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**International
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Court**

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Date: **23 November 2021**

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. THOMAS LUBANGA DYILO

Public

**Seventh Decision on the TFV's administrative decisions on applications for reparations
and additional matters**

To be notified, in accordance with regulation 31 of the Regulations of the Court, to:**Legal Representatives of Victims V01**

Mr Luc Walley
Mr Franck Mulenda

Counsel for the Defence

Ms Catherine Mabil
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims V02

Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta Orwinyo

Unrepresented Victims**Unrepresented Applicants for Participation/Reparation****The Office of Public Counsel for Victims**

Ms Paolina Massidda

The Office of Public Counsel for the Defence**States' Representatives**

Amicus Curiae

REGISTRY**Registrar**

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Trial Chamber II of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the ‘Lubanga case’), having regard to article 75 of the Rome Statute and Regulation 58 of the Regulations of the Trust Fund for Victims (‘TFV’), issues its Seventh Decision on the TFV’s administrative decisions on applications for reparations and additional matters (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 15 December 2017, the Chamber, in its prior composition, issued the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’ wherein it, *inter alia*, reiterated that victims who had not been in a position to submit a dossier by 31 March 2017 would be screened by the TFV for eligibility at the implementation stage.¹

2. On 7 February 2019, the Chamber issued a decision approving the process for locating new applicants,² and directing the TFV to collect applications, with the support of the Legal Representatives of Victims (‘LRVs’) and the Office of the Public Counsel for Victims (‘OPCV’).³ The Chamber also instructed the TFV to forward the applications to the Registry’s Victims Participation and Reparations Section (‘VPRS’) for verifications and recommendations, in order to allow the TFV’s Board of Directors to take administrative decisions on the victims’ eligibility, to be submitted to the Chamber for a final decision.⁴

3. On 14 December 2020, the Chamber issued a decision approving the programme proposed by the TFV for the implementation of service-based collective reparations, subject to certain modifications and guarantees to be integrated by the TFV and the implementing partner (‘14 December 2020 Decision’).⁵

¹ Corrected Version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, 21 December 2017 (public redacted version filed on 5 July 2018), [ICC-01/04-01/06-3379-Red-Corr-tENG](#), (‘Lubanga Decision on the Size of Reparations Award’), para. 293, referring to Decision on the Motion of the Office of Public Counsel for Victims for Reconsideration of the Decision of 6 April 2017, 13 July 2017, [ICC-01/04-01/06-3338-tENG](#), para. 11.

² Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations (‘Decision on New Applicants’), 7 February 2019 (reclassified as public on 13 April 2021), [ICC-01/04-01/06-3440-tENG](#).

³ Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), para. 21.

⁴ Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), paras 29-30.

⁵ Rectificatif de la Décision faisant droit à la requête du Fonds au profit des victimes du 21 septembre 2020 et approuvant la mise en oeuvre des réparations collectives prenant la forme de prestations de services (‘14 December 2020 Decision’), 14 December 2020 (public redacted version filed on 4 March 2021 and correction filed on 5 March 2021), [ICC-01/04-01/06-3495-Red-Corr](#), para. 120.

4. On 26 March 2021, the Chamber issued a decision, *inter alia*, extending the deadline and setting the final cut-off date for the submission of the last complete dossiers to the VPRS on 1 October 2021.⁶

5. On 21 October 2021, the TFV submitted its Fifteenth progress report on the implementation of collective reparations ('Fifteenth Progress Report'), providing information, *inter alia*, on the identification of new applicants, the status of admissibility decisions, the implementation of the collective reparations awards, and the advances on the symbolic reparations.⁷

6. On 2 November 2021, the OPCV⁸ and the Legal Representatives of Victims V01 ('LRV01')⁹ submitted their responses to the Fifteenth Progress Report.

7. On 11 November 2021, as authorised by the Chamber,¹⁰ TFV submitted additional information ('Additional Information').¹¹

II. ANALYSIS

A. Administrative Decisions

8. In its Fifteenth Progress Report, the TFV informs that during the reporting period the VPRS transmitted two batches of victims' applications, consisting of 193 applications in total, and submits for the Chamber's final approval 100 positive administrative decisions adopted by the Board of Directors.¹² The administrative decisions were taken following the TFV's Board of Directors verification and assessment of eligibility of direct and indirect victims of the crimes for which Mr Lubanga was convicted, as detailed in the Annex to the Fifteenth Progress

⁶ Decision on the submissions by the Legal Representative of Victims V01 in its Response to the Twelfth Report of the Trust Fund for Victims on the implementation of collective reparations, filing ICC-01/04-01/06-3500-Conf-Exp, 26 March 2021 (reclassified as public on 13 April 2021), [ICC-01/04-01/06-3508](#).

