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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***

Confidential

**Decision on the TFV's Fourth Update Report on the Implementation of the Initial
Draft Implementation Plan**

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

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Trial Chamber II of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), having regard to articles 75 and 79 of the Rome Statute (‘Statute’) and Regulation 23bis(3) of the Regulations of the Court (‘Regulations’), issues this Decision on the TFV’s Fourth Update Report on the Implementation of the Initial Draft Implementation Plan (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI delivered the Reparations Order,¹ *inter alia*, directing the Trust Fund for Victims (‘TFV’) to submit an urgent plan for priority victims.² On 16 March 2021, Trial Chamber VI was dissolved and the case was assigned to the newly constituted Trial Chamber II.³

2. On 8 June 2021, the TFV submitted the initial draft implementation plan with focus on priority victims (the ‘IDIP’).⁴ Following the parties’ and Registry’s observations⁵ and the TFV’s reply,⁶ on 23 July 2021, the Chamber issued a decision (‘Decision on the IDIP’),⁷ approving the IDIP, subject to certain amendments and additional information to be provided by the TFV, and directing the TFV to file by-monthly progress reports its implementation.

¹ Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Reparations Order (‘Reparations Order’), 8 March 2021, [ICC-01/04-02/06-2659](#).

² Reparations Order, [ICC-01/04-02/06-2659](#), p. 97.

³ Presidency, Decision assigning judges to divisions and recomposing Chambers, 16 March 2021, [ICC-01/04-02/06-2663](#), p. 7.

⁴ Report on Trust Fund’s Preparation for Draft Implementation Plan (notified on 9 June 2021), ICC-01/04-02/06-2676-Conf, with Annex A, Initial Draft Implementation Plan with focus on Priority Victims, ICC-01/04-02/06-2676-Conf-AnxA (a corrigendum was filed on 14 June 2021 and a public redacted version of the cover filing and annex were filed on 15 June 2021, [ICC-01/04-02/06-2676-Red](#) and [ICC-01/04-02/06-2676-AnxA-Corr-Red](#)).

⁵ Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan, 23 June 2021, ICC-01/04-02/06-2680-Conf (a public redacted version was filed on 28 June 2021, [ICC-01/04-02/06-2680-Red](#)); Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims, 23 June 2021, [ICC-01/04-02/06-2681](#); Defence Observations on the TFV initial draft implementation plan, 23 June 2021, ICC-01/04-02/06-2682-Conf; Registry Observations on the Trust Fund for Victims’ Initial Draft Implementation Plan, 23 June 2021, [ICC-01/04-02/06-2683](#).

⁶ Observations on the responses and observations submitted on the Initial Draft Implementation Plan, 28 June 2021, ICC-01/04-02/06-2687-Conf (a public redacted version was filed on the same day [ICC-01/04-02/06-2687-Red](#)).

⁷ Decision on the TFV’s initial draft implementation plan with focus on priority victims (‘Decision on the IDIP’), 23 July 2021, [ICC-01/04-02/06-2696](#).

3. On 23 September 2021, the TFV submitted its First Progress Report on the IDIP's implementation.⁸ Following the Defence's observations,⁹ on 28 October 2021, the Chamber issued a decision ('Decision on the IDIP's First Report'), *inter alia*, instructing the TFV to clarify and provide additional details on certain issues relevant to the implementation of the IDIP.¹⁰

4. On 23 November 2021, the TFV submitted its Second Progress Report on the IDIP's implementation.¹¹ Following the Legal Representatives for Victims' ('LRVs', hereafter the 'CLR1'¹², the 'CLR2',¹³ respectively) responses¹⁴ and the Defence's observations,¹⁵ on 17 December 2021 the Chamber issued a decision ('Decision on the IDIP's Second Report'), *inter alia*, instructing the TFV to provide additional information and proposals required for the proper implementation of the IDIP.¹⁶

5. On 24 January 2022, the TFV submitted its Third Update Report on the IDIP's implementation.¹⁷ Following the Defence¹⁸ and CLR1¹⁹ observations, on 10 February 2022,

⁸ Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Directors decision pursuant to regulation 56 of the Regulations of the Trust Fund ('IDIP First Report'), 23 September 2021, ICC-01/04-02/06-2710-Conf (a public redacted version was filed on 7 October 2021, [ICC-01/04-02/06-2710-Red](#)).

