

**Cour
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**International
Criminal
Court**

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No.: ICC-01/04-02/06

Date: 30 June 2021

THE APPEALS CHAMBER

Before: Judge Marc Perrin de Brichambaut, Presiding
 Judge Piotr Hofmański
 Judge Luz del Carmen Ibáñez Carranza
 Judge Solomy Balungi Bossa
 Judge Gocha Lordkipanidze

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

**Public Redacted Version of the “Response of the Common Legal Representative of the Victims of the Attacks to the Defence Request for Suspensive Effect of the Reparations Order, to the TFV’s Observations on the Defence Request for Suspensive Effect, and to the TFV’s Request under rule 103 of the Rules”
 (ICC-01/04-02/06-2684-Conf)**

Source: Office of Public Counsel for Victims (CLR2)

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby submits his response to the Defence request for suspension of the implementation of the “Reparations Order”¹ (the “Defence Request for Suspensive Effect” or the “Defence Request”) as articulated in the “Defence Appellant Brief against the 8 March Reparations Order” (the “Defence Appeal Brief”),² to the Trust Fund for Victims’ (the “TFV”) Observations on the Defence Request for Suspensive Effect,³ and to the TFV’s Request under rule 103 of the Rules of Procedure and Evidence (the “Rules”).⁴

2. The Legal Representative submits that the Defence Request for Suspensive Effect must be rejected *in limine* as being made significantly tardy. If, nevertheless, the Appeals Chamber were to entertain the Defence Request, he submits that it should be rejected as the relevant criteria for granting suspensive effect are not met. Primarily, considering that the TFV has only recently started the consultation process with relevant stakeholders and many preliminary steps are yet to be taken prior to implementing any substantive measures, no irreversible situation would be created if the TFV were to proceed with the preliminary steps of the implementation of the Reparations Order and pending the Appeals Chamber’s determination on the appeals.

3. Granting suspensive effect will result in the disruption of the initial steps to be undertaken by the TFV and the ensuing delay to the reparations proceedings. Ultimately, the victims would be the ones facing the adverse consequences of any suspensive effect, while the Defence would bear none.

¹ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021 (the “Reparations Order”).

² See the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675](#), 7 June 2021, paras. 260-272 (the “Defence Appeal Brief”).

³ See the “Observations on the Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence”, [No. ICC-01/04-02/06-2679](#), 22 June 2021 (the “TFV’s Observations on the Defence Request for Suspensive Effect”).

⁴ *Idem*, paras. 32-34.

4. With regard to the TFV's Observations on the Defence Request for Suspensive Effect, while concurring with the TFV's second preliminary issue raised, the Legal Representative takes issue with the TFV's contention that the convicted person's indigence and the length of the term of imprisonment are factors of such relevance as to undermine the implementation of a reparations order through the TFV.

5. Finally, the Legal Representative opposes the TFV's Request under rule 103 of the Rules. In the alternative, if the Appeals Chamber were inclined to grant the TFV's Request, it is submitted that the TFV should only be authorised to make observations on a limited number of topics which directly pertain to its functions and/or operational activities, by 9 August 2021 at the latest, and the parties should be allowed to respond to said observations within a reasonable timeframe.

II. PROCEDURAL BACKGROUND⁵

6. On 8 March 2021, Trial Chamber VI issued the Reparations Order, ordering collective reparations with individualised components to be awarded to direct and indirect victims of the crimes for which Mr Ntaganda has been convicted and setting the total reparations award for which Mr Ntaganda is liable at 30 million USD.⁶

7. On 16 March 2021, the Presidency assigned the present case to a newly constituted Trial Chamber II (the "Trial Chamber").⁷ Judge Chang-ho Chung was subsequently elected Presiding Judge of the Trial Chamber.⁸

⁵ The procedural background recounted in these submissions is not exhaustive, but limited to the most relevant procedural steps with regard to the present submissions.

⁶ See the Reparations Order, *supra* note 1, p. 97

⁷ See the "Decision assigning judges to divisions and recomposing chambers" (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

⁸ See the "Decision on the Election of the Presiding Judge" (Trial Chamber II), [No. ICC-01/04-02/06-2664](#), 22 March 2021, para. 2.

