

**Cour
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**International
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Court**

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Date: **4 December 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

**Confidential document
with**

Confidential, *ex parte* to the legal representative and OPCV only annex A

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

Source: The Trust Fund for Victims

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

Legal Representative of Victims

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REGISTRY

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Mr Herman von Hebel

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

I. CLASSIFICATION OF THE PRESENT SUBMISSION

1. The Trust Fund for Victims (“Trust Fund”) has classified the present filing confidential pursuant to regulation 23 *bis* (1) of the Regulations of the Court due to the confidential classification of the underlying decision and because the information herein relates to topics that should remain confidential for the time being in order to ensure the safety and security of the victims in these reparations proceedings.

2. The Trust Fund has classified annex A to this filing confidential, *ex parte* available only to the legal representative of victims and the Office of Public Counsel for Victims (“Legal Representative” and “OPCV Legal Representative”) because this annex relates to information that does not concern the rights of Mr Katanga, but solely involves the Legal Representative and the OPCV Legal Representative.

II. PROCEDURAL HISTORY

3. On 24 March 2017, Trial Chamber II (“Trial Chamber”) issued an order for reparations against Mr Germain Katanga, awarding \$1,000,000 in individual and collective reparations to 297 victims in the case.¹

4. 25 July 2017, the Trust Fund filed its draft implementation plan relevant to the Trial Chamber’s order for reparations (“Draft Implementation Plan”).²

5. On 11 September 2017, the Legal Representative,³ the OPCV Legal Representative,⁴ and the defence⁵ filed observations on the Draft Implementation Plan.

6. On 10 October 2017, the Trust Fund and the Legal Representative jointly filed additional observations on the Draft Implementation Plan (“TFV/LRV Additional Observations”).⁶

¹ [ICC-01/04-01/07-3728](#).

² [ICC-01/04-01/07-3751-Red](#).

³ 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), ICC-01/04-01/07-3763-Conf.

⁴ Observations sur le Projet de plan de mise en œuvre de l’Ordonnance de réparation déposé par le Fonds au profit des victimes, ICC-01/04-01/07-3762.

⁵ Defence Observations on the TFV’s Draft implementation plan, ICC-01/04-01/07-3764.

⁶ ICC-01/04-01/07-3767-Conf.

7. On 12 October 2017, the Trial Chamber issued a decision relevant to the Draft Implementation Plan, the observations of the parties, and the TFV/LRV Additional Observations (“Decision of 12 October 2017”),⁷ wherein it: 1) approved the implementation of the individual reparations awards, setting the deadline for completion to 1 December 2017; 2) set deadlines for various responses and additional information from the Trust Fund regarding the implementation of the collective reparations awards to 15 November and 1 December; and 3) instructed the Trust Fund to provide it with an update on the execution of the payment of the individual reparations awards by 15 December 2017.⁸

8. On 16 October 2017, the Trust Fund and Legal Representative conducted a joint mission to Geneva, Switzerland relevant to the situation of the victims located in a refugee settlement in Uganda.

9. On 18 to 20 October 2017, the Trust Fund and the Legal Representative conducted a joint mission to Kampala, Uganda in regard to the current situation of the victims in the Ugandan refugee settlement, particularly regarding their possible resettlement in the United States of America (“USA”) or Europe.

10. On 25 to 27 October 2017, the Trust Fund and the Legal Representative conducted a joint mission to Kinshasa, Democratic Republic of the Congo (“DRC”) for informal working level discussions with Ministry staff in order to prepare a memorandum to the DRC government authorities regarding their participation and cooperation with the implementation of the reparations awards contained in the order for reparations (“DRC Memorandum”).

11. On 1 November 2017, the Trust Fund held a follow-up meeting with Ugandan authorities.

12. During the first two weeks of November 2017, numerous meetings were held between the Trust Fund and the relevant finance and SAP sections of the Registry regarding the technical aspects of the disbursement of the individual reparations awards, including those who have been relocated to the USA and Europe.

⁷ ICC-01/04-01/07-3768-Conf.

⁸ Decision of 12 October 2017, pp. 24-25.

13. On 10 November, the Trust Fund sent a draft version, prepared by the Trust Fund and the Legal Representative, of the DRC Memorandum to the OPCV Legal Representative for her input and comments.