⁹ Defence observations on the TFV First Progress Report on the implementation of the Initial Draft Implementation Plan, 4 October 2021, ICC-01/04-02/06-2714-Conf (a public redacted version was filed on 5 November 2021, [ICC-01/04-02/06-2714-Red](#)).

¹⁰ Decision on the TFV's First Progress Report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Directors' decision pursuant to regulation 56 of the Regulations of the Trust Fund ('Decision on the IDIP's First Report'), 28 October 2021, [ICC-01/04-02/06-2718-Red](#).

¹¹ Trust Fund's Second Update report on the Implementation of the Initial Draft Implementation Plan ('IDIP Second Report'), 23 November 2021, ICC-01/04-02/06-2723-Conf (a public redacted version was filed on 28 December 2021, [ICC-01/04-02/06-2723-Red](#)).

¹² Common Legal Representative of the former child soldiers.

¹³ Common Legal Representative of the victims of the attacks.

¹⁴ Response of the Common Legal Representative of the Former Child Soldiers to the Trust Fund's Second Update report on the Implementation of the Initial Draft Implementation Plan, 6 December 2021, ICC-01/04-02/06-2725-Conf (a public redacted version was filed on 7 January 2022, [ICC-01/04-02/06-2725-Red](#)); Response of the Common Legal Representative of the Victims of the Attacks to the "Trust Fund's Second Update report on the Implementation of the Initial Draft Implementation Plan", 6 December 2021, ICC-01/04-02/06-2724-Conf (a public redacted version was filed on 7 January 2022, [ICC-01/04-02/06-2724-Red](#)).

¹⁵ Defence observations on the TFV Second Progress Report on the implementation of the Initial Draft Implementation Plan, 6 December 2021, ICC-01/04-02/06-2726-Conf (a public redacted version was filed on 5 January 2022, [ICC-01/04-02/06-2726-Red](#)).

¹⁶ Decision on the TFV's Second Progress Report on the implementation of the Initial Draft Implementation Plan, 17 December 2021, [ICC-01/04-02/06-2730](#) ('Decision on the IDIP's Second Report').

¹⁷ Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan, 24 January 2022 ('IDIP Third Report'), ICC-01/04-02/06-2741-Conf (a public redacted version was filed on the same date, [ICC-01/04-02/06-2741-Red](#)).

¹⁸ Defence observations on the Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan, 4 February 2022 ('Defence Observations'), ICC-01/04-02/06-2744-Conf (a public redacted version was filed on the same date, [ICC-01/04-02/06-2744-Red](#)).

¹⁹ Observations of the Common Legal Representative of the Former Child Soldiers on the Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan, 4 February 2022 ('CLR1

the Chamber issued a decision ('Decision on the IDIP's Third Report') reiterating its prior instructions and ordering the TFV to provide in its next report the concrete information on all topics previously indicated by the Chamber.²⁰

6. On 24 March 2022, the TFV submitted its Fourth Update Report on the IDIP's implementation ('Fourth Report'),²¹ providing information on the: (i) security situation, (ii) eligibility and urgency screening conducted so far, including substantive details of the assessment in Annex 1; (iii) arrangements to address the urgent needs of former child soldiers who are not SGBV victims or children born out of rape and sexual slavery; (iv) extent to which economic measures address urgent needs of victims; and (v) number of victims included in the IDIP.

