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Internationale**



**International  
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Date: 1 July 2016

**TRIAL CHAMBER II**

**Before:** Judge Marc Perrin de Brichambaut, Presiding Judge  
Judge Olga Herrera Carbuccion  
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Public Document**

**With Confidential *Ex parte* Annex, only available to the Office of Public Counsel  
for Victims**

**Consolidated response to the submissions filed on 31 March and 7 June 2016 by  
the Trust Fund for Victims**

**Source:** Office of Public Counsel for Victims

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

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## I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims, acting as the Legal Representative of some applicants for reparations and some victims who may benefit from an order for collective reparations<sup>1</sup> (“the Legal Representative”), hereby submits a consolidated response to the submissions of the Trust Fund for Victims (“the TFV”) filed on 31 May and 7 June 2016 and respectively containing the first submission of victim dossiers to Trial Chamber II (“the Chamber”) pursuant to its Order of 9 February 2016 (“the Order”), and additional information on the draft implementation plan for reparations.<sup>2</sup>

2. As a preliminary remark, the Legal Representative is unsure about the legitimacy of the TFV’s decision to discontinue field missions intended to meet with and complete the dossiers of victims already authorised to participate in the trial. In fact, this decision is tantamount to a unilateral stay of execution of a court order without prior authorisation.

3. The Legal Representative also notes that the request for reconsideration contained in the TFV’s submission of 31 May 2016 does not meet the criteria established by the Court’s case law. However, considering the difficulties encountered in implementing the Order, identified by the TFV after its initial field missions, including risks pertaining to the well-being of victims, the Legal Representative submits that under article 64 of the Rome Statute, the Chamber may use its discretion to adapt the Order to the realities on the ground.

4. The Legal Representative therefore contends that in the interest of the prospective beneficiaries whom she represents, practical solutions should be found to ensure implementation of the reparations procedure, instead of engaging in

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<sup>1</sup> Trial Chamber I, “Decision on the OPCV’s request to participate in the reparations proceedings”, ICC-01/04-01/06-2858, 5 April 2012.

<sup>2</sup> “First submission of victim dossiers”, ICC-01/04-01/06-3208, 31 May 2016 and “Additional Programme Information Filing”, ICC-01/04-01/06-3209, 7 June 2016.

further legal discussions on issues that have already been exhaustively examined. Accordingly, the Legal Representative wishes to submit practical suggestions to the Chamber to assist it in its mandate of implementing the reparations order as amended by the Appeals Chamber, and supervising implementation of the plan proposed by the TFV.

## II. BACKGROUND

5. On 3 March 2015, the Appeals Chamber rendered its “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2” (“the Judgment on appeal”) directing the TFV to submit the draft implementation plan (“the Draft Implementation Plan”) within six months.<sup>3</sup>

6. On 3 November 2015, the TFV submitted the Draft Implementation Plan.<sup>4</sup>

7. On 9 February 2016, the Chamber issued the “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”<sup>5</sup> (“the Order”), requesting the TFV to prepare the dossiers of victims who are potential beneficiaries of reparations and submit them to the Chamber by the prescribed dates,<sup>6</sup> and to prepare and submit details of the reparations plan to the Chamber by 7 May 2016.

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<sup>3</sup> “Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2” (Appeals Chamber), ICC-01/04-01/06-3129 A, A2 A3, 3 March 2015.

<sup>4</sup> “Filing on Reparations and Draft Implementation Plan,” ICC-01/04-01/06-3177-Conf and ICC-01/04-01/06-3177-AnxA, 3 November 2015.

<sup>5</sup> See, “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, ICC-01/04-01/06-3198, 9 February 2016.

<sup>6</sup> *Idem*, paras. 17 and 18.

8. On 15 February 2016, the TFV filed a request for leave to appeal the Order.<sup>7</sup> On 4 March 2016, the Chamber dismissed the request *in limine*.<sup>8</sup>

9. On 23 March 2016, the TFV filed a request for extension of time to submit the first batch of victim dossiers.<sup>9</sup> On 29 March 2016, the Chamber granted the request and extended the time to 31 May 2016.<sup>10</sup>

10. On 3 May 2016, the TFV filed another request for extension of time for the submission of additional information on the envisaged reparations programmes.<sup>11</sup> On May 4, the Chamber also granted the request and extended the said time to 7 June 2016.<sup>12</sup>

