

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 17 May 2017

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 document

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

Source:

The Trust Fund for Victims

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Germain Katanga

Mr David Hooper

Ms Caroline Buisman

Legal Representative of Victims

Mr Fidel Nsita Lubengika

Paolina Massidda

States Representatives

Trust Fund for Victims

Mr Pieter de Baan, Executive Director,
Secretariat

REGISTRY

Registrar

Mr Herman von Hebel

**Victims Participation and Reparations
Section**

Mr Phillip Ambach

1. Pursuant to regulation 56 of the Regulations of the Trust Fund for Victims (hereinafter “TFV Regulations”), the Board of Directors of the Trust Fund for Victims (hereinafter “TFV Board” and “Trust Fund”) respectfully submits the following notification to Trial Chamber II (hereinafter “Trial Chamber”).

I. BACKGROUND

2. On 24 March 2017, the Trial Chamber issued an order for reparations against Mr Katanga pursuant to article 75 of the Statute (hereinafter “Order for Reparations”).¹ The Trial Chamber ordered awards for reparations to 297 victims totalling \$1,000,000 USD,² comprised of an individual symbolic compensation award of \$250 per victim³ and four collective awards in the form of housing assistance, education assistance, income-generating activities, and psychological rehabilitation.⁴ The Trial Chamber instructed the Trust Fund to submit its draft implementation plan relevant to the Order for Reparations by 27 June 2017.⁵

3. In light of Mr Katanga’s indigence, the Trial Chamber also requested that the TFV Board indicate whether, pursuant to regulation 56 of the TFV Regulations, it would complement the payment of both the individual and collective awards ordered against Mr Katanga (hereinafter “Request”).⁶ With respect to the individual reparations awards portion of the Request, the Trial Chamber, *inter alia*, invited the TFV Board « à faire usage de la marge de discrétion que lui accordent les textes [du Règlement du Fonds] et à prendre en compte les dispositions applicables en matière de réparations afin d’octroyer des réparations qui soient significatives pour les victimes ». ⁷ The Trial Chamber recommended « au Conseil de direction du Fonds d’examiner avec bienveillance la possibilité d’avoir recours à l’indemnisation, en dehors des réparations collectives, et d’accepter de fournir des ressources pour compléter les réparations individuelles ». ⁸

¹ «Ordonnance de réparation en vertu de l’article 75 du Statut », [ICC-01/04-01/07-3728](#).

² [Order for Reparations](#), para. 264.

³ [Order for Reparations](#), pp. 112-113.

⁴ [Order for Reparations](#), para. 306.

⁵ [Order for Reparations](#), para. 309. The Trial Chamber set a deadline of three months from the date of the issuance of the Order for Reparations.

⁶ [Order for Reparations](#), para. 127, p. 130.

⁷ [Order for Reparations](#), para. 342.

⁸ *Ibid.*

II. PRELIMINARY OBSERVATIONS

A. Timing of the present notification

4. For the reasons set out below, particularly those in paragraphs 38 and 39, the TFV Board considers it appropriate at this time to formally indicate to the Trial Chamber its decision on the Request. The timing of the present notification is relevant to an earmarked voluntary contribution made following a solicitation initiated by the Executive Director of the Trust Fund pursuant to the amended regulation 27⁹ of the TFV Regulations and the imminent public announcement of that contribution by the donor State Party, namely The Netherlands,. Further, in the TFV Board's view, there is no other contrary consideration that would necessitate delaying this notification until the submission of the draft implementation plan.