8. On 30 March 2021, the Appeals Chamber upheld the Judgment⁹ and the Sentencing Judgment.¹⁰

9. On 8 April 2021, both the Legal Representative¹¹ and the Defence¹² filed their respective notices of appeal against the Reparations Order.

10. On 9 April 2021, the Appeals Chamber elected Judge Marc Perrin de Brichambaut as Presiding Judge in the appeals against the Reparations Order.¹³

11. On 7 June 2021, the Legal Representative¹⁴ and the Defence¹⁵ filed their respective Appeal Briefs.¹⁶ In its Appeal Brief, the Defence made a request for the immediate suspension of the Reparations Order.¹⁷

12. On 9 June 2021, the TFV submitted its “Report on the Trust Fund’s Preparation for Draft Implementation Plan”¹⁸ (the “TFV’s Report”) and “Initial Draft

⁹ 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 A A2](#), 30 March 2021.

¹⁰ 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.

¹¹ See 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 April 2021.

¹² See the “Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659”, [No. ICC-01/04-02/06-2669 A5](#), 8 April 2021.

¹³ See the “Decision on the Presiding Judge of the Appeals Chamber in the appeals against the decision of Trial Chamber VI entitled ‘Reparations Order’” (Appeals Chamber), [No. ICC-01/04-02/06-2670 A4 A5](#), 9 April 2021.

¹⁴ See 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](#), 7 June 2021 (the “CLR2 Appeal Brief”).

¹⁵ See the Defence Appeal Brief, *supra* note 2.

¹⁶ See the CLR2 Appeal Brief, *supra* note 14.

¹⁷ See the Defence Appeal Brief, *supra* note 2, paras. 260-273 (the “Defence Request for Suspensive Effect”).

¹⁸ See the “Report of the Trust Fund’s Preparation for Draft Implementation Plan”, [No. ICC-01/04-02/06-2676-Conf](#), 9 June 2021 (the “TFV’s Report”).

Implementation Plan with Focus on Priority Victims” (the “IDIP”).¹⁹ A public redacted version of the TFV’s Report was filed on 14 June 2021.²⁰

13. On 11 June 2021, the Appeals Chamber invited the TFV to submit, by 22 June 2021, observations on the Defence Request for Suspensive Effect,²¹ and set a time limit for the Legal Representatives to respond to that request and to the TFV’s observations by 25 June 2021, and for the Defence to respond to the TFV’s observations by the same date.²²

14. On 22 June 2021, the TFV submitted its “Observations on the Defence Request for Suspensive Effect and a Request under rule 103 of the Rules of Procedure and Evidence”.²³

15. On 23 June 2021, the Legal Representative,²⁴ the Common Legal Representative of the Former Child Soldiers,²⁵ the Defence²⁶ and the Registry²⁷ filed their respective observations on the IDIP.

¹⁹ See the “Initial Draft Implementation Plan with Focus on Priority Victims (‘Initial Draft Implementation Plan’ or ‘IIP’)”, No. ICC-01/04-02/06-2676-Conf-AnxA, 9 June 2021. All references to the Initial Draft Implementation Plan in these submissions will be made to its corrected version, namely the “Corrigendum of Initial Draft Implementation Plan with Focus on Priority Victims (‘Initial Draft Implementation Plan’ or ‘IIP’), [No. ICC-01/04-02/06-2676-AnxA-Corr-Red](#), 14 June 2021 (the “IDIP”).

²⁰ See the “Public redacted version of ‘Report on Trust Fund’s Preparation for Draft Implementation Plan’ submitted on 8 June 2021”, [No. ICC-01/04-02/06-2676-Red](#), 14 June 2021.

²¹ See the “Order setting a time limit for responses to the request for suspensive effect and invitation to the Trust Fund for Victims to submit observations on that request” (Appeals Chamber), [No. ICC-01/04-02/06-2678 A4 A5](#), 11 June 2021, para. 6.

