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Date: **20 May 2022**

TRIAL CHAMBER II

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

**Public redacted version of the “Common Legal Representative of the Former Child Soldiers’ Response to the ‘Trust Fund for Victims’ second submission of Draft Implementation Plan’ (ICC-01/04-02/06-2750)”
ICC-01/04-02/06-2763-Conf, dated 18 May 2022**

Source: Office of Public Counsel for Victims (CLR1)

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative”) hereby files her response to the “Trust Fund for Victims’ second submission of Draft Implementation Plan” (the “Second DIP Submission”),¹ and the annexed updated version of the Draft Implementation Plan (the “Updated DIP”).²

2. The Legal Representative underlines that, as illustrated by her urgent request for an extension of time,³ the prevailing and deteriorating volatile security in Ituri poses a significant obstacle to effective and prompt consultations with the victims, which are essential in the process, and which remain very difficult.⁴

3. Furthermore, the Legal Representative notes the Trust Fund for Victims’ (the “TFV”) efforts to include more information in its Updated DIP, but insists that the time and resources spent recalling the principles to be applied, the types of harms the victims have been suffering from and the type of reparations awarded – which are some of the main components of a *Reparations Order*, rather than a *DIP* – would be better used to put forward a practical and tangible proposal that can be discussed with the victims. Such an approach would allow to put them at the centre of the process while giving them agency on their rehabilitation process, as per these good practices recalled by the Chamber. It would also enable the whole process to move on much more swiftly and avoid countless discussions back and forth between the parties and

¹ See the “Trust Fund for Victims’ second submission of Draft Implementation Plan”, [No. ICC-01/04-02/06-2750](#), 25 March 2022 (the “Second DIP Submission”).

² See “Annex 1 to the Trust Fund for Victims’ second submission of Draft Implementation Plan”, [No. ICC-01/04-02/06-2750-Conf-Anx1](#) and [No. ICC-01/04-02/06-2750-Anx1-Red-Corr](#), 25 March 2022 (the “Updated DIP”).

³ See the “URGENT Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”, [No. ICC-01/04-02/06-2735-Conf-Exp](#) and [No. ICC-01/04-02/06-2735-Red](#), 18 January 2022 (the “LRV Request”).

⁴ See also the Updated DIP, *supra* note 2, para. 347; and the “Decision on the TFV’s Fourth Update Report on the Implementation of the Initial Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2761-Conf](#), 12 May 2022, para. 28.

the TFV, for the ultimate benefit of the victims whose patience is being arduously tested.

II. LEVEL OF CLASSIFICATION

4. Pursuant to regulation 23bis(1) of the Regulations of the Court, the present submission is filed as confidential, because it contains confidential information not known to the public, and refers to documents filed with the same classification. A public redacted version thereof will be filed in due course.

III. PROCEDURAL BACKGROUND

5. On 8 March 2021, Trial Chamber VI issued the “Reparations Order”,⁵ whereby it, *inter alia*, instructed the TFV to file the DIP in the present case within six months of that decision.⁶

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

7. On 9 June 2021, the TFV submitted a report on its preparation for an Initial Draft Implementation Plan with focus on Priority Victims (the “IDIP”),⁹ supplemented on 28 June 2021.¹⁰

⁵ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021.

⁶ *Idem*, para. 249.

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.

⁹ See the “Report on Trust Fund’s Preparation for Draft Implementation Plan With Annex A Initial Draft Implementation Plan with focus on Priority Victims”, [No. ICC-01/04-02/06-2676-Conf](#) and [No. ICC-01/04-02/06-2676-Conf-AnxA](#), 9 June 2021. See also [No. ICC-01/04-02/06-2676-Conf-AnxA-Corr](#) and [No. ICC-01/04-02/06-2676-Conf-AnxA-Corr-Anx](#); and [No. ICC-01/04-02/06-2676-Red](#) and [No. ICC-01/04-02/06-2676-AnxA-Corr-Red2](#).

¹⁰ See the “Observations on the responses and observations submitted on the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2687-Conf](#) and [No. ICC-01/04-02/06-2687-Red](#), 28 June 2021.

8. On 16 July 2021, the TFV submitted a request for the variation of the time limit for the submission of the DIP. In particular, the TFV sought an extension of time until 17 December 2021,¹¹ which was supported by the parties.¹²

9. On 23 July 2021, the Chamber granted the TFV an extension of time limit to submit its DIP by 17 December 2021.¹³ The Chamber however directed the TFV to find all possible alternatives to finalise it as efficiently and expeditiously as possible, taking into account the fact that the time limit cannot be extended indefinitely without infringing on the rights of victims to prompt reparations.¹⁴

10. The same day, the Chamber issued a decision approving the IDIP subject to amendments and additional information to be provided by the TFV in its subsequent report.¹⁵

See also the “Order for the submission of observations on the initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2677](#), 10 June 2021. See also the “Registry Observations on the Trust Fund for Victims’ Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2683](#), 23 June 2021; the “Defence Observations on the TFV initial draft implementation plan”, [No. ICC-01/04-02/06-2682-Conf](#) and [No. ICC-01/04-02/06-2682-Red](#), 23 June 2021; 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; and 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](#) and [No. ICC-01/04-02/06-2680-Red](#), 23 June 2021.