B. The TFV Board's consideration of whether it has the discretionary authority to consider complementing the payment of individual awards for reparations under rule 98 (2) and, if so, in what circumstances it would do so

1. Background

5. At the outset, the Trust Fund notes that this is the first time in the Court's history that the TFV Board has been seized of a request from a Trial Chamber to consider using its complement authority pursuant to regulation 56 of the TFV Regulations.¹⁰

6. Further, the Trial Chamber's Request is also the first time that the TFV Board has been seized of a request to consider using its regulation 56 complement authority with respect to

⁹ Assembly of the State Parties, Resolution [ICC-ASP/6/Res.3](#), Amendment to the Regulations of the Trust Fund for Victims, adopted by consensus at the 7th plenary meeting, on 14 December 2007, by consensus. The ASP Resolution amended Regulation 27 to add the following text after the phrase "as requested by the donor": "fulfils the criteria listed in (a) and (b) of this regulation. The above restrictions may, however, be waived when the funds have been raised at the initiative of the members of the Board of Directors and/or the Executive Director, provided that there is full compliance with the following:".

¹⁰ In this respect, the Trust Fund notes that it was not seized of such a request in the *Lubanga* case. In the Trial Chamber's order for reparations, the Trial Chamber did not make a request of the Trust Fund, but rather ordered the Trust Fund to make its other resources available for purposes of complementing the payment of the awards in that case. See Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, ICC-01/04-01/06-2904, para. 271-273. See, for the further procedural history in this respect, See Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, [ICC-01/04-01/06-3129](#) (hereinafter "*Lubanga* Reparations Appeal Judgment"), paras 106-116.

the payment of individual awards ordered pursuant to rule 98 (2) of the Rules of Procedure and Evidence (hereinafter “Rules”).¹¹

7. In this regard, the Trust Fund recalls that it has previously submitted in this and in other cases that there existed an unresolved legal question as to whether, as a matter of law, the TFV Board’s discretionary authority under regulation 56 of the TFV Regulations extends to complementing the payment of individual awards for reparations or, alternatively, whether the TFV Board has such discretionary authority only with respect to deciding whether to complement the payment of collective and organizational awards pursuant to rules 98 (3) and (4) of the Rules. The Trust Fund notes that, in the Order for Reparations, the Trial Chamber carried a legal analysis of this question, concluding that, in its view, the TFV Regulations do not operate as a legal bar to the TFV Board complementing the payment of individual awards for reparations, while equally not obliging it to do so.¹²

8. Accordingly, prior to considering the concrete Request in the present case, the TFV Board decided to deliberate on this same question. Put differently, the TFV Board decided that it first needed to decide, based on the relevant statutory texts, whether as a matter of law it *could* complement the payment of individual awards prior to considering whether it *would* complement the payment of the individual awards as set out in the Trial Chamber’s Request. Thus, the TFV Board’s determination of this first legal question is not limited to the specific circumstances of the *Katanga* case, but is rather a decision applicable to all currently on-going and future reparations proceedings at the Court.

9. Specific to the *Katanga* case, the Trust Fund recalls that it is to submit its draft implementation plan, including its indication with respect to its complement decision, by 27 June 2017.¹³ Mindful of this deadline, the TFV Board decided to prioritise the complement Request at its Annual Board Meeting, currently taking place from 16 to 18 May 2017.

10. Given that the first question set out above therefore needed to be decided prior to the Annual Board Meeting, the TFV Board deliberated on the following three issues:

¹¹ The awards for reparations ordered in the *Lubanga* case were only collective pursuant to rule 98 (3) of the Rules. See [Lubanga Reparations Appeal Judgment](#), paras 140 *et seq.*

¹² [Order for Reparations](#), paras 336-337.

¹³ *Supra* para. 6.

- i. Does the TFV Board, as a matter of law, have the discretionary authority to complement an individual award for reparations pursuant to regulation 56 of the TFV Regulations?
- ii. If the TFV Board may decide to complement individual awards, is its discretion to complement individual awards for reparations unqualified or, if not, what factors may be derived from the second sentence of regulation 56 of the TFV Regulations to guide the TFV Board's exercise of its discretion in deciding whether to complement an individual award for reparations?
- iii. Are there further policy considerations that may also guide the TFV Board's decision of whether to complement an individual award for reparations?