²² *Idem*, para. 7.

²³ See the TFV’s Observations on the Defence Request for Suspensive Effect, *supra* note 3.

²⁴ See the “Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan”, [No. ICC-01/04-02/06-2680-Conf](#), 23 June 2021.

²⁵ See the “Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims”, [No. ICC-01/04-02/06-2681](#), 23 June 2021.

²⁶ See the “Defence Observations on the TFV initial draft implementation plan”, [No. ICC-01/04-02/06-2682-Conf](#), 23 June 2021.

²⁷ See the “Registry Observations on the Trust Fund for Victims’ Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2683](#), 23 June 2021.

16. On 24 June 2021, the TFV requested leave to file a reply to the observations of the parties and the Registry by email.²⁸ In a joint response by email,²⁹ the Legal Representatives opposed the request, which was granted by the Trial Chamber on the same day.³⁰

III. SUBMISSIONS

A. Response to the Defence Request for Suspensive Effect

17. According to rule 156(5) of the Rules, “[w]hen filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3”.

18. The Appeals Chamber has the power to grant a request for suspensive effect under article 82(3) of the Statute and rule 156(5) of the Rules when seized of such a request in relation to an appeal against an order for reparations pursuant to article 82(4) of the Statute.³¹

19. The Appeals Chamber has held³² that, when deciding on requests for suspensive effect, it would consider whether the implementation of the decision under appeal (i) “would create an irreversible situation that could not be corrected, even if the

²⁸ See the Email sent by the TFV on 24 June 2021 at 13:36.

²⁹ See the Joint email sent by the Legal Representatives on 24 June 2021 at 15:27.

³⁰ See the Email Decision issued by the Trial Chamber on 24 June 2021 at 17:43.

³¹ See the “Decision on the admissibility of the appeals against Trial Chamber I’s ‘Decision establishing the principles and procedures to be applied to reparations’ and directions on the further conduct of proceedings” (Appeals Chamber), [No. ICC-01/04-01/06-2953](#), 14 December 2012, para. 80.

³² See the “Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the ‘Decision on the Admissibility and Abuse of Process Challenges’” (Appeals Chamber), [No. ICC-01/05-01/08-817](#), 9 July 2010, para. 11. See also the “Decision on the requests of Mr Ruto and Mr Sang for suspensive effect” (Appeals Chamber), [No. ICC-01/09-01/11-391 OA3 OA4](#), 29 February 2012, para. 9; the “Decision on the request of Mr Kenyatta and Mr Muthaura for suspensive effect” (Appeals Chamber), [No. ICC-01/09-02/11-401 OA4](#), 29 February 2012, para. 9; and the “Decision on the admissibility of the appeals against Trial Chamber I’s ‘Decision establishing the principles and procedures to be applied to reparations’ and directions on the further conduct of proceedings”, *supra* note 31, para. 82.

Appeals Chamber eventually were to find in favour of the appellant”³³, (ii) “*would lead to consequences that ‘would be very difficult to correct and may be irreversible’*”³⁴, or (iii) “*could potentially defeat the purpose of the appeal*”.³⁵

1) The Defence Request for Suspensive Effect must be rejected in limine

20. As a preliminary observation, and as rightly pointed by the TFV in its submissions,³⁶ the Legal Representative contends that the Defence Request for Suspensive Effect is significantly tardy. Indeed, according to the Appeals Chamber, “*as a practice, it is preferable that a request for suspensive effect - which, given the nature of the request, ought to be decided as expeditious as possible - should be presented in the appeal together with the reasons in support of the request as prescribed in rule 156(5) of the Rules of Procedure and Evidence*”.³⁷ In the *Bemba* case, when the appellant did not provide any explanation as to why he did not request suspensive effect when filing the appeal, but instead made the request in a separate document filed seven days later, the Appeals Chamber decided that this merited “*the rejection of the Request for Suspensive Effect*”.³⁸

21. In the present case, the Defence did not request suspensive effect in its notice of appeal, but only two months later in its Appeal Brief, and failed to provide any reasoning or justification for doing so. Given “*the urgent nature of requests for suspensive effect, and because of the need for clarity as early as possible as to whether a request for*

³³ See the “Decision on the request of Mr. Thomas Lubanga Dyilo for suspensive effect of his appeal against the oral decision of Trial Chamber I of 18 January 2008” (Appeals Chamber), [No. ICC-01/04-01/06-1290 OA 11](#), 22 April 2008, paras. 7-8.