¹¹ See the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2693](#), 16 July 2021.

¹² See the “Joint Response of the Common Legal Representatives of Victims to the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2694](#), 22 July 2021; “Observations on Behalf of Mr Ntaganda on the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2695](#), 22 July 2021. See also the email communication from the Registry to the Chamber’s Legal Officer, 22 July 2021, at 11:10.

¹³ See the “Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2697](#), 23 July 2021.

¹⁴ *Idem*, para. 12.

¹⁵ See the “Decision on the TFV’s initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2696](#), 23 July 2021. The Chamber rejected the Defence’s request for leave to appeal said decision. See the “Decision on the Application on behalf of Mr Bosco Ntaganda seeking leave to appeal the Decision on the TFV’s initial draft implementation plan with focus on priority victims”, [No. ICC-01/04-02/06-2704](#), 17 August 2021; the “Joint Response of the Common Legal Representatives of Victims to Mr Ntaganda’s Request for Leave to Appeal the Decision on the TFV’s IDIP (ICC-01/04-02/06-2698)”, [No. ICC-01/04-02/06-2699](#), 6 August 2021; and the “Application on behalf of Mr Bosco Ntaganda seeking leave to appeal Decision on the TFV’s initial draft implementation plan with focus on priority victims”, [No. ICC-01/04-02/06-2698](#), 2 August 2021.

11. On 23 September 2021, the TFV submitted its First Update Report on the IDIP.¹⁶
12. On 29 October 2021, the Chamber issued a decision on the TFV First Update Report, instructing the latter to clarify some specific issues, approving the alternative proposal for administrative eligibility assessment and urgency screening and encouraging the TFV to provide additional details on said proposal and on information relating to outreach.¹⁷
13. On 23 November 2021, the TFV submitted its Second Update Report,¹⁸ to which the Common Legal Representatives of the Victims (the “CLRs”) and the Defence submitted their respective response on 6 December.¹⁹
14. On 15 December 2021, the Defence filed the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”.²⁰ On the same date, the Chamber shortened the deadline for any responses to

¹⁶ See the “Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director’s decision pursuant to regulation 56 of the Regulations of the Trust Fund”, [No. ICC-01/04-02/06-2710-Conf](#) and [No. ICC-01/04-02/06-2710-Red](#), 23 September 2021. See also the “Defence observations on the TFV First Progress Report on the implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2714-Conf](#) and [No. ICC-01/04-02/06-2714-Red](#), 4 October 2021.

¹⁷ See the “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” (Trial Chamber II), [No. ICC-01/04-02/06-2718-Conf](#) and [No. ICC-01/04-02/06-2718-Red](#), 28 October 2021.

¹⁸ See the “Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2723-Conf](#) and [No. ICC-01/04-02/06-2723-Red](#), 23 November 2021.

¹⁹ See the “Defence observations on the TFV Second Progress Report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2726-Conf](#) and [No. ICC-01/04-02/06-2726-Red](#), 6 December 2021; the “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 (ICC-01/04-02/06-2723-Conf)”, [No. ICC-01/04-02/06-2725-Conf](#) and [No. ICC-01/04-02/06-2725-Red](#), 6 December 2021; and the “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’”, [No. ICC-01/04-02/06-2724-Conf](#) and [No. ICC-01/04-02/06-2724-Red](#), 6 December 2021.

²⁰ See the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”, [No. ICC-01/04-02/06-2728](#), 15 December 2021.

the Defence Request to 17 December 2021 at noon.²¹ On 17 December, the CLRs submitted their response to said request.²²

15. The same day, the Chamber granted the Defence's Request and ordered the parties and the Registry to file their observations on the DIP, if any, by 24 January 2022.²³ The Chamber also issued a separate decision on the TFFV's Second Update Report, ordering further details and information to be provided.²⁴

16. On 20 December 2021, the TFFV submitted its draft DIP.²⁵

17. On 14 January 2022, the Defence filed a request seeking an extension of the page limit to respond to the DIP.²⁶ On 17 January 2022, the Chamber shortened the deadline for any responses to the Defence Request to 19 January 2022.²⁷ On 18 January 2022, the CLRs submitted their joint response to said request,²⁸ which was granted by the Chamber on the same day.²⁹

²¹ See the email communication from Trial Chamber II, 15 December 2021 at 19:49.

²² See the "Joint Response of the Common Legal Representatives of the Victims to the 'Defence request for an extension of the time limit to respond to the Trust Fund for Victims' Draft Implementation Plan'", [No. ICC-01/04-02/06-2729](#), 17 December 2021.

²³ See the "Order for the submission of observations on the draft implementation plan" (Trial Chamber II), [No. ICC-01/04-02/06-2731](#), 17 December 2021.

²⁴ See the "Decision on the TFFV's Second Progress Report on the implementation of the Initial Draft Implementation Plan" (Trial Chamber II), [No. ICC-01/04-02/06-2730-Conf](#), 17 December 2021.

²⁵ See the "Trust Fund for Victims' submission of Draft Implementation Plan", [No. ICC-01/04-02/06-2732](#), 20 December 2021 (the "First DIP Submission"). See also the "Draft Implementation Plan ("DIP") of the Trust Fund for Victims for the collective reparations awarded to the victims of the crimes for which Mr Bosco Ntaganda has been convicted by the International Criminal Court", [No. ICC-01/04-02/06-2732-Conf-AnxA](#), 20 December 2021.