2. *Issue (i): The TFV Board's determination of whether it has the discretionary authority to complement individual awards for reparations*

11. The TFV Board considered that this question relates to the scope of its discretionary authority under regulation 56 of the TFV Regulations. The TFV Board first recalled that it has an independent responsibility to ensure that any decisions it takes comply with its own Regulations, which govern all of the Trust Fund's permissible activities. In this regard, the TFV Board further recalled that its authority is limited by that granted to it by the Assembly of States Parties, which promulgated the TFV Regulations in an official ASP Resolution¹⁴ and which therefore are the controlling legal text for answering this question. In the TFV Board's view, if the TFV Regulations definitively exclude a complement of the payment of individual awards for reparations, there is no room for it to assert that it has discretion to do so.¹⁵

12. The TFV Board recalled that the first sentence of regulation 56 of the TFV Regulations states that: "The Board of Directors shall determine whether to complement the resources collected through awards for reparations with 'other resources of the Trust Fund' and shall advise the Court accordingly".

¹⁴ Assembly of the State Parties, Resolution ICC-ASP/4/Res.3, adopted at the 4th plenary meeting, 3 December 2005, by consensus, as amended by Resolution [ICC-ASP/6/Res.3](#).

¹⁵ In such a situation, the TFV Regulations would need to be amended; this is a procedure which is explicitly provided for in regulation 78. Regulation 78 authorizes *inter alia* the TFV Board to propose amendments to the TFV Regulations.

13. Therefore, the TFV Board first considered whether the term “resources collected through awards for reparations” contains a limitation as to the type¹⁶ of award for reparations that can potentially be complemented. The TFV Board recalled that the types of awards for reparations are laid out in rule 98 of the Rules. Accordingly, rule 98 was reviewed in terms of how it is cross-referenced within the TFV Regulations in relation to the term “resources collected through awards for reparations”. Second, the TFV Board considered that, according to the rules of statutory interpretation, terms should be interpreted as having the same meaning throughout the entire document in which they are contained. For purposes of the TFV’s Board’s deliberation on this question, that legal document is the TFV Regulations and therefore other provisions where this term is used or defined were also analysed.

a) Relevant legal provisions analysed by the TFV Board

14. Rule 98 (2) - (4) of the Rules set out the types of awards for reparations that may be ordered against a convicted person and transferred to the Trust Fund. Rule 98 provides in relevant part:

2. The Court may order that an *award for reparations* against a convicted person be deposited with the Trust Fund where at the time of making the order it is impossible or impracticable to make *individual awards* directly to each victim.

3. The Court may order that an *award for reparations* against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a *collective award* more appropriate.

4. Following consultations with interested States and the Trust Fund, the Court may order that an *award for reparations* be made through the Trust Fund to an *intergovernmental, international or national organization* approved by the Trust Fund. [Emphasis added.]

15. With respect to the TFV Regulations, regulations 73-75, which regulate organizational awards ordered under rule 98 (4), provide that:

73. Where the Court orders that an award for reparations against a convicted person be made through the Trust Fund to an intergovernmental, international or national organization, in accordance with rule 98, sub-rule 4, of the Rules of Procedure and

¹⁶ The types of awards for reparations are individual, collective or organizational. See [Lubanga Reparations Appeals Judgment](#), paras 130-143. With regard to organizational awards being a ‘type’ of award See *Prosecutor v. Jean-Pierre Bemba Gombo*, Trust Fund, Observations relevant to reparations, 31 October 2016, ICC-01/05-01/08-3457, paras 96-106; See also *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trust Fund Submissions on the reparations proceedings, 2 December 2016, ICC-01/12-01/15, paras 36-41.

Evidence, the draft implementation plan shall set out, where not already specified by the Court:

- (a) The concerned organization(s) and a summary of their relevant expertise;
- (b) A list of the specific functions that the concerned organization(s) is/are to undertake in fulfilment of the Court's order;
- (c) A memorandum of understanding and/or other contractual terms between the Board of Directors and the concerned organization(s) setting out roles and responsibilities, monitoring and oversight.