³⁴ See the “Decision on the Requests of the Prosecutor and the Defence for suspensive effect of the appeals against Trial Chamber I’s Decision on Victim’s Participation of 18 January 2008” (Appeals Chamber), [No. ICC-01/04-01/06-1347 OA 9 OA 10](#), 22 May 2008, paras. 19, 20 and 23.

³⁵ See the “Reasons for the decision on the request of the Prosecutor for suspensive effect of his appeal against the ‘Decision on the release of Thomas Lubanga Dyilo’” (Appeals Chamber), [No. ICC-01/04-01/06-1444 OA 12](#), 22 July 2008, para. 10. See also the “Decision on the Request of the Prosecutor for Suspensive Effect” (Appeals Chamber), [No. ICC-01/05-01/08-499 OA2](#), 3 September 2009, para. 13.

³⁶ See the TFV’s Observations on the Defence Request for Suspensive Effect, *supra* note 3, para. 13.

³⁷ See the “Decision on the Request of the Prosecutor for Suspensive Effect”, *supra* note 35, para. 10. See also the “Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the ‘Decision on the Admissibility and Abuse of Process Challenges’”, *supra* note 32, para. 8.

³⁸ See the “Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the ‘Decision on the Admissibility and Abuse of Process Challenges’”, *supra* note 32, para. 10.

suspensive effect is made”,³⁹ it is submitted that it is unjustifiable for an appellant to request suspensive effect at the stage when the implementation of the Impugned Decision has already effectively started. Moreover, the Legal Representative recalls that “*suspensive effect is the exception, not the rule*”.⁴⁰

22. Consequently, and in accordance with the Appeals Chamber’s jurisprudence as referred to above, the Legal Representative respectfully requests the Appeals Chamber to reject the Defence Request for Suspensive Effect *in limine*.

23. If, nevertheless, the Appeals Chamber were to entertain the Defence Request on the merits, the Legal Representative submits that the Request should be rejected for the reasons as follows.

2) *No irreversible situation would be created by the implementation of the preliminary steps of the Reparations Order*

24. The Legal Representative submits that no irreversible situation would be created if the TFV were to proceed with the preliminary steps of the implementation of the Reparations Order and pending the Appeals Chamber’s determination on the appeals.

25. The Defence does not seem to challenge the collective nature of the reparations as awarded in the present case, while taking issue with the individualised components of the collective award.⁴¹ It also does not challenge the implementation of the Reparations Order through the TFV. In the Reparations Order, Trial Chamber VI instructed the TFV to submit by 8 June 2021 an urgent plan for priority victims, and by 8 September 2021 its general draft implementation plan.⁴² The TFV was invited to resort, to the extent possible, to pre-existing structures, programmes and partners to

³⁹ *Idem*, para. 8.

⁴⁰ See the “Decision on Mr William Samoei Ruto’s request for suspensive effect” (Appeals Chamber), [No. ICC-01/09-01/11-1370 OA7 OA8](#), 17 June 2014, para. 10.

⁴¹ See the Defence Appeal Brief, *supra* note 2, paras. 185-188.

⁴² See the Reparations Order, *supra* note 1, p. 97.

optimise the costs of implementation of reparations.⁴³ Also, the TFV was ordered to consult with the victims and their families for the purpose of designing and implementing reparations awards.⁴⁴

26. Thus, designing reparations awards in accordance with the Reparations Order is per definition a process that requires several preliminary steps to be completed by the TFV in consultation and/or cooperation with relevant stakeholders. The TFV's draft implementation plans are subject to the scrutiny by the parties and to the approval of the Trial Chamber. Moving on to any first substantive steps, such as the assessment of the eligibility of potential beneficiaries, is subject to the availability of sufficient resources and of relevant organisational structures, programmes and/or implementing partners in the affected areas.