⁷ 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 ('Fifteenth progress report'), 21 October 2021, [ICC-01/04-01/06-3524](#).

⁸ 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 ('OPCV Response'), 2 November 2021, [ICC-01/04-01/06-3525](#).

⁹ Réponse des RLV V01 au Quinzième Rapport sur le progrès de la mise en oeuvre des réparations collectives déposé par le Fonds au profit des victimes (ICC-01/04-01/06-3524) avec annexe du 21 octobre 2021 ('LRV01 Response'), 2 November 2021, [ICC-01/04-01/06-3526](#).

¹⁰ See email from the TFV to the Chamber's Legal Officer on 4 November 2021, 16:00 and email from the Chamber to the TFV on 4 November 2021, 18:23.

¹¹ 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) ('TFV Additional Information'), 11 November 2021, [ICC-01/04-01/06-3527](#).

¹² Fifteenth progress report, [ICC-01/04-01/06-3524](#), paras 15-16.

Report.¹³ The TFV further informs the Chamber that, out of the 1156 files received so far from the VPRS, 214 still await further processing by the TFV.¹⁴

9. The Chamber recalls that in rendering its administrative decisions on the eligibility of new applications, the TFV's Board of Directors is assisted by the initial verification of the applications and the recommendations provided by the VPRS.¹⁵ In addition, the Chamber notes that no objections to the Board of Directors' assessment have been raised by the LRV01 or the OPCV.

10. In light of the above and after having reviewed the assessment carried out by the VPRS¹⁶ and the TFV's Board of Directors,¹⁷ the Chamber hereby issues its final decision, endorsing the TFV's Board of Directors' administrative decisions and approving the 100 new applications for reparations as detailed in the Annex of the Fifteenth Progress Report.

B. Identification of new applicants

11. The TFV reports that, in light of the security and health situation in Ituri, only interviews with applicants from Bunia and Kisangani remained possible via video and in person. Nevertheless, the LRV01 and the Legal Representatives of Victims V02 ('LRV02'), with the logistical support from the TFV, managed to collect over 400 applications during the reporting period.¹⁸

12. In addition, the Chamber notes the LRV01 submission that hundreds of direct victims residing outside Bunia, in contact with them since 2019, could not finalise their dossiers, while a large number of indirect victims still wish to submit their requests. The LRV01 note that they have a detailed list of all these victims and that consultations with the other LRVs and the TFV as to their situation moving forward are ongoing.¹⁹

13. The Chamber underlines that the final cut-off date to submit complete reparations dossiers to the VPRS expired on 1 October 2021. Conscious of the challenges posed by the

¹³ Confidential *ex parte* Annex only available to the LRV01, the Trust Fund for Victims and the VPRS ('Annex'), 21 October 2021, ICC-01/04-01/06-3524-Conf-Exp-Anx.

¹⁴ Fifteenth progress report, [ICC-01/04-01/06-3524](#), para. 17.

¹⁵ Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), paras 29-30.

¹⁶ Transmitted to the Chamber by the VPRS via e-mail on 22 October 2021 at 16:54, as requested by the Chamber pursuant to Décision relative à la première et à la deuxième transmission des décisions administratives du Fonds au profit des victimes portant sur des nouvelles demandes en réparation, 20 May 2020, [ICC-01/04-01/06-3476](#), para. 16.

¹⁷ Annex, ICC-01/04-01/06-3524-Conf-Exp-Anx.

¹⁸ Fifteenth progress report, [ICC-01/04-01/06-3524](#), para. 11. *See also* LRV01 Response, [ICC-01/04-01/06-3526](#), para. 8.

¹⁹ LRV01 Response, [ICC-01/04-01/06-3526](#), paras 12-13.

security and health situation in Ituri, the Chamber regrets that the LVRs were not able to complete all dossiers before the final deadline, considering that efforts should have been ongoing since at least 2016 and the deadline was twice extended.²⁰ Nonetheless, the Chamber commends the LRVs' and the TFV's efforts and notes the large number of applications collected during the reporting period. The Chamber also welcomes the proposed consultations between the LRVs and the TFV as to the situation of the remaining victims moving forward,²¹ and reiterates that they may be able to benefit from reparations in the *Ntaganda* case.²²

C. Additional matters raised by the OPCV and the LRV01 in their Responses

14. The Chamber notes that the OPCV and the LRV01 raise several matters in their responses to the TFV's Fifteenth Progress Report, mostly requiring further information from the TFV. At the outset, the Chamber reiterates that, at this stage of the proceedings, the TFV and the implementing partner are in charge of conducting the implementation of the service-based collective reparations, as approved by the Chamber.²³ As held elsewhere,²⁴ during the implementation stage of reparations proceedings, once the draft implementation plan has been approved, the Chamber's role is expected to be minimal, solely retaining oversight over the implementation process and inviting and considering submissions only when strictly necessary.

