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TRIAL CHAMBER II

**Before: Judge Chang-Ho Chung, Presiding Judge
Judge Péter Kovács
Judge María del Socorro Flores Liera**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Document

**Response of the Common Legal Representative of the Former Child Soldiers
to the TFV Initial Draft Implementation Plan with focus on Priority Victims**

Source: Office of Public Counsel for Victims (CLR1)

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

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative”) hereby submits her Response to the Initial Draft Implementation Plan focused on priority victims (the “IIP”) filed by the Trust Fund for Victims (the “TFV”) on 9 June 2021.¹

2. The Legal Representative emphasises the need for continuous exchanges and cooperation with the TFV for the best interests of the victims and future reparations beneficiaries who have waited for almost 20 years to be given a chance to rebuild their lives. In this regard, and in the spirit of the Chamber’s Reparations Order,² the Legal Representative acknowledges the first coordination efforts undertaken and endeavours to continue working in this direction.

3. The Legal Representative limits her observations to submissions relating to former child soldiers, direct and indirect victims, and their families. These observations are formulated in a spirit of cooperation, and aim at addressing current divergence of views in order to find ways to improve the services to be offered to victims.

4. The Legal Representative is not satisfied that the current proposed IIP allows victims in urgent need to receive reparations without further delay, due mainly, as developed *infra*, to the lack of concrete and responsive proposals included therein and the heavy and inadequate methodologies.

¹ See the “Report on Trust Fund’s Preparation for Draft Implementation Plan With Annex A Initial Draft Implementation Plan with focus on Priority Victims”, [No. ICC-01/04-02/06-2676-Conf](#) (the “Report”) and [No. ICC-01/04-02/06-2676-Conf-AnxA](#) (the “IIP”), 9 June 2021. On 14 June, the TFV submitted its “Corrigendum to Annex A to the Initial Draft Implementation Plan with Focus on Priority Victims (“Initial Implementation Plan” or “IIP””, [No. ICC-01/04-02/06-2676-Conf-AnxA-Corr](#). See also [No. ICC-01/04-02/06-2676-Red](#) and [No. ICC-01/04-02/06-2676-AnxA-Corr-Red](#) (public redacted version of the IIP submitted on 14 June 2021).

² See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021, paras. 16, and 251.

II. PROCEDURAL BACKGROUND

5. On 8 July 2019, Trial Chamber VI (the “Chamber”) convicted Mr Ntaganda of five counts of crimes against humanity and thirteen counts of war crimes,³ a conviction that was entirely confirmed by the Appeals Chamber on 30 March 2021.⁴

6. On 7 November 2019, the Chamber issued the Sentencing Judgment, imposing individual sentences for each of the counts of which Mr Ntaganda had been convicted and a joint sentence of 30 years.⁵ The Judgment was also entirely confirmed by the Appeals Chamber on 30 March 2021.⁶

7. On 5 December 2019, 14 May 2020, 26 June 2020 and 15 December 2020, the Chamber issued orders aiming at advancing the reparations proceedings.⁷

8. On 8 March 2021, the Chamber issued the “Reparations Order”, instructing, *inter alia*, the TFV to submit an urgent plan for the priority victims on 8 June 2021, at the latest.⁸

³ See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

⁴ See the “Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red A2](#), 30 March 2021 with [AnxA](#) and [AnxB](#); as well as the “Separate opinion of Judge Howard Morrison and Judge Piotr Hofmański on the Prosecutor’s appeal”, [No. ICC-01/04-02/06-2666-Anx1 A2](#); the “Separate opinion of Judge Howard Morrison on Mr Ntaganda’s appeal”, [No. ICC-01/04-02/06-2666-Anx2 A2](#); the “Separate opinion of Judge Luz Del Carmen Ibáñez Carranza on Mr Ntaganda’s appeal”, [No. ICC-01/04-02/06-2666-Anx3 A2](#); the “Separate opinion of Judge Solomy Balungi Bossa on the Prosecutor’s appeal”, [No. ICC-01/04-02/06-2666-Anx4 A2](#); and the “Corrected version of partly concurring opinion of Judge Chile Eboe-Osuji”, [No. ICC-01/04-02/06-2666-Anx5-Corr A2](#).

