mission undertaken not only for the purpose of meeting with the victim beneficiaries to update their choices regarding the modalities of collective reparations, but also for the purposes of closely monitoring the implementation of the modalities of collective reparations in the process of being put into effect and working with the Trust Fund on preparations for the modalities that are to be implemented.³²

18. On 3 July 2019, the Trust Fund submitted an update report on the implementation of collective reparations³³ ("Report of 3 July 2019").

19. On 15 July 2019, the Legal Representative filed observations on the Report of 3 July 2019.³⁴

20. On 26 July 2019, the Trust Fund submitted an update report on the implementation of collective reparations³⁵ ("Report of 26 July 2019") with two

²⁹ "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.

³⁰ "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.

³¹ "Observations du Représentant légal sur le rapport du Fonds au profit des victimes du 28 février 2019 (ICC-01/04-01/07-3826-Conf) ", 11 March 2019, ICC-01/04-01/07-3827-Conf.

³² "Rapport du Représentant légal relatif à l'exécution des réparations collectives", 23 May 2019, ICC-01/04-01/07-3832-Conf.

³³ ICC-01/04-01/07-3834-Conf.

³⁴ "Observations du Représentant légal sur le rapport du Fonds au profit des victimes du 3 juillet 2019 (ICC-01/04-01/07-3834-Conf)", 15 July 2019, ICC-01/04-01/07-3835-Conf.

confidential annexes *ex parte* the Trust Fund³⁶ ("Annexes A and B to the Report of 26 July 2019"). In that report, the Trust Fund requested the Chamber to approve the implementation of collective reparations in respect of the purchase of livestock, a number of income-generating activities and education assistance³⁷ ("Trust Fund's Request of 26 July 2019").

21. On 2 August 2019, in accordance with the Chamber's instructions of 30 July 2019,³⁸ the Legal Representative informed the Chamber of its endorsement of the Trust Fund's Request of 26 July 2019.³⁹

22. On 2 August 2019, in accordance with the Chamber's instructions of 30 July 2019,⁴⁰ the OPCV informed the Chamber that it likewise endorsed the Trust Fund's Request of 26 July 2019.⁴¹ On 5 August 2019, the Chamber granted the Request of 26 July 2019 in that it approved implementation of collective reparations relating to the purchase of livestock, a number of income-generating activities and education assistance.⁴²

23. On 7 August 2019, the Legal Representative filed observations on the Report of 26 July 2019.⁴³ The Legal Representative pointed out in particular that in view of

³⁵ "Update report on the implementation of the collective reparations awards and Request for approval of implementation proposals pursuant to regulation 58 of the Regulations of the Trust Fund for Victims", 26 July 2019, ICC-01/04-01/07-3836-Conf.

³⁶ Annex A to the Report of 26 July 2019, ICC-01/04-01/07-3836-Conf-Exp-AnxA; and Annexe B to the Report of 26 July 2019, ICC-01/04-01/07-3836-Conf-Exp-AnxB.

³⁷ Report of 26 July 2019, paras. 45-46.

³⁸ Email from the Chamber on 30 July 2019 at 10.39.

³⁹ "Réponse du Représentant légal à la demande d'approbation formulée dans le rapport du Fonds au profit des victimes du 26 juillet 2019 (ICC-01/04-01/07-3836-Conf, § 45 et 46)", 2 August 2019, ICC-01/04-01/07-3837-Conf.

⁴⁰ Email from the Chamber on 30 July 2019 at 10.30.

⁴¹ "Observations concernant le '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'", 2 August 2019, ICC-01/04-01/07-3838-Conf ("OPCV's Observations of 2 August 2019").

⁴² Email from the Chamber on 5 August 2019 at 10.32.

⁴³ "Observations du Représentant légal relatives au rapport du Fonds au profit des victimes du 26 juillet 2019 (ICC-01/04-01/07-3836-Conf)", 7 August 2019, ICC-01/04-01/07-3839-Conf ("Observations of the Legal Representative of 7 August 2019").

the difficulties on the ground, it was necessary to consider converting certain modalities of collective reparations into financial compensation.⁴⁴

24. On 18 November 2019, the Trust Fund submitted an update report on the implementation of collective reparations⁴⁵ ("Report of 18 November 2019"). The Trust Fund also included in its submissions a request that the Chamber approve a proposal relating to the implementation of an income-generating activity in respect of the purchase of fish⁴⁶ ("Trust Fund's Request of 18 November 2019").