15. Having reviewed the matters raised by the OPCV and the LRV01, the Chamber considers that none of them amount to issues that require the Chamber's involvement, having been previously decided by the Chamber or sufficiently addressed by the TFV. The Chamber further reiterates that the victims' concerns related to the implementation of the service-based collective reparations should be raised directly with the TFV and dealt with in the context of the continuous collaboration and cooperation between the TFV, the LRVs, and the OPCV.

16. Notwithstanding, strictly for the sake of clarity and stressing that it should not be seized with these or similar issues in the future, the Chamber will briefly detail below its assessment

²⁰ See Sixth Decision on the TFV's administrative decisions on applications for reparations and other related matters ('Sixth Decision'), 23 August 2021, [ICC-01/04-01/06-3523](#), para. 10.

²¹ LRV01 Response, [ICC-01/04-01/06-3526](#), paras 11, 13.

²² Sixth Decision, [ICC-01/04-01/06-3523](#), para. 11; *see also* LRV01 Response, [ICC-01/04-01/06-3526](#), para. 13.

²³ Sixth Decision, [ICC-01/04-01/06-3523](#), para. 15.

²⁴ See, *inter alia*, *Prosecutor v. Bosco Ntaganda*, Decision on the TFV's initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#), para. 40; Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on the Updated Implementation Plan from the Trust Fund for Victims ('Al Mahdi Decision on UIP'), 4 March 2019, [ICC-01/12-01/15-324-Red](#), para. 14; 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, 3 March 2015, [ICC-01/04-01/06-3129](#), Annex A, Order for Reparations (amended), [ICC-01/04-01/06-3129-AnxA](#), para. 76.

of the matters raised by the OPCV and the LRV01 and why no involvement of the Chamber is required at this stage:

(i) Issues regarding the implementation of service-based collective reparations:

- a. Alleged absence of a calendar setting out a starting date.²⁵ As instructed by the Chamber in the 14 December 2020 Decision,²⁶ the TFV indicated that the starting date of implementation was 1 March 2021.²⁷ In the Fifteenth Progress Report, the TFV further elaborates on the concrete steps of implementation undertaken during the reporting period.²⁸
- b. Alleged absence of precise information as to the localities of implementation.²⁹ In the 14 December 2020 Decision, the Chamber approved the implementation of the service-based collective reparations, which included the territories and localities identified by the TFV.³⁰ No further modification or guarantees regarding territories were imposed by the Chamber. In the Fifteenth Progress Report, the TFV further details the territories where the implementing partner is operational, according to the victims' location.³¹
- c. Alleged absence of concrete details regarding socio-economic activities³² and alleged issue of victims' change of preferences.³³ Throughout the proceedings that lead to the approval of the implementation of the service-based collective reparations, the Chamber stressed the need to ensure flexibility, in order to properly respond to the diverse and evolving needs and wishes of the victims.³⁴ In the Fifteenth Progress Report, the TFV indicates that following the initial intake of 153 beneficiaries, the evaluation of their

²⁵ OPCV Response, [ICC-01/04-01/06-3525](#), paras 8-10.

²⁶ 14 December 2020 Decision, [ICC-01/04-01/06-3495-Red-Corr](#), para. 124.

²⁷ Annexe A au Douzième rapport sur le progrès de la mise en oeuvre 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) ('Annex A to the Twelfth Progress Report'), 21 January 2021, [ICC-01/04-01/06-3497-AnxA-Red](#), para. 29; For further details and dates pertaining to various steps in implementation *see also* 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, 21 April 2021, [ICC-01/04-01/06-3512-Red](#), paras 28-29.

²⁸ Fifteenth progress report, [ICC-01/04-01/06-3524](#), paras 19-21.

²⁹ OPCV Response, [ICC-01/04-01/06-3525](#), paras 11-12.

³⁰ For details as to territories and localities, *see Annex A to the Requête d'approbation des résultats de l'invitation à soumissionner concernant les réparations collectives basées sur les services apportés aux victimes* ('Annex A Request'), 21 septembre 2020, ICC-01/04-01/06-3480-Conf-Exp-AnxA, p. 7.

³¹ Fifteenth progress report, [ICC-01/04-01/06-3524](#), para. 22; TFV Additional Information, [ICC-01/04-01/06-3527](#), para. 11.