⁵ See the “Sentencing judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019.

⁶ See the “Public redacted version of Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled ‘Sentencing judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2667-Red A3](#), 30 March 2021.

⁷ See the “Decision on issues raised in the Registry’s First Report on Reparations” (Trial Chamber VI), [No. ICC-01/04-02/06-2630](#), 15 December 2020; the “First Decision on Reparations Process” (Trial Chamber VI), [No. ICC-01/04-02/06-2547](#), 26 June 2020; the “Decision appointing experts on reparations” (Trial Chamber VI), [No. ICC-01/04-02/06-2528-Conf](#) and [No. ICC-01/04-02/06-2528-Red](#), 14 May 2020; and the “Order setting deadlines in relation to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), 5 December 2019.

⁸ See the “Reparations Order”, *supra* note 2.

9. On 8 April and 7 June 2021, the common legal representative of the victims of the attacks and the Defence filed their respective Notice of Appeal and Document in Support of the Appeal against the Reparations Order.⁹

10. On 9 June 2021, the TFV submitted its Report on its Preparation for an Initial Draft Implementation Plan with focus on Priority Victims.¹⁰

11. On 10 June 2021, the Chamber issued an order directing the parties and the Registry to file any observation they may have on the IIP by 23 June 2021.¹¹

III. SUBMISSIONS

12. The Legal Representative acknowledges that several exchanges have been held between the legal representatives and the TFV, in furtherance of the Reparations Order, keeping in mind the best interests of the victims concerned. Regrettably, as developed *infra*, the Legal Representative observes that several points of disagreements appear to persist. This is all the more unfortunate that the several exchanges herewith referred to did not succeed in facilitating a common understanding, which heightens her concerns with regard to the timeliness and adequacy of the support to be provided to her clients.

⁹ See the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675 A5](#), 7 June 2021; the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2674 A4](#), 7 June 2021; the “Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659”, [No. ICC-01/04-02/06-2669 A5](#), 8 March 2021; and the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2668 A4](#), 8 March 2021.

¹⁰ See the Report and the IIP, *supra* note 1.

¹¹ See the “Order for the submission of observations on the initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2677](#), 10 June 2021.

1. Disagreements concerning the interpretation of the Chamber's Reparations Order

a. Different nature and therefore methodology governing the Initial Draft Implementation Plan focused on priority victims and the Draft Implementation Plan

13. The Legal Representative first underlines the distinction, in her view, between the Chamber's instructions regarding the content of the Draft Implementation Plan (the "DIP") to be filed in September 2021 and that of the IIP. Undoubtedly, and by its very nature, the DIP ought to be much more complete as it aims at addressing the needs of, and related reparations modalities for, all the victims concerned by the Reparations Order; while the IIP, in essence, aims at addressing the most urgent victims' needs. In light of the content of the TFV's submissions (both the Report and the IIP), the timing of its filing stretched to the very last moment indicated by the Chamber – in fact, after said time-limit – and the absence of concrete proposals contained in the IIP, the Legal Representative is concerned by the TFV's interpretation of the Reparations Order and by its methodology.¹²

14. In this regard, the Legal Representative respectfully submits that the methodology underpinning the IIP must be adapted to its nature and goal, which are, essentially, to respond to pre-identified urgent situations and to put in place, as fast as possible, transitory and initial measures that will provide quick and relevant support to victims who have been assessed to belong to priority groups, pending access to the full reparations programmes.