14. On 13 November 2017, the Trust Fund requested an extension of the deadlines of 15 November and 1 December set in the Decision of 12 October 2017 to 4 December 2017 and also proposed to submit the progress report on the execution of the individual reparations awards disbursement, due originally by 15 December 2017, in that same filing.⁹

15. On 15 to 17 November 2017, the Trust Fund held working day sessions with the Legal Representative and OPCV Legal Representative in regards to the disputed issues in its Draft Implementation Plan and the planned execution of the individual reparations awards.

16. On 16 November 2017, the OPCV Legal Representative sent comments on the draft DRC Memorandum, indicating her agreement with the substance, but objecting to the terminology used regarding her office's role in the reparations proceedings. The OPCV Legal Representative proposed to discuss this issue during the then planned joint working session of the afternoon of 17 November 2017.¹⁰

17. Over the next two weeks, the Legal Representative and OPCV Legal Representative exchanged, via written communications, various proposals relevant to the terminology to be used in the DRC Memorandum.

18. From 23 November to 30 November 2017, the Trust Fund conducted a joint mission with members of the Legal Representative and OPCV Legal Representatives' teams to the DRC, during which the individual reparations awards were delivered to the reparations beneficiaries residing in the DRC.

19. On 30 November 2017, the Trial Chamber granted the Trust Fund's request for an extension.¹¹

⁹ Request for an extension of time, registered on 14 November 2017, ICC-01/04-01/07-3770-Conf.

¹⁰ For reasons not addressed herein, the Legal Representative declined to participate in the joint session. The working session was held between the Trust Fund and the OPCV Legal Representative.

¹¹ Décision faisant droit à la demande de prorogation de délai déposée par le Fonds au profit des victimes le 14 novembre 2017, ICC-01/04-01/07-3771-Conf.

20. On 1 December 2017, by way of email communication, the Trust Fund and the Legal Representative jointly requested an extension of the 4 December 2017 deadline to transmit the DRC Memorandum to the DRC government authorities and a copy thereof to the Trial Chamber due to the fact that the Memorandum was not yet finalised because the Legal Representative and OPCV Legal Representative had not yet reached an agreement on the above-mentioned issue of terminology.¹²

21. Also on 1 December 2017, the Legal Representative sent the latest track changed version of the DRC Memorandum to the OPCV Legal Representative, which is attached as annex A to the present filing.

III. Report on the execution of the payment of the individual reparations awards and additional information on the implementation of the collective reparations awards ordered in the *Katanga* case

22. The Trust Fund hereby submits the progress report regarding the execution of the payment of the individual reparations awards and the requested additional information on the collective reparations awards as ordered by the Trial Chamber in its Decision of 12 October 2017.

23. Prior to doing so, the Trust Fund wishes to express its most sincere appreciation for the truly exemplary assistance and collaboration it received from all of the Kinshasa and Bunia field offices' staff, as well as the various sections and units of the Registry, including, but not limited to VPRS, Finance, Accounts, Disbursements, Treasury, Travel Unit, Mission Planning, Security, SAP, PIOS, and the AV Unit, without whom the DRC mission for the payment of the individual reparations awards would not have been a success.

24. The Trust Fund also wishes to express its gratitude to the Legal Representative and the OPCV Legal Representative for the efficient and collaborative manner in which they have worked with the Trust Fund in the execution of the payment of the individual reparations awards. The Trust Fund also wishes to recognise the invaluable assistance provided by the Legal Representatives' three local intermediaries.

¹² Email communication sent by the Trust Fund and Legal Representative to the Trial Chamber at 13.11 Ugandan local time. The request was sent via email due to the fact that all of the relevant staff was traveling either back from the mission or to New York for the Assembly of States Parties.

25. Finally and most importantly, the Trust Fund wishes to recognise that the success of the mission, particularly in terms of the paramount need for discretion and confidentiality, is due in large measure to the victims themselves, who have conscientiously and diligently respected to this day the confidential nature of the payments of the individual reparations awards.

26. The Trust Fund assures the Trial Chamber and the participants of its commitment to promptly providing any further information or clarification in regards to the below, should this be felt necessary.