11. On 31 May and 7 June 2016, the TFV filed the first batch of victim dossiers and additional information on the envisaged reparations programmes.<sup>13</sup>

12. On 10 June 2016, the Legal Representative sent an email to the Chamber requesting leave to submit consolidated observations in response to the TFV's submissions.<sup>14</sup> On 14 June 2016, the Chamber granted the request, instructing the Legal Representatives of Victims, and the Defence to submit their observations on the TFV's submission by 1 July 2016.<sup>15</sup>

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<sup>7</sup> "Request for Leave to Appeal against the '*Ordonnance enjoignant au Fonds au profit des victimes de compléter le projet de plan de mise en œuvre*'" (9 February 2016)", ICC-01/04-01/06-3200, 15 February 2016

<sup>8</sup> Trial Chamber II, "Decision on the request of the Trust Fund for Victims for leave to appeal against the order of 9 February 2016", ICC-01/04-01/06-3202, 4 March 2016.

<sup>9</sup> "Request for extension of time to submit the first transmission of potential victim dossiers", ICC-01/04-01/06-3204, 23 March 2016.

<sup>10</sup> "Decision on the request of the Trust Fund for Victims for an extension of the time limit for the submission of the first batch of files of potential victims", ICC-01/04-01/06-3205, 30 March 2016.

<sup>11</sup> "Request for extension of time to submit additional reparation programme information" (Trial Chamber II), ICC-01/04-01/06-3207, 3 May 2016.

<sup>12</sup> "Decision extending the time limit for the submission of additional reparation programme information" (Trial Chamber II), ICC-01/04-01/06-3207, 4 May 2016.

<sup>13</sup> "First submission of victim dossiers" and the "Additional Programme Information Filing", above, footnote 2.

<sup>14</sup> Email sent on 10 June 2016 at 12:42, by the Principal Counsel, to the Legal Officer of Trial Chamber II.

<sup>15</sup> "Order setting the time limit for observations on the latest documents filed by the Trust Fund for Victims" (Trial Chamber II), ICC-01/04-01/06-3210-tENG, 14 June 2016.

### III. OBSERVATIONS

13. The Legal Representative notes that it has emerged from the experience of counsel who undertook the initial field missions with the TFV in April 2016, and from TFV findings, that there is a growing sense of disappointment among victims, which is compounded by increasing reluctance to participate in the reparations process on which the TFV is still not able to provide more detailed information. The Legal Representative respectfully submits that both the Chamber and the TFV should give consideration to this fact, in order to ensure the effective implementation of the reparations within a reasonable time limit, after nine years of proceedings and 14 years after commission of the crimes which led to the harm suffered by the victims.

14. In response to the submissions filed by the TFV, this submission will address the following issues: (A) the TFV's request for reconsideration of the Order; (B) the Chamber's discretion under article 64(2) and (6)(f) of the Rome Statute to modify and/or amend the Order with a view to adapting it to new circumstances encountered during its implementation; and (C) practical suggestions for effective implementation of the Order – which may ultimately be amended by the Chamber.

15. Lastly, the Legal Representative suggests the convening of a hearing to discuss all these issues and agree on a schedule for the effective implementation of reparations within a reasonable time frame.

#### **A. The TFV's request for review of the Order does not meet the standard established by the Court's case law**

16. By way of introduction, the Legal Representative wonders whether there is any legal basis for the TFV – which is not a party to the reparations proceedings and merely executes the Chamber's orders with respect to reparations – to submit a request for reconsideration of the Order. In any event, she contends that the request does not fall within the clearly defined framework established by the Court's case law.

17. In fact, as the various Chambers involved have consistently stated, there is no accommodation in the Rome Statute and the Rules of Procedure and Evidence for a request of this nature during proceedings.<sup>16</sup> However, a request for reconsideration may be entertained under “exceptional circumstances” which the Chambers consider as existing where the order appears to be “irregular”, i.e. “[...] manifestly unsound and [its] consequences are manifestly unsatisfactory.”<sup>17</sup>

18. Yet, the TFV’s submissions fail to establish any error in the reasoning of the Chamber that might render the Order defective.<sup>18</sup> The said Order is not irregular and, although current circumstances indicate that its implementation is apparently difficult at this stage of the proceedings, that does not in any way mean that it was not grounded on sound reasoning at the time it was issued.