7. On 7 April 2022, the Defence²² and the CLR1²³ submitted their observations on the Fourth Report. In general terms, the Defence challenges the TFV's substantive and procedural approach to the eligibility and urgency assessments²⁴ and the CLR1 disagrees with the TFV's assessment regarding victims who are already beneficiaries of the *Lubanga* reparations programme.²⁵

II. SUBMISSIONS AND ANALYSIS

8. In its Decision on the IDIP's Third Report, the Chamber reiterated its prior instructions for the TFV to: (i) propose an alternative way of addressing the urgent needs of former child soldiers who are not SGVB victims or children born out of rape or sexual slavery;²⁶ (ii) provide concrete information on the extent to which the measures of socio-economic assistance offered were suitable to meaningfully address the urgent needs of victims;²⁷ (iii) indicate the number

Observations), ICC-01/04-02/06-2743-Conf-Exp (a public redacted version was filed on the same date, [ICC-01/04-02/06-2743-Red2](#)).

²⁰ Decision on the TFV's Third Update Report on the Implementation of the Initial Draft Implementation Plan, 10 February 2022, a corrigendum was filed on 26 April 2022, [ICC-01/04-02/06-2745-Corr](#) ('Decision on the IDIP's Third Report').

²¹ Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 March 2022 ('Fourth Report'), ICC-01/04-02/06-2751-Conf and Annex 1, ICC-01/04-02/06-2751-Conf-Anx 1.

²² Defence observations on the Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 7 April 2022 ('Defence Observations'), ICC-01/04-02/06-2755-Conf.

²³ Observations of the Common Legal Representative of the Former Child Soldiers on the "Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan" (ICC-01/04-02/06-2751-Conf), 7 April 2022 ('CLR1 Observations'), ICC-01/04-02/06-2754-Conf.

²⁴ Defence Observations, ICC-01/04-02/06-2755-Conf.

²⁵ CLR1 Observations, ICC-01/04-02/06-2754-Conf

²⁶ Decision on the IDIP's Second Report, ICC-01/04-02/06-2730-Conf, para. 16; Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), para. 10.

²⁷ Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), para. 12.

of victims to initially benefit from the projects and the costs therein;²⁸ (iv) provide additional details as to the way it will substantively, as opposed to procedurally, assess eligibility and urgency for the purposes of the IDIP;²⁹ and (v) indicate the impact of the security situation on the IDIP's implementation.³⁰ The Chamber will hereafter assess the information provided by the TFV and the parties' relevant submissions in relation to each of the abovementioned issues.

a) Mechanism for addressing urgent needs of former child soldiers who are not SGVB victims or children born out of rape or sexual slavery

9. The Chamber welcomes the TFV's determination, confirmed by the relevant implementing partner and supported from the CLR1, that it is feasible to provide services to this group of victims within the terms of the contract signed for the purposes of the IDIP.³¹ Taking into account the scope of the services to be provided, and in line with its previous orders, the Chamber approves the proposal for using one pre-existent assistance project in place in the DRC since May 2020, as the most efficient and expeditious emergency response to address the urgent needs of victims of crimes against child soldiers requiring priority treatment.³²

b) Extent to which measures of socio-economic assistance offered would be suitable to meaningfully address the urgent needs of victims

10. The Chamber welcomes the TFV's information that regarding 'urgent needs of material character, the implementing partners have leeway to address their situation, including with material support in the form of subsistence allowances, if and when required'.³³ As such, the Chamber is satisfied that financial hardship that may endanger a priority victim's life can be properly and meaningfully addressed within the context of the assistance projects relied upon for the IDIP purposes, and until the effective implementation of the DIP.³⁴

²⁸ Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), paras 13-14; related to the information previously requested in the Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 16.

²⁹ Decision on the IDIP's Second Report, ICC-01/04-02/06-2730-Conf, para. 12; Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), para. 24

³⁰ Decision on the IDIP's Second Report, ICC-01/04-02/06-2730-Conf, para. 9.