27. It is apparent from the TFV's Report submitted on 9 June 2021 that the TFV has only recently entered into a consultation process with the relevant stakeholders.⁴⁵ Because of the security situation in the region, the TFV could not and still cannot travel to most of the locations relevant to the Reparations Order, and as a result of the displacement caused by the ongoing violence, the LRVs and the TFV have not been able to contact many of the victims.⁴⁶ Additionally, the TFV's travel to a refugee camp in Uganda where potential beneficiaries may be located, is unforeseeable due to the COVID-19 pandemic.⁴⁷ Moreover, although the TFV's Board of Directors has met and considered the complement to the payment of the awards in the present case, it is still unknown which amount will be dedicated to the reparations.⁴⁸

28. The IDIP shows that, as far as the victims of the attacks are concerned, the TFV's current operational capacities in the affected locations in the field are limited⁴⁹ to two

⁴³ *Idem*, para. 249.

⁴⁴ *Idem*, para. 250.

⁴⁵ See the TFV's Report, *supra* note 18, para. 24.

⁴⁶ *Idem*, para. 40.

⁴⁷ *Idem*, para. 43.

⁴⁸ *Idem*, para. 45.

⁴⁹ See the IDIP, *supra* note 19, para. 22.

assistance projects;⁵⁰ only one of the projects can accommodate a maximum of [REDACTED] victims; and the capacities of this project can be increased by a maximum of [REDACTED].⁵¹ Thus, it is already clear that, in order to provide reparations awards to the overwhelming majority of the victims of the attacks, the TFV's operational capacities in the field first need to be significantly reinforced by putting in place new operational structures and programmes and by selecting new relevant implementing partners. However, engaging new implementing partners can only be achieved through competitive bidding processes governed by the Court's rules, and as it currently stands, the procedure of competitive bidding processes followed by a contracting process *"takes about one year, if no re-publication is required or other risks materialise, which are inherent in procurement and contracting processes"*.⁵²

29. The Legal Representative also notes incidentally that all the parties, with the Registry issuing a number of reservations on the matter, have objected to the IDIP.⁵³ Considering the unanimous opposition to the IDIP, this initial step of the preliminary phase of the implementation of the Reparations Order is very likely to take even more time than envisaged.

30. All the preliminary steps referred to above are a constituent part of the implementation of the Reparations Order and are meant to be completed prior to proceeding with any substantive measures. These preliminary steps are of a general nature and are not prejudicial to the pending appeals, given that they *have to be taken*, regardless of the outcome of the appeals. Given the large extent of the preliminary measures to be taken and completed, along with numerous security and COVID-19 related difficulties and challenges, it is unlikely that the preliminary phase of the

⁵⁰ *Idem*, paras. 30-35.

⁵¹ *Idem*, para. 74.

⁵² *Idem*, para. 21.

⁵³ See the "Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims' Draft Initial Implementation Plan", *supra* note 24; the "Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims", *supra* note 25; the "Defence Observations on the TFV initial draft implementation plan", *supra* note 26; and the "Registry Observations on the Trust Fund for Victims' Initial Draft Implementation Plan", *supra* note 27.

implementation of the Reparations Order will be finalised before the Appeals Chamber's determination on the appeals.

31. Accordingly, the Legal Representative submits that in light of the particular circumstances of the present case as referred to above, there is no need nor basis for the suspension of the implementation of the Reparations Order as requested by the Defence. Granting the suspension, including the preliminary phase of the implementation of the Reparations Order, would not be "*in the interest of justice*", as argued by the Defence,⁵⁴ and certainly not in the interests of the victims who have now been waiting for justice and reparations for over 18 years.

