

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **17 July 2020**

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

**Update report on the implementation of the collective reparations awards pursuant to
regulation 58 of the Regulations of the Trust Fund for Victims
and**

**Request for approval of implementation proposals related to the income-generating
activities modality**

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****Counsel for Germain Katanga**

Mr David Hooper

Ms Caroline Buisman

Legal Representative of Victims

Mr Fidel Nsita Luvengika

Ms Paolina Massidda

States Representatives**REGISTRY**

Registrar

Mr Peter Lewis

Victims Participation and Reparations**Section**

Mr Philipp Ambach

I. BACKGROUND

1. Pursuant to regulation 58 of the Regulations of the Trust Fund for Victims (“Trust Fund”), the Trust Fund hereby provides Trial Chamber II (“Trial Chamber”) with an update report concerning the progress in the implementation of the four collective reparations awards ordered in the case of *The Prosecutor v. Germain Katanga*, namely: (i) housing assistance; (ii) educational assistance; (iii) income-generating activities (“IGAs”); and (iv) psychological support.¹ The present update report gives an overview on developments since the last update reports on the implementation of collective reparations and proposes, after due consultation with the Procurement Unit, methods of implementation for the purchase of motorcycles, fuel and various products, for which the Trial Chamber’s approval is requested herein, in accordance with the Trial Chamber’s instructions set out in its order issued on 7 February 2019 (“Order of 7 February 2019”).²

II. CLASSIFICATION OF THE PRESENT SUBMISSION

2. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund has classified this report and its annex as confidential in line with the Trial Chamber’s classification of the orders and decisions upon which the present report is based.

III. RELEVANT PROCEDURAL HISTORY

3. The Trust Fund recalls the procedural history set out in the update reports on the implementation of collective reparations awards, submitted on 28 February 2019,³ 26 July 2019⁴ and 18 November 2019⁵ (“28 February 2019 Update Report”, “26 July 2019 Update Report”, and “18 November 2019 Update Report”, respectively) where it described the progress made and its

¹ See [Reparations Order](#), para. 304. See also paras 302-303.

² 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, ICC-01/04-01/07-3825-Conf.

³ 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.

⁴ Update report on the implementation of the collective reparations awards and Request for approval of implementation proposals pursuant to regulation 58 of the Regulations of the Trust Fund for Victims, with Confidential, *ex parte* Annexes A and B, available only to the Trust Fund for Victims, 26 July 2019, ICC-01/04-01/07-3836-Conf.

⁵ 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.

proposed planning in relation to the four collective reparations awards ordered by the Trial Chamber,⁶ and where it requested the Trial Chamber's approval of the implementation of reparations in relation to cattle, small IGAs, and first trimester education assistance ("First Request"),⁷ and the Trial Chamber's approval of a proposed alternative method of implementation for the purchase of fish ("Second Request").⁸

4. On 20 November 2019, the Trial Chamber issued an order instructing the legal representatives of victims ("LRV" and "OPCV LRV", jointly referred to as "LRVs") to submit their observations related to the Second Request.⁹

5. On 21 November 2019, the OPCV LRV informed the Trial Chamber that she would not submit observations related to the Second Request, as the purchase of fish does not concern her clients.¹⁰

6. On 26 November 2019, the LRV submitted his observations expressing his support for the Trust Fund's Second Request.¹¹

7. On 12 December 2019, the Trial Chamber issued a decision in which it: (i) developed its reasoning related to the approval of the First Request;¹² (ii) instructed the Trust Fund to provide it and the LRVs with the type of confidential information, related to the housing assistance, that the Trust Fund intends to share with the pre-qualified organisations, as well as the agreement on confidentiality, non-disclosure and intellectual property rights; (iii) instructed the Trust Fund to submit a confidential redacted version, available to the LRVs, of Annexes A and B to the 26 July 2019 Update Report; and (iv) approved the Trust Fund's Second Request.¹³

8. On 17 December 2019, the Trust Fund provided the Trial Chamber and the LRVs with the type of confidential information, related to the housing assistance, that it intends to share with

⁶ See [Reparations Order](#), para. 304. See also paras 302-303.

⁷ 26 July 2019 Update Report, paras 45-46.

⁸ 18 November 2019 Update Report, paras 29-33.

⁹ *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.

¹⁰ Email from the OPCV LRV to the Trial Chamber on 21 November 2019 at 15.13.

¹¹ *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.