15. In this regard, the Legal Representative submits that the Reparations Order should be read as setting a lighter frame for the IIP than the one required for the DIP, while remaining under the control of the Chamber, therefore ensuring the balance between, and respect of, the parties' rights. However, as it stands, the IIP clearly

¹² See the Report, *supra* note 1, in particular paras. 21-24.

demonstrates that the TFV did not, so far, adopt the flexibility and responsiveness needed for the establishment of an IIP.

b. The very notion of 'priority victims'

16. The Legal Representative refers to the Reparations Order regarding the identification of priority victims, which clearly states that all child soldiers fall under said category; and that amongst them, some have further or distinct vulnerabilities that ought to be addressed due to the urgency of their situation at this stage already.¹³ As explained by the TFV,¹⁴ in a spirit of cooperation and as requested by the latter, the Legal Representative identified amongst her clients the ones in need of more specific urgent support, while at the same time emphasising that this list aimed at identifying priorities amongst a pre-identified priority category, in as much as all the victims she represents ought to be covered by the IIP. In doing so, the Legal Representative referred in particular, to her clients suffering from mental issues, physical and/or economic issues that put their lives at immediate risk, victims of sexual violence,¹⁵ children born out of rape or sexual slavery, and elderly victims, while expressly specifying that this list and the data contained therein might not be fully accurate since it was based on the information available to her at the time and that the deadline for transmission, coupled with the difficulties to carry on field missions, were not enabling the Legal Representative to consult her clients to update said information. Regarding victims of

¹³ See the "Reparations Order", *supra* note 2, para. 97.

¹⁴ See the IIP, *supra* note 1, para. 15.

¹⁵ See the 14 periodic reports on victims in the case and their general situation submitted by the Registry (respectively [No. ICC-01/04-02/06-632](#), 8 June 2015; [No. ICC-01/04-02/06-889](#), 6 October 2015; [No. ICC-01/04-02/06-1157](#), 8 February 2016; [No. ICC-01/04-02/06-1369](#), 6 June 2016; [No. ICC-01/04-02/06-1567](#), 6 October 2016; [No. ICC-01/04-02/06-1774](#), 6 February 2017; [No. ICC-01/04-02/06-1938](#), 6 June 2017; [No. ICC-01/04-02/06-2056](#), 6 October 2017; [No. ICC-01/04-02/06-2212](#), 6 February 2018; [No. ICC-01/04-02/06-2296-Corr](#), 7 June 2018; [No. ICC-01/04-02/06-2322](#), 9 October 2018; [No. ICC-01/04-02/06-2325](#), 6 February 2019; [No. ICC-01/04-02/06-2353](#), 6 June 2019; and [No. ICC-01/04-02/06-2434](#), 7 October 2019) submitted pursuant to Trial Chamber VI's orders in the first and fourth decisions on victims' participation in trial proceedings. See the "Decision on victims' participation in trial proceedings", [No. ICC-01/04-02/06-449](#), 6 February 2015, para. 24 (ix); and the "Fourth decision on victims' participation in trial proceedings" (Trial Chamber VI), [No. ICC-01/04-02/06-805](#), 1 September 2015, para. 13(ii)(a).

sexual violence, the Legal Representative underlines in particular the fact none of her clients has ever benefited from any support through the TFV assistance programmes so far.¹⁶ This holds true as far as all the former child soldiers she represents are concerned.

17. Through her previous exchanges with the TFV, but also reading the ambivalent terms used throughout the IIP (with changing references to “*all the clients of the LRV Child Soldiers*”, “*particularly vulnerable victims*” which do not include all the former child soldiers, “*direct and indirect child soldiers*”, “*Child Soldiers who were also victims of rape and sexual slavery belong to the Priority Victim categories of children born out of rape and sexual slavery and victims of SGBV*” or “*Child Soldiers/SGBV*”),¹⁷ the Legal Representative cannot but conclude that the TFV still faces conceptual difficulties envisaging that all former child soldiers are indeed falling into the category of priority victims as a basis for further assessment. As mentioned by the TFV itself, the former child soldiers, as a category of priority victims, need indeed to be taken into consideration, comprehensively.¹⁸ But nothing in the IIP demonstrates that the TFV effectively took all of them into account for the purpose thereof.