²⁶ See the "Request on behalf of Mr Ntaganda seeking an extension of the page limit to respond to the Draft Implementation Plan of the Trust Fund for Victims", [No. ICC-01/04-02/06-2733](#), 14 January 2022.

²⁷ See the email communication from Trial Chamber II, 17 January 2022, at 11:48.

²⁸ See the "Joint Response of the Common Legal Representatives of the Victims to the 'Request on behalf of Mr Ntaganda seeking an extension of the page limit to respond to the Draft Implementation Plan of the Trust Fund for Victims'", [No. ICC-01/04-02/06-2734](#), 18 January 2022.

²⁹ See the email communication from Trial Chamber II, 18 January 2022 at 12:49.

18. On 18 January 2022, the Legal Representative submitted an urgent request for extension of time to respond to the DIP,³⁰ to which the Defence,³¹ the other Legal Representative³² and the TFV³³ responded on 20 January 2022. In their respective submissions, the parties highlighted some of the key information missing in the DIP and requested the Chamber to order its urgent submission by the TFV.

19. On 21 January 2022, the Chamber granted said extension of time until 24 March 2022, instructed the TFV to provide additional information by 24 February 2022, and the Government of the Democratic Republic of the Congo (the “DRC Authorities”) to provide its submissions by 10 March 2022.³⁴

20. On 24 January 2022, the TFV submitted its Third Update Report on the implementation of the IDIP.³⁵ On 4 February 2022, the Legal Representative³⁶ and the

³⁰ See the LRV Request, *supra* note 3.

³¹ See the “Response on behalf of Mr Ntaganda to the CLR1’s request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”, [No. ICC-01/04-02/06-2736](#), 20 January 2022. See also the “Additional matters identified by the Defence in the Draft Implementation Plan that should be addressed by the Trust Fund for Victims”, [No. ICC-01/04-02/06-2740-Conf](#) and [No. ICC-01/04-02/06-2740-Conf-AnxA](#), 24 January 2022.

³² See the “Response of the Common Legal Representative of the Victims of the Attacks to the ‘Public Redacted version of the ‘URGENT Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to Trust Fund for Victims’ Draft Implementation Plan’ (ICC-01/04-02/06-2735-Conf-Exp)’”, [No. ICC-01/04-02/06-2737-Conf](#), 20 January 2022.

³³ See the “Trust Fund for Victims’ Observations in relation to CLR1’s Request for Extension of Time to Respond to the Draft Implementation Plan”, [No. ICC-01/04-02/06-2738](#), 20 January 2022.

³⁴ See the “Decision on the ‘Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan’ and additional request by the TFV” (Trial Chamber II), [No. ICC-01/04-02/06-2739](#), 21 January 2022.

³⁵ See the “Trust Fund for Victims’ Third Update Report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2741-Conf](#) and [No. ICC-01/04-02/06-2741-Red](#), and [No. ICC-01/14-02/06-2741-Conf-Anx1](#), 24 January 2022.

³⁶ See the “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”, [No. ICC-01/04-02/06-2743-Conf-Exp](#), [No. ICC-01/04-02/06-2743-Conf-Red](#) and [No. ICC-01/04-02/06-2743-Red2](#), 4 February 2022.

Defence³⁷ filed their respective observations on said report, requesting an order from the Chamber to instruct the TFV to promptly provide additional information.

21. On 10 February 2022, the Chamber issued a decision ordering the TFV to provide the concrete information on all topics required in its next report.³⁸

22. On 18 February 2022, the TFV filed a request for extension of time to submit additional information on the DIP,³⁹ which was partially opposed by the CLR⁴⁰ and by the Defence.⁴¹ The Chamber partially granted the TFV Request,⁴² extending the TFV deadline until 24 March 2022, and the DRC Authorities' as well as the parties' and the Registry's deadlines to submit their observations respectively on 7 and 24 April 2022.

23. On 23 March 2022, the TFV sought the leave of the Chamber for yet another extension of time, as little as it may be, to be allowed to file both its fourth report on the IDIP and its Updated DIP on 24 March by midnight, with notification of said documents on 25 March 2022.⁴³ The same day, the Chamber granted said request.⁴⁴

³⁷ See the "Defence observations on the Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan", [No. ICC-01/04-02/06-2744-Conf](#), 4 February 2022.

³⁸ See the "Decision on the TFV's Third Update Report on the Implementation of the Initial Draft Implementation Plan" (Trial Chamber II), [No. ICC-01/04-02/06-2745](#), 10 February 2022.

³⁹ See the "Trust Fund for Victims' Request for Extension of Time to Submit Additional Information on Draft Implementation Plan", [No. ICC-01/04-02/06-2746](#), 18 February 2022.

⁴⁰ See the "Joint Response of the Common Legal Representatives of the Victims to the 'Trust Fund for Victims' Request for Extension of Time to Submit Additional Information on Draft Implementation Plan'", [No. ICC-01/04-02/06-2747](#), 22 February 2022.

⁴¹ See the "Defence response to the 'Trust Fund for Victims' Request for Extension of Time to Submit Additional Information on Draft Implementation Plan'", [No. ICC-01/04-02/06-2748](#), 22 February 2022.