¹² The approval was given by way of email: email from the Trial Chamber to the Trust Fund and the LRVs on 5 August 2019 at 10.32.

¹³ *Décision relative aux requêtes du Fonds au profit des victimes du 26 juillet et du 18 novembre 2019 et aux demandes du BCPV du 2 août 2019*, 12 December 2019, ICC-01/04-01/07-3846-Conf.

the pre-qualified organisations, as well as the agreement on confidentiality, non-disclosure and intellectual property rights,¹⁴ and submitted a confidential redacted version, available to the LRVs, of the abovementioned annexes.¹⁵

9. On 6 March 2020, the LRV submitted his “*Rapport du Représentant légal relatif à l’exécution des réparations collectives*” (“LRV’s Report of 6 March 2020”).¹⁶

10. On 12 March 2020, the LRV submitted a “*Demande du Représentant légal visant à octroyer l’accès du Fonds au profit des victimes au document ICC-01/04-01/07-3692-Conf-Exp-Anx1*”.¹⁷ Later that day, the LRV submitted his “*Observations du Représentant légal relatives à la mise en œuvre du soutien psychologique au titre de modalité de réparation collective*” (“LRV’s Report of 12 March 2020”).¹⁸

11. On 16 March 2020, the Trial Chamber instructed the reclassification of documents ICC-01/04-01/07-3692-Conf-Exp-Anx1 and ICC-01/04-01/07-3692-Conf-Exp-Anx1-tENG as “Confidential Ex Parte Legal Representatives of Victims & Trust Fund for Victims only”.

12. On 3 July 2020, the Trial Chamber ordered the Trust Fund to submit quarterly reports starting with a first report on 17 July 2020, to which the LRV and OPCV LRV could respond at the latest by 14 August 2020. In addition, the Trial Chamber invited the LRV to clarify and submit requests, if any, to the Chamber relevant to its Report dated 12 March 2020, at the latest by 17 July 2020.¹⁹

¹⁴ Email from the Trust Fund to the Trial Chamber and the LRVs on 17 December 2019 at 16.00.

¹⁵ Confidential *Ex Parte* Redacted Version of Annex A to the 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, 17 December 2019, ICC-01/04-01/07-3836-Conf-Exp-AnxA-Red; Confidential *Ex Parte* Redacted Version of Annex B to the 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, 17 December 2019, ICC-01/04-01/07-3836-Conf-Exp-AnxB-Red.

¹⁶ *Rapport du Représentant légal relatif à l’exécution des réparations collectives, avec 1 annexe confidentielle ex parte réservée uniquement au Représentant légal, au Bureau du conseil public pour les victimes, et au Fonds au profit des victimes*, 6 March 2020, ICC-01/04-01/07-3851-Conf.

¹⁷ *Demande du Représentant légal visant à octroyer l’accès du Fonds au profit des victimes au document ICC-01/04-01/07-3692-Conf-Exp-Anx1*, 12 March 2020, ICC-01/04-01/07-3852-Conf.

¹⁸ *Observations du Représentant légal relatives à la mise en œuvre du soutien psychologique au titre de modalité de réparation collective*, 12 March 2020, ICC-01/04-01/07-3853-Conf.

¹⁹ *Ordonnance enjoignant au Fonds au profit des victimes de déposer des rapports trimestriels sur l’exécution des réparations et au représentant légal des victimes de déposer des observations à des fins de clarification de ses écritures des 6 et 13 mars 2020*, 3 July 2020, ICC-01/04-01/07-3855-Conf.

13. Additional procedural history relevant to each collective modality is contained in the relevant section and not produced here to avoid duplication.

IV. REGULATION 58 UPDATE REPORT

14. The Trust Fund hereby submits an update report on the implementation of the collective reparations awards and requests the Trial Chamber's approval for the implementation proposals relevant to the IGAs of the purchase of motorcycles, fuel and various products.

A. Preliminary Remarks

15. At the outset, the Trust Fund wishes to reiterate its gratitude and appreciation to the LRVs for their continuous collaboration and clear communication with their respective clients during all stages of the implementation process. As set out by the LRV, the fruitful collaboration has led to the victims' great satisfaction and appreciation for the Court, the Trust Fund and the LRV, and their confidence in the implementation process.²⁰

16. The Trust Fund notes that the LRV submits that the confidentiality of the reparation proceedings should be reviewed and notes that the LRV may proceed pursuant to Regulation 23 *bis* (3) of the Regulations of the Court.²¹ The Trust Fund would support such a request and preserves the right to make submissions thereon.

