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TRIAL CHAMBER II

Before:

**Judge Chang-ho Chung, Presiding Judge
Judge Péter Kovacs
Judge Maria del Socorro Flores Liera**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Public

**Public Redacted Version of “Defence observations on the Trust Fund for Victims’ Fifth
Update Report
on the Implementation of the Initial Draft Implementation Plan”, dated 6 June 2022,
ICC-01/04-02/06-2769-Conf**

Source: Defence Team of Mr Bosco Ntaganda

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

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Further to the Decision on the TFV's Fourth Update Report on the Implementation of the Initial Draft Implementation Plan issued by Trial Chamber II ("Chamber") on 12 May 2022 ("Decision on Fourth Report")¹ and the submission by the Trust Fund for Victims ("TFV") of its "Fifth Update Report on the Implementation of the Initial Draft Implementation Plan", notified on 25 May 2022 ("TFV Fifth Report"),² Counsel for Mr Ntaganda ("Defence") hereby submits this:

**Defence observations on the Trust Fund for Victims' Fifth Update Report
on the Implementation of the Initial Draft Implementation Plan**

"Defence Observations on Fifth Report"

INTRODUCTION

1. In its Decision on Fourth Report, the Chamber instructed the TFV *first*, "[...] to provide concrete information in its next report as to: (i) the exact dates and number of victims that have actually started benefiting from the IDIP and its two programmes during the contractual year ending by 30 April 2022 [...] and (iii) whether any surplus related to the projects not having reached their full capacity or not having provided actual services during the entire previous contractual year will be reinvested or used in the future"³, *second* "[...] to provide precise and updated information as to the number of victims assessed in the context of the IDIP's screening",⁴ and *third*, "[...] to ensure that the above and indeed all clarifications included in the Decision on the Registry's First Report are correctly applied by the relevant examiner when assessing eligibility."⁵ In addition, the Chamber held that it "[...] expects the TFV to continue keeping the Chamber and the parties informed as to any further [security] developments that may have an impact on the IDIP's implementation."⁶

2. These Defence Observations on Fifth Report address these requirements in turn as well as three issues arising from the TFV Fifth Report, namely resort to socio-economic measures, the distinction between assistance programs and judicial reparations and outreach measures implemented by the TFV.

¹ Decision on the TFV's Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 12 May 2022, [ICC-01/04-02/06-2761-Conf](#) ("Decision on Fourth Report").

² Trust Fund for Victims' Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 May 2022, [ICC-01/04-02/06-2767-Conf](#) ("Fifth Report").

³ Decision on Fourth Report, para.13.

⁴ Decision on Fourth Report, para.14.

⁵ Decision on Fourth Report, para.26.

⁶ Decision on Fourth Report, para.28.

3. Considering the observations set out below, the Defence submits that insufficient information is being provided by the TFV in many areas. The TFV should thus be ordered to provide more detailed information in its next report due on 24 July 2022. Furthermore, oversight exercised over the actions of the TFV remains an issue of concern to the Defence.

CONFIDENTIALITY

4. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, these Defence Observations are classified as confidential as they respond to submissions likewise classified as confidential. A public redacted version of these Defence Observations will be filed shortly in accordance with the Chamber's instructions.

SUBMISSIONS

I. Exact dates and number of victims

5. The Defence understands from the TFV Fifth Report that as of 24 May 2022, *i.e.* the date of the notification of the Fifth Report, 24 priority victims – 11 Former Child Soldier Victims and 13 Victims of the Attacks – have started benefitting from the implementation of the IDIP reparations, including urgent socio-economic measures, urgent psychological measures and urgent physical measures.⁷ In this regard, the Defence notes that this number is well below the 31 beneficiaries in total – 12 Former Child Soldier Victims and 19 Victims of the Attacks – who have already been referred to the implementing partners for intake.⁸

6. Furthermore, although reparations have now officially commenced, the TFV does not provide detailed information regarding the actual reparations awarded to priority victims. The information provided falls short of the Chamber's instructions to the TFV to report "regularly to the Chamber on the details of its implementation."⁹ This is even more important at the beginning of the implementation of the IDIP to allow the parties to assess whether reparations received by priority victims fulfil the requirements of the Reparations Order. It is also critical to allow the Chamber to exercise the proper level of oversight over the activities of the TFV at this early stage.

⁷ Fifth Report, para.19.

⁸ Fifth Report, para.19.

⁹ Decision on the TFV's initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#) ("Decision on IDIP"), para.30.