³² OPCV Response, [ICC-01/04-01/06-3525](#), paras 13-14.

³³ LRV01 Response, [ICC-01/04-01/06-3526](#), paras 14-15.

³⁴ *See* 14 December 2020 Decision, [ICC-01/04-01/06-3495-Red-Corr](#), paras 112, 118, 138-139.

needs and wishes for socio-economic measures is underway.³⁵ In the Additional Information, the TFV further stresses that the beneficiaries require an in-depth assessment for the implementing partner to provide them with the requisite specific and tailored services, with their chosen vocational training due to start on 22 November 2021.³⁶

- d. Submission as to the alleged need for the LRVs' involvement in the intake process.³⁷ The Chamber recalls its previous finding as to the LRVs' role at this stage of proceedings and that it is not necessary for them to be involved in each of the steps and activities carried out by the TFV and the implementing partner.³⁸
 - e. Alleged issue of confusion and misinformation within the victims' communities.³⁹ As instructed by the Chamber, it is for the TFV, together with the implementing partner, to disseminate relevant information and/or carry out appropriate awareness-raising campaigns within the victims' communities.⁴⁰ As informed in the Fifteenth Progress Report, the TFV is currently reflecting with the implementing partner and will keep the LRVs apprised for any input, and plans to continue disseminating information and conducting awareness-raising campaigns within the victims' communities;⁴¹ and
 - f. Alleged issue of the victims' information available to the implementing partner and confidentiality concerns.⁴² The Chamber notes that, in light of the need for the service-based collective reparations to be adjusted to the diverse and evolving needs and wishes of the victims,⁴³ the TFV informs that the implementing partner conducts intake screenings to identify the present needs of victims.⁴⁴ In addition, the Chamber underlines that in its 14 December 2020 Decision, it instructed the TFV and the implementing partner to ensure confidentiality during implementation.⁴⁵
- (ii) Alleged issue of lack of information regarding research into disappeared victims.⁴⁶ The Chamber recalls that in its 14 December 2020 Decision, it directed the TFV to provide further

³⁵ Fifteenth progress report, [ICC-01/04-01/06-3524](#), para. 21.

³⁶ TFV Additional Information, [ICC-01/04-01/06-3527](#), para. 10.

³⁷ LRV01 Response, [ICC-01/04-01/06-3526](#), paras 16-18.

³⁸ Sixth Decision, [ICC-01/04-01/06-3523](#), para. 15.

³⁹ LRV01 Response, [ICC-01/04-01/06-3526](#), paras 19-21.

⁴⁰ Sixth Decision, [ICC-01/04-01/06-3523](#), para. 16.

⁴¹ Fifteenth progress report, [ICC-01/04-01/06-3524](#), para. 24.

⁴² LRV01 Response, [ICC-01/04-01/06-3526](#), para. 22.

⁴³ 14 December 2020 Decision, [ICC-01/04-01/06-3495-Red-Corr](#), paras 112, 118, 138-139.

⁴⁴ Fifteenth progress report, [ICC-01/04-01/06-3524](#), para. 21.

⁴⁵ 14 December 2020 Decision, [ICC-01/04-01/06-3495-Red-Corr](#), para. 153.

⁴⁶ OPCV Response, [ICC-01/04-01/06-3525](#), paras 15-17.

information as to this issue.⁴⁷ The TFV subsequently provided extensive information, indicating the challenges encountered in identifying relevant local organisations able to carry out the task and its future plans.⁴⁸ In its Fifteenth Progress Report, the TFV indicates that the process of determining how and with whom to partner has not yet concluded and may possibly extend to the *Ntaganda* case.⁴⁹ In the Additional Information, the TFV further submits that it is trying to find qualified individuals who could be contracted for this purpose, as the international organisations it contacted could not assist.⁵⁰

D. TFV's reporting obligations

17. In the Additional Information, the TFV draws the Chamber's attention that the matters raised by the OPCV and the LRV01 aim at further detailing the TFV's reporting obligations. However, the TFV indicates that, since it does not directly implement the reparations and relies on the implementing partner's periodic reports, any additional reporting not incorporated into the Scope of Work would amount to additional indirect programme costs.⁵¹

18. The Chamber recalls that in the 14 December 2020 Decision, it reiterated the TFV's obligation to keep it informed of the progress, challenges, obstacles, or other information relevant to the implementation.⁵² As explained, this information would enable the Chamber to exercise its oversight and facilitate the communication and collaboration between the Chamber, the LRVs, the TFV, and the implementing partner.⁵³

19. The Chamber notes that no objections as to the agreed reporting obligations between the TFV and the implementing partner were raised by the OPCV or the LRVs prior to the 14 December 2020 Decision.⁵⁴ As such, the Chamber approved the reporting scheme together with the implementation of the service-based collective reparations programme,⁵⁵ emphasising that

⁴⁷ 14 December 2020 Decision, [ICC-01/04-01/06-3495-Red-Corr](#), para. 157.