17. Over the past months, the Trust Fund has been working in close collaboration with the LRVs and relevant sections of the Registry in order to elaborate suitable solutions for the implementation of the remaining modalities of collective reparations and is now able to present concrete implementation proposals for the IGAs of the purchase of motorcycles, fuel and various products. However, the current health and security situation continues to have a major impact on the timely implementation of collective reparations.

B. Health and Security Situation

18. Following the coronavirus disease pandemic ("COVID-19"), the Registrar informed the Court, on 9 March 2020, of the establishment of an inter-organ task force ("Crisis Management

²⁰ LRV's Report of 6 March 2020, paras 25-26.

²¹ LRV's Report of 6 March 2020, paras 30-34.

Team” or “CMT”), responsible for taking the appropriate preparatory measures and coordinating the Court’s crisis response.

19. On the same day, the CMT, with immediate effect, limited all official mission travel to essential travel only, with the CMT, together with the respective managers, assessing the necessity of the travel. Country Offices were informed to adhere to the in-country UN Security Management Team advisories.

20. On 11 March 2020, the Joint Threat Assessment Group (“JTAG”) reiterated the measure taken by the CMT and specified that it includes both travel to and from headquarters and between countries. Furthermore, the JTAG updated its security recommendation for the Democratic Republic of the Congo (“DRC”), specifying that “[a]ll missions to Ituri province, including Bunia, [are] to be reviewed on a case by case basis to determine the appropriate level of security support”.

21. On 13 March 2020, the Court officials informed the Court’s staff, in conformity with the measures taken by the host State authorities and the advice from the CMT, of the physical closure of the headquarters premises from 17 March until 31 March, indicating that staff was expected to work remotely, except for a limited number of staff members whose physical presence was deemed critical. The physical closure was extended several times.

22. On 3 April, the JTAG recommended the suspension of all missions until further notice and specified, for eastern DRC, that additional security and safety restrictions may need to be put in place by the Country Office at short notice, “[i]n light of the military operations against armed groups operating in eastern DRC, in case of any incident related to Ebola and COVID-19 pandemic, as well as the possible exacerbation of any anti-foreign sentiment in the country caused by the blaming of the international community for bringing it into communities.” The JTAG renewed its recommendation on 8 May 2020.

23. On 15 May 2020, the Registrar informed the Court of the gradual opening of the Court’s headquarters premises as of 1 June 2020, which was eventually postponed to 8 June 2020. While staff members return gradually to the Court’s premises, with priority given to staff members whose return will improve greatly the productivity in relation to core services of the Court, the situation remains unchanged for the Country Offices, where they are to continue following the local respective authorities and UN guidelines.

24. On 4 June 2020, the Prosecutor issued a statement regarding the situation in Ituri, expressing her deep concern over the numerous reports of an escalation in serious violence over the past several months, particularly in the territories of Djugu and Mahagi.²²

25. On 7 July 2020, the JTAG issued a new recommendation indicating *inter alia* that any travel for the purpose of ensuring business continuity, implementation of contingency of security plans, including returns to the duty station and rotations of critical personnel assigned in the situation countries is not to be understood as subject to the applicable suspension of mission.

26. On 16 June 2020, the JTAG recommended the suspension until further notice of all international missions, except those justified as essential, for Bunia. All essential external missions require an Occupational Health Unit (“OHU”) medical assessment, a Country Office feasibility assessment and approval from the CMT. All in-country missions require an OHU medical assessment, as well as compliance with all host government and UN decisions related to limiting the spread of the COVID-19 pandemic. Furthermore, all missions to and from active Ebola outbreak areas, including Ituri province, were suspended due to the prevailing and expanding Ebola situation.

27. On 22 June 2020, the CMT indicated that official mission travel activities within the EU Schengen Area may resume as of 1 July 2020, while official mission travel for all other countries remains limited to essential travel until further notice.