18. In this regard, the Legal Representative draws the attention of the Chamber and of the TFV on the fact that the information provided will need to be contemporaneously updated once in touch with these victims at the implementation stage of the priority measures covered by the IIP.¹⁹ In particular, the Legal Representative foresees an increase in the numbers of children born out of rape. Indeed some former female child soldiers are still in the process of reintegrating their communities and may not have been in a position to mention the existence of these children yet. The same holds true regarding victims with disabilities – both physical and mental health issues, since each

¹⁶ See *supra* note 15.

¹⁷ See the IIP, *supra* note 1, paras. 15, 17, 47, 48, 55, and 65.

¹⁸ *Idem*, para. 55.

¹⁹ See also *supra* para. 16.

day passing carries the possibility of seeing their situation worsening, absent any support ever provided – including by the TFV.

19. Additionally, the Legal Representative is concerned by the methodology adopted by the TFV to determine the list of priority victims, starting with the TFV confusing eligibility and filtering processes as developed *infra*; the suggestion that concrete urgent reparation measures could only be identified after running victims through said *eligibility* process and priorities assessment made by the TFV and its implementing partners; and the reference to “*criteria of priority*”,²⁰ when these have already been established by the Chamber and informed by both legal representatives of victims in the present case.

c. Apparent confusion between the eligibility and the filtering processes

20. The Legal Representative posits that her clients who have been granted the right to participate in the present proceedings and have all expressed their desire to benefit from the reparations continue to fall squarely within the parameters of the case as referred to by the Chamber and their access to priority measures should not be delayed by an additional assessment of their already assessed eligibility.

21. In this regard, it seems that the TFV is confusing *eligibility* on the one hand, which will apply for administrative purposes to new applicants not yet participating in the proceedings, and eligibility which could more adequately be referenced as *screening* for the sole purpose of identifying, at the implementation stage, the most appropriate reparations measures for each victims concerned in light of their personal situation.²¹

22. Moreover, the Legal Representative is extremely concerned by the TFV’s suggestion – all the more as a risk mitigating measure, to rely on and “*allow [...] communities to appreciate and validate the selection of additional Priority Victims*”, especially

²⁰ See the IIP, *supra* note 1, para. 20.

²¹ *Idem*, paras. 58 and 70 in particular.

sexual and gender-based violence victims (“SGBV victims”),²² in as much as knowledge of the community for these specific crimes cannot be presumed, to the contrary. The Legal Representative emphasises one more time that confidential and discrete access to reparations services ought to be provided by the TFV and its partners to the victims, without the communities being informed, let alone validating it. Such a course of action runs against all reparations basic principles and good practices and ought to be removed from the IIP.

23. Furthermore, the Legal Representative questions the reference made by the TFV to a simplified application process for her clients who have not applied to participate in the *Lubanga* reparations programmes, who shall not, contrary to the TFV’s suggestion, go through yet another application process when they have already been recognised as victims in the *Ntaganda* case.²³ The fact that the TFV envisages incorporating them, in parts or in totality, in its *Lubanga* reparations programmes as an urgency measure responding to the needs of the IIP cannot in itself justify that they would have to go through yet another *application* process.

24. Regarding possible new beneficiaries only,²⁴ the Legal Representative respectfully submits that the eligibility system ought to be streamlined. In particular, she notes that children born out of rape or sexual slavery have already been included by the Chamber in its Reparations Order through their parents who are already reparations beneficiaries and who were previously identified and granted the right to participate at trial.²⁵ Furthermore, the Legal Representative is concerned by the specific and sole reference made by the TFV to new applicants victims of the attacks and their legal representation,²⁶ possibly implying the possibility that in fact new applicants former child soldiers, including SGBV victims and Hema victims who could not yet

²² *Idem*, para. 97.