³¹ Fourth Report, ICC-01/04-02/06-2751-Conf, paras 30-31. *See also* CLR1 Observations, ICC-01/04-02/06-2754-Conf, para. 31.

³² Decision on the IDIP, [ICC-01/04-02/06-2696](#), paras 24, 28.

³³ Fourth Report, ICC-01/04-02/06-2751-Conf, para. 35.

³⁴ Decision on the IDIP, [ICC-01/04-02/06-2696](#), paras 7-9.

c) Number of victims to initially benefit from the projects and the costs therein

11. The Chamber notes the TFV's submission that the relevant implementing partners can provide services to, approximately, 100 former child soldiers, up to 150 children born out of rape and/or dependants, and 60 victims of the attacks.³⁵ The TFV informs that these numbers may vary and be adjusted based on the realities of implementation and their costs.³⁶ The TFV further notes that while one of the projects may not reach its full capacity during the first year, the other may reach it very soon and victims will have to wait for the contract's next year starting in May 2022.³⁷ Lastly, the TFV indicates that it will engage with the implementing partners to determine the possibilities for the continuation of the part of the project in relation to the Ntaganda IDIP's beneficiaries.³⁸ Nevertheless, the Chamber notes the CLR1's submission that her clients in urgent needs are 'still waiting for urgent support'.³⁹

12. As to the associated costs, the Chamber notes that the TFV has previously indicated that '[t]he cost anticipated for the IDIP related reparations measures for [each] project is USD 150.000'.⁴⁰ Although the TFV has indicated that the number of beneficiaries could be increased with the contract extensions,⁴¹ it has yet to indicate whether such increase would imply any associated additional costs.

13. In light of the above, the TFV is instructed to provide concrete information in its next report as to: (i) the exact dates and number of victims that have actually started benefiting from the IDIP and its two programmes during the contractual year ending by 30 April 2022, in addition to having been under assessment for the purposes of eligibility, urgency screening, and project's intake; and (iii) whether any surplus related to the projects not having reached their full capacity or not having provided actual services during the entire previous contractual year will be reinvested or used in the future.

³⁵ Fourth Report, ICC-01/04-02/06-2751-Conf, para. 36.

³⁶ Fourth Report, ICC-01/04-02/06-2751-Conf, para. 36.

³⁷ Fourth Report, ICC-01/04-02/06-2751-Conf, para. 37.

³⁸ Fourth Report, ICC-01/04-02/06-2751-Conf, para. 38.

³⁹ CLR1 Observations, ICC-01/04-02/06-2754-Conf, para. 30.

⁴⁰ IDIP First Report, [ICC-01/04-02/06-2710-Red](#), paras 28, 38.

⁴¹ IDIP First Report, [ICC-01/04-02/06-2710-Red](#), paras 28, 38; Fourth Report, ICC-01/04-02/06-2751-Conf, para. 38.

d) Details as to the way the TFV will substantively, as opposed to procedurally, assess eligibility and urgency for the purposes of the IDIP

14. Regarding procedural aspects and results of the assessment, in the Fourth Report the TFV informs that it has conducted the screening of 45 beneficiaries.⁴² However, as noted by the Defence,⁴³ when detailing the number of victims referred to each of the implementing partners and the assessments conducted after gathering the relevant information, the numbers do not add up. In light of the above, the Chamber instructs the TFV to provide precise and updated information as to the number of victims assessed in the context of the IDIP's screening.