32. The Legal Representative further contends that proceeding with the preliminary steps of the implementation of the Reparations Order pending the Appeals Chamber's determination on the appeals is not prejudicial as such to the rights of Mr Ntaganda as no irreversible situation would be created by the implementation of preliminary measures of a general nature. In addition, the Defence will be able to make observations on the TFV's draft implementation plans on two separate occasions, without the need to suspend the entire implementation process. In this regard, it is worth noting that, as far as the priority victims of the attacks are concerned, the TFV proposes to provide interim relief to [REDACTED] victims only at this stage, and intends to do so through pre-existing assistance programmes projects and with its assistance mandate budget, and not the one dedicated to the reparation awards.

3) The Defence fails to demonstrate that the relevant criteria for granting suspensive effect are met

33. In its Appeal Brief, the Defence cites the following possible outcomes if its appeal were to be granted:

"(i) a requirement being identified for reparations application forms to be transmitted to the Defence; (ii) a requirement being identified for the Defence to become involved in determining the eligibility of potential beneficiaries, both participating victims and new

⁵⁴ See the Defence Appeal Brief, *supra* note 2, para. 267.

potential beneficiaries; (iii) a requirement being identified for Trial Chamber II becoming involved in some way in ruling on individual applications; (iv) a requirement being identified for guidelines having to be issued to the TFV that would circumscribe its work during the implementation phase; (v) the eligibility of beneficiaries having to be reviewed pursuant to different criteria or using a different standard of proof; (vi) a lesser number of potential beneficiaries being identified; (vii) the liability of the Convicted Person being determined to be less than USD 30,000,000, thereby impacting the implementation of programs; and (viii) the implementation of the reparations process in this case having to be revisited to ensure it is in conformity with the sui generis scheme being developed by the Court".⁵⁵

34. The Legal Representative avers that none of these outcomes are relevant to the implementation of the preliminary steps of the Reparations Order. Indeed, all alleged outcomes pertain to substantive matters, in particular the scope of the Defence's role in reparations proceedings, the assessment of the eligibility of the beneficiaries, and the scope of the convicted person's liability for reparations. However, as argued above, the preliminary steps to be taken by the TFV as part of the implementation of the Reparations Order have to be taken regardless of the outcome of the appeals, as they are of a general nature and are indeed preliminary as opposed to any substantive measures. These measures are unlikely to be completed before the Appeals Chamber's determination on the appeals. The only consequence of granting the Defence Request for Suspensive Effect would be to halt these preliminary steps, thereby unnecessarily lengthening the reparations process.

35. Furthermore, the Legal Representative posits that, given the collective nature of the reparations, which was not challenged by the Defence, and in accordance with the Court's practice,⁵⁶ the role of the Defence at the implementation phase of collective reparations is limited to making observations on the TFV's draft implementation plan(s).

⁵⁵ *Idem*, para. 267.

⁵⁶ See the "Reparations Order" (Trial Chamber VIII), [No. ICC-01/12-01/15-236](#), 17 August 2017, para. 146. See also the "Order for Reparations pursuant to Article 75 of the Statute" (Trial Chamber II), [No. ICC-01/04-01/07-3728-tENG](#), 24 March 2017, para. 311; and the "Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'" (Appeals Chamber), [No. ICC-01/04-01/06-3466-Red](#), 18 July 2019, paras. 247-249.

36. In support of its Request for Suspensive Effect, the Defence argues that “[t]aking into consideration the nature of the errors alleged [...] the possibility that the Impugned Decision will be reversed or amended is real”,⁵⁷ and that “implementation of the Impugned Decision at this stage could result in considerable time being spent and resources being allocated by the TFV, as well as raised expectations of victims”.⁵⁸ However, it is submitted that the Defence fails to demonstrate that the relevant criteria set forth by the Appeals Chamber for granting suspensive effect are met, in particular that the implementation of the Reparations Order would create an irreversible situation that could not be corrected, or could potentially defeat the purpose of the appeal.

37. Considering all the above, the Legal Representative submits that the Defence has failed to demonstrate that the relevant criteria for granting suspensive effect have been met and therefore respectfully requests the Appeals Chamber to reject the Defence Request for Suspensive effect.