19. Furthermore, the Legal Representative points out that the arguments made in support of the request for reconsideration are none other than those previously advanced – and dismissed – in support of the TFV’s application for leave to appeal the same Order<sup>19</sup>. In this regard, the Legal Representative relies on the case law of the

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<sup>16</sup> See, *inter alia*, Pre-Trial Chamber I, “Decision on the Defence for Mathieu Ngudjolo Chui’s Request concerning translation of documents”, ICC-01/04-01/07-477, 15 May 2008, p. 5; Pre-Trial Chamber II, “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”, ICC-01/09- 02/11-96, 30 May 2011, para. 38; Pre-Trial Chamber II, Single Judge, “Decision on the ‘Demande en reconsidération de la décision ICC-01/05-01/13-460 05-06-2014’ submitted by the Defence for Mr Mangenda on 12 June 2014”, ICC-01/05-01/13-498, 17 June 2014 and Trial Chamber V(A), “Decision on the Sang Defence’s Request for Reconsideration of Page and Time Limits”, ICC-01/09-01/11-1813, 10 February 2015.

<sup>17</sup> See, *inter alia*, Trial Chamber III “Decision on the ‘Requête de la Défense aux fins d’obtenir de la Chambre de Première Instance III des décisions appropriées avant l’ouverture du Procès prévue pour le 22 Novembre 2010’”, ICC-01/05-01/08-1010, 16 November 2010 and Trial Chamber I, “Decision on the defence request to reconsider the ‘Order on numbering of Evidence’ of 12 May 2010’”, ICC-01/04-01/06-2705, 30 March 2011.

<sup>18</sup> Trial Chamber IX, Single Judge, “Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance”, ICC-02/04-01/15-468, 15 June 2016; Trial Chamber VII, “Decision on Prosecution’s Motion for Reconsideration of the ‘Decision on Outstanding Evidentiary Applications’”, ICC-01/05-01/13-1896, 19 May 2016; and Trial Chamber VI, “Decision on Defence’s request seeking partial reconsideration of ‘Decision on Defence preliminary challenges to Prosecution’s expert witnesses and request for leave to reply’”, ICC-01/04-02/06-1282, 18 April 2016.

<sup>19</sup> See “Decision on the request of the Trust Fund for Victims for leave to appeal against the order of 9 February 2016”, above footnote 8.

Court which holds that mere disagreement with a Chamber's reasoning may not constitute grounds for a request for reconsideration.<sup>20</sup>

20. In any event, the Legal Representative submits that such action is unwarranted in the instant case as the Chamber may, *proprio motu*, exercise its discretion under the Rome Statute, to amend any order for the conduct of proceedings.

**B. The Chamber's discretionary powers under article 64(2) and (6)(f) of the Rome Statute allow it to modify the Order**

21. The Legal Representative submits that given the circumstances of the instant case and developments noted in the field during the initial field missions undertaken by the TFV in April 2016, the Chamber should consider the possibility of amending its Order to adapt it to the new requirements of the proceedings.

22. In this regard and as established in the case law of the Court, particularly in the instant case:

[...] it is necessary for the Chamber to be able to make and amend its case-management orders. [...] For issues that are solely administrative, it would cause injustice - indeed it may well lead to absurdity - if the Chamber was unable to alter the procedural orders that, in reality, need constant review as the issues, the evidence and the circumstances of the case evolve. Accordingly, decisions or orders of this kind will, of necessity, need to be varied, sometimes repeatedly.<sup>21</sup>

23. In fact, various chambers of the Court have had to amend their previously issued orders on account of new developments in the cases pending before them.<sup>22</sup>

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<sup>20</sup> Pre-Trial Chamber I, "Corrigendum to the Decision on Libya application for leave to appeal and request for reconsideration of the 'Decision on the "Urgent Defence Request"', ICC-01/11-01/11-316-Corr, 24 April 2013, para. 23.

<sup>21</sup> Decision on the defence request to reconsider the 'Order on numbering of Evidence' of 12 May 2010", ICC-01/04-01/06-2705, 30 March 2011, para. 13.

<sup>22</sup> Trial Chamber I, "Decision adopting amended and supplemented directions on the conduct of the proceedings", ICC-02/11-01/15-498, 4 May 2016, para. 10: "By their technical nature and their being directly instrumental to the fundamental need to ensure the fair and expeditious conduct of the trial, directions are subject to modification, including in light of actual developments. Such developments

24. Accordingly, under article 64(2) of the Rome Statute which provides that it is the duty of the Chamber to ensure that a trial is fair and expeditious, the Chamber may amend its orders. Furthermore, pursuant to article 64(6)(f) of the Statute, the Chamber may rule on any relevant matters in the performance of its duties. The Legal Representative submits that these provisions, which are supposed to be implemented during trial, remain applicable to the reparations phase.