15. Regarding the results of the assessment, the TFV informs that it has not reached any negative conclusion on the eligibility for the IDIP programmes by any victims submitted by either LRVs.⁴⁴ However, the TFV indicates that it has excluded from the IDIP's scope those victims who are already beneficiaries to the *Lubanga* programme.⁴⁵ The CLR1 takes issue with this, considering it to be a 'unilateral decision made by the TFV', arguing that 'the mere fact that a victim is recognised as a beneficiary of reparations in the *Lubanga* case, does not exclude him or her from being in urgent needs'.⁴⁶ The CLR1 also indicates that the rejection of these victims is illogical and contrary to the *do no harm* principle, as the TFV first decided to meet with them in order to assess their eligibility while fully aware that they were also recognised as beneficiaries in the *Lubanga* case.⁴⁷ Lastly, the CLR1 informs that the TFV clarified that, although not designed to cater specifically for SGBV victims, the *Lubanga* programme does address physical or psychological harm which can be consequence of SGBV.⁴⁸

16. The Chamber recalls that the Reparations Order clearly stated that, because the reparation programme in the *Lubanga* case is a collective award aimed at comprehensively repair the harm suffered by all direct and indirect victims of that case, in relation to the overlapping victims and harms in both the *Lubanga* and the *Ntaganda* cases, the reparation programmes implemented in the *Lubanga* case should be understood to repair the victims' harm on behalf of both, Mr Lubanga and Mr Katanga.⁴⁹ Further, the Chamber reiterates that the urgent needs of the victims to be addressed through the IDIP are only those resulting from the harm suffered as a consequence of the crimes for which Mr Ntaganda was convicted and

⁴² Fourth Report, ICC-01/04-02/06-2751-Conf, para. 12.

⁴³ Defence Observations, ICC-01/04-02/06-2755-Conf, para. 50 and footnote 93.

⁴⁴ Fourth Report, ICC-01/04-02/06-2751-Conf, paras 15-16.

⁴⁵ Fourth Report, ICC-01/04-02/06-2751-Conf, para. 15.

⁴⁶ CLR1 Observations, ICC-01/04-02/06-2754-Conf, paras 22-23.

⁴⁷ CLR1 Observations, ICC-01/04-02/06-2754-Conf, para. 24.

⁴⁸ CLR1 Observations, ICC-01/04-02/06-2754-Conf, para. 25.

⁴⁹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 220.

for which the victims cannot continue waiting until reparations in the case are fully operational.⁵⁰

17. In light of the above, the Chamber considers that, in principle, the decision to exclude the *Lubanga* beneficiaries from the *Ntaganda* IDIP is not a ‘unilateral’ decision from the TFV, but an implementation of the Reparations Order. However, this can only apply to the extent that the harms suffered by the overlapping victims that require urgent treatment, can be and are actually being addressed within the context of the *Lubanga* reparations programme.⁵¹ Consequently, the *Ntaganda* victims in urgent need, i.e. those who would qualify as eligible for the purposes of the *Ntaganda* IDIP, who are also *Lubanga* beneficiaries, should be given priority to start benefiting from the various components of the *Lubanga* service-based collective reparations without delay.⁵² Otherwise, their urgent needs should be addressed through the *Ntaganda* IDIP as an emergency response up to the time they are fully integrated into and start benefiting from the *Lubanga* reparations programme.

18. Regarding the application of the *do no harm* principle, the Chamber reminds the TFV that the principle shall be applicable throughout the reparation proceedings, including when the TFV carries out the approved reparations measures,⁵³ either directly or through its implementing partners. Accordingly, the Chamber agrees with the CLR1 that the TFV should avoid, at this stage, contacting victims that would clearly not qualify to benefit from the IDIP. Nevertheless, to the extent that contact was made for the purpose of determining whether the victims needed to be prioritised within the context of the *Lubanga* reparations programme,⁵⁴ the Chamber does not consider that the *do no harm* principle has been infringed.

19. Regarding the substantive criteria applied to assess eligibility and urgent needs, the Chamber welcomes the information provided by the TFV in Annex 1 of the Fourth Report, and notes the objections raised by the Defence, which are addressed below.

⁵⁰ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 33.

⁵¹ The Chamber notes a recent decision in the *Lubanga* case in which the Chamber noted that, although the number of beneficiaries is substantially higher, at the time only 183 victims were benefiting from the reparations programme. See, Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Eighth Decision on the TFV’s administrative decisions on applications for reparations and additional matters, 10 March 2022, [ICC-01/04-01/06-3532](#), paras 7, 10.