²³ *Idem*, paras. 58-60.

²⁴ *Idem*, paras. 58-59.

²⁵ See the “Reparations Order”, *supra* note 2, paras. 120 *et seq.*

²⁶ See the IIP, *supra* note 1, para. 18.

come forward or did not want to while the *Lubanga* process was still opened, will not apply as beneficiaries to the reparation process.²⁷

25. In addition, the Legal Representative emphasises in the strongest terms that the process applied in the *Lubanga* case should not be repeated, with eligibility processes stretching through several years without seeing the beginning of the implementation of any reparations programme. She underlines that eligibility screening should be done at the moment of implementation as needs are evolving with time passing. The needs of former child soldiers have been identified and are generically known, providing specific individual needs identified and changing from a person to another; what needs to be adapted relates to the situation of each individual and their needs at the time of implementation. In this regard, flexibility is key and all the more because the situation in the field renders access to the victims utterly difficult.

26. Finally, the Legal Representative is concerned by the fact that decisions on eligibility (*filtering* for the purpose of the IIP) and vulnerability would be taken by the implementing partners and not by the TFV, although after being trained by the latter. This seems to infer that all the work done by the Legal Representative with her clients will not be taken into consideration in order to expedite the process as well as to avoid further re-traumatisation of the victims through yet other consuming interviews when the Legal Representative is already in a position to identify her clients' various specific vulnerabilities at this stage. Such a course of action aims at conceptualising and proposing concrete modalities for the approval of the Chamber, *versus* implementing such measures. In this regard, the Legal Representative respectfully submits that such *filtering* should only aim at refining the information previously provided by her clients and assessing their situation at time of implementation, and not at identifying and further deciding whether they are indeed in a priority situation – all the more, since, by default, all her clients are falling into this category, being former child soldiers.²⁸

²⁷ *Idem*, paras. 18, 44, and 47.

²⁸ See the "Reparations Order", *supra* note 2, para. 97.

Lastly, the Legal Representatives, as already mentioned to the TFV, should be part of the training given to its partners to proceed with any types of assessment and information to be given to their clients, in order to ensure that best practices are upheld and to avoid any confusion and re-traumatisation for their clients.

2. Lack of concreteness and flexibility of the Initial Draft Implementation Plan

a. Absence of a detailed harm assessment and corresponding proposed services

27. The Legal Representative is concerned by the fact that despite their detailed exchanges over the past three months and the information in possession of, and available to, the TFV, the latter chose not to – or was unable to – include a more detailed assessment of the harm suffered by the victims concerned in its IIP, together with all possible types and modalities of reparations that would adequately respond to the latter.²⁹ The IIP, as presented by the TFV, is not concrete enough. It only includes references to harm suffered in general terms and does not propose specific and responsive measures to be implemented for the approval of the Chamber. As such it is nowhere close to constitute an IIP.

28. Furthermore, the difficulties shared with the TFV as to the current communication with her clients should not be used by the latter as a justification for delaying the assessment of the information in possession of the Legal Representative and already shared with the TFV.³⁰ To the contrary, the Legal Representative is already well aware of the situation and needs of her clients, and more comprehensive consultations, as noted by the TFV itself, will need to happen when starting the implementation of the first measures under the IIP and not be used as a benchmark to make concrete proposals for the purpose of the IIP.³¹

²⁹ *Idem*, para. 3.

³⁰ *Idem*, paras. 13 and 15.

³¹ *Idem*, para. 45.