⁴² See the "Decision on the Trust Fund for Victims' Request for Extension of Time to Submit Additional Information on Draft Implementation Plan" (Trial Chamber II), [No. ICC-01/04-02/06-2749](#), 24 February 2022.

⁴³ See the email sent by TFV Legal on 23 March 2022 at 12:06.

⁴⁴ See the email sent on behalf of Trial Chamber II on 23 March 2022 at 13:46.

24. On 25 March 2022, the TFV Fourth Update Report on the IDIP (the “Fourth Update Report”)⁴⁵ and the Second DIP Submission,⁴⁶ containing the Updated DIP,⁴⁷ were filed in the record of the case.

25. On 7 April 2022, the Legal Representative, as well as the Defence filed their respective observations on the Fourth Update Report.⁴⁸

26. On 8 April 2022, the Chamber extended the deadlines to submit observations on the Updated DIP to 4 May 2022 for the DRC Authorities, and to 18 May 2022 for the parties and the Registry.⁴⁹

27. On 6 May 2022, the Registry transmitted the DRC Authorities’ observations.⁵⁰

28. On 12 May 2022, the Chamber issued a decision on the Fourth Update Report.⁵¹

29. On 16 May 2022, the Registry transmitted an addendum to the DRC Authorities’ observations.⁵²

⁴⁵ See the “Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2751-Conf](#), with a confidential annex, 25 March 2022.

⁴⁶ See the Second DIP Submission, *supra* note 1.

⁴⁷ See the Updated DIP, *supra* note 2.

⁴⁸ See the “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””, [No. ICC-01/04-02/06-2754-Conf](#), 7 April 2022; and the “Defence observations on the Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2755-Conf](#), 7 April 2022.

⁴⁹ See the email sent on behalf of Trial Chamber II on 8 April 2022 at 10:54.

⁵⁰ See the “*Transmission des observations des autorités de la République Démocratique du Congo relatives à la version publique expurgée du projet mis à jour du Plan de mise en œuvre du Fonds au profit des victimes*”, [No. ICC-01/04-02/06-2760](#), 6 May 2022. See also Annex III to the “*Transmission des observations des autorités de la République Démocratique du Congo relatives à la version publique expurgée du projet mis à jour du Plan de mise en œuvre du Fonds au profit des victimes*”, [No. ICC-01/04-02/06-2760-Conf-AnxIII](#), 6 May 2022 (the “DRC Authorities’ Observations”).

⁵¹ See the “Decision on the TFV’s Fourth Update Report on the Implementation of the Initial Draft Implementation Plan”, *supra* note 4.

⁵² See the “*Addendum à la ‘Transmission des observations des autorités de la République Démocratique du Congo relatives à la version publique expurgée du projet mis à jour du Plan de mise en œuvre du Fonds au profit des victimes’*, enregistrée le 6 mai 2022, ICC-01/04-02/06-2760”, [No. ICC-01/04-02/06-2762](#) and [No. ICC-01/04-02/06-2762-Anx](#) (the “Addendum to the DRC Authorities’ Observations”), 16 May 2022.

IV. SUBMISSIONS

30. The Legal Representative is bound to underline that her ability to adequately respond to the Updated DIP presupposes that she was able to organise comprehensive consultations with her clients on these crucial matters for them. Unfortunately, and despite the best efforts of her team, her ability to conduct said consultations have remained significantly undermined by the extremely volatile security situation in Ituri and the correlative displacement of numerous victims, as well as by the recent issues surfacing in the implementation of the *Lubanga* reparation programmes which created defiance and reluctance to engage on these very important issues.⁵³

31. As underlined in her previous request, the Legal Representative has been confronted with an extra difficulty in both organising the consultations with her clients and drafting a comprehensive response to the DIP due to the absence of important information and details therein.⁵⁴

32. In this regard, and as a general preliminary comment, she underlines that, despite having benefitted from a 6-month extension of time to submit the Updated DIP, the TFV chose to delve deeper and in greater details into general procedures rather than providing specific tangible information as to the expected implementation of the reparations themselves. This comes to the detriment of victims, not only in terms of expectations to be managed, but also in terms of a foreseeable timeline for the implementation of the reparation programmes. The Legal Representative respectfully underlines that each passing day has an impact on her clients' lives, and the importance of ensuring meaningful and comprehensive submissions from the TFV is intrinsically

⁵³ See, *inter alia*, the "Seventeenth 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 and Confidential *ex parte* Annexes B and C only available to the LRV01, the LRV02, the OPCV and the Trust Fund for Victims", [No. ICC-01/04-01/06-3533-Conf](#), 4 May 2022, para. 25. See also the "Réponse commune des Représentants légaux des victimes au Seizième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 4 février 2022", [No. ICC-01/04-01/06-3531-Red](#), 17 March 2022.

⁵⁴ See the LRV Request, *supra* note 3, paras. 21-23. See also *infra*, para. 46.

related to the latter's further ability to lead adequate and effective implementation of the reparation programmes at a later stage.

33. Despite these undermining factors, the Legal Representative was able to organise a field mission in order to consult with a sample group of 16 victims on the limited number of proposals by the TFV. Said sample is representative of the 283 former child soldiers represented by the Legal Representative in the present proceedings.