25. On 21 November 2019, in response to the Chamber's instructions of 20 November 2019,⁴⁷ the OPCV informed the Chamber that it would not file observations since the Trust Fund's proposal relating to the implementation of an income-generating activity in respect of the purchase of fish did not concern its clients.⁴⁸

26. On 26 November 2019, in accordance with the Chamber's instructions of 20 November 2019,⁴⁹ the Legal Representative informed the Chamber of its support of the Trust Fund's proposal to disburse funds for the purchase of fish⁵⁰ ("Observations of the Legal Representative of 26 November 2019").

II. Analysis

27. As a preliminary remark, the Chamber takes note of the most recent advances achieved by the Trust Fund, the Legal Representative and the OPCV, which are the

⁴⁴ Observations of the Legal Representative of 7 August 2019, para. 22.

⁴⁵ "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.

⁴⁶ Report of 18 November 2019, paras. 24-33.

⁴⁷ "Ordonnance enjoignant aux Représentants légaux des victimes de déposer des observations sur les écritures du Fonds au profit des victimes du 18 novembre 2019", 20 November 2019, ICC-01/04-01/07-3844-Conf.

⁴⁸ Email to the Chamber on 21 November 2019 at 15.13.

⁴⁹ "Ordonnance enjoignant aux Représentants légaux des victimes de déposer des observations sur les écritures du Fonds au profit des victimes du 18 novembre 2019", 20 November 2019, ICC-01/04-01/07-3844-Conf.

⁵⁰ "Réponse du Représentant légal au rapport du Fonds au profit des victimes du 18 novembre 2019 (ICC-01/04-01/07-3843-Conf)", 26 November 2019, ICC-01/04-01/07-3845-Conf.

result of the effort they have put into communication and cooperation, and urges them to continue on that path.

a) Trust Fund's Request of 26 July 2019

28. The Chamber recalls that it has already approved the Trust Fund's proposals to implement certain modalities of collective reparations, that is to say, the purchase of cattle, income-generating activities with a value below EUR 10,000 and the payment of school fees for the first term of the 2019-2020 school year. In its email of 5 August 2019, the Chamber stated that it would give its reasons in a subsequent decision. The Chamber sets out those reasons below.

29. The Chamber recalls first of all that in its Decision of 12 October 2017, it approved only the implementation of individual reparations, taking the view that the Trust Fund had not provided it with sufficient information in respect of the collective reparations.⁵¹ Against that background, the Chamber instructed the Trust Fund several times to provide it with additional information, namely a detailed description of the modality or modalities of collective reparations that the Trust Fund envisaged implementing, including the processes planned and the entities/persons to be responsible for putting into effect the modality or modalities in question, and the expected implementation schedule, so that the Chamber could approve implementation of those modalities.⁵² The Chamber also recalls that it directed the Trust Fund to provide it with the information requested before implementing each modality of collective reparations.⁵³ The Chamber recalls moreover that in order not to further delay implementation of the collective reparations, it had stated that it was willing to approve implementation of each modality of collective reparations separately.⁵⁴

⁵¹ Decision of 12 October 2017, paras. 45-51.

⁵² Decision of 12 October 2017, para. 51; Order of 20 September 2018, para. 15; Order of 7 February 2019, para. 18.

⁵³ Order of 7 February 2019, para. 14.

⁵⁴ Order of 7 February 2019, para. 13.

30. After carefully reading the Trust Fund's proposals contained in the Report of 26 July 2019, the Chamber considers that the information provided is sufficiently detailed and in accordance with its instructions. It also notes that the OPCV and the Legal Representative have endorsed the Trust Fund's proposals. It therefore finds that the proposals should be approved.

31. The Chamber further notes that in its Report of 18 November 2019, the Trust Fund states that the modalities of collective reparations, namely the purchase of livestock and income-generating activities with a value below EUR 10,000, have already been implemented.⁵⁵

b) OPCV's request relating to the draft confidentiality agreement

32. In its Report of 26 July 2019, the Trust Fund also observed that in order to implement the modality of collective reparations in the form of housing assistance, it had issued a call for expressions of interest for the purpose of preselecting local service providers. The Trust Fund stated that, for the invitation to tender to attract meaningful offers, it would be necessary to disclose confidential information, such as the exact localities where land is to be obtained or where houses will be built or rehabilitated. Therefore, to ensure that the work solicited cannot be linked to the reparations in this case, the Trust Fund intends to require the preselected service providers ("preselected organizations") to sign a confidentiality agreement that it has drafted in collaboration with the Registry's Procurement Unit and Legal Office⁵⁶ ("Draft Confidentiality Agreement").