29. Finally, with regard to addressing the specific urgent needs of SGBV victims and of children born out of rape or sexual slavery, the Legal Representative respectfully questions the appropriateness and responsiveness of the TFV proposal which, according to its own estimation, will take about 6 to 9 months *after* the development of a scope of work in July and August 2021.³² It is particularly difficult to see how the measures envisaged respond to an emergency plan and do not simply fit within the DIP the TFV will file in September 2021. Moreover, she notes the reference made by the TFV to an existing need on their side to consult with partners and victims as planned at the moment for July 2021, to understand the best ways to address former child soldiers, SGBV victims, and children born out of rape situations. The Legal Representative posits however that said information should already be part of the current proposed IIP.³³

b. Inappropriateness of the cumbersome procurement process

30. The Legal Representative notes and supports the observations of the TFV regarding the procurement system as applied at the Court for the purpose of reparations proceedings³⁴ and agrees that the inadequacy of the current system to the present very specific procedural judicial stage of the proceedings is partly responsible for the tardiness of reparations proceedings at the Court in as much as it has an influence on the rapidity and effective implementation of its programmes by the TFV. The Legal Representative duly takes notes of the explanations provided by the TFV as to the capabilities (legal, financial and logistical) of its *existing* partners to absorb and include the *Ntaganda* priority victims identified so far,³⁵ and of the cumbersomeness and time-line (about a year minimum) of a process that would aim at identifying and selecting possible other *new* partners.³⁶ However, since the mechanisms identified by

³² *Idem*, paras. 67-68 and 71.

³³ *Idem*, para. 71.

³⁴ *Idem*, paras. 21-24.

³⁵ *Idem*, paras. 20 and 22-25.

³⁶ *Idem*, para. 21.

the TFV flows from existing rules with which the TFV has been intimately familiar for several years to date, the Legal Representative fails to see why the TFV submission was not done several weeks/months ago already, allowing the Chamber to approve the way forward already and the priority victims to be treated with the adequate urgency as instructed in the Reparations Order.³⁷ Similarly, she notes that the information generated through the consultations with their existing implementing partners were conducted by the TFV in May and June 2021,³⁸ when they could and should have been conducted in the immediate aftermath of the Reparations Order, thereby allowing the TFV to file its IIP much earlier in the process.

31. The Legal Representative further underlines that the TFV proposal to reinforce the existing programmes needs to duly take into account the measure of the real needs of the priority victims concerned, which goes beyond the number of Individuals mentioned in the IIP.³⁹ Furthermore, she underlines that the localities where her clients reside are spread throughout the Ituri territory, and not only in the places where the referred assistance programmes are implemented at the moment.⁴⁰ In the same vein, the Legal Representative notes that the figures provided by the TFV in the IIP with regard to its assistance programmes and how *some* of them could incorporate *some* of the priority victims identifies are not specific enough to concretely envisaged the necessary correspondence between existing capacities and needs.⁴¹ Not being privy to such information, the Legal Representative is not in a position to comment on the appropriateness of the vague suggestions made by the TFV in its IIP. The Legal Representative notes the information provided by the TFV that assistance programmes can be developed to match urgent needs of reparations programmes – which in itself constitutes good news – but wishes to underline that such possibility could have been identified months ago already. The Legal Representative notes once more that in

³⁷ *Idem*, paras. 23 to 25.

³⁸ *Idem*, para. 22.

³⁹ *Ibid.*

⁴⁰ *Idem*, para. 23.

⁴¹ *Idem*, paras. 34-35, or para. 37.

conceptual terms, assistance programmes and reparations programmes are very distinct in nature and the real needs and rights of victims through specific reparations programmes cannot be replaced by more general assistance programmes – which is one of the reasons why the IIP ought to contain much more concrete proposals.⁴²

32. Similarly, the Legal Representative acknowledges and welcomes the observation made by the TFV as to the need to clearly mark as reparation measures deriving from the *Ntaganda* Reparations Order any initial reparations delivered within the framework of an existing assistance project.⁴³ However, here again, she fails to see how and why the anticipated related outreach would have constituted an element to take into consideration for the purpose of submitting a delayed IIP, on which the TFV was not able to report at an earlier stage.⁴⁴

33. Furthermore, the Legal Representative draws the attention of the Chamber and of the TFV on the urgent need to develop funding campaigns specifically targeting the beneficiaries of the *Ntaganda* case and discretely aiming at supporting the urgent programmes that ought to be put in place swiftly for the benefit of priority victims in the present case. Indeed, the recent voluntary earmarked contributions by the Government of Australia⁴⁵ and the voluntary contribution by the Government of Ireland⁴⁶ fall short from the needed funds.