34. The Legal Representative will highlight in turn: (1) the information that appears to remain missing from the Updated DIP despite the parties' repeated requests and the Chamber's correlated instructions, and for which the provision of tangible and concrete details is urgently needed; (2) the consultations held with a sample group of victims; (3) other questions stemming from the Updated DIP; and (4) comments of a more general nature in support of some of the issues raised in the Updated DIP.

1) Information missing from the Updated DIP

35. The Legal Representatives first notes that the following information is still missing and requests the Chamber to instruct the TFV to supplement it as soon as possible:

- i. The TFV mentions that it will secure the services of a consultant specialised in gender-sensitive programming specifically in relation to harm suffered by victims of sexual and gender-based violence ("SGBV") crimes.⁵⁵ Although the Legal Representative notes the additional information provided by the TFV in its Updated DIP, said information remains widely theoretical and rhetorical and does not provide more concrete information as to the consultant's expected scope of work and impact, beyond the general mention of providing training, analysing the situation of SGBV victims and proposing appropriate measures.⁵⁶

⁵⁵ See the Updated DIP, *supra* note 2, paras. 70, 211, 213, 240, and 248.

⁵⁶ *Idem*, para. 248.

She therefore renews her request to be provided with more tangible information in this regard, and to be consulted on the latter's terms of reference (as for the consultant on missing persons, as proposed by the TFV).⁵⁷

- ii. In its Updated DIP, the TFV does not provide any further detailed information as to the amounts or the modalities envisaged with regard to the *"socio-economic support starter sum"* and modest cash transfer, but indicates that "[w]hen exactly [...], which amount and how best to provide such a sum will be a matter for each programme to determine".⁵⁸ Although the Legal Representative is satisfied that the TFV is learning from and using the experience of the implementation of the reparations in the *Lubanga* case, she however notes that keeping such a determination in the abstract at this stage is likely to lead to similar issues in the present case. She more generally questions why the TFV is not yet in a position to propose a realistic and appropriate amount that could already be assessed by the Chamber and discussed with the CLRs and their respective clients.
- iii. Regarding the provision of school fees within educational activities, the Legal Representative notes that the meagre information added in the Updated DIP does not provide more details on how precisely or on how long this modality would apply for the beneficiaries,⁵⁹ and she thus encourages the TFV to incorporate the lessons learned from the implementation of the reparations in the *Lubanga* case in this aspect too. Furthermore, the Legal Representative notes the TFV's proposal to provide beneficiaries with a lump sum as a financial support for them to attend an alphabetisation course.⁶⁰ Apart from the fact that it is important to integrate more detailed and comprehensive information in this regard, notably as to the amount of such a lump sum, the Legal Representative submits that said lump sum, even if it were a significant one, would not

⁵⁷ *Idem*, para. 243.

⁵⁸ *Idem*, para. 182.

⁵⁹ *Idem*, para. 192.

⁶⁰ *Idem*, para. 207.

necessarily enable beneficiaries to attend literacy classes considering their other current professional and personal responsibilities, for instance as heads of families.⁶¹ Indeed, to fully enable beneficiaries with conflicting interests to attend such classes, a close follow-up will be required on an individual basis.

- iv. The Updated DIP “*has been prepared to take into account that it will be implemented in Ituri Province, in the DRC*”,⁶² and proposes a lump sum in lieu of rehabilitation for eligible victims currently residing elsewhere in the DRC, Uganda or another country,⁶³ rather than presenting concrete proposals as to their inclusion in the reparations programme. This is a serious concern. Indeed, despite the fact that the TFV is well aware that many victims beneficiaries continue to move within Ituri, the DRC and outside of the country too,⁶⁴ it is nonetheless not including this reality in its programming yet. The Legal Representative therefore reiterates her calls for the Chamber and the TFV to carefully assess these kinds of situations and propose adequate ways to ensure that the victims concerned will benefit from the reparations ordered by the Court on an equal footing, and at the same time as the victims residing in Ituri.
- v. The Updated DIP envisages covering all types of needs in relation to SGBV victims’ health,⁶⁵ but still does not provide any detailed information as to the intended modalities to be put in place (*i.e.* mobile clinic, locations of medical centres as close as possible to the beneficiaries, provision of mobility, transports and subsistence fees, *etc.*).⁶⁶

⁶¹ See *infra*, para. 37.

⁶² See the Updated DIP, *supra* note 2, para. 10.

⁶³ *Idem*, para. 205.

⁶⁴ *Idem*, paras. 95, 111, 205, 341, and 401(g). See also the 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, *supra* note 48, para. 20; and the “Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan”, *supra* note 45, para. 10.

⁶⁵ *Idem*, para. 212.

⁶⁶ *Idem*, pp. 121-122, *Former Child Soldiers Logical Framework*.

- vi. In its Updated DIP, the TFV still does not seem to provide more details on exactly what kind of harm the satisfaction measures intend to cover within the group of former child-soldiers beneficiaries.⁶⁷

2) Consultations with victims

36. The Legal Representative consulted with a sample group of 16 victims, including both direct and indirect victims, as well as SGBV victims, on some of the key proposals contained in the Updated DIP.