II. Number of victims assessed in the context of the IDIP's screening

7. According to the TFV Fifth Report, as of the date of the submission of the TFV Fourth Report, 46 beneficiaries – 29 Former Child Soldier Victims and 17 Victims of the Attacks - had been positively assessed by the TFV in the context of the IDIP's screening.¹⁰ In addition, as of 24 May 2022 *i.e.* the notification date of the TFV Fifth Report, two additional Victims of the Attacks have been positively assessed, thus resulting in a total of 48 beneficiaries,¹¹ including 29 Former Child Soldier Victims and 19 Victims of the Attacks.¹² The numbers provided thus match.

8. The Defence is nevertheless surprised that between the Fourth Report and the Fifth Report, *i.e.* a period of two months, the TFV has only been able to assess two additional beneficiaries.

9. Furthermore, no information is provided in the TFV Fifth Report regarding the urgency screening of "victims identified so far – because they have submitted applications forms or were registered as new potential beneficiaries – but who did not participate in the trial proceedings".¹³ Yet, as instructed by the Chamber¹⁴, the TFV had coordinated with the VPRS to start as soon as practicable the eligibility assessment and urgency screening of those victims.¹⁵ Subsequently, having proposed a way ahead for the screening of these potential beneficiaries in the Third Report¹⁶, the TFV stated, in the TFV Fourth Report, that "[o]nce it is foreseeable that additional beneficiaries can be taken in, the Trust Fund will engage with VPRS in order to receive their indication as to the victims in urgent needs who they interviewed until March 2021."¹⁷

10. In light of the foregoing, considering (i) the limited number of places in the programmes;¹⁸ (ii) the slow pace of the eligibility assessment and urgency screening of participating victims; and (iii) the fact that DIP reparations may begin within a relatively short

¹⁰ Fifth Report, para.14.

¹¹ Fifth Report, para.15.

¹² Fifth Report, paras.14-15.

¹³ Decision on the TFV's First Progress Report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Directors' decision pursuant to regulation 56 of the Regulations of the Trust Fund, 28 October 2021, [ICC-01/04-02/06-2718-Conf](#) ("Decision on First Report"), para.23.

¹⁴ Decision on First Report, para.23.

¹⁵ Trust Fund's Second Update report on the Implementation of the Initial Draft Implementation Plan, 23 November 2021, [ICC-01/04-02/06-2723-Conf](#) ("Second Report"), para.21.

¹⁶ Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan, 24 January 2022, [ICC-01/04-02/06-2741-Conf](#) ("Third Report"), paras.22-25.

¹⁷ Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 March 2022, [ICC-01/04-02/06-2751-Conf](#) ("Fourth Report"), para.37.

¹⁸ Fourth Report, para.36.

timeframe, depending on the approval of the DIP,¹⁹ the Defence submits that the Chamber should instruct the TFV to limit IDIP reparations to participating victims.

11. The Defence notes in this regard, in light of the information available in the TFV IDIP and subsequent five TFV Update Reports, that the potential number of priority participating victims meeting the criteria set forth by the Chamber for the eligibility assessment and the urgency screening has yet to be determined. According to figures available to this day, there appears to be around 60 priority victims²⁰ in the group of Former Child Soldier Victims. As for Victims of the Attacks, an estimation of the number of victims who meet the Chamber's criteria has yet to be provided and/or confirmed.

12. The Defence therefore submits that the Chamber should instruct the TFV to conduct a proper assessment of the total number of participating priority victims expected to be assessed in the context of IDIP reparations. On the one hand, such an estimate would enable the TFV, and by extension the Chamber, to evaluate the total cost associated with the implementation of the IDIP. On the other hand, such an estimate would assist in ensuring that implementation of the IDIP is limited to genuine priority victims, as opposed to potential beneficiaries taking advantage of the IDIP to benefit from reparations sooner.

III. Application of clarifications in the Decision on Fourth Report and the Decision on the Registry's First Report by the relevant examiner when assessing eligibility

13. Despite the Chamber's instruction to the TFV "[...] to ensure that all clarifications in this decision and in the Decision on the Registry's First Report are correctly applied by the relevant examiner when assessing eligibility,"²¹ the TFV Fifth Report is silent in this regard. The Chamber's holding in its Decision on Fourth Report that "[b]ased on these criteria and analysing both the additional information and documentation collected by the TFV during administrative eligibility assessment of victims and the documents in the case file to which the TFV has access, the Chamber is confident that the TFV has the capacity to conduct, as

¹⁹ Annex 1 to the "Trust Fund for Victims' second submission of Draft Implementation Plan", 25 March 2022, [ICC-01/04-02/06-2750-Conf-Anx1](#) ("Updated DIP"), Attachments "Implementation of Former Child Soldiers Programme (FCSP) v.2.0" and "Implementation of Victims of the Two Attacks Programme".