74. The Secretariat shall oversee the work of the concerned organization(s) in fulfilling the Court's orders, subject to the overall oversight of the Court.

75. The regulations that relate to individual awards to victims pursuant to rule 98, sub rule 2, and collective awards to victims in accordance with rule 98, sub-rule 3, shall apply *mutatis mutandis* to the procedures of the Board in implementing rule 98, and sub-rule 4, as appropriate, depending on whether the Court has indicated that the award shall be individual or collective. [Emphasis added.]

16. Further, regulation 43 of the TFV Regulations provides that: “When **resources collected through [...] awards for reparations** are transferred to the Trust Fund pursuant to [...] **rule 98, sub-rules 2-4**, of the [Rules], the Board of Directors shall determine the uses of such resources in accordance with any stipulations or instructions contained in such orders, in particular on the scope of beneficiaries and the nature and amount of the award(s)” (emphasis added).

17. Finally, the TFV Board noted that all of the other TFV regulations that use the term “resources collected through awards for reparations” cross-reference to rule 98 as a whole without excluding rule 98 (2).¹⁷

b) Determination of the TFV Board

18. For the reasons that follow, the TFV Board considered that the first sentence of regulation 56 of the TFV Regulations grants it the discretionary authority to complement the payment of

¹⁷ See e.g. Regulations of the Trust Fund for Victims, Regulation 21 (c) which states that the Trust Fund shall be funded by: “*Resources collected through awards for reparations* if ordered by the Court pursuant to *rule 98* of the Rules of Procedure and Evidence” (emphasis added). Regulation 34 of the TFV Regulations, contained in Chapter IV entitled “Resources collected through awards for reparations” states that: “The Trust Fund shall take receipt of *resources collected through awards for reparations* and shall separate such resources from the remaining resources of the Trust Fund *in accordance with rule 98 of the Rules of Procedure and Evidence*. It shall note the sources and amounts received, together with any stipulations contained in the order of the Court as to the use of the funds” (emphasis added).

awards for reparations ordered under rule 98 (2), (3), and/or (4) of the Rules. In other words, to complement the payment of individual awards, collective awards, or organizational awards.

19. First, the TFV Board considered that the text of regulation 75 of the TFV Regulations supports this conclusion. In this regard, the TFV Board highlighted that an organizational award under rule 98 (4) may relate to that selected organization implementing either collective rule 98 (3) and/or individual rule 98 (2) awards. In this regard, regulation 75 specifically provides that the procedures governing individual awards for reparations apply *mutatis mutandis* to rule 98 (4) organisational awards. The TFV Board observed that the second sentence of regulation 56 explicitly provides for it to complement the payment of rule 98 (4) organizational awards. Given that an organizational award may include individual awards for reparations, the TFV Board considered that deciding that it may never complement individual awards risks rendering the text of regulation 75 moot and seemingly directly contradicts the plain text of the regulations relevant to organizational awards and its complement authority provided therefor in regulation 56 of the TFV Regulations.

20. Second, the TFV Board considered that this conclusion was further supported by the fact that regulation 43 explicitly includes rule 98 (2) individual awards within the meaning of the term “resources collected through awards for reparations”, as well as the fact that this term is otherwise used throughout the TFV Regulations to refer to awards for reparations under all of the Rule 98 provisions without being limited to only awards ordered under rule 98 (3) and (4).

21. Regarding the differing language of “deposited with the Trust Fund” and “made through the Trust Fund” contained in rule 98 (2) and 98 (3)-(4) of the Rules, the TFV Board considered that these differing terms also cannot be read as limiting the scope of the complement authority in the first sentence of regulation 56 of the TFV Regulations to only collective or organizational awards.¹⁸ This is because regulation 43 makes clear that the term “resources collected through awards for reparations” also includes those resources “deposited with the Trust Fund” by its express inclusion of rule 98 (2).