37. Regarding the TFV's proposal to provide all victims with a socio-economic support starter sum early in the reparation programme,⁶⁸ all consulted victims expressed the need for such an approach to enable them to overcome their precarious situation and to facilitate their intake into the programme. The Legal Representative notes that the TFV proposes such a lump sum to be modest,⁶⁹ without further indication as to what it understands by that, except that it would be for each programme to determine the exact amount.⁷⁰ In this regard, the Legal Representative reiterates her calls for the Chamber and the TFV to ensure that victims benefit from the reparations ordered by the Court on an equal footing, and submits that it would be for the Chamber to decide on an adequate amount for the starter sum, which should be identical for all victims.

38. As to the proposed refresher trainings, university scholarships and language courses,⁷¹ consulted victims voiced concerns over the envisaged duration of such a reparation measure. In particular, victims expressed the need for such support to cover the whole period of their studies. Indeed, a support measure which only covers part of the studies, for instance two out of seven years of university studies in medicine,

⁶⁷ *Idem*, para. 226.

⁶⁸ *Idem*, paras. 182-187.

⁶⁹ *Idem*, para. 185.

⁷⁰ *Idem*, para. 182.

⁷¹ *Idem*, paras. 188-190.

forcing the beneficiary to drop out before obtaining his or her diploma, would be ineffective and even harmful. Regarding the allowance to help beneficiaries cover their day-to-day living costs throughout their studies,⁷² consulted victims indicated that such an allowance would need to cover all basic needs without having to rely on family members. For instance, when the envisaged trainings, studies or courses require the beneficiary to travel and reside away from home, the allowance should cover all expenses related to such travel and accommodation. It would be contrary to the *do no harm* principle for beneficiaries to have to arrange their accommodation with their family, particularly since a lot of former child soldiers are being ostracised from their family and/or community.

39. With regard to the provision of a fixed budget to cover school fees of the beneficiaries' dependants, the TFV proposes for the amount to be determined "*within the context of each programme, as being equivalent to the value of secondary school fees for a fixed number of children [...] at a public school in Ituri*".⁷³ The Legal Representative agrees with the need to determine such a budget separately for each programme, since school fees vary between localities and beneficiaries' dependants attend school at different levels. In this regard, she submits that the calculation of the fixed budget should take into account the cost of university level education, rather than being equivalent to the value of secondary school fees exclusively. The Legal Representative also underlines the importance of clear and transparent communication as to the reasons for this differentiation in school fee budgets, in order to avoid misunderstandings and frustrations as they have been occurring in the *Lubanga* case. Lastly, consulted victims stressed once more how important it is for them that their children are able to finish their studies, especially considering the damage victims themselves have suffered to their "life plan" following their recruitment in the UPC/FPLC in 2002/2003,⁷⁴ which will

⁷² *Idem*, para. 191.

⁷³ *Idem*, para. 192.

⁷⁴ See the "Submissions on Reparations on behalf of the Former Child Soldiers", [No. ICC-01/04-02/06-2474](#), 28 February 2020, para. 69.

never be fully repaired 20 years after the commission of the crimes at the origin of their victimisation.

40. Concerning the organisation of vocational training courses,⁷⁵ consulted victims voiced the same concerns as for the refresher trainings, university scholarships and language courses, namely that any envisaged financial assistance would need to cover all their basic needs, enabling them to successfully attend the courses without forsaking their personal and professional responsibilities and without having to rely on family members. Similarly, the starter kit for their income-generating activity project should include all materials needed to conduct their project independently. Absent of such inclusion, they believe the activity to be undertaken will never generate revenues and will be therefore doomed to fail. As with the provision of school fee budgets, there will be a need to differentiate between beneficiaries, which needs to be communicated in a clear and transparent way in order not to raise expectations and create frustrations in the future.

41. Most consulted victims welcome the possible creation of a savings and credit association,⁷⁶ while a few do not believe in the effectiveness of community-based projects. Those in support of the proposal also stressed the need for a personalised follow-up for their income-generating activity, ranging from a few months to up to three years.

42. Similarly, a majority of consulted victims welcome the development and construction of commemoration centres and the development of mobile memorial initiatives, as proposed in the *Lubanga* case,⁷⁷ and see benefits not only for themselves, but also for succeeding generations. However, some victims strongly oppose said initiative.

⁷⁵ See the Updated DIP, *supra* note 2, para. 193.

⁷⁶ *Idem*, para. 195.

⁷⁷ *Idem*, paras. 223-227.

43. In order to not unduly raise expectations, the Legal Representative discussed the TFV's proposal to provide SGBV victims and children born out of rape and sexual violence with a symbolic lump sum without mentioning the proposed amount [REDACTED].⁷⁸ The Legal Representative was able to consult with a few SGBV victims who expressed their support for such a measure. They indicated that said lump sum should be meaningful to recognise the full extent of their harm and that of their children born out of rape. They also argued that the lump sum should not merely be symbolic but should allow them to take proper and effective care of their children born out of rape. As such, the Legal Representative submits that there appears to be a large discrepancy between the proposed amount [REDACTED] and the SGBV victims' reasonable expectations.

44. While most consulted victims are not concerned by the TFV's proposal to hire a consultant in charge of the search for missing persons,⁷⁹ they all expressed their support for such an initiative.