25. Indeed, in the specific and new context of reparations, the case law of Trial Chamber II cited above is sound. In fact, the Order mainly contributed to determining a time frame for implementing reparations, and in defining a procedure which includes the identification of beneficiary victims. Where the Chamber finds that the planned procedures are not the most appropriate in practice, it has a duty to order any necessary modifications.

26. Accordingly, the Legal Representative, based on the TFV's observations, notes that the current approach for identifying victims eligible for reparations, is bound to cause scheduling delays, generate substantial additional costs and, basically, imperil the well-being and safety of victims.

27. In order to overcome the difficulties encountered, the Legal Representative hereby submits practical suggestions to advance the reparations procedure and ensure the protection, well-being, and safety of victims. These suggestions may also help to avoid a lengthy and costly process as anticipated in the TFV's latest submissions.

### **C. Practical suggestions for implementing the Order which may ultimately be amended**

#### **1. Assessment of harm to determine reparations plans**

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are inherent in the nature of a trial and, as such, not predictable in advance. Accordingly, the parties must be ready to expect and welcome such changes and to promptly adapt to them with a view to contributing to the overall fairness and expeditiousness of the proceedings." See also, Trial Chamber VI, "Supplemental decision on matters related to the conduct of proceedings", ICC-01/04-02/06-1342, 27 May 2016.

28. The Legal Representative notes that the TFV cited, *inter alia*, logistical and resource constraints as obstacles to the implementation of the Order. In particular, she is concerned by the amount of money the TFV has already spent to complete 31 dossiers. Her preoccupation is compounded by the comment that the amount spent is deductible from the total amount that the TFV had earmarked for reparations in the instant case.

29. Should this approach be maintained, the Legal Representative fears that the TFV's reserves may not be sufficient to cover the actual amount of reparations for victims. Accordingly, the Legal Representative is looking at ways of simplifying the procedure for collecting victims' applications for reparations and the TFV's role in this exercise.

30. Regarding the assessment of harm as conducted hitherto, the Legal Representative understands that the Order was essentially intended to state that the Chamber needed a certain number of dossiers that would enable it to understand the nature and extent of victimisation in order to determine which of the TFV's draft project might address such victimisation.

31. The Legal Representative contends that the first dossiers submitted by the TFV are sufficiently illustrative of the overall situation, enabling the Chamber to grasp the nature and extent of victimisation with a view to suggesting concrete amendments to the TFV's implementation plan and, subsequently, approving it. In this regard, considering the apparent impasse in the implementation of reparations, the Legal Representative submits that the content of the dossiers filed on 31 May, should be sufficient to enlighten the Chamber on the scope and form of victimisation resulting from the crimes for which Mr Lubanga was convicted.

32. Indeed, the TFV's draft implementation plan of 3 November 2015; the principles it contains (in particular the presumption of mental harm and "*integrated*

*programming*");<sup>23</sup> the dossiers in the Chamber's custody; the views and concerns of victims previously presented to the Chamber;<sup>24</sup> as well as reports by experts who appeared at trial, should adequately edify the Chamber on the victims to be covered by the reparations plans.

33. However, the Chamber may decide, *proprio motu*, to appoint experts capable of providing an expertise on the form of victimisation endured by child soldiers and its long-term impact, and to identify projects that can address the needs of victims. Should the Chamber consider appointing experts, the Legal Representative would like such experts to be jointly instructed by the parties. Once the expertise has been provided, the TFV may then propose the most suitable projects – which might be approved by the Chamber – and, subsequently, determine projects that are most suitable for victims whose request for reparations would have been approved by the Chamber.

34. Such an approach would avoid subjecting victims anew to other – numerous and lengthy – interviews additional to those conducted during the preparation of their requests for reparations. It would also limit the costs of such identification missions only to those organised for the sole purpose of identifying victims and compiling requests for reparations.<sup>25</sup> Lastly, this approach would enable the Defence to participate in the process by joining in the instruction of experts.