28. As a result of all travel restrictions, the Trust Fund’s Programme Manager has, up until this day, not been able to travel back to Bunia, after traveling to Cameroon in March 2020 during her leave. Furthermore, one Associate Field Programme Officer (“AFPO”) has been on sick leave since February 2020, and has been in South Africa since mid-March in order to receive specialised medical treatment, not able to return to the DRC because of COVID-19. This has significantly reduced the Trust Fund’s field capacity in Bunia to one AFPO,²³ who was working

²² “Credible information indicates there have been many armed attacks on the civilian population. In recent months, these attacks have intensified in several territories in Ituri. There are also reports from the same source of repeated attacks on camps for internally displaced persons and on targeted communities. Moreover, these reports indicate the killing and maiming of many civilians, many of whom are children; abductions and summary or extrajudicial executions; sexual and gender-based crimes against women, under-age girls, and men; systematic pillaging; and the burning and destruction of homes, private property and public buildings.”

²³ The fourth staff member in Bunia, mentioned in the 26 July 2019 Update Report (para. 22), has started a new position with the Trust Fund in the Central African Republic on 30 July 2019. However, between 19 August and 18

from home in Bunia due to the measures taken by the Country Office. As of 10 July 2020, she has been allowed to occasionally return to the office.

29. The further impact of the health and security situation, if any, on the implementation of the different modalities of collective reparations is described under each specific modality below. Despite the described circumstances, the Trust Fund is fully committed to implementing the modalities, for which it requests the Trial Chamber's approval in this report, and will do so, as soon as feasible considering the health and security situation.

C. Housing Assistance

30. The Trust Fund recalls that an open tender was conducted to enable local housing construction companies to apply.²⁴ To that end, the Trust Fund finalised the Expression of Interest ("EOI"), which was advertised on the websites of the Court and the United Nations Global Market Place by the Procurement Unit on 23 May 2019 for a period of three weeks, with a closing date of 14 June 2019.²⁵ During the posting period, the Bunia-based AFPO circulated the EOI to local companies throughout Ituri.

31. On 11 July 2019, the Trust Fund received the consolidated results of the EOI from the Procurement Unit.²⁶ After a technical evaluation, the Trust Fund concluded that none of the bidders met all the requirements.

32. Therefore, on 11 October 2019, the Trust Fund requested the bidders to complete their bids by including all required documents by 25 October 2019. Seven organisations responded to the Trust Fund's request and five of them were selected after another technical evaluation.

33. In developing the tender documents for the next phase of the procurement process, several concerns were raised within the Trust Fund. The Trust Fund only possessed drawings of several models of houses designed by an architect in 2018, without technical specifications relevant to the construction materials needed and in which quantity. Based on these basic drawings, it deemed not feasible to develop a complete Scope of Work ("SOW") and a Bill of Quantities, detailed enough for the selected organisations to develop a full proposal. The Trust

November 2019, he has continued working in Bunia to support the team with the implementation of collective reparations.

²⁴ 28 February 2019 Update Report, para. 42; 26 July 2019 Update Report, para. 50.

²⁵ Email from the Procurement Unit to the Trust Fund on 24 May 2019 at 11.13.

²⁶ Email from the Procurement Unit to the Trust Fund on 11 July 2019 at 14.45.

Fund is currently reaching out to this architect to engage him to develop a Bill of Quantities and SOW as a basis for a procurement process.

34. Therefore, in the interest of efficiency and quality of delivery, the Trust Fund explored the possibility of using a UN pre-procurement process to identify a qualified contractor in Bunia, able to construct houses according to the specifications previously discussed with the victims. This process consisted in identifying a construction company that was recruited by the UN following the UN procurement procedures, and that could be directly engaged by the Trust Fund without having to go through the Court's procurement procedures.

35. In this regard, the Trust Fund reached out to [REDACTED], who recommended a local construction company that has been, and currently still is, implementing several construction projects for [REDACTED]. Based on this recommendation, the Trust Fund reached out to [REDACTED] to seek confirmation that the company was indeed recruited following the UN procurement procedures, but was informed that the company's services were only used for Quick Impact Projects and other less formal engagement instruments such as Low Value Acquisitions.

36. Following consultation with the Procurement Unit, the Trust Fund reached out to the [REDACTED] in the DRC, whose services cover *inter alia* infrastructure, project management, procurement, financial management and human resources, and held a meeting to discuss the specific housing support needs.

37. [REDACTED] raised concerns as to whether the victims' allocated budgets, based on the drawings by the architect in 2018, will be sufficient for the implementation of this activity, but is willing to share a list of local constructing partners operating in and around Bunia. The Trust Fund currently awaits a further response from [REDACTED].

38. A further concern raised in the course of these discussions relates to the real estate property rights. The Trust Fund has started to collect information as to the documentation required before the start of a construction, and will engage with the LRVs in defining these requirements.