¹⁸ In this regard, the TFV Board noted that, as clarified in the [Lubanga Reparations Appeal Judgment](#), a convicted person is liable for *all* awards for reparations ordered against him or her, including when only collective reparations are awarded. Thus, in the case where a convicted person has resources (i.e. is not indigent for purposes of reparations), the convicted person’s resources would equally be deposited with the Trust Fund to pay for the collective awards, but would not be deposited for a specific individual beneficiary, as is the case with individual awards for reparations.

22. Finally, as a separate matter, the TFV Board noted that regulation 56 refers to “resources collected through [...]”, which it noted could raise the question of whether the TFV Board can ‘complement’ an award for reparations when the convicted person has not contributed any of his or her own funds towards the award. As set out above, the TFV Board considered that this language applies equally to individual awards, collective awards and an award to an organization. In this regard, the TFV Board recalled that, in the *Lubanga* case, it had already decided to complement the payment of the collective awards despite the fact that Mr Lubanga had not contributed any resources of his own towards their payment. The TFV Board therefore considered that the question of whether its complement authority may be used in cases where no resources are contributed by the convicted person has already been decided in the affirmative and is applicable to any award for reparations ordered against a convicted person under rule 98 (2) – (4) of the Rules.

23. The TFV Board therefore concluded that the first sentence of regulation 56 of the TFV Regulations, particularly in light of regulation 75 of the TFV Regulations, provides it with the discretionary authority to complement the payment of an individual, collective and/or organizational award for reparations (rule 98 (2) - (4), respectively).

24. The TFV Board next considered whether the second sentence of regulation 56 clarifies that its complement authority is limited to only awards for reparations ordered under rule 98 (3) and (4) of the Rules (i.e. only collective awards or awards to an organization) or whether the Board still retains discretion to complement individual rule 98 (2) awards for reparations. The TFV Board recalled that the second sentence of regulation 56 provides that:

“Without prejudice to its activities under paragraph 50, sub-paragraph (a), the Board of Directors shall make all reasonable endeavours to manage the Fund taking into consideration the need to provide adequate resources to complement payments for awards under rule 98, sub-rules 3 and 4 of the Rules of Procedure and Evidence and taking particular account of ongoing legal proceedings that may give rise to such awards.”

25. For the reasons that follow, the TFV Board decided that the language of the second sentence does not exclude complementing the payment of individual awards for reparations, but rather refers to how the TFV Board should manage the Trust Fund’s resources. In other words, the TFV Board determined that the second sentence provides a clear prioritization of how the

Trust Fund's other resources should be managed, but does not *per se* limit the TFV Board's complement authority to only collective or organizational awards.

26. The TFV Board considered that this conclusion is supported by how the Trust Fund's activities can be funded- specifically by earmarked voluntary contributions from donors. In other words, while the TFV Board has an obligation to manage its other resources so that it is in a financial position to adequately fund its assistance mandate activities and to complement potential awards for reparations under rule 98 (3) and (4), the TFV Board was of the view that it would not be fiscally wise to turn away additional voluntary contributions where there is an interest specifically in funding an individual award for reparations. The TFV Board equally took into account the possibility that certain State Parties and/or private donors, who may have an interest in funding a specific individual award for reparations, might not be interested in also contributing to a collective award or to activities under the assistance mandate.

27. Further, assuming that the priorities laid out in the second sentence of regulation 56 are adequately funded and the Trust Fund still has resources available, the TFV Board considered that the ordinary meaning of this second sentence, when read in conjunction with the first sentence and the other provisions of the TFV Regulations, allows it to complement the payment of an individual award that would otherwise be left unfulfilled.

28. The TFV Board therefore concluded that the second sentence of regulation 56 of the TFV Regulations does not constitute a further legal limitation to only complementing collective awards or organizational awards of its discretionary authority provided in the first sentence.