45. Lastly, the vast majority of consulted victims are open to the idea of Mr Ntaganda apologising publicly, while a few others oppose it arguing that said apologies should have been offered much earlier to be considered genuine. As such, the Legal Representative welcomes the TFV's proposal to ensure that such apologies are presented in a scenery that respects different trends of opinions amongst victims.⁸⁰

3) Other questions stemming from the Updated DIP

46. As a general comment, the Legal Representative observes that the TFV adopts a flexible approach to the entire implementation phase of the Updated DIP, which in itself appears to be a necessary and appropriate methodology. Nonetheless, she wishes to underline that adopting a similar flexibility to the design of the Updated DIP⁸¹ does

⁷⁸ *Idem*, para. 238.

⁷⁹ *Idem*, paras. 241-243.

⁸⁰ *Idem*, para. 246.

⁸¹ *Idem*, para. 30.

not carry the same value inasmuch as the latter needs to be validated by the Chamber, and the CLRs need to be able to discuss its content with their clients in order to ensure that the reparations will correspond to their situation and respond to their needs, while giving them agency on their rehabilitation process. It is therefore imperative that the Updated DIP provides them with detailed proposals and information, as opposed to theoretical pathways.⁸²

47. The Legal Representative would also like to emphasise that victims who will have benefitted from the IDIP are meant to see their most urgent needs addressed only, and that such assistance is meant to be provided on a rapid and temporary basis, pending the full deployment of the fully fledged services proposed in the Updated DIP.⁸³

48. The Legal Representative notes the renewed request by the TFV to be authorised to submit consolidated quarterly reports once the Updated DIP is approved,⁸⁴ merging the reporting on the IDIP and the Updated DIP, in order to align with the internal reports it receive from its implementing partners.⁸⁵ Although the Legal Representative notes the commitment made by TFV to immediately inform the Chamber and the parties if an issue requires immediate resolution in the course of the reporting periods,⁸⁶ she nonetheless wishes to underline that for the moment, the efforts deployed by the TFV in relation to the IDIP and the Updated DIP are very distinct, and as long as there is no implementation *per se*, separate reporting deadlines would be warranted. Moreover, she further wishes to distinguish and highlight the different nature and purposes of quarterly reports to the Chamber, which has the role of monitoring the implementation of the IDIP and the Updated DIP respectively, and the purposes of regular updates provided to the CLRs on the extent and nature of services received by

⁸² See also *supra*, paras. 31 and 32.

⁸³ See the Updated DIP, *supra* note 2, paras. 250-254, and 403.

⁸⁴ See the Second DIP Submission, *supra* note 1, para. 27.

⁸⁵ See the First DIP Submission, *supra* note 25, paras. 12-18.

⁸⁶ *Idem*, para. 16.

their respective clients as the various phases of the programmes are deployed. Indeed, as the current experience of the implementation of the reparations in the *Lubanga* case has shown, frequent and comprehensive communications need to be upheld between the CLRs,⁸⁷ the TFV and its implementing partners, in order to facilitate access to services to the victims beneficiaries and possibly help navigating any difficulties that might arise;⁸⁸ and to this end, avoid losing precious time which the victims no longer have.

49. Regarding the financing of the IDIP and the Updated DIP by the TFV as ordered by the Chamber, and noting the safeguards recalled by the TFV in its Second Submission of the DIP with regard to the fact that it *“will only be able to finance the implementation of reparations measures within its financial means, and as supported by its donors”*,⁸⁹ the Legal Representative cannot stress enough the importance of the TFV continuing its fundraising efforts in parallel with the development of the Updated DIP as mentioned in the latter.⁹⁰ This is of paramount importance for the victims of the present case who have legitimate expectations as to the reparations they are entitled to. In this regard, and despite the more lengthy information provided in the Updated DIP on its financial plans, she is particularly concerned by the statement according to which *“the Trust Fund is not bound to fully complement the sum of liability ordered by Trial Chambers”*,⁹¹ when, in fact, the Legal Representative contends that fundraising should be considered as one of the main activities, if not the main activity, of a trust fund.

⁸⁷ See, *inter alia*, the *“Réponse commune des Représentants légaux des victimes au Seizième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 4 février 2022”*, *supra* note 53, paras. 10 and 13.

⁸⁸ The Legal Representative emphasises, as a mitigating measure, and as underlined in the communication strategy shared, the usefulness and necessity of regular communication and cooperation between the TFV staff and the CLRs teams, in order to be able to defuse and clarify any confusion, issue or misunderstanding with the victims concerned and react and learn from every possible difficulty promptly.

⁸⁹ See the Second DIP Submission, *supra* note 1, para. 22.

⁹⁰ See the Updated DIP, *supra* note 2 paras. 31-36.

⁹¹ *Idem*, para. 276.

50. The Legal Representative further notes that the TFV foresees an extremely close oversee of its partners, at time on a daily basis.⁹² Although she finds this approach certainly responsible and professional in light of its obligations to ensure that the Updated DIP is implemented according to the agreed terms, she however wonders whether such a close involvement is necessary on a mid-term basis (once the staff has been trained and the programme is operational) and what resources will be used for this. The Legal Representative underlines that the use of the TFV's scarce resources is only a concern for her inasmuch as the latter has underlined itself its limited capacities, and as repeated delays have been occurring in these proceedings, presumably for this very reason, to the detriment of the victims she represents.