33. Arguing that the Draft Confidentiality Agreement goes to a matter that directly concerns the interests of beneficiaries, the OPCV requested that the Chamber order the Trust Fund to transmit that draft agreement to the OPCV and the Legal Representative so that they can submit any comments before it is sent to the

⁵⁵ Report of 18 November 2019, paras. 15 and 19. See also Observations of the Legal Representative of 26 November 2019, para. 23.

⁵⁶ Report of 26 July 2019, para. 53.

preselected organizations⁵⁷ ("OPCV's Request concerning the Draft Confidentiality Agreement").

34. The Legal Representative states that he had suggested to the Trust Fund that it use a pseudonym so that, in the interests of confidentiality, it did not appear as the body issuing the call for expressions of interest for the purpose of selecting organizations to implement the modality of collective reparations in the form of housing assistance.⁵⁸ According to the Legal Representative, the Trust Fund's decision to disclose information about the beneficiaries to the organizations preselected to implement that modality conflicts with the protective measures adopted by the Chamber and which only the Chamber has the power to amend.⁵⁹

35. The Chamber recalls first of all its duty to ensure "[...] the safety, physical and psychological well-being, dignity and privacy of victims [...]" within the meaning of article 68(1) of the Statute.

36. The Chamber recalls that in its Decision of 12 October 2017, it underscored that it was crucially important that the programme of individual and collective reparations be implemented with the utmost discretion in order to safeguard the victim beneficiaries against any risk to safety or security.⁶⁰ That is why, in its Decision of 4 February 2019, it dismissed the Trust Fund's request for certain confidential documents in the case record to be reclassified as public.⁶¹

37. The Chamber notes that the Trust Fund wishes to disclose information about the victim beneficiaries so that the preselected organizations can submit to it meaningful and relevant proposals for projects. The Chamber agrees with the Legal Representative that the Trust Fund should have made a prior request to the

⁵⁷ OPCV's Observations of 2 August 2019, paras. 9 and 11.

⁵⁸ Observations of the Legal Representative of 7 August 2019, para. 32.

⁵⁹ Observations of the Legal Representative of 7 August 2019, para. 34.

⁶⁰ Decision of 12 October 2017, para. 46.

⁶¹ *"Décision relative à la demande du Fonds au profit des victimes aux fins de reclassification de certains documents, ainsi que de reclassification et d'expurgation d'autres documents"*, 4 February 2019, ICC-01/04-01/07-3824-Conf.

Chamber for leave to disclose confidential information about the beneficiaries of reparations to third parties, here, the preselected organizations. Nevertheless, in the interests of not further delaying implementation of the collective reparations, the Chamber finds that it is not appropriate to require the Trust Fund to file such a request.

38. The Trust Fund is nevertheless instructed to submit to the Chamber, as well as to the OPCV and the Legal Representative, precise details of the type of information that it has disclosed or intends to disclose to the preselected organizations, and the Draft Confidentiality Agreement, within five days of notification of this decision.

39. The Trust Fund is also required in the future to seek the Chamber's leave to disclose confidential information about victim beneficiaries to third parties.

c) OPCV's request relating to Annexes A and B to the Report of 26 July 2019

40. The Trust Fund filed Annexes A and B to the Report of 26 July 2019 as confidential *ex parte* Trust Fund because in its view they contain information relating to the Court's internal processes.⁶² However, the OPCV has asked the Chamber to order the Registry to make Annexes A and B to the Report of 26 July 2019 available to the OPCV and the Legal Representative on the grounds that the information they contain is also relevant to the interests of the victims⁶³ ("OPCV's Request relating to Annexes A and B to the Report of 26 July 2019").

41. The Chamber notes that Annexes A and B to the Report of 26 July 2019 contain exchanges between the Trust Fund and the Registry's Procurement Unit about the Trust Fund's proposals in relation to tendering procedures.⁶⁴

42. The Chamber notes that the Trust Fund is having to put in additional work to find ways of making the Court's existing tendering procedures compatible with the

⁶² Report of 26 July 2019, para. 2.

⁶³ OPCV's Observations of 2 August 2019, paras. 10-11.

⁶⁴ Annex A to the Report of 26 July 2019, ICC-01/04-01/07-3836-Conf-Exp-AnxA; and Annex B to the Report of 26 July 2019, ICC-01/04-01/07-3836-Conf-Exp-AnxB.

desired objective, that is to say, the prompt and satisfactory implementation of reparations. The Chamber notes in that context that the Legal Representative has continuously advanced proposals to assist the Trust Fund in achieving that objective.

