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

Date: **11 November 2021**

**TRIAL CHAMBER II**

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF**

***THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Public**

**Information provided pursuant to regulation 28 of the Regulations of the Court in relation to the Trust Fund's "Fifteenth 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" submitted on 21 October 2021 (ICC-01/04-01/06-3524)**

**Source:** The Trust Fund for Victims

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

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## I. RELEVANT PROCEDURAL HISTORY

1. On 21 July 2021, the Trust Fund for Victims (“Trust Fund”) submitted its Fourteenth progress report on the implementation of collective reparations in the *Lubanga* case (“Fourteenth Progress Report”).<sup>1</sup>
2. On 3 August 2021, the Office of the Public Counsel for Victims (“OPCV”) submitted its response to the Fourteenth Progress Report.<sup>2</sup> Therein, the OPCV mentions that the Fourteenth Progress Report does not include: (i) a calendar as to the actual starting date of implementation of service-based collective reparations; (ii) detailed and concrete information on the locations where the current activities by the implementing partner are carried out; (iii) the appropriate timing for the implementation of the symbolic reparations for victims; and (iv) the status of the search of the disappeared victims.
3. On 23 August 2021, the Trial Chamber issued the “Sixth Decision on the TFV’s administrative decisions on applications for reparations and other related matters” (“23 August 2021 Decision”).<sup>3</sup> Therein, the Trial Chamber directed the Trust Fund to include in its next quarterly report information requested by the OPCV in its response to the Fourteenth Progress Report.
4. On 21 October 2021, the Trust Fund submitted its Fifteenth progress report on the implementation of collective reparations (“Fifteenth Progress Report”).<sup>4</sup> Therein, the Trust Fund provided information in relation to the implementation of collective reparations including on matters related to the information sought by the OPCV.

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<sup>1</sup> Fourteenth 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, With Confidential *ex parte* Annex A only available to the LRV01, the Trust Fund for Victims and the VPRS, Confidential *ex parte* Annex B only available to the OPCV, the Trust Fund for Victims and the VPRS, Confidential *ex parte* Annex C only available to the LRV02, the Trust Fund for Victims and the VPRS and Confidential *ex parte* Annex D only available to the LRV01, the LRV02, the OPCV, the Trust Fund for Victims and the VPRS, 21 July 2021, [ICC-01/04-01/06-3519-Red](#).

<sup>2</sup> Réponse du BCPV au Quatorzième Rapport sur le progrès de la mise en oeuvre des réparations collectives déposé par le Fonds au profit des victimes le 21 juillet 2021, 3 August 2021, ICC-01/04-01/06-3521-Conf-Exp.

<sup>3</sup> Sixth Decision on the TFV’s administrative decisions on applications for reparations and other related matters, 23 August 2021 (“23 August 2021 Decision”), [ICC-01/04-01/06-3523](#).

<sup>4</sup> Fifteenth 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, With Confidential *ex parte* Annex only available to the LRV01, the Trust Fund for Victims and the VPRS, 21 October 2021, [ICC-01/04-01/06-3524](#).

5. On 2 November 2021, the OPCV submitted its response to the Fifteenth Progress Report (“OPCV Response”).<sup>5</sup> In particular, the OPCV contends that the information put forward in the Fifteenth Progress Report does not comprehensively comply with the Trial Chamber’s instructions as they remain “vague” in relation to the three following areas: (i) the absence of a calendar as to the actual starting date of implementation of service-based collective reparations; (ii) the absence of detailed and concrete information on the development of socio-economic activities by the implementing partner, and more generally the localities where all the activities and services are being developed; and (iii) the absence of precise information regarding the project for disappeared victims. The OPCV requested the Trial Chamber to order the Trust Fund urgently to submit the above-mentioned information.

6. On 4 November 2021, the Trust Fund addressed the Trial Chamber by email,<sup>6</sup> stating that it “considers it necessary to respond to the observations of OPCV of 2 November 2021 on the Trust Fund’s 15<sup>th</sup> Report on reparation implementation. In these observations, the OPCV requests the Chamber to urgently issue various orders to the Trust Fund. Accordingly, the Trust Fund considers that additional information and, in particular, the general perspective of the Trust Fund on such requests after the Trial Chamber’s approval of the programme of 20 December 2020 may assist the Trial Chamber in its deliberations. The Trust Fund accordingly wishes to seek leave to address the Chamber on these matters by Thursday, 11 November 2021, 4pm”.