⁵² The Chamber understands that this is indeed the case, see Annex 1 to the Fourth Report, ICC-01/04-02/06-2751-Conf-Anx1, para. 51.

⁵³ Reparations Order, [ICC-01/04-02/06-2659](#), paras 50, 52.

⁵⁴ In case contact was done following the lists requested in December 2021 by the TFV to the LRVs, according to the information provided by the TFV in Annex 1 to the Fourth Report, ICC-01/04-02/06-2751-Conf-Anx1, para. 51.

i. General issues

20. The Defence argues that the TFV's terms of reference to adopt eligibility criteria, in addition to the Reparations Order, must be considered with caution.⁵⁵ Firstly, the Defence submits that a Trial Chamber VI's decision relied upon by the TFV to determine eligibility served the specific purpose of allowing the Registry to carry out its general assessment regarding the overall number of victims that may be potentially eligible for reparations, and was 'not necessarily meant to be used for the TFV's assessment of the individual eligibility of victims.'⁵⁶ The Chamber however notes that, in the Reparations Order, Trial Chamber VI detailed 'the characteristics of the categories of eligible victims, in order to enable their identification by the TFV.'⁵⁷ When detailing the criteria, Trial Chamber VI clearly emphasised: '[r]egarding the scope of the conviction, the Chamber recalls its findings in the Decision on the First Report.'⁵⁸ Accordingly, the Chamber is satisfied that the TFV is correct in applying the criteria as detailed in the Reparations Order, including as to the scope of the conviction the findings in the Decision on the First Report, in order to determine the eligibility of victims for the purposes of reparations.

21. Secondly, the Defence objects the use by the TFV of decisions by the Trial and Appeals Chambers in the *Lubanga* case setting standards to determine eligibility, arguing that the TFV neglects the fundamental difference between the *Lubanga* and the *Ntaganda* reparations, as in the former it is the trial chamber that issues final decisions on eligibility.⁵⁹ It argues that the approach followed in the *Lubanga* case is linked to the trial chamber's role as the trier of fact, and its proximity to the evidence, which does not apply to the TFV.⁶⁰ The Chamber disagrees with such conclusion. In line with the Court's jurisprudence,⁶¹ in exercise of its discretion and

⁵⁵ Defence Observations, ICC-01/04-02/06-2755-Conf, para. 17.

⁵⁶ Defence Observations, ICC-01/04-02/06-2755-Conf, para. 18, referring to Decision on issues raised in the Registry's First Report on Reparations ('Decision on the Registry's First Report'), 15 December 2020, [ICC-01/04-02/06-2630](#).

⁵⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 105.

⁵⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 107.

⁵⁹ Defence Observations, ICC-01/04-02/06-2755-Conf, para. 19.

⁶⁰ Defence Observations, ICC-01/04-02/06-2755-Conf, para. 19.

⁶¹ See, *inter alia*, Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, 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](#) ('*Lubanga* Judgment on Principles'), para. 166, noting the trend of other international courts ordering reparations on a collective basis when dealing with mass crimes and mass victimization by only determining the framework for the implementing entity; Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable', 18 July 2019, [ICC-01/04-01/06-3466-Red](#) ('*Lubanga* Judgment on Size of Reparations Award'), para 138, noting that the relevant legal provisions 'do not stipulate who should assess eligibility in cases where collective reparations are awarded not how exactly this should be done.' See also, Appeals Chamber, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Judgment on the appeal of

considering its decision to grant collective reparations, the Reparations Order set out the eligibility requirements for victims to benefit from reparations in the case and delegated their identification into the TFV. Based on these criteria and analysing both the additional information and documentation collected by the TFV during administrative eligibility assessment of victims and the documents in the case file to which the TFV has access, the Chamber is confident that the TFV has the capacity to conduct, as instructed, a fair, efficient, and expeditious assessment of the victims' eligibility.⁶²