²⁰ Observations of the Common Legal Representative of the Former Child Soldiers on the "Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan" (ICC-01/04-02/06-2751-Conf), 7 April 2022, [ICC-01/04-02/06-2754-Conf](#), para.32.

²¹ Decision on Fourth Report, para.26, Disposition.

instructed, a fair, efficient, and expeditious assessment of the victims' eligibility",²² is no reason for the TFV not to report on the measures taken to comply with the Chamber's instructions.

14. The Defence acknowledges that the Chamber "[...] has already approved the procedure proposed by the TFV to conduct the administrative eligibility and urgency screening for the IDIP purposes, which, in exercise of its discretion, the Chamber delegated into the TFV."²³ The Defence also acknowledges the TFV's undertaking "[REDACTED]"²⁴ which the Chamber took into consideration. The concerns of the Defence however, are of a different nature.

15. Indeed, the procedure approved by the Chamber on the basis of the TFV First Report²⁵ and the TFV Second Report²⁶ is not only very general, it provides no information on many issues raised by the Defence in its Observations on First Report,²⁷ Observations on Second Report²⁸ and Observations on Fourth Report.²⁹ The TFV must explain and the Chamber and the parties must be informed, beyond the few steps set out in the TFV First Report, how it intends to take stock of and apply the factual evidentiary basis and complex legal findings *inter alia*, in the Trial Judgment,³⁰ Sentencing Judgment³¹ and Reparations Order,³² without any assistance from or oversight being exercised by the Chamber. The Defence deems it appropriate to recall in this regard that VPRS, the Court's section staffed and designed to handle victims' participation and reparation matters, had to seek the assistance of Trial Chamber VI for the purpose determining whether participating victims' narratives were included in the scope of the Trial Judgment.³³ What is more, the findings of VPRS are now being challenged *per se* by the TFV without any information being provided.³⁴ Many developments have taken place since the TFV was initially involved in the eligibility determination process in Lubanga implementation

²² Decision on Fourth Report, para.21.

²³ Decision on Fourth Report, para.27.

²⁴ Annex 1 to Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 March 2022, [ICC-01/04-02/06-2751-Conf-Anx1](#) ("Internal Guidelines"), para.12.

²⁵ Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director's decision pursuant to regulation 56 of the Regulations of the Trust Fund, 23 September 2021, [ICC-01/04-02/06-2710-Conf](#) ("First Report"), paras.44-48; Decision on First Report, para.15, Disposition.

²⁶ Second Report, paras.12-21; Decision on the TFV's Second Progress Report on the implementation of the Initial Draft Implementation Plan, 17 December 2021, [ICC-01/04-02/06-2730-Conf](#) ("Decision on Second Report"), paras.10-13.

²⁷ Defence observations on the TFV First Progress Report on the implementation of the Initial Draft Implementation Plan, 4 October 2021, [ICC-01/04-02/06-2714-Conf](#), paras.6-7,34-44.

²⁸ Defence observations on the TFV Second Progress Report on the implementation of the Initial Draft Implementation Plan, 6 December 2021, [ICC-01/04-02/06-2726-Conf](#), paras.8,14.

²⁹ Defence observations on the Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 7 April 2022, [ICC-01/04-02/06-2755-Conf](#), paras.4,50-59.

³⁰ Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#).

³¹ Sentencing Judgment, 7 November 2019, [ICC-01/04-02/06-2442](#).

³² Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#) ("Reparations Order").

³³ Annex I to the Registry's First Report on Reparations, 30 September 2020, [ICC-01/04-02/06-2602-Conf-AnxI](#).

³⁴ Updated DIP, para.334.

and it is reasonable for the Chamber and the parties to obtain detailed information on the procedural aspects of the eligibility determination and urgency screening process in the context of the IDIP.