A. Report on the execution of the payment of the \$250 symbolic individual compensation reparations awards

27. As set out above, in collaboration with the Legal Representative and OPCV Legal Representative, the Trust Fund executed the payment of the \$250 symbolic individual compensation reparations awards to the victims residing in the DRC from 28 November to 1 December 2017.¹³

28. In regards to the overall implementation, the Trust Fund hereby reports the following to the Trial Chamber:

- a. **DRC located victims:** Of the total 265 victims, 260 have received their individual reparations awards. The Trust Fund is attempting to contact and locate the outstanding five¹⁴ individuals and will update the Trial Chamber on its progress in this regard by 15 December 2017.
 - i. There have been no reports of security or safety issues for any victims during or following the execution of the payments.
 - ii. There have been no local media reports that the individual reparations awards were in the process of being or have been paid.
 - iii. In accordance with regulation 68 of the Regulations of the Trust Fund (“TFV Regulations”), the identities of all 260 victims were verified by a staff member of the Trust Fund, together with the respective Legal Representative, and all 260

¹³ Due to travel issues affecting both the Legal Representative and OPCV Legal Representative field teams’ arrival in Bunia, the scheduled dates of the payments were pushed back one day.

¹⁴ 3 are clients of the Legal Representative; 2 are clients of the OPCV Legal Representative.

victims acknowledged receipt of the award in writing. The signed receipts and copies of the identity cards will be submitted to VPRS for storage in the VAMS. This procedure will facilitate the Trust Fund's provision of update reports to the Trial Chamber as the collective reparations awards are implemented, as required pursuant to regulation 58 of the TFV Regulations, and also ensure the safety of the confidential victim information contained therein.

- iv. All 260 victims received reimbursement for their travel expenses and signed receipts acknowledging this payment. These receipts are for internal Trust Fund financial reporting and will not be stored in the VAMS.
- b. **Uganda located victims:** Of the total 15 victims, 14 are scheduled to receive their individual reparations awards during a joint Trust Fund and Legal Representative mission scheduled for 6 and 7 December 2017. One of the individuals was in Bunia during the DRC implementation and received his/her reparations award at that time. The Trust Fund will inform the Trial Chamber of the completion of these payments by 15 December 2017.
- c. **Relocated victims:** For these 17 victims, the Trust Fund is still in the process of gathering the required banking information¹⁵ and will update the Trial Chamber on its progress in this regard by 15 December 2017.

B. Specific reparations proposals for the victims located in Uganda

29. The Trust Fund recalls that, at the time of the submission of its Draft Implementation Plan, it did not have sufficient information regarding the current situation of the victims residing in the Ugandan refugee settlement to provide the Trial Chamber with a concrete proposal with respect to the collective awards for these individuals.¹⁶

30. Following the joint missions to Geneva, Switzerland and Kampala, Uganda, The Trust Fund was informed that 7 of these individuals are engaged in a resettlement process to be relocated

¹⁵ This process has been complicated by the fact that some of the relocated victims need a Swahili translator and because international bank transfers requires, in addition to the bank account information, acquiring the bank SWIFT/IBAN codes.

¹⁶ Draft Implementation Plan, para. 64.

outside Uganda.¹⁷ Accordingly, it is currently understood that 8 individuals will remain in the refugee settlement in Uganda, though of course they may also later decide to request relocation.

31. These joint missions also confirmed that there are legal impediments due to these individuals' refugee status to providing the ordered collective modalities, particularly in relation to providing permanent housing.

32. Further, during the DRC mission, the Trust Fund was informed of an incident that occurred last week at the refugee settlement concerning authorities destroying houses constructed outside of the prescribed areas.

33. During the 15 to 17 November consultations with the Legal Representative, the Trust Fund was further informed that the Legal Representative had consulted with his clients and that they expressed a preference, in light of the difficulties and uncertainties set out above, to having their collective reparations awards converted into a collective compensation award.

34. In addition to the above considerations, the Trust Fund strongly doubts the feasibility and cost efficiency of a fully-fledged collective awards programme for a group of victims numbering less than 10 in total.

35. On the basis of the above, the Trust Fund hereby informs the Trial Chamber that it proposes to treat the Uganda located victims as "relocated" and provide them with the same collective compensation award as those individuals relocated in the USA and Europe.