D. Educational Assistance

39. On 3 June 2019, the Ministry of Primary, Secondary and Vocational Education of the DRC announced its intention to provide free basic education in all public primary schools and in the first two years of secondary schools, as prescribed in the Constitution.

40. On 26 August 2019, a first meeting was held between the Trust Fund and Heads of Schools to plan the implementation of the educational assistance in private primary, secondary and higher education.

41. On 27 August 2019, the Secretary-General of the Ministry addressed a letter to all Provincial Directors of the *Enseignement primaire, secondaire et professionnel* with the accompanying measures for the effective implementation of the free education as from the academic year 2019-2020.

42. As a result of the Government's decision, the Trust Fund, in agreement with the LRVs, decided to delay the further payment of school fees in order to assess the effective implementation of this new measure from September to October 2019. Additionally, a number of victims requested to allocate their remaining budget under the modality of educational assistance to the modality of income-generating activities instead.²⁷

43. Several other meetings with Heads of Schools were held to assess the level of implementation of the free education policy, the outcome of which being that, despite the new law, pupils who attend public schools are still required to pay *frais de construction*, which range between USD 5 and 10 for one year, and a *contribution des parents*, which ranges between USD 10 and 25 per term. These amounts are set and agreed upon by the Parents Teachers Association and also cover running costs in schools in anticipation of subsidies from the Government.

44. Over the past months, the Trust Fund has paid the above-mentioned contributions on a continuous basis, following the same method of implementation as last year. So far, for the 2019-2020 school year, a total amount of USD 5.992,47 has been paid for 42 victims (70 pupils and students). The analysis of the Trust Fund's database shows that around 93% of the victims' budget for educational assistance has been used.²⁸

²⁷ This was the case for 13 victims for an amount of around USD 2177; see LRV's Report of 6 March 2020, para. 38.

²⁸ There are 15 victims who still have a budget allocated to this modality, for a total of USD 2.892,6.

E. Income-Generating Activities

1. Small IGAs

45. The Trust Fund wishes to point out that, as set out in its 26 July 2019 Update Report, small IGAs are activities with a total value below 10,000 EUR for which, following agreement with the Procurement Unit and in accordance with the Court's Financial Regulations and Rules ("FRR"), the Court's procurement process does not find application.²⁹

46. Large IGAs, on the other hand, are activities which involve a large number of beneficiaries and allocated budgets of over 10,000 EUR per type of IGA, such as the purchase of motorcycles, fuel, fish and various products, and for which the Trust Fund is required by the Court's FRR to pass through an open tender process.³⁰

47. Therefore, the Trust Fund wishes to reiterate that, contrary to the LRV's understanding,³¹ all victims have received their items for the category of small IGAs.³²

2. Large IGAs

i. Purchase of motorcycles

48. On 5 July 2019, an EOI for motorcycles was advertised on the websites of the Court and the United Nations Global Market Place by the Procurement Unit for a period of four weeks, with a closing date of 8 August 2019.³³

49. On 22 August 2019, the Trust Fund was able to retrieve the responses to the EOI in order to proceed with an assessment to select the most competitive bidder in terms of price and specifications indicated by the victims.

50. Although the bidders met the technical requirements, the commercial evaluation revealed that the offers were not in compliance with the commercial requirements, as bidders provided other brands of motorcycles than requested, did not provide price quotations for the requested motorcycles or submitted price quotations for only a part of the motorcycles and

²⁹ 26 July 2019 Update Report, paras 34-35; The activities under this category are: the setup of small restaurants, bakery businesses and butcher's shops, tailoring, cereal and grain milling, carpentry, logging, the sale of clothing and the sale of pharmaceutical products.

³⁰ *Ibid.* paras 36, 48-49.

³¹ LRV's Report of 6 March 2020, paras 43-44.

³² 18 November 2019 Update Report, para. 19.

³³ Email from the Procurement Unit to the Trust Fund on 5 July 2019 at 12.04.

significantly higher than the cost estimation. Based on this evaluation, the members of the Evaluation Committee agreed to: (i) cancel the procurement procedure; (ii) prepare a generic technical specification for each of the requested motorcycles in order to attract more bidders and to obtain a larger variety of brands; and (iii) re-advertise the activity and invite local suppliers, based in Bunia, in order to obtain more comparable prices within the cost estimation and available funds. Therefore, a new Request for Quotation was prepared and put into the SAP-software, but could not be sent to the local suppliers due to COVID-19.