B. Response to the TFV’s Observations on the Defence Request for Suspensive Effect

38. The Legal Representative’s response to the TFV’s Observations will be limited to a few points only.

39. First, the Legal Representative concurs with the TFV’s second preliminary issue concerning the timing of the Defence Request for Suspensive Effect,⁵⁹ as argued above.⁶⁰

40. Second, the Legal Representative, however, takes issue with the TFV’s observation that “it is highly unlikely that the decision as such will be enforced in the near future, considering the Trial Chamber’s finding on indigence and the length of Mr Ntaganda’s term of imprisonment”.⁶¹ This observation does not find any support in the Court’s

⁵⁷ See the Defence Appeal Brief, *supra* note 2, para. 261.

⁵⁸ *Idem*, para. 268.

⁵⁹ See the TFV’s Observations on the Defence Request for Suspensive Effect, *supra* note 3, para. 13.

⁶⁰ See *supra* paras. 20-23.

⁶¹ See the TFV’s Observations on the Defence Request for Suspensive Effect, *supra* note 3, para. 19.

practice. Without wishing to speculate on the *rationale* underpinning said observation, the Legal Representative submits that, in accordance with the Court's practice, the indigence of a convicted person and the length of the term of imprisonment have never been – and must not be in the present case – factors of such relevance as to undermine the implementation of a reparations order through the TFV.

41. Finally, the Legal Representative notes that, according to the TFV, any new projects are expected to start after the determination on the appeals.⁶² This supports the Legal Representative's arguments above against granting suspensive effect by confirming that no substantive measures are expected to be taken pending the Appeals Chamber's determination on the appeals.

C. Response to the TFV's Request under rule 103 of the Rules

42. As a preliminary remark, the Legal Representative notes that the TFV should have made its request under rule 103 of the Rules in a separate submission rather than as part of its observations in response to the Defence Request for Suspensive Effect.

43. In its submissions, the TFV requests leave to present observations pursuant to rule 103 of the Rules on 1) the delegation of judicial functions to the TFV; 2) the criteria for the assessment of eligibility; 3) the TFV's role in determining the concrete implementation measures; and 4) the role of the TFV and the monitoring role of the Trial Chamber.⁶³ Moreover, the TFV suggests it should be invited to present observations on "*any of these matters*" raised by the Defence in Grounds 3, 4-9 and 15 of its Appeal Brief and on matters raised by the Legal Representative in his appeal, without specifying which one(s).⁶⁴

44. The Legal Representative takes note, with concern, of the very large extent of topics for which the TFV seeks leave to address. He stresses that the TFV is not a party

⁶² *Idem*, para. 30.

⁶³ *Idem*, para. 32.

⁶⁴ *Idem*, para. 33.

in the present proceedings, but an entity in charge of the implementation of the Reparations Order. He also notes that the TFV seems unavailable to make their intended observations before September 2021,⁶⁵ and thus if authorised to do so in September or later, this will cause a delay in the present proceedings given that the parties should further be authorised to submit their observations in response.

45. The Legal Representative is of the view that the Appeals Chamber will not be assisted by the observations which the TFV seeks to make and respectfully requests the Appeals Chamber to reject the TFV's Request. However, if the Appeals Chamber were inclined to grant the TFV's Request, it is submitted that the TFV's observations should be limited to topics which directly pertain to its functions and/or operational activities and should be filed by the same deadline as the one set for the parties' responses to the appeals, namely 9 August 2021. The parties should then be allowed to respond to the TFV's observations within a reasonable timeframe.

IV. RELIEF SOUGHT

46. The Legal Representative respectfully requests that the Appeals Chamber:

- **REJECT** the Defence Request for Suspensive Effect of the Reparations Order.
- **REJECT** the TFV's Request under rule 103 of the Rules,
or in the alternative,
- **AUTHORISE** the TFV to make observations on a limited number of topics which directly pertain to the latter's functions and/or operational activities, by 9 August 2021 at the latest, and
- **AUTHORISE** the parties to respond to the TFV's observations within a reasonable timeframe.

⁶⁵ *Idem*, para. 34.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', followed by a period.

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 30th day of June 2021

At The Hague, The Netherlands