3. *Issue (ii): The TFV Board's determination relevant to which factors may be derived from the second sentence of regulation 56 of the TFV Regulations to guide its exercise of its discretion in deciding whether and to what extent to complement an individual award for reparations*

29. As set out above, the TFV Board determined that the second sentence of regulation 56 of the TFV Regulations provides a clear prioritization in terms of its management of the Trust Fund's resources. Thus, the TFV Board was of the view that its discretion to complement individual awards for reparations is not unfettered, but should be exercised within that funding prioritization scheme.

30. In terms of the prioritization of the management of the Trust Fund's resources, the TFV Board considered that it is clear that the two priorities of funding the assistance mandate

and complementing collective and organizational awards for reparations take priority over complementing individual awards for reparations.

31. In other words, if the prioritized activities are adequately funded and the Trust Fund still has resources available – or may secure additional funding - to complement an individual award for reparations, the TFV Board may decide to do so. But, the TFV Board is not under any positive obligation to manage its resources for the specific purpose of having resources to complement individual awards for reparations and may decide not to do so if it would mean that there were not adequate resources to fund collective and organizational awards ordered in the same case or with respect to ongoing cases where such awards may be ordered or if funding an individual award would prejudice its ability to carry out its assistance mandate activities.

32. Specific to awards for reparations, the TFV Board considered that this required dual consideration- whether the order for reparations containing the individual award also orders collective or organizational awards that should be complemented first and whether there are other ongoing cases where collective and or organizational cases may be ordered and may need to be complemented- is found in the language of the second sentence of regulation 56, which it recalled provides that the TFV Board must take into account “the need to provide adequate resources to complement payments for awards under rule 98, sub-rules 3 and 4 of the Rules of Procedure and Evidence *and* taking particular account of ongoing legal proceedings that may give rise to such awards” (emphasis added).

33. In sum, the TFV Board concluded that the resource prioritization scheme set out in the second sentence of regulation 56 of the TFV Regulations provides the framework for guiding its exercise of discretion in deciding whether to complement an individual award for reparations. The TFV Board concluded that a complement of an individual award for reparations must not prejudice the Trust Fund’s ability to fund its assistance mandate activities and should only be done after the TFV Board has determined that the Trust Fund has adequate resources to first complement any collective or organizational awards ordered in the same case and in regard to ongoing cases where a collective or organizational award may be ordered.

4. Issue (iii): Other factors identified by the TFV Board that may guide its exercise of discretion regarding whether to complement the payment of an individual award for reparations

34. Beyond the factors identified above, the TFV Board considered that it should also take into account the following additional policy considerations when deciding whether to complement an individual award for reparations.

35. First, whether the individual award represents the clearly expressed wish of the victims in the case. The TFV Board recalled that reparations proceedings at the Court permit victims, through their legal representatives, to make submissions on the types of reparations awards that they consider most appropriate to remedy the harms that they have suffered prior to the order for reparations being issued. The TFV Board considered that, in reparations proceedings, the wishes of the victims concerned should be given tremendous deference by the Trust Fund. In the TFV Board's view, the Trust Fund should, to the extent feasible, facilitate the realisation of the wishes of victims with respect to how best to remedy the harm that they have suffered.

36. Second, the TFV Board also considered that the likelihood of identifying a donor willing to make an earmarked contribution for the payment of the individual awards should be taken into account. In this regard, the TFV Board was of the view that if the Trust Fund considers it likely that it would be able to fundraise for a donation covering an individual award for reparations, this factor would weigh heavily in favor towards deciding to complement the award.

37. Finally, the TFV Board considered that the administrative costs of its implementing partners associated with implementing the individual awards should be taken into account with respect to ensuring that such costs would not equal a disproportionate amount of the funds available for the actual awards intended to benefit the victims.