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<sup>23</sup> "Filing on Reparations and Draft Implementation Plan," above footnote 4 and "Additional Programme Information Filing", above footnote 2, paras 33-34.

<sup>24</sup> "Observations sur le Projet de mise en œuvre des réparations déposé par le Fonds au profit des victimes le 3 novembre 2015", ICC-01/04-01/06-3193-Conf, 1 February 2016, in particular paras. 27-45 which identify certain types of certain projects for beneficiaries. See also, "Observations of V01 Group of Victims on the "Filing on Reparations and Draft Implementation Plan" filed by the Trust Fund for Victims, ICC-01/04-01/06-3177", ICC-01/04-01/06-3194-tENG, 1 February 2016; "Observations of Team V02 on the draft implementation plan for reparations submitted by the Trust Fund for Victims (TFV) to Trial Chamber II on 3 November 2015" before Trial Chamber II", ICC-01/04-01/06-3195-tENG, 1 February 2016.

<sup>25</sup> "First submission of victim dossiers", above, footnote 2, "Additional Programme Information Filing", paras 15-17, 78, 116, 189 and para. 93.

35. Furthermore, like the TFV, the Legal Representative notes that the absence of more detailed projects approved by the Chamber at this juncture makes it difficult to hold informed interviews with victims. In fact, the victims find themselves in a difficult position because they are expected to express their wishes and agree to participate in projects whose content cannot be disclosed to them. Consequently, the Legal Representative submits that the Chamber should give preliminary approval to certain types of projects to be implemented subsequently by the TFV, so that the victims are sufficiently enlightened and can, therefore, make informed decisions on participation in the reparations procedures in the instant case.

36. The Legal Representative emphasises that this is a step that must precede interviews to identify new victims who are potential beneficiaries.

37. However, the Legal Representative takes note of the TFV's suggestion about developing collective activities through symbolic interventions in tandem with actual programmes and supports such actions for affected communities.<sup>26</sup>

**2. Joint mission to raise awareness among affected communities and, subsequently, missions by the Legal Representative to identify potential beneficiaries.**

38. The Legal Representative submits that the Court should, as soon as possible, provide the affected communities with information reparations implementation projects preliminarily approved by the Chamber,<sup>27</sup> and on the ensuing victim identification procedure.

39. The Legal Representative suggests that it is incumbent on the Registry to organise joint missions which include field staff of the Victims Participation and Reparations Section ("the VPRS") and of the Public Information and Outreach

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<sup>26</sup> "Additional Programme Information Filing", above footnote 2, paras. 65-66.

<sup>27</sup> See above, para. 35

Section, who will visit locations previously identified in consultation with the Legal Representative, to disseminate information about ongoing reparations procedures. In fact, the Registry is duty-bound to raise awareness within the affected communities and has the requisite expertise to execute that mandate.

40. Accordingly, prior consultations should be held among stakeholders (Registry, legal representatives, and TFV) to reach common ground on the key messages to be disseminated to the affected communities. In fact, if the messages disseminated are not the same, then this crucial process is bound to fail.

41. In that regard and relying on the Judgment rendered by Trial Chamber I, the Legal Representative has prepared a list of locations which can be visited by Court staff to raise the awareness of prospective beneficiaries. The list is appended to this submission for the attention of the Chamber.<sup>28</sup> However, some of the locations may turn out to be problematic due to challenges pertaining to the safety and well-being of victims who may have an interest in reparations. In fact, some victims live in communities which still support or are close to Mr Lubanga, making the identification exercise more complex should victims be exposed.

42. To ensure efficiency, the Legal Representative suggests that these outreach activities should start in locations not identified as problematic. Besides, this would allow more time to identify the most effective approach for reaching out to the largest number of victims who are potential beneficiaries in other communities which pose a security risk.

43. These missions will pave the way for the Legal Representative's missions to identify potential beneficiaries and compile applications for reparations. The Legal Representative therefore requests the assistance of a field counsel who would join the OPCV team, in accordance with the practice already established in other cases and

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<sup>28</sup> Confidential, *Ex parte*, Annex 1, only available to the VPRS.

which has proven its effectiveness. The said appointed field counsel might subsequently join the preliminary missions.