51. After exploring other possibilities, and in close consultation with the Procurement Unit, the Trust Fund, with the much appreciated assistance from the DRC Country Office, contacted in May 2020 several local UN suppliers to collect *pro forma* merchandise costs, in order to determine the most competitive prices for the desired motorcycles, which will then be purchased directly from the selected vendors through Purchase Orders.

52. As the *pro forma* merchandise costs showed an increase in prices for most types of motorcycles, due to the lower supply from China because of COVID-19, the Trust Fund reached out to the LRVs with an overview of the available types of motorcycles, their price and delivery time, with the suggestion to inform the victims of the new prices and to consult with them on eventual changes to their original choices of motorcycles or IGA.³⁴

53. On 12 June 2020, the OPCV LRV informed the Trust Fund of the victims' choices.³⁵ On 10 July 2020, the LRV informed the Trust Fund of the victims' choices.

54. As the prices have changed, some of the victims have chosen a motorcycle at a lower price than their budget or have decided not to choose a motorcycle. They have chosen to use the remaining or unused amounts of their budgets for the purchase of various products or fuel instead of motorcycles. The Trust Fund has diligently recorded these amounts and the preferences of the victims and will transfer those amounts to the other forms of reparations.

55. 31 victims (including one of the OPCV LRV) have chosen a motorcycle at a higher price. The Trust Fund decided to complement the higher prices with other resources, taking into account that the total amount that needs to be complemented is about 6 percent of the total price

³⁴ Email from the Trust Fund to the LRV on 5 June 2020 at 14.37; email from the Trust Fund to the OPCV LRV on 8 June 2020 at 16.12.

³⁵ Email from the OPCV LRV to the Trust Fund on 12 June 2020 at 14.11.

of the motorcycles. The Trust Fund contacted in writing both LRVs and they confirmed both in writing that the proposed solution does not pose problems to the victims in terms of equal treatment.

56. Based on the updated choices, the Trust Fund considers proceeding with the purchase of the desired motorcycles through Purchase Orders from two to three different vendors offering the lowest prices. On 16 July 2020, the five vendors confirmed the prices they had originally presented and indicated that these prices will stand unchanged for a period of 30 days, *i.e.* until 15 August 2020. In awaiting the Trial Chamber's approval, the Trust Fund will therefore, from the date of this filing engage in officially choosing the vendors and preparing the purchase orders for the motorcycles in accordance with the wishes of the victims.

57. As to the manner of implementation, the Trust Fund will carry out the following preparatory steps: (i) the grouping of victims and scheduling these groups for the pick-up/delivery of their selected items; (ii) obtaining a security assessment and updated recommendations from the Bunia Field Office security officers with respect to the location of implementation; (iii) continued consultations with the Court's medical unit to take the necessary precautions in light of COVID-19 and Ebola; (iv) communicating the proposed calendars and groups to the LRVs for their input; and (v) with the consent of the LRVs, contacting the relevant victims in advance to inform them of the scheduled date and how the implementation will proceed, as well as confirming their specific choices, if needed; (vi) providing the vendors with a list with the number of people and types of motorcycles and specifications required for each day to enable them to make the necessary arrangements.

58. Once a victim receives his/her motorcycle(s), he/she will be handed a copy of the receipt and asked to sign an *acte de réception* as proof of having received this reparation award. The Trust Fund will keep the original receipt for accountability purposes. Victims will be provided with transportation costs to cover the cost of travel to pick up the motorcycles.

59. The Trust Fund hereby respectfully requests the Trial Chamber's approval for the proposed way of implementation as set out above, taking into account that it has diligently carried out consultations with all relevant Registry colleagues, including in order to ensure

compliance with the RFF, and with the LRVs,³⁶ and has provided the Trial Chamber with as much detailed information as is realistic and possible, particularly bearing in mind the evolving health and security situation in Ituri and the corresponding JTAG restrictions.

ii. Purchase of fuel

60. On 5 July 2019, an EOI for fuel was advertised on the websites of the Court and the United Nations Global Market Place by the Procurement Unit for a period of four weeks, with a closing date of 8 August 2019.³⁷

61. On 22 August 2019, the Trust Fund was able to retrieve one response to the EOI, as only one bidder expressed interest. Unfortunately, the sole bidder's proposed price quotation exceeded the local market price by about 50%. Considering that fuel in Bunia is mostly sold informally by small vendors on the side of the road and that the few existing gas stations lack proper management structures, the chances of attracting interest from other bidders through a relaunch of the EOI were very low.