7. The Trial Chamber informed the Trust Fund and the parties that “pursuant to Regulation 28 (1) of the Regulations of the Court, the Chamber grants the TFCV’s request to submit additional information in response to the observations submitted by the OPCV on the TFCV’s Fifteenth Progress Report on implementation of reparations in the *Lubanga* case. The additional observations should be limited to the issues raised by the OPCV and should be submitted by Thursday, 11 November 2021, at the latest”.<sup>7</sup>

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<sup>5</sup> *Réponse du BCPV au Quinzième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 21 octobre 2021*, 2 November 2021, [ICC-01/04-01/06-3525](#).

<sup>6</sup> Email from the Trust Fund to the Trial Chamber and the LRVs on 4 November 2021 at 16.00.

<sup>7</sup> Email from the Trial Chamber to the Trust Fund and the LRVs on 4 November 2021 at 18.23.

## II. INFORMATION PURSUANT TO REGULATION 28

### A. Information relevant to the collective service-based reparation measures

8. The Trust Fund hereby submits its additional information relevant to the OPCV Response to the Trial Chamber to urgently order the Trust Fund to submit a calendar of implementation, more detailed information about the development of socio-economic activities and the precise locations at which the implementation takes place.

9. First, the Trust Fund underlines that, in its Fifteenth Progress Report, it has reported that implementation of concrete activities for the benefit of victims regarding the collective service-based reparations has started.<sup>8</sup> These activities started in the first week of August, after the names of the first group of 425 beneficiaries were submitted to the implementing partner on 1 July 2021 and the intake had started. The submission of the OPCV in relation to a start date of the implementation is therefore moot. The Trust Fund indicated that an initial intake screening was conducted to identify the present needs of 153 beneficiaries. Based on this screening, 60 beneficiaries have started to benefit from physical rehabilitation while 123 beneficiaries are currently benefitting from psychological support. As set out in the Fifteenth Progress Report, the implementing partner could not easily get in touch with all the 425 victims whose details were submitted to the implementing partner in June 2021. This issue has been and is in the process of being addressed. In particular, the Trust Fund proposed by way of e-mails, on 28 and 29 October 2021, to hold a meeting with the LRVs to address, *inter alia*, this issue and matters they deemed relevant. The Trust Fund decided to invite the implementing partner to such meeting.

10. In addition, the beneficiaries of this first batch of beneficiaries required an in-depth needs assessment in relation to socio-economic activities before the implementing partner could start providing the requisite specific and tailored services. It is recalled in this context, that the beneficiaries' needs and wishes are paramount in the selection of socio-economic measures implemented for their benefit. Delving into details, all beneficiaries in contact with the implementing partner (today 183), should start vocational training related to their respective projects by 22 November 2021. Those beneficiaries have chosen to pursue activities related to

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<sup>8</sup> Fifteenth Progress Report, para. 21.

small businesses (taxi-moto, selling food etc), to working as a mechanic or a sewer. Those who have selected small business activities should have ended their trainings and be fully equipped to start their income-generating activities by 10 December 2021. Others have chosen occupations that require longer training (up to 4 months). All the measures and additional services (including schooling support, microcredit, etc.) foreseen in the Scope of Work and Proposal will also be implemented at the same time.

11. Finally, the Trust Fund reported information related to the *Territoires*, where the activities are being implemented, in its Fifteenth Progress Report.<sup>9</sup> The Trust Fund has chosen to indicate *Territoires* and not localities, because the implementing partner has the specific task to implement activities where the victims are currently located or established. The implementing partner does not select localities to implement activities independently of the place where beneficiaries are located.

12. The Trust Fund notes that it has the obligation, pursuant to regulation 58 of the Regulations of the Trust Fund, “to provide updates to the Chamber on progress in the implementation of the award, in accordance with the Chamber’s order. At the end of the implementation period, the Trust Fund shall submit a final narrative and financial report to the relevant Chamber.” The information provided in the Trust Fund’s update reports has the purpose of providing information that allows the Trial Chamber to assess that the implementation is in line with the order for reparations and the approved implementation plan.

13. Different from the case of *Katanga*, the Trust Fund does not directly itself implement the reparations in this case. The Trust Fund ensures implementation by guiding, monitoring and later evaluating the work of the implementing partner. For that purpose, the Trust Fund relies on periodic reports of the implementing partner for detailed implementing information, which subsequently is reflected in its progress updates to the Trial Chamber. The implementing partner’s quarterly reports are due in respectively mid-January, mid-April, mid-July and mid-October of each calendar year and the annual report is due in mid-February of each calendar year. The Trust Fund scrutinises these reports, and seeks clarifications from the implementing partner when necessary, visits, insofar as security situation allows, implementation localities and carries out verification checks of project records to ensure that the implementing partner is performing as planned and expected. In addition,

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<sup>9</sup> Fifteenth Progress Report, para. 22.

in this specific case, where each beneficiary is pre-determined, the implementing partner and the Trust Fund regularly jointly address issues arising in respect of certain beneficiaries, in particular if matters relevant to individual beneficiaries are brought to the Trust Fund's attention, including by the LRVs, intermediaries or the Country Office.