⁴⁸ Annex A to the Twelfth Progress Report, 21 January 2021, [ICC-01/04-01/06-3497-AnxA-Red](#), paras 31-36.

⁴⁹ Fifteenth progress report, [ICC-01/04-01/06-3524](#), para. 25.

⁵⁰ TFV Additional Information, [ICC-01/04-01/06-3527](#), paras 17-18.

⁵¹ TFV Additional Information, [ICC-01/04-01/06-3527](#), para. 14. *See also* paras 12-15.

⁵² 14 December 2020 Decision, [ICC-01/04-01/06-3495-Red-Corr](#), paras 161-163.

⁵³ 14 December 2020 Decision, [ICC-01/04-01/06-3495-Red-Corr](#), paras 161-162.

⁵⁴ *See* Observations du BCPV sur la Requête d'approbation des résultats de l'invitation à soumissionner concernant les réparations collectives basées sur les services apportés aux victimes déposée par le Fonds au profit des victimes, 2 octobre 2020, [ICC-01/04-01/06-3484](#); Observations des Représentants Légaux V01 conformément à l'Ordonnance fixant le délai pour le dépôt d'observations sur la requête du Fonds au profit des victimes du 21 septembre 2020, déposées le 2 octobre 2020 et reclassifiées sous la mention « confidentiel » le 10 décembre 2020, [ICC-01/04-01/06-3485-Red](#); Observations des Représentants légaux V02 sur la requête ICC-01/04-01/06-3480-Conf + Conf-Exp-AnxA du Fonds au profit des victimes en date du 21 septembre 2020, déposé le 2 octobre et enregistré le 5 octobre 2020, [ICC-01/04-01/06-3486](#).

⁵⁵ For the reporting scheme, *see*, Annex A Request, ICC-01/04-01/06-3480-Conf-Exp-AnxA, pp. 42-43.

the obligation to provide information and to contribute to the communication and collaboration between various actors equally applies to the implementing partner.⁵⁶

20. In light of the above, the Chamber is satisfied that the information provided by the TFV in its progress reports, including in the Fifteenth Progress Report, is sufficient. Notwithstanding, considering that the more complete the information the better would be the communication and collaboration between the various actors, the Chamber encourages the implementing partner and the TFV to include as comprehensive information as possible in their next progress reports.

E. Cooperation between the TFV, the LRVs, and OPCV

21. In the Additional Information, the TFV submits that the LRVs may raise directly with the TFV any concerns relating to their clients or their clients' personal situation and any other issues relevant to the implementation. The TFV further indicates its willingness to discuss with the LRVs the details of the implementation during collaborative discussions and meetings.⁵⁷

22. As previously stressed,⁵⁸ the Chamber commends the continued cooperation between the TFV, the LRVs, and the OPCV, and encourages them to continue engaging in collaborative discussions and continue sharing the necessary information, exchanging views and concerns, and supporting each other for the successful implementation of the reparations in the case. As indicated above, all victims' concerns related to the implementation of the service-based collective reparations should be raised directly with the TFV and dealt with during such discussions.

⁵⁶ 14 December 2020 Decision, [ICC-01/04-01/06-3495-Red-Corr](#), para. 162.

⁵⁷ TFV Additional Information, [ICC-01/04-01/06-3527](#), para. 16.

⁵⁸ Sixth Decision, [ICC-01/04-01/06-3523](#), para. 15; 14 December 2020 Decision, [ICC-01/04-01/06-3495-Red-Corr](#), paras 161-163.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

ENDORSES the TFV's Board of Directors' administrative decisions;

APPROVES the administrative decisions taken by the TFV's Board of Directors with regard to 100 new applicants who shall become beneficiaries of reparations;

ENCOURAGES the implementing partner and subsequently the TFV to include as concrete and complete information as possible in their next progress reports;

ENCOURAGES the TFV, the LRVs, and the OPCV to continue engaging in collaborative discussions and to continue sharing the necessary information, exchanging views and concerns, and supporting each other for the successful implementation of the reparations in the case.

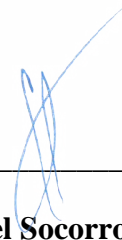
Done in both English and French, the English version being authoritative.



Judge Chang-ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated this Tuesday, 23 November 2021

At The Hague, The Netherlands