38. Finally, the TFV Board noted that the above list of additional factors were derived in light of the specific circumstances of the *Katanga* Request and accordingly clarified that they are not meant to be exhaustive. The TFV Board considered that identifying factors potentially relevant to its decision of whether to complement the payment of an individual award for reparations can only be done on a case-by-case basis and will depend upon the specific circumstances of each individual case and corresponding order for reparations. In this regard, the TFV Board observed that there may be other factors that are considered relevant in future cases, as well as the fact that

the factors identified with respect to the *Katanga* case may be applied in a different manner in a different case.

III. THE TFV BOARD'S DECISION ON THE TRIAL CHAMBER'S REQUEST

A. Background

39. Following the issuance of the Order for Reparations, the Executive Director of the Trust Fund initiated informal consultations with a potential State Party donor, namely The Netherlands, regarding its expressed interest in earmarking a voluntary contribution for the individual awards for reparations in the *Katanga* case.

40. Following the TFV Board's decision of 24 April 2017 that it has the discretionary authority to consider complementing the payment of an individual award for reparations, the Executive Director of Trust Fund continued these informal consultations and received a positive response from The Netherlands.

41. On 2 May 2017, the Executive Director of the Trust Fund sent a formal request pursuant to regulation 27 of the TFV Regulations to The Netherlands for a voluntary contribution in the amount of \$74,250 or its equivalent in Euros, earmarked for the individual awards for reparations ordered in the *Katanga* Order for Reparations.

42. Earlier today, on 17 May 2017, at its Annual Meeting, the TFV Board met to decide upon the Trial Chamber's complement Request.

B. The TFV Board's decision on the complement Request

43. With respect to the collective reparations aspect of the Request, the TFV Board recalled that complementing the payment of collective awards takes priority over individual awards with respect to the case in which a request arises and with regard to future potential collective and organizational awards.

44. The TFV Board reviewed the current funds available in its reparations reserve and took into account the amount of the collective awards in the present case as well as possible future awards that may potentially arise in other cases. The TFV Board also considered its planned fundraising

activities for the next year, taking into account the budgetary considerations relevant to its planned assistance mandate activities (including its expansion plans into new situation countries) as well as potential future reparations awards in other cases before the Court.

45. With respect to the individual reparations aspect of the Request, the TFV Board first recalled that the victims in the *Katanga* case consistently expressed a wish for the Trial Chamber to order both individual and collective reparations awards.

46. Further, the TFV Board recalled that the potential to identify a willing donor would “weigh heavily” in favor of deciding to complement an individual award for reparations.

47. Bearing in mind the views of the victims and the positive response of The Netherlands to its regulation 27 solicitation for an earmarked contribution, the TFV Board decided to complement the payment of the individual awards ordered in the *Katanga* case in full, i.e. the entire \$74,250 USD, equaling an individual symbolic compensation award of \$250 USD to each of the 297 reparations beneficiaries identified in the Trial Chamber’s Order for Reparations.

48. Based on these considerations, the TFV Board decided to complement the payment of both the collective and individual awards ordered against Mr Katanga in the *Katanga* Order for Reparations at the amount of \$1,000,000 USD.

49. The TFV Board further decided to actively pursue fundraising opportunities in respect of the collective awards ordered in the *Katanga* case, which, if successful, would lessen the burden on the Trust Fund’s current reparations reserve.

IV. THE TFV BOARD’S NOTIFICATION TO THE TRIAL CHAMBER

50. Pursuant to regulation 56 of the TFV Regulations, the TFV Board hereby notifies the Trial Chamber of its decision to complement the payment of the individual and collective awards for reparations ordered in the *Katanga* case for the benefit of the 297 victims identified in the Trial Chamber’s Order for Reparations of 24 March 2017 in the amount of \$1,000,000 USD.

FOR THE FOREGOING REASONS

The Board of Directors of the Trust Fund for Victims respectfully submits this notification.

A handwritten signature in black ink, consisting of a stylized 'P' followed by a long horizontal stroke and a loop at the end.

Pieter W.I. de Baan

Executive Director of the Secretariat of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 17 May 2017

At The Hague, The Netherlands