44. Given the TFV's experience to date, the Legal Representative considers that these missions should be conducted by teams smaller than those deployed hitherto, in order to simplify the logistics involved, cut costs and, above all, ensure the wellbeing of the victims to be interviewed.<sup>29</sup>

45. The Legal Representative holds the view that the large number of people who interviewed the victims targeted by the initial missions of the TFV is not guarantee to victims' welfare. Apart from the high risk of confusion and nurturing of expectations among victims, there is also the risk of re-traumatisation resulting from various successive interviews in which victims have to narrate their story and the impact of the crimes they suffered in 2002-2003 to various people. Since the Court has a duty to protect victims from any potentially re-traumatising situation, the Chamber must take concrete measures to protect them.

46. Accordingly, the Legal Representative's team(s) will conduct missions in consultation with the Registry (in particular the VPRS and the Victims and Witnesses Unit), as appropriate, and with the support of the Registry's language services, if need be.

47. The Legal Representative informs the Chamber that the resources currently allocated to the OPCV are not enough for it to fulfil its mandate as legal representation for potential beneficiaries. Hence, since April, she has requested the Registry to grant it access to the contingency fund. The request is still pending, but will soon be forwarded to the Chair of the Committee on Budget and Finance. Consequently, the Principal Counsel considers that the necessary resources may

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<sup>29</sup> The Principal Counsel therefore draws the attention of the Chamber to the highly inappropriate nature of the identification mechanism which the TFV proposed, following which it will, along with implementing partners, identify the victims to benefit from the programmes. See, "Additional Programme Information Filing", above, footnote 2, and "Filing on Reparations and Draft Implementation Plan", ICC-01/04-01/06-3177-AnxA, paras. 41, 43, 46, 52, 54, 56 and 60

finally be allocated in September 2016. However, the delay, which is compounded by the TFV's decision to suspend all field missions, means that she will be unable to identify all potential beneficiaries by December 2016 as stated in the Order. She therefore requires a supplementary period of at least six months to complete the process.

### **3. Transmission of applications to the Chamber**

48. Like the TFV and other legal representatives of victims, the Legal Representative underscores the very real difficulties and risks involved in disclosing victims' identities to the Defence, given the prevailing circumstances in Ituri. Hence, making victims' participation in the reparations process conditional on their consenting to the disclosure of their identities to the Defence is tantamount to negating any procedure aimed at awarding reparations to victims in the instant case. Furthermore, predicating the Chamber's consideration of victims' dossiers on such consent could ruin all reparation efforts and invalidate this process.

49. Considering that the reparations ordered in the instant case are collective, the Legal Representative wonders why the Defence should have access to the identity of all victims who are potential beneficiaries. In fact, by considering all the requests submitted to it, the Chamber should be able to quantify Mr Lubanga's responsibility and rule on the project to be implemented. Such an approach would enable the Chamber to protect and safeguard the rights of the Defence while fulfilling its duty to the victims. Hence, the Legal Representative draws the attention of the Chamber to the fact that a distinction should be drawn between the process of victim identification and the decision to award reparations via specific projects in a collective approach as upheld by the Appeals Chamber, given the nature of the crimes and specific circumstances.

50. The Legal Representative emphasises that the Chamber safeguards the rights of all parties, and that the judges have a duty to ensure the fairness of proceedings

for each and every one of the parties. In her view, the fact that the identities of beneficiary victims are available only to the Bench, constitutes sufficient guarantee with respect to collective reparations. The Bench is entirely capable of ensuring that the identities of applicants are established and that their dossiers are complete for reparations purposes. Defence observations on the nature and circumstances of victimisation, based on the facts in the instant case, constitute a sufficient safeguard that the Bench should factor into its final determination.

51. Once the observations of the Defence have been received, the Chamber will be able to rule on the applications for reparations. The TFV will then have to take over as provided for in the instruments and implement the project approved by the Chamber. The Legal Representative also highlights the Chamber's role in supervising and monitoring such implementation, possibly through the submission of regular reports by the TFV.

#### IV. REQUEST FOR A HEARING

52. Lastly, the Legal Representative respectfully requests the Chamber to convene a hearing to discuss all these issues. During the hearing, she would also like to develop in greater detail the subject of non-disclosure to the Defence of the identity of victims who are potential beneficiaries, and the impact that such anonymity would have on the quantification of Mr Lubanga Dyilo's responsibility.

**CONSEQUENTLY**, the Legal Representative respectfully requests Trial Chamber II to consider the above observations.

[signed]

**Paolina Massidda**  
**Principal Counsel**

Dated this 1 July 2016

At The Hague, Netherlands