22. Regarding the Defence's submission as to the need for supporting documentation and the reliance on a credible and coherent account,⁶³ the Chamber considers that the Defence misinterprets both the TFV's proposal and the Reparations Order. Regarding the TFV's proposal, the Chamber notes that it is not accurate to indicate that the TFV does not intend to ask for any supporting documents at all from the victims. To the contrary, the TFV indicates throughout its proposal the way in which it will review the 'relevant documents'⁶⁴ and the type of documents accepted in certain cases.⁶⁵ However, consistent with the Reparations Order, when faced with 'lack of documents' the TFV indicates that it will rely 'on account of facts provided by the victim'.⁶⁶ This is consistent with the Reparations Order which clearly indicates that eligible victims must provide sufficient proof of identity, of the harm suffered, and of the causal link between the crime and the harm.⁶⁷ However, the Chamber took into account the difficulties the victims may face in producing documents and stressed that, even in the context of individual reparations, documents are required 'to the extent possible'; therefore, the same allowance should be given in the context of collective reparations.⁶⁸

ii. Defence's observations on the TFV's guidelines

23. As to the issue of the required proof of identity,⁶⁹ the Chamber notes that in the Reparations Order, it was indeed clearly indicated that, to prove identity, victims may use

the victims against the "Reparations Order", 8 March 2018, [ICC-01/12-01/15-259-Red2](#), paras 1, 70-72, noting that even in the case of individual reparations, '[i]t is within the discretion of a trial chamber to request, on a case-by-case basis, the assistance of, for example, the Trust Fund for Victims to undertake the administrative screening of beneficiaries of [...] reparations meeting the eligibility criteria set out by the trial chamber'.

⁶² Reparations Order, [ICC-01/04-02/06-2659](#), para. 253.

⁶³ Defence Observations, ICC-01/04-02/06-2755-Conf, paras 20-25.

⁶⁴ Annex 1 to the Fourth Report, ICC-01/04-02/06-2751-Conf-Anx1, paras 7, 41, 50.

⁶⁵ Annex 1 to the Fourth Report, ICC-01/04-02/06-2751-Conf-Anx1, paras 8-9, 20.

⁶⁶ See clear subheading 'Lack of documents and reliance on account of facts provided by the victim', at para 10, of the Annex 1 to the Fourth Report, ICC-01/04-02/06-2751-Conf-Anx1.

⁶⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 137.

⁶⁸ Reparations Order, [ICC-01/04-02/06-2659](#), paras 138-140.

⁶⁹ Defence Observations, ICC-01/04-02/06-2755-Conf, para. 26.

official or unofficial documents and, in the absence of them, a statement signed by two credible witnesses establishing the identity of the victim and describing the relationship between the victim and any individual acting on their behalf is acceptable.⁷⁰

24. As to the issue of the need for a more rigorous approach to the assessment of eligibility former child soldiers,⁷¹ the Chamber considers the Defence's concerns to be unfounded. The TFV has stated that it 'intends to continue applying the standard of proof in the same way as applied in the *Lubanga* case',⁷² which the Chamber considers to be a sufficient assurance.

25. Regarding the territorial scope of the case for the purposes of determining eligibility of the victims of the attacks,⁷³ the Chamber reiterates that, as to the crime of persecution for each location, 'only victims of underlying acts that served as the basis for the Chamber to convict Mr Ntaganda for the crime of persecution are eligible for reparations'.⁷⁴ Regarding victims alleging having suffered harm in the forest or bush surrounding locations, victims 'may be eligible for reparations for any of the crimes for which the Chamber entered convictions on the basis of the relevant corresponding conduct having occurred in the forest or bush surrounding those locations'.⁷⁵

26. Accordingly, the TFV is instructed to ensure that the above and indeed all clarifications included in the Decision on the Registry's First Report are correctly applied by the relevant examiner when assessing eligibility.