16. More importantly, the procedure implemented *de facto* by the TFV to determine the eligibility and urgency requirements of the first 46 victims, as described in the TFV Fourth Report,³⁵ reveals many issues that need to be addressed. Although the Defence is cognizant of the Chamber’s finding that it “[...] does not consider it necessary to play a role in the administrative eligibility assessment and urgency screening that would go beyond overseeing the design of the process as a whole and receiving progress reports and statistical information as to the victims’ eligibility assessments,”³⁶ these issues are part and parcel and well within ‘*overseeing the design of the process as a whole.*’

17. Indeed, as it stands, the eligibility and urgency determination process is but a paper exercise conducted by a so-called TFV examiner, on the basis of information collected by the LRVs and VPRS – in the context of requests for participation approved pursuant to the *prima facie* standard of proof – and provided to the TFV. The sole additional information purportedly in the possession of the TFV *examiner* appears to have been obtained by the TFV’s implementing partners, in the form of a questionnaire opposed by the Defence³⁷ and yet to be addressed by the Chamber. In any event, it stems from the TFV’s description of the procedure implemented that there will be no contact between the TFV examiner and the potential beneficiaries being assessed and that the TFV will only seek additional information or documents from victims, *if required*.³⁸

18. The Defence thus requests the Chamber to instruct the TFV to provide additional information on the internal procedure implemented to determine the eligibility and urgency of priority victims, including in particular, the measures taken to ensure that all clarifications in this decision and in the Decision on the Registry’s First Report are correctly applied by the relevant examiner.

³⁵ See for instance Internal Guidelines, paras.5,14,25,49-53, Attachment “Questionnaire d’entretien – Evaluation de l’urgence des Besoins”.

³⁶ Decision on Second Report, para.13.

³⁷ Defence observations on the Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 7 April 2022, [ICC-01/04-02/06-2755-Conf](#), paras.5,58.

³⁸ See for instance First Report, para.48; Second Report, para.15.

IV. Information on any security related developments that may have an impact on the IDIP's implementation

19. The Defence deplores the paucity of information provided in the TFV Fifth Report regarding the impact of the security situation on the implementation of the IDIP.

20. In its Decision on Fourth Report, the Chamber “[...]” noted the submissions that the impact of the security situation on the IDIP’s implementation primarily concerns the ability of the TFV and its implementing partners to locate and contact victims and ultimately to provide them with services.”³⁹ On this basis, the Chamber considered that “[...]” it has received sufficient information and assurances as to the current impact of the security situation on the IDIP’s implementation [...].”⁴⁰ The Chamber nonetheless held that it “[...]” expects the TFV to continue keeping the Chamber and the parties informed as to any further developments that may have an impact on the IDIP’s implementation.”⁴¹

21. Regrettably, although two months have passed since the Fourth Update Report, the TFV does not provide any update. It simply states once again that “[the security situation] remains volatile and unpredictable [...]”.⁴² The TFV thus fails to inform the Chamber and the parties of any *further* developments that may impact the implementation of the IDIP. What is more, the TFV Fifth Report fails to even address the impact of the security situation on its ability – and that of its implementing partners – to locate and contact victims.

22. Many recent developments are likely to impact the ability of the TFV to locate and contact victims. For instance, besides the fact that many armed groups such as CODECO are continuously conducting numerous deadly attacks, one, ADF, is presently gaining ground in Ituri. This armed group has now absolute control over several new areas and is launching many

³⁹ Decision on Fourth Report, para.28.

⁴⁰ Decision on Fourth Report, para.28.

⁴¹ Decision on Fourth Report, para.28.

⁴² Fifth Report, para.11.

attacks against the civilian population.⁴³ NGO's have expressed concerns over the probability of the intensification of the attacks conducted by ADF.⁴⁴

23. The impact of the retreat of the UPDF on the security situation, and eventually on the implementation of reparations, also deserves consideration. Uganda's armed forces were indeed invited by Congolese authorities to combat ADF conjointly with the FARDC. The UPDF's retreat has been considered as premature by the DRC government, demonstrating their potential lack of means to effectively fight against this armed group.⁴⁵

24. More importantly, the Defence takes issue with the proposition that the impact of the security situation on the IDIP's implementation primarily concerns the ability of the TFV and its implementing partners to locate and contact victims. As addressed in the Defence observations on the Updated DIP,⁴⁶ the impact of the security situation in Ituri on the implementation of the IDIP is much broader and significant.