C. The monetary amounts proposed for victims relocated in the United States and Europe

36. The Trust Fund recalls that, in its Decision of 12 October 2017, the Trial Chamber instructed the Trust Fund to provide a justification for the monetary sums it proposed to provide to the victims relocated in the USA and Europe as a collective compensation award in lieu of the modalities originally approved by the Trial Chamber in its order.¹⁸ The Trust Fund also recalls that the Legal Representative expressed the view that proposed sums were too low and should

¹⁷ Specifically, 6 individuals have requested to be located to the USA, two of whom are scheduled to leave before the end of 2017, and one individual has not yet, but intends to make a relocation request. The remaining four who have already made a request are tentatively scheduled to be relocated some time next year, though this is provisional and cannot be guaranteed.

¹⁸ Decision of 12 October 2017, paras 41-42.

instead be roughly the equivalent of the value associated with the reparations awards packages being provided to the DRC located victims.

37. This issue was discussed during the consultations with the Legal Representative on 15 November 2017.

38. The Trust Fund acknowledges and appreciates that concerns expressed by the Legal Representative that its original proposal could lead to justifiable feelings of discrimination or unfair treatment, particularly given that the victims located in the USA and Europe remain in contact with victims located in the DRC. Further, the Trust Fund notes that, with the Trial Chamber's rejection of proposed sub-category 3 and the Trust Fund's decision to directly implement (as opposed to using an implementing partner) the individual reparations awards, increasing the proposed monetary amounts to the equivalent of the monetary value of the corresponding awards packages for those in the DRC is now also financially feasible while respecting the total limit of \$1,000,000 for all of the reparations in this case.

39. Accordingly, the Trust Fund informs the Trial Chamber that, after discussion with the Legal Representative, it accepts the counter-proposal put forward by the Legal Representative. As is discussed in more detail below in Section E, the Trust Fund proposes to submit a revised budget to the Trial Chamber and participants following the 17th Meeting of the Trust Fund's Board of Directors, which is being held on 4 and 5 December 2017.

D. The proposed two year time frame of the reparations programme

40. The Trust Fund recalls that, in the Decision of 12 October 2017, the Trial Chamber instructed the Trust Fund to provide it with a justification for the proposed two year time frame of the reparations programme.¹⁹ The Trust Fund appreciates being given the opportunity to clarify this point as, upon review, it is of the opinion that it did not accurately set out what this time frame meant in its Draft Implementation Plan.

41. The two year time frame is meant to apply to the full (or as close as possible) implementation of the collective modalities awarded by the Trial Chamber with the exception of the payment of school fees (education assistance modality) and higher education scholarships (income generating activities modalities). For these modalities (such as the construction of a

¹⁹ Decision of 12 October 2017, para. 48.

house or the provision of livestock), the Trust Fund considers it appropriate and in the interests of the victims to maintain the two year time frame in order to ensure that the victims receive the reparations awarded to them in a timely manner. The Trust Fund also considers this time frame to be programmatically feasible with respect to the delivery of these awards.

42. For the school fees and higher education scholarships, the Trust Fund notes that it will only know the duration of these payments once the concerned victims have decided whether, for example, to shift their awards from the other collective modalities into the education assistance component, as well as only after the Trust Fund has been informed of the age and number of children covered by this award for each reparations beneficiary.

43. The Trust Fund informs the Trial Chamber that it is currently planning the collective reparations information collection mission with the Legal Representative and OPCV Legal Representative, whereat the victims will be able to make their specific choices with regard to the collective awards. The mission is currently tentatively planned for the second half of January 2018. The Trust Fund will provide further information on this mission as soon as the plan is adequately developed.

44. In summary, the Trust Fund wishes to assure the Trial Chamber and the participants of its full commitment to providing the payment of school fees and higher education scholarships in a flexible manner that will be dictated by the needs and wishes of the concerned victims and will not apply a strict two year limit on these awards. The Trust Fund maintains this time frame for the remainder of the reparations programme for the reasons set out above.