62. Following further consultations, the Procurement Unit confirmed the possibility of benefitting from a UN procurement process as per Rule 110.18 (a) of the FRR. This means, *in concreto*, that the Trust Fund would solicit the services of the provider of fuel to the UN in Bunia through a sole sourcing procedure.

63. Consequently, the Trust Fund sent a Request for Quotation to the UN fuel supplier inviting it to submit its quotation. The supplier had an additional request for clarification regarding the possibility of bulk delivery of the fuel, all at once rather than separately per victim. The Trust Fund reiterated its preference for a more individualised approach, inviting a few victims per day over a period of five days, and is expecting the supplier's final answer on this delivery schedule any time soon. If the supplier's answer is affirmative, the implementation is to take place as follows:

64. The Trust Fund intends to issue prepaid fuel coupons to victims equal to their respective budgets for this modality. Victims will be received in groups of three to four per day, over a period of five days, providing their own barrels, for the collection of the fuel using their coupons.

³⁶ LRV's Report of 6 March 2020, para. 48.

³⁷ Email from the Procurement Unit to the Trust Fund on 5 July 2019 at 12.04.

The transportation costs of victims with their fuel barrels to and from the fuel provider will be covered by the Trust Fund.

65. Once the victims have been served, the coupons will be kept by the Trust Fund and victims will sign an *acte de réception* with the precise amount of fuel received and of dollars paid. The Trust Fund will keep the originals and share copies with the LRV and victims.

66. The Trust Fund intends to organise a planning meeting with the fuel provider to agree on the issuance of these coupons and on a detailed implementation calendar, which will then be shared with the LRV for his input. With the consent of the LRV, the Trust Fund will contact the relevant victims in advance to inform them of the scheduled date and how the implementation will proceed, as well as confirming their specific choices, if needed.

67. The Trust Fund hereby respectfully requests the Trial Chamber's approval for the proposed way of implementation as set out above, taking into account that it has diligently carried out consultations with all relevant Registry colleagues, including in order to ensure compliance with the RFF, and with the LRV,³⁸ and has provided the Trial Chamber with as much detailed information as is realistic and possible, particularly bearing in mind the evolving health and security situation in Ituri and the corresponding JTAG restrictions.

iii. Purchase of various products

68. Over the past months, the Trust Fund has been working closely with the LRVs and the Procurement Unit to find the most appropriate solution.

69. During the preparation of a SOW, as well as during a preliminary market survey for the purpose of defining the technical specifications for the items that are to be purchased, the Trust Fund's field staff raised the following significant concerns that would have affected the entire procurement procedure: (i) difficulties to estimate the quantity in general and for each of the requested items; (ii) the fluctuation of prices, due to the uncertain market in rural DRC, making it challenging to receive competitive offers with fixed prices for a certain period; and (iii) the majority of local vendors not necessarily having a legally registered entity nor accepting other payment methods than cash.

³⁸ LRV's Report of 6 March 2020, para. 48.

70. Bearing in mind the abovementioned concerns, the Trust Fund had reason to assume that starting the procurement procedure would not have attracted sufficient vendors submitting their quotations within the approved implementation plan restrictions. Therefore, the Trust Fund sought guidance from the Procurement Unit on how to initiate and proceed with the procurement activities in order to obtain comparable offers and to secure the principles.³⁹

71. The Procurement Unit concluded that, “in consequence of the available documentation, information and the methodology of implementation required by [the] STFV, [...] it would be impossible to follow the Court’s procurement process”, and advised the Trust Fund to consider engaging the Court’s Finance Section for the use of an alternative obligation method (“MOD”) for disbursement, like it did for the implementation of cattle and small IGAs.⁴⁰

72. Consequently, the implementation of this modality, whereby the Trust Fund purchases the requested items directly from the vendors through MODs, would follow the same manner of implementation as for the small IGAs.