14. The Trust Fund also underlines that the implementing partner proceeds in line with the very detailed Scope of Work and the even more detailed and agreed Proposal for the first year of implementation that was submitted to the Trial Chamber and by reference to which the Trial Chamber approved the service-based collective reparation programme on 20 December 2020. Accordingly, the reporting obligations of the implementing partner to the Trust Fund were devised in a way that allows the Trust Fund to fulfil its own reporting obligations and monitoring function. Consequently, while the OPCV and related requests by the LRVs aim at further detailing the Trust Fund's reporting obligations, the Trust Fund would like to draw the attention of the Trial Chamber to the fact that any such additional requirements on reporting were not incorporated in the reporting scheme between the Trust Fund and the implementing partner. In addition, the Trust Fund notes that any such additional reporting obligations of the implementing partner usually come at a cost, which are indirect programme costs.

15. The Trust Fund underlines that any concerns of LRVs during the implementation that relate to their clients or their clients' personal situation as well as any other issues relevant to the implementation may be raised directly with the Trust Fund, and ideally before raising it with the Chamber, in line with the Trial Chamber encouragement to observe a continuous cooperation.<sup>10</sup> The Trust Fund recalls that Trial Chamber VI in the "Decision on the Updated Implementation Plan from the Trust Fund for Victims"<sup>11</sup> requested all parties to limit the submission of filings to it and install instead a dialogue with the Trust Fund.

16. In this vein, the Trust Fund is willing to discuss with the LRVs the details of the implementation; ideally in a collaborative setting. As mentioned above, the Trust Fund and the LRVs have scheduled a meeting to be held on 16 November 2021. The Trust Fund invited the chief of project of the implementing partner to brief the LRVs about the status of implementation, including on the very detailed information requested in the OPCV Response.

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<sup>10</sup> 23 August 2021 Decision, para. 15.

<sup>11</sup> Decision on the Updated Implementation Plan from the Trust Fund for Victims, 4 March 2019, paras. 14, 74-78, 81, 104-105.

## **B. Information about the absence of precise information regarding the project for disappeared victims**

17. The Trust Fund has kept the OPCV updated about this modality and its progress. On 19 January 2021, the Trust Fund and the OPCV had the opportunity to discuss the *status quo* relevant to the search for disappeared victims. In discussions between the OPCV and the Trust Fund, it was agreed that the Trust Fund would once more contact the international institutions with offices in Kinshasa and Bunia, also with a view of getting advice as to organisations in Ituri that could locate and identify specifically designated missing child soldiers (dead or alive). New information could not be obtained, i.e. the *status quo* remains the same, as there is no organisation that could be engaged to actively ‘investigate’ specific requests or cases. The Trust Fund is still in the process of establishing whether there are qualified individuals who could be contracted by the Trust Fund for this specific purpose. This is ongoing before the background first that movement in Ituri of staff or ICC contractors is extremely limited for more than a year and second that potential beneficiaries in the *Ntaganda* case may share such concern.

18. Finally, the Trust Fund notes that there is no urgency in readjusting resources from this modality to the collective service based reparation modality, as the maximum budget for the implementing partner is currently fixed.

## **C. Information about the symbolic reparation measures**

19. The Trust Fund understands the matter related to symbolic reparation measures not to fall within the urgent request formulated by the OPCV, takes note of the issues raised by the OPCV and will therefore address those matters in its next progress report. The Trust Fund merely recalls that the Trial Chamber approved the symbolic reparations programme,<sup>12</sup> that then LRVs, including the OPCV, raised concerns similar to those addressed in the OPCV Response and that accordingly the Trust Fund amended the Scope of Work to fully take into account those concerns, informing the Trial Chamber accordingly.<sup>13</sup>

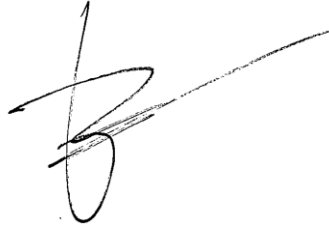
<sup>12</sup> Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations, 21 October 2016, [ICC-01/04-01/06-3251](#).

<sup>13</sup> Annex A to *Neuvième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 (ICC-01/04-01/06-3251) et 6 avril 2017 (ICC-01/04-01/06-3289) et la Décision du 7 février 2019 (ICC-01/04-01/06-3440-Red)*, 21 April 2020, [ICC-01/04-01/06-3474](#), para. 30-35.



**FOR THE FOREGOING REASONS**

The Trust Fund respectfully requests the Trial Chamber to take note of the present observations.



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

Dated this 11<sup>th</sup> of November 2021

At The Hague, The Netherlands