25. To begin with, the impact of the security situation in Ituri must be assessed in the light of the *do no harm* principle. In its Decision on Fourth Report, the Chamber reminded the TFV that "the *do no harm* principle shall be applicable throughout the reparation proceedings, including when the TFV carries out approved reparations measures, either directly or through its implementing partners."⁴⁷

⁴³ Radio Okapi, Ituri : des attaques des ADF font environ 20 morts, en une semaine, à Djugu (Société civile), 15 May 2022, available at <https://www.radiookapi.net/2022/05/15/actualite/securite/ituri-des-attaques-des-adf-font-environ-20-morts-en-une-semaine-djugu>; Radio Okapi, Ituri : les ADF érigent leurs bastions dans 8 localités à Walese Vonkutu, 24 May 2022, available at <https://www.radiookapi.net/2022/05/24/actualite/securite/ituri-les-adf-erigent-leurs-bastions-dans-8-localites-walese-vonkutu>; Radio Okapi, Ituri : plus de 400 ADF aperçus à Walese Karo, alerte un député, 25 May 2022, available at <https://www.radiookapi.net/2022/05/25/actualite/securite/ituri-plus-de-400-adf-aperçus-walese-karo-alerte-un-depute>; PoliticoCD, Ituri : Les ADF se réorganisent et installent 8 bastions pour planifier des attaques à Irumu (CRDH), 25 May 2022, available at <https://www.politico.cd/la-rdc-a-la-une/2022/05/25/ituri-les-adf-se-reorganisent-et-installent-8-bastions-pour-planifier-des-attaques-a-irumu-crdh.html/109255/>.

⁴⁴ PoliticoCD, Ituri : Les ADF se réorganisent et installent 8 bastions pour planifier des attaques à Irumu (CRDH), 25 May 2022, available at <https://www.politico.cd/la-rdc-a-la-une/2022/05/25/ituri-les-adf-se-reorganisent-et-installent-8-bastions-pour-planifier-des-attaques-a-irumu-crdh.html/109255/>; ; Radio Okapi, Ituri : les ADF érigent leurs bastions dans 8 localités à Walese Vonkutu, 24 May 2022, available at <https://www.radiookapi.net/2022/05/24/actualite/securite/ituri-les-adf-erigent-leurs-bastions-dans-8-localites-walese-vonkutu>; Amnesty International, DRC-Uganda: Civilians must be protected during joint military operations, 3 December 2021, available at <https://www.amnesty.org/en/latest/news/2021/12/drc-uganda-civilians-must-be-protected-during-joint-military-operations/>.

⁴⁵ Radio Okapi, L'armée ougandaise annonce le retrait de ses troupes de la RDC, 15 May 2022, available at <https://www.radiookapi.net/2022/05/18/emissions/dialogue-entre-congolais/larmee-ougandaise-annonce-le-retrait-de-ses-troupes-de>.

⁴⁶ Observations on behalf of the convicted person on the Trust Fund for Victims' Updated Draft Implementation Plan, 18 May 2022, ICC-01/04-02/06-2765-Conf ("Defence Observations on Updated DIP"), paras.39-43.

⁴⁷ Decision on Fourth Report, para.18.

26. The TFV acknowledged in previous pleadings that the *do no harm* principle implies that it should assess the potential consequences of its actions, not to fuel any tension or animosity.⁴⁸ This is why, even in the context of the IDIP, the TFV must *inter alia*, obtain much more information on the security situation, identify the various groups fighting, their location and those who are their targets, ensure through a robust eligibility determination process that no victim associated with militias such as CODECO or ADF obtain reparations, and avoid creating conditions that could potentially trigger more conflicts, thereby doing more harm than good.

27. Indeed, in a region where for over twenty years every person has been affected by the numerous armed conflicts, implementing reparations to only one community risks being perceived as an injustice by other communities, potentially leading to increased tensions and animosity

28. For instance, the TFV must be very cautious when planning and implementing outreach activities for the purpose of identifying new potential priority victims / beneficiaries. Pursuant to TFV Fifth Report, the Chamber is informed for the first time that “[...] radio messages have started to be broadcasted since 9 May 2022 for an initial duration of two months.”⁴⁹ Yet, neither the content of the messages *nor* the locations where they are broadcasted are known.

29. Considering the complex, unpredictable and highly volatile security situation in Ituri today, the Defence takes the view that the TFV must inform the Chamber and the parties of its outreach strategy and that the outreach message should be approved by the Chamber.

V. Additional issues arising from the TFV Fifth Report

30. The Defence deems it appropriate to address two additional issues arising from the TFV Fifth Report, namely resort to socio-economic measures for priority victims and the TFV’s understanding of the difference between assistance projects and judicial reparations.

31. Regarding the resort to socio-economic measures for priority victims, the Defence acknowledges the Chamber’s finding in its Decision on Fourth Report that “financial hardship that may endanger a priority victim’s life can be properly and meaningfully addressed within the context of the assistance projects relied upon for the IDIP purposes, and until the effective implementation of the DIP [...]”⁵⁰ On this basis, the Chamber welcomed the fact that “[...]”