34. Finally, the Legal Representative supports the TFV references to basic reparations principles to be uphold in the development of its IIP (do no harm, dignity, non-discrimination, non-stigmatisation, inclusivity, gender-sensitiveness and inclusivity)⁴⁷ and emphasises the necessity to apply said principles concretely, at each stage of the process conducted, by both the TFV and its implementing partners. This is

⁴² *Idem*, paras. 20 and 27.

⁴³ *Idem*, paras. 28 and 29.

⁴⁴ *Idem*, para. 28.

⁴⁵ See TFV, "[Australia makes AUD\\$ 300,000 contribution to Trust Fund for Victims, earmarked to Ntaganda reparations](#)", 31 May 2021.

⁴⁶ See TFV, "[Ireland sends important message of support for reparative justice with €300,000 contribution to Trust Fund for Victims](#)", 12 May 2021.

⁴⁷ See the IIP, *supra* note 1, paras. 42 to 44.

all the more important in light of the time that has elapsed since their victimisation and the absence of any support or help provided to the victims ever since. In this regard, the Legal Representative underlines that the IIP does not contain any concrete proposal as to how these principles will be upheld and implemented within the framework of concrete services to be made available to priority victims on an emergency basis.

35. Finally, the Legal Representative draws the attention of both the Chamber and the TFV to the risk mitigation measures (telephone and internet) referred to in the IIP which do not seem to correspond to realistic field realities based on her experience and hence cannot be considered as effective measures for the purpose of the present IIP.⁴⁸

36. Lastly, although the Legal Representative agrees and supports the references made in the IIP to a reporting framework for its partners, and information relayed to the Chamber for its monitoring role, she again notes that a specific and concrete mechanism is not yet being suggested by the TFV, rendering any further comments on these aspects impossible.

c. References made to the Lubanga proceedings

37. The Legal Representative underlines that the *Lubanga* programmes are not sufficient to address the needs of the victims in the *Ntaganda* case (referring to former child soldiers), in as much as more crimes and distinct and additional harm have been recognised in the latter case. The Legal Representative hence points to the absolute necessity to reinforce capacities through the IIP and to develop these capacities within the framework of the DIP with all the specificities of the *Ntaganda* case, aiming at a long-term support of the victims concerned. Additionally, and incidentally, the Legal Representative recalls that the cut of date of 31 October set in the *Lubanga* case with regard to the eligibility process does not apply in the *Ntaganda* case.⁴⁹ Both cases are evidently at different stages of development of their respective reparations proceedings

⁴⁸ *Idem*, para. 97. See also *supra* para. 16.

⁴⁹ *Idem*, paras. 59-60.

and equal chances ought to be given to the victims of the *Ntaganda* case to come forward for that purpose.

38. Further, the Legal Representative is puzzled to find references within the IIP to lessons learned in the implementation of the *Lubanga* reparations and to the *intensification* of activities in summer 2021 (purportedly including priority victims of the *Ntaganda* case too).⁵⁰ Indeed, as far as she knows, not a single activity thereby referred to has been implemented yet, and accordingly, not a single victim has so far received any reparations at all in the *Lubanga* case.⁵¹

39. Regarding the recourse to the planned *Lubanga symbolic* reparations programmes, the Legal Representative expresses her doubt as to the appropriateness of such reference in the context of *priority* measures to be taken to alleviate the immediate sufferings of her clients; especially noting that the TFV expects that the contract with an implementing partner for that programme will only be concluded by the end of 2021/early 2022.⁵² In addition, as mentioned by the legal representatives in the *Lubanga* case, there are doubts as to the way victims and communities are welcoming such reparations as planned at the moment.⁵³ This being said, the Legal Representative underlines and agrees that the context in which the reparations measures will be implemented, *i.e.* how communities approach such measures, including the priority ones, needs to be addressed as part of the reparation programme itself, as a good practice and as a prerequisite to any reparations measures. In this

⁵⁰ *Idem*, paras. 6, 31, 33, 49, and 63.