43. The Chamber considers, in addition, that the reparative value of this procedure also lies in the fact that the victims who are the beneficiaries of the reparations are involved in their implementation, including through the victims' legal representatives. The Chamber is of the view that every decision made by the Trust Fund relating to how the reparations ordered by the Chamber are implemented concerns the interests of the victim beneficiaries. The Chamber believes that this applies to Annexes A and B to the Report of 26 July 2019 because they contain information about the procedure intended to implement the collective reparations.

44. Lastly, the Chamber notes the observations of the Legal Representative on the fact that the Court's rules on procurement and tendering are being applied for the first time to implement reparations awarded by a Chamber, and therefore in a context other than that for which they were adopted.⁶⁵

45. In the light of the foregoing, the Chamber finds that Annexes A and B to the Report of 26 July 2019 must be made available. Accordingly it instructs the Trust Fund to file in the case record a confidential redacted version (as applicable) of Annexes A and B to the Report of 26 July 2019 available to the Legal Representative and the OPCV, within 10 days of notification of this decision.

d) Trust Fund's Request of 18 November 2019

46. The Trust Fund states that a number of beneficiaries wish to sell fresh, salted or smoked fish as an income-generating activity.⁶⁶ The Trust Fund submits that it is not itself in a position to purchase fish on the shores of Lake Albert – or to facilitate that purchase – because fish is sold outside the hours in which Trust Fund personnel are authorized to travel outside Bunia. The Trust Fund also maintains that it is

⁶⁵ Observations of the Legal Representative of 7 August 2019, paras. 19-20.

⁶⁶ Report of 18 November 2019, paras. 27 and 30.

likewise not recommended that it obtain the fish itself at the Bunia market, because the price of fish is much higher there than near Lake Albert, and doing so would therefore reduce the value of the income generated by that reparation.⁶⁷ Given the circumstances, in order to satisfy the wishes of those beneficiaries, the Trust Fund accordingly proposes providing them with funds so that they can themselves purchase fresh fish directly from the sellers at Lake Albert.⁶⁸ The Trust Fund explains that this method includes a monitoring system to ensure that the funds received are actually used to purchase fish.⁶⁹ The Trust Fund adds that the Legal Representative and the OPCV concur with the proposal described above.⁷⁰ The OPCV stated that this activity does not concern the victim beneficiaries it represents.⁷¹

47. The Chamber agrees with the Trust Fund that the proposal described above does not have the effect of converting the reparations in the form of an income-generating activity into financial compensation, but is an intermediate stage enabling fish to be purchased on the most favourable terms.

48. In the light of the foregoing, the Chamber finds that it is appropriate to approve the Trust Fund's proposal to provide funds for the purpose of purchasing fish in accordance with the specific procedures described by the Trust Fund.

49. Lastly, the Chamber shares the view of the Legal Representative⁷² that it is necessary to envisage flexible measures tailored to specific situations in order to avoid pointlessly delaying the implementation of the reparations. The Chamber therefore encourages the Trust Fund to keep up its efforts in that direction.

⁶⁷ Report of 18 November 2019, para. 28.

⁶⁸ Report of 18 November 2019, para. 30.

⁶⁹ Report of 18 November 2019, paras. 30-31.

⁷⁰ Report of 18 November 2019, para. 32.

⁷¹ Email to the Chamber on 21 November 2019 at 15.13.

⁷² Observations of the Legal Representative of 26 November 2019, para. 26.

FOR THESE REASONS, the Chamber

GRANTS the Trust Fund's Request of 26 July 2019;

GRANTS the OPCV's Request Relating to the Draft Confidentiality Agreement;

INSTRUCTS the Trust Fund to submit to the Chamber, in a version available to the Legal Representative and the OPCV, the type of information about the beneficiaries that the Trust Fund has disclosed or intends to disclose to the preselected organizations and the Draft Confidential Agreement within five days of notification of this decision;

GRANTS the OPCV's Request concerning Annexes A and B to the Report of 26 July 2019;

INSTRUCTS the Trust Fund to file a confidential redacted version of Annexes A and B to the Report of 26 July 2019 available to the Legal Representative and the OPCV, within five days of notification of this Decision; and

GRANTS the Trust Fund's Request of 18 November 2019.

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 December 2019

At The Hague, Netherlands