E. Programme support costs related to the distribution of awards

45. The Trust Fund recalls that, in its Decision of 12 October 2017, the Trial Chamber requested that the Trust Fund “provide it with its reasoning for holding Mr Katanga liable overall for programme support costs related to the distribution of the awards to victims” and to further provide it with “explanations as to how [the Trust Fund] reached the 15 per cent figure given as a standard for reference pertaining to those costs”.²⁰

46. The Trust Fund has also taken careful note of the Trial Chamber’s concerns related to the legal and factual questions that arise in relation to including these support costs within the

²⁰ Decision of 12 October 2017, para. 50.

amount of a convicted person's liability, as well as the Legal Representative's submissions on this issue. Further, the Trust Fund has itself engaged in intensive legal research and discussion on the important issues raised by the Trial Chamber and the Legal Representative.

47. The Trust Fund recalls that, on an issue such as this, a decision must be taken by its Board of Directors and cannot be taken directly by the Secretariat. In this regard, the Trust Fund informs the Trial Chamber that its Board of Directors is holding its 17th Annual Meeting during this year's Assembly of States Parties in New York, USA. The Board of Directors Meeting is scheduled for 4 and 5 December 2017, at which the Secretariat will present this issue to the Board of Directors for its consideration.

48. The Trust Fund regrets that it is not able to inform the Trial Chamber of whether it maintains its position as set out in the Draft Implementation Plan and the reasons for that position within the deadline set by the Trial Chamber. However, in consideration of the Board of Directors' final responsibility and accountability for the management of the resources and activities of the Trust Fund, the Trust Fund respectfully requests an extension of time for providing its response to this issue until the Board of Directors has taken a decision thereon. The Trust Fund would accordingly respectfully request an extension until 15 December 2017 to respond to the Trial Chamber's request on this issue.

49. Finally, the Trust Fund notes that, depending on the Board of Director's eventual decision, this issue would render the current proposed budget and the collective reparations awards packages' associated monetary values, contained in Annex 1 to the Draft Implementation Plan, inaccurate and require significant adjustment. Given that the Trial Chamber's Decision of 12 October 2017 already requires making adjustments to the budget, the Trust Fund proposes to also include any adjustments that may be required by the Board of Director's decision on this issue in a revised budget that it will submit on 15 December 2017.

F. Transmission of the DRC Memorandum to the government authorities and submission of a copy to the Trial Chamber

50. As set out in the procedural history, the Trust Fund regrets to inform the Trial Chamber that the DRC Memorandum has not yet been notified to the DRC government authorities because it has not been finalised. As mentioned, the current delay is due to ongoing discussions that do not involve the Trust Fund, but relate to the Legal Representative and OPCV Legal Representative.

51. In the Trust Fund's view, this issue relates to more than simply the DRC Memorandum and, absent resolution, has the potential to delay or complicate the collective reparations awards mission and implementation. The Trust Fund considers that there is a need for the Legal Representative and OPCV Legal Representative to decide how they will (or will not) collaborate together in the interests of their respective clients during the implementation stage.

52. In this respect, the Trust Fund wishes to be clear that it has not been asked, does not wish to, and in any case is not the appropriate body to mediate this particular issue. The Trust Fund therefore respectfully requests that the Trial Chamber hold a status conference with the Legal Representative and OPCV Legal Representative in order to decide on the modalities of their involvement, together or separately, in the implementation of the collective reparations awards in this case, including with respect to the information gathering mission.

53. The Trust Fund notes that, in its email communication of 1 December 2017, the Legal Representative expressed the hope that the DRC Memorandum could be finalised by 4 December 2017. The Trust Fund shares this desire, but nonetheless must make clear to the Trial Chamber that its ability to comply with the Trial Chamber's deadlines is being negatively affected by issues outside of its control. The Trust Fund therefore respectfully requests the suspension of a deadline applicable to it on this matter until the Legal Representative and OPCV Legal Representative have informed it and the Trial Chamber that they have reached an agreement on the final text of the Memorandum.

FOR THE FOREGOING REASONS

The Trust Fund for Victims respectfully:

- submits the requested progress report on the execution of the payment of the individual reparations awards;
- submits the requested additional information relevant to the collective reparations awards;
- requests an extension until 15 December 2017 to provide the Trial Chamber with the outstanding additional information mentioned above; and
- requests that the Trial Chamber convene a status conference with the Legal Representative and OPCV Legal Representative and suspend the Trust Fund's

deadline relevant to the DRC Memorandum until such time as it has been finalized by the Legal Representative and OPCV Legal Representative.



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 4 December 2017

At The Hague, The Netherlands