⁵¹ See the “Thirteenth progress report on the implementation of collective reparations as per Trial Chamber II’s decisions of 21 October 2016, 6 April 2017 and 7 February 2019”, [No. ICC-01/04-01/06-3512-Red](#), 21 April 2021, paras. 28-30.

⁵² See the IIP, *supra* note 1, paras. 49, 55, and 64.

⁵³ See the “Réponse consolidée aux ‘Observations in relation to the victim identification and screening process pursuant to the Trial Chamber’s order of 25 January 2018’ du 23 mars 2018 et au ‘Fourth progress report on the implementation of collective reparations’”, [No. ICC-01/04-01/06-3402-Red](#), 1 April 2021, para. 7; and the “Réponse aux observations du Fonds au profit des victimes sur le processus d’identification et de sélection des autres victimes potentiellement éligibles aux réparations ainsi que sur les prochaines étapes de la mise en œuvre des réparations”, [No. ICC-01/04-01/06-3403-Red](#), 19 March 2021, para. 31.

regard, it is hoped that after several years of work in Ituri, the Court, and notably the TFV, have been working on such context and with the communities already.

40. Furthermore, the Legal Representative agrees with the TFV regarding its comprehensive approach adopted in line with the *Lubanga* reparation programme, for the benefit of her clients, *i.e.* the adoption of a holistic approach to the harms they are suffering from.⁵⁴ However, she raises a concern concerning the reparations measures proposed for the elderly or those who cannot pursue an income-generating activity, who may receive, according to the IIP, a stipend for a certain period. Indeed, this measure is not transformative nor perennial and consequently needs to be completed with other measures that will enable the victims concerned to gain in autonomy and stability.⁵⁵ In that respect, the Legal Representative notes that the attribution of a stipend is a valid measure, but only if it exists as an additional measure to access fundamental services, as she already submitted notably for the SGBV victims.⁵⁶ Coming back to the holistic approach principle, the Legal Representative submits that the TFV is barely referring to said principle without providing any concrete proposals on what it will exactly consist in, save for the group hereby addressed.

41. To conclude, the Legal Representative is not satisfied that the current IIP indeed *“proposes three different measures for Priority Victims together with eligibility mechanisms that allow victims in urgent need to receive reparations without further delay”*.⁵⁷ In particular, the Legal Representative does not see concrete proposals that the Chamber could approve and that would help move forward the process at stake, contrary to what was expected at the present stage. The Legal Representative further underlines the need for the TFV to reframe and complete its IIP as expeditiously as possible and no later than by 8 July (which would already extend the initial time-line foreseen by the Chamber of

⁵⁴ See the IIP, *supra* note 1, para. 55.

⁵⁵ *Ibid.*

⁵⁶ See the “Submissions on Reparations on behalf of the Former Child Soldiers”, [No. ICC-01/04-02/06-2474](#), 28 February 2020, paras. 80-82.

⁵⁷ See the IIP, *supra* note 1, para. 95.

a month). Prolonging it further would defeat the very purpose of establishing this IIP for priority victims in urgent needs.

IV. CONCLUSION

42. For the reasons stated *supra*, the Legal Representative respectfully requests the Trial Chamber to instruct the TFV to complete and reframe its IIP with concrete assessments and proposals for the approval of the Chamber as promptly as possible, and no later than by 8 July 2021.



Sarah Pellet

Common Legal Representative of the
Former Child Soldiers

Dated this 23rd day of June 2021

At The Hague, The Netherlands