⁴⁸ *The Prosecutor v. Thomas Lubanga*, Submission on the principles to be applied, and the procedure to be followed by the Chamber with regard to reparations, 10 May 2012, [ICC-01/04-01/06-2878](#), paras.5-7.

⁴⁹ Fifth Report, para.23.

⁵⁰ Decision on Fourth Report, para.10.

implementing partners have leeway to address their situation, including with material support in the form of subsistence allowances, if and when required.”⁵¹ Furthermore, in the TFV Third Report, the TFV indicated that when “implementing activities are not feasible due to the current lack of infrastructure or the security risks in relation to the safety of victims and/or the implementing partner’s staff and operations [...] the implementing partner may opt for the most adequate solution based on the nature of victim needs. For socio-economic activities, cash transfer may be organized.”⁵²

32. The Defence therefore understands that the TFV intends to offer two types of cash-transfers in the context of IDIP reparations, namely (i) a lump sum *in lieu* of rehabilitation programmes should the security situation deteriorate or due to the current lack of infrastructure; and (ii) subsistence allowances for priority victims with urgent material needs. Considering the limitations in the Reparations Order concerning reparations in the form of financial benefits, which should only be used exceptionally,⁵³ it is of the utmost importance for the TFV to provide detailed information, including on the quantification of financial benefits awarded and the TFV’s planned procedures to control and oversee the expenses of beneficiaries. Specifically with regard to the distribution of lump sum *in lieu* of, the TFV should be instructed to provide details concerning the current infrastructure of the programmes or the lack thereof.

33. In any case, the Defence submits that cash transfer should be avoided as much as possible. In this regard, the Defence refers to its Observations on the Updated DIP⁵⁴, which highlight the numerous risks associated with cash transfers, including but not limited to (i) the risk of financing armed groups in Ituri; and (ii) the risk of having to deal with non-priority victims and/or false claims, as the burden of proof is significantly low. Moreover, if and when resort to financial benefits is unavoidable, the Defence reiterates⁵⁵ its proposal that the TFV should instead opt for a system of expense pre-approval and subsequent reimbursement.

34. As for TFV’s understanding of the difference between assistance projects and judicial reparations, the Defence deems appropriate to draw the Chamber’s attention to paragraph 22 of the TFV Fifth Report in which the TFV appears to conflate its two mandates, namely its assistance role for victims falling under the jurisdiction of the court and its implementing role of reparations for victims of the crimes for which Mr Ntaganda was convicted. In this regard, the Defence recalls the instructions of the Chamber, which held that “Firstly, as suggested by

⁵¹ Decision on Fourth Report, para.10.

⁵² Third Report, para.10.

⁵³ Reparation Order, para.84.

⁵⁴ Defence Observations on Updated DIP, para.100.

⁵⁵ Defence Observations on Updated DIP, para.104.

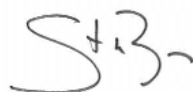
the TFV and the LRVs, a clear budgetary and administrative distinction should be made within the assistance projects in order to separately account for the services provided to the victims of the crimes for which Mr Ntaganda was convicted ('Ntaganda victims'), as opposed to, more generally, victims of the crimes under the jurisdiction of the Court in the Democratic Republic of the Congo ('situation victims')."⁵⁶ Although the Chamber has approved the use of assistance projects to repair priority victims in the context of the IDIP, the two call upon significantly different eligibility mechanism, which should not be confused. It is thus paramount for the Chamber to provide clear instructions to the TFV in this regard.

CONCLUSION

35. In light of the foregoing, the Defence respectfully requests the Chamber to consider these Defence Observations on Fifth Report and to order / instruct the TFV:

- a. to provide the missing information regarding the procedural aspects of the eligibility determination and urgency screening process;
- b. to re-assess the impact of the security situation in Ituri on the implementation of the IDIP in light of these observations and to provide the result thereof as well as detailed information, including any mitigation strategy required;
- c. to provide the Chamber and the parties with the details of its outreach strategy referred to in the TFV Fifth Report, including an assessment of its potential impact in line with the do no harm principle;
- d. to provide detailed information in relation to, *inter alia* (i) the type of reparations awarded to priority victims; (ii) the number of priority victims expected to be assessed in the context of the IDIP; and (iii) resort to socio-economic reparations for priority victims

RESPECTFULLY SUBMITTED ON THIS 19th DAY OF JULY 2022



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⁵⁶ Decision on IDIP, para.25.