27. Based on the findings above, and the information provided by the TFV in the Fourth Report and Annex, the Chamber does not consider necessary to further address the Defence's submissions regarding temporal scope, transgenerational harm, establishment of harm, indirect victims, and urgency screening. Similarly, the Chamber notes that it has already approved the procedure proposed by the TFV to conduct the administrative eligibility and urgency screening for the IDIP purposes,⁷⁶ which, in exercise of its discretion, the Chamber delegated into the TFV. Further, the Chamber recalls that one of the instruction the Chamber reiterated in the Decision on the Third Report was for the TFV to provide 'substantive, as opposed to

⁷⁰ Reparations Order, [ICC-01/04-02/06-2659](#), para. 137.

⁷¹ Defence Observations, ICC-01/04-02/06-2755-Conf, paras 27-35.

⁷² Annex 1 to the Fourth Report, ICC-01/04-02/06-2751-Conf-Anx1, para. 12.

⁷³ Defence Observations, ICC-01/04-02/06-2755-Conf, paras 37-40.

⁷⁴ Decision on the Registry's First Report, [ICC-01/04-02/06-2630](#), para. 60

⁷⁵ Decision on the Registry's First Report, [ICC-01/04-02/06-2630](#), para. 19(f).

⁷⁶ Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), para. 15, p. 13; Decision on the IDIP's Second Report, ICC-01/04-02/06-2730, paras 10, 12.

procedural' details of the eligibility and urgency assessment.⁷⁷ As such, the Chamber does not consider it necessary to further address the Defence's submissions on the procedural approach.

e) The impact of the security situation on the IDIP's implementation.

28. As to the security situation,⁷⁸ the Chamber notes with concern the information received as to latest developments in Ituri, which include attacks on displaced persons' camps and civilians.⁷⁹ At the same time, the Chamber notes the submissions that the impact of the security situation on the IDIP's implementation primarily concerns the ability of the TFV and its implementing partners to locate and contact victims and ultimately to provide them with services.⁸⁰ The Chamber also notes that the TFV, together with the LRVs and the implementing partners, have continued their efforts to ensure that the priority victims are indeed reached.⁸¹ Consequently, the Chamber considers that it has received sufficient information and assurances as to the current impact of the security situation on the IDIP's implementation and expects the TFV to continue keeping the Chamber and the parties informed as to any further developments that may have an impact on the IDIP's implementation.

f) Publicity

29. Finally, in line with its previous instructions,⁸² the Chamber directs the TFV, the CLR1, and the Defence to review their underlying submissions and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 20 May 2022.

⁷⁷ Decision on the IDIP's Third Report, [ICC-01/04-02/06-2745-Corr, paras 10-11](#).

⁷⁸ Defence Observations, ICC-01/04-02/06-2755-Conf, paras 8-13.

⁷⁹ Defence Observations, ICC-01/04-02/06-2755-Conf, para. 10.

⁸⁰ Fourth Report, ICC-01/04-02/06-2751-Conf, para. 11.

⁸¹ Fourth Report, ICC-01/04-02/06-2751-Conf, para. 11.

⁸² Decision on the TFV's First Progress Report, [ICC-01/04-02/06-2718-Red](#), para. 29.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

APPROVES the use of one of the pre-existent assistance projects in place in the DRC since May 2020 to address the urgent needs of victims of crimes against child soldiers requiring priority treatment;

INSTRUCTS the TFV to provide precise and concrete information in its next report regarding all issues referred to in paragraphs 13 and 14 above;

INSTRUCTS the TFV to ensure that all clarifications in this decision and in the Decision on the Registry's First Report are correctly applied by the relevant examiner when assessing eligibility; and

DIRECTS the TFV, the CLR1, and the Defence to review their underlying submissions and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 20 May 2022.

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 Thursday, 12 May 2022

At The Hague, The Netherlands