51. On the issue of capacities, the Legal Representative further notes and shares the concerns expressed by the TFV about the possibility of maintaining a field presence in Bunia (not only in Kinshasa) in the near future.⁹³ She wholly supports the TFV in its assessment of the necessity to be based in Bunia, to allow for a meaningful and effective monitoring and follow-up of the Updated DIP implementation with its partners but also with the communities and the victims beneficiaries. She underlines that this presence is a key element for the victims she represents and must be guaranteed during the entire runtime of the implementation of reparations in the present case.

4) Comments in support of issues raised in the Updated DIP

52. The Legal representative concurs with the understanding of the purpose of the Reparations Order as laid down by the TFV as permitting the empowerment of victims and their evolution from their status of victims to the one of resilient survivors with agency.⁹⁴ She reiterates in this regard the importance of the implementation of good practices by the TFV implementing partners in their daily relationships with the victims, and the implementation by the latter of the principles laid down in the

⁹² *Idem*, para. 40.

⁹³ *Idem*, paras. 48-51.

⁹⁴ See the Updated DIP, *supra* note 2, para. 8.

Reparations Order, such as a survivor-centred approach, involving the victims in the decision-making regarding their own path to recovery, and the “do no harm” principle.⁹⁵

53. The Legal Representative encourages the initiatives of the TFV to tighten its links with the DRC Authorities to be able to advocate for as much support as possible.⁹⁶ The Legal Representative underlines that it is very important for the victims that the Authorities play their own essential role with regard to the support and reparations to be afforded to victims of crimes in accordance with its national and international obligations; but also that they support the TFV in the implementation of programmes ensuring long-lasting changes and ownership in the communities. She further underlines that such a cooperation appears equally paramount to ensure that all victims, whether residing in Ituri, in other regions of the DRC or outside of the DRC, will benefit from the same access to reparations as victims living in Ituri.⁹⁷ In this regard, she highlights that the easy solution to provide a lump sum to victims residing outside of Ituri instead of the range of designed services foreseen in the Updated DIP cannot be the only answer provided by the TFV, especially in light of the TFV’s own estimation that “[REDACTED]” are living outside of Ituri Province.⁹⁸ She therefore submits that the various situations of the individuals composing this group should be carefully assessed, in order to identify the circumstances of them living outside of Ituri, whether they wish to come back or not, and in light of such assessment, what services could be provided to them too, if needed, with the support of the country in which they reside.

⁹⁵ See the Reparations Order, *supra* note 5, paras. 45-52. See also the “Decision on the TFV’s Fourth Update Report on the Implementation of the Initial Draft Implementation Plan”, *supra* note 4, para. 18.

⁹⁶ See the Updated DIP, *supra* note 2, paras. 27, 49-50 and 60-61.

⁹⁷ See *supra*, para. 35 (iv).

⁹⁸ See the Updated DIP, *supra* note 2, para. 273.

54. The Legal Representatives notes the observations provided by the DRC Authorities.⁹⁹ Absent of more detailed observations, she notes with concern the assertion according to which “[REDACTED]”.¹⁰⁰ She notes the new wording in the Addendum according to which “[l]e Gouvernement prendra toutes les mesures y compris celles liées à la sécurité dans le zone sous état de siège nécessaires à l’accompagnement des équipes commises aux réparations/indemnisations des victimes”,¹⁰¹ but remains concerned about [REDACTED].

55. On the issue of cooperation with external entities, the Legal Representative notes agreeably that the TFV has been leading consultations with some organisations active in Ituri and that areas of collaboration were identified and will continue to be identified.¹⁰² Inasmuch as these organisations might partake in the Updated DIP implementation, give advice to the TFV, or be in contact with her clients through the provision of services, the Legal Representative would like to receive more information about them, notably who they are and how their contribution is envisaged.

56. Lastly, the Legal Representative concurs with the TFV that once the Appeals Chamber will have issued its Judgments on the pending appeals, and contingent to the Trial Chamber’s possible consecutive instructions on the matter, the TFV might indeed have to update its Updated DIP once more. She commends in this regard the TFVs commitment, should the situation arise, to proceed as swiftly as possible.¹⁰³

⁹⁹ See the DRC Authorities’ Observations, *supra* note 50; and the Addendum to the DRC Authorities’ Observations, *supra* note 52.

¹⁰⁰ See the DRC Authorities’ Observations, *supra* note 50.

¹⁰¹ See the Addendum to the DRC Authorities’ Observations, *supra* note 52.

¹⁰² See the Updated DIP, *supra* note 2, para. 62.

¹⁰³ See the Second DIP Submission, *supra* note 1, para. 26.

V. CONCLUSION

57. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to:

- instruct the TFV to supplement its Updated DIP in accordance with paragraph 35 *supra* as soon as possible, in order to allow her to hold meaningful and extensive consultations with the victims she represents; and
- defer its approval of the Updated DIP until the parties are able to comment on the supplemented DIP, following informed consultations of their respective clients.



Sarah Pellet
Common Legal Representative of the
Former Child soldiers

Dated this 20th day of May 2022

At The Hague, The Netherlands