73. In the lead-up to the actual implementation, the Trust Fund will carry out the following preparatory steps: (i) the grouping of victims and scheduling these groups for the pick-up/delivery of their selected items; (ii) arranging the transfer of funds through an MOD in cooperation with the relevant finance units of the Registry; (iii) obtaining a security assessment and updated recommendations from the Bunia Field Office security officers with respect to the proposed payment method; (iv) continuing consultations with the Court’s medical unit to take the necessary precautions in light of COVID-19 and Ebola; (v) communicating the proposed calendars and groups to the LRVs for their input; and (vi) with the consent of the LRVs, contacting the relevant victims in advance to inform them of the scheduled date and how the implementation will proceed, as well as confirming their specific choices, if needed. In instances where a victim indicated that he or she requires assistance to travel, the Trust Fund will liaise with the LRVs and the victim to find appropriate *ad hoc* solutions.

74. For the actual implementation, the Trust Fund will visit the vendors at the market with little groups, so the victims can directly receive their selected items based on their budgets.

³⁹ Email from the Trust Fund to the Procurement Unit on 13 February 2020 at 16.24.

⁴⁰ Email from the Procurement Unit to the Trust Fund on 13 February 2020 at 21.38; see 26 July 2019 Update Report, paras 25-32.

Regarding the financial and documentation aspects, the Trust Fund intends to have each victim sign an *acte de réception* immediately after receiving his or her selected merchandise.

75. The Trust Fund intends to cover the costs of transportation of the items to the location of the victim. In a situation where the victim is unable to collect all of his/her items as a result of insufficient storage or as a result of the perishable nature of the items, provision will be made for the vendor to provide the items in batches as per the request of the victims. A *bon de retrait* system will be set up to enable the victims to collect the needed quantity of items at their convenience. The Trust Fund will ensure the effective implementation in these cases by setting up a monitoring system to capture and assess which victims have received their items in totality or partially.

76. The Trust Fund hereby respectfully requests the Trial Chamber's approval for the proposed way of implementation as set out above, taking into account that it has diligently carried out consultations with all relevant Registry colleagues, including in order to ensure compliance with the RFF, and with the LRVs,⁴¹ and has provided the Trial Chamber with as much detailed information as is realistic and possible, particularly bearing in mind the evolving health and security situation in Ituri and the corresponding JTAG restrictions.

F. Psychological Support

77. On 19 March 2019, the Trust Fund communicated a draft Call for Consultants to the LRVs for their comment and input.⁴² The OPCV LRV provided the Trust Fund with her observations on 25 March 2019, and, on 3 April 2019, the LRV informed the Trust Fund that he would make a counter-proposal within a reasonable period of time.⁴³

78. On 12 March 2020, the LRV indicated that, following clarifications from the Trust Fund's field staff that the Call for Consultants constitutes a first step in selecting interested individuals or organisations to whom will then be sent a detailed SOW, he does not object to the publication of the EOI.⁴⁴

⁴¹ LRV's Report of 6 March 2020, para. 49-50.

⁴² Email from the Trust Fund to the LRV on 19 March 2019 at 17.34; email from the Trust Fund to the OPCV LRV on 19 March 2019 at 17.40.

⁴³ Email from the OPCV LRV to the Trust Fund on 25 March 2019 at 11.47; email from the LRV to the Trust Fund on 3 April 2019 at 16.55.

⁴⁴ LRV's Report of 12 March 2020, paras 26-28.

79. Following this communication, the Trust Fund shared the Call for Consultants with the LRVs for their final approval.

80. The Trust Fund takes note of the proposals set out in the LRV's Report of 12 March 2020 and agrees with the LRV on the relevance of the report of the expert appointed by the Trial Chamber in September 2015, and the therein proposed model as an excellent basis on which to further define the model of support to be provided to the beneficiaries.⁴⁵

81. Based on this proposal and a meeting held with the LRV in July 2020, the Trust Fund contacted the expert directly on 10 July 2020 with a view to hire her as a consultant to draft the EOI and SOW. Should this be possible and as soon as these materials will be prepared, foreseeably in Autumn 2020, the procurement process for the psychological support programme can start. As discussed with the LRV and the expert, the Trust Fund envisages that the expert may also be involved after the procurement process for training and monitoring purposes. However, as she is assisting in the procurement process, she cannot be herself the implementing partner.

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests the Trial Chamber to:

1. Approve the implementation of the purchase of motorcycles, as set out in section E (2) (i) above.
2. Approve the implementation of the purchase of fuel, as set out in section E (2) (ii) above.
3. Approve the implementation of the purchase of various products, as set out in section E (2) (iii) above.

⁴⁵ LRV's Report of 12 March 2020, paras 52-68.



Pieter W.I. de Baan
Executive Director of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 17 July 2020

At The Hague, The Netherlands