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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***

Public

Public Redacted version of 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’ (ICC-01/04-02/06-2751-Conf)” ICC-01/04-02/06-2754-Conf, dated 7 April 2022

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative”) hereby files her observations on the “Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan” (the “Fourth Update Report”).¹

II. LEVEL OF CLASSIFICATION

2. Pursuant to regulation 23bis(1) of the Regulations of the Court, the present submission is filed confidential as it contains confidential information not known to the public. A public redacted version will be filed in due course.

III. PROCEDURAL BACKGROUND²

3. On 8 March 2021, Trial Chamber VI issued the “Reparations Order”, instructing, *inter alia*, the Trust Fund for Victims (the “TFV”) to submit a general draft implementation plan on 8 September 2021, and an urgent plan for the priority victims on 8 June 2021, at the latest.³

4. On 16 March 2021, the Presidency assigned the present case to the newly constituted Trial Chamber II (the “Chamber”).⁴ Judge Chang-ho Chung was subsequently elected Presiding Judge of the Chamber.⁵

¹ 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](#) and [No. ICC-01/04-02/06-2751-Conf-Anx1](#), 24 March 2022 (the “Fourth Update Report”).

² The procedural background included in these submissions is non-exhaustive and primarily focuses on the procedure relevant to these submissions. The various procedural steps taken before the Appeals Chamber are also omitted.

³ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021.

⁴ See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

⁵ 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.

5. On 8 April 2021, the Common Legal Representative of the Victims of the Attacks and the Defence filed their respective Notice of Appeal against the Reparations Order.⁶ Appeals proceedings are currently pending before the Appeals Chamber.⁷

6. 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”).⁸ On 23 June 2021, the parties and the Registry filed their observations thereon.⁹

⁶ See the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2668 A4](#), 8 April 2021; and the “Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659”, [No. ICC-01/04-02/06-2669 A5](#), 8 April 2021.

⁷ See the “Response on behalf of Mr Ntaganda to the Trust Fund for Victims’ observations on the Reparations Appeals”, [No. ICC-01/04-02/06-2717 A4 A5](#), 25 October 2021; the “Response of the Common Legal Representative of the Victims of the Attacks to the ‘Observations in relation to the ‘Defence Appellant Brief Against the 8 March Reparations Order’ and the ‘Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order’””, [No. ICC-01/04-02/06-2716 A4 A5](#), 25 October 2021; the “Observations in relation to the ‘Defence Appellant Brief Against the 8 March Reparations Order’ and the ‘Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order’””, [No. ICC-01/04-02/06-2713 A4 A5](#), 30 September 2021; the “Reply to LRV1 and LRV2 Responses to Mr Ntaganda’s Appellant Brief”, [No. ICC-01/04-02/06-2712 A4 A5](#), 30 September 2021; the “Response on behalf of Mr Ntaganda to the ‘Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order’””, [No. ICC-01/04-02/06-2702 A4 A5](#), 9 August 2021; the “Response of the Common Legal Representative of the Victims of the Attacks to the Defence’s Appeal Brief (ICC-01/04-02/06-2675)”, [No. ICC-01/04-02/06-2701 A4 A5](#), 9 August 2021; the “Response of the Common Legal Representative of the Former Child Soldiers on Mr Ntaganda and the Victims of the Attacks’ Appeals against the Reparations Order (ICC-01/04-02/06-2659)”, [No. ICC-01/04-02/06-2700 A4 A5](#), 9 August 2021; “Decision on the Presiding Judge of the Appeals Chamber in the appeals against the decision of Trial Chamber VI entitled ‘Reparations Order’” (Appeals Chamber), [No. ICC-01/04-02/06-2670 A4 A5](#), 9 April 2021. See also the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675 A5](#), 7 June 2021; and the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2674 A4](#), 7 June 2021.

⁸ 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](#).

⁹ See 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

7. On 28 June 2021, the TFV submitted additional observations regarding its IDIP.¹⁰
8. On 16 July 2021, the TFV submitted a request to postpone the submission of its Draft Implementation Plan (the “DIP”) until 17 December 2021. The TFV highlighted the difficulties posed by the public health situation and the security situation both in the Democratic Republic of the Congo and in Uganda.¹¹ On 22 July 2021, the Common Legal Representatives of Victims (the “CLRs”) and the Defence filed their respective response in support of said request.¹²
9. On 23 July 2021, the Chamber issued a decision, approving the IDIP subject to amendments and additional information to be provided by the TFV in its subsequent report.¹³ The Chamber rejected the Defence’s request for leave to appeal said decision.¹⁴
10. The same day, the Chamber granted the TFV’s extension of time limit to submit its DIP.¹⁵ 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

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.

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.

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 “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; 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.

¹³ 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.

¹⁴ 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.

¹⁵ See the “Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2697](#), 23 July 2021.

the time limit cannot be extended indefinitely without infringing on the rights of victims to prompt reparations.

11. On 23 September 2021, the TFV submitted its First Update Report on the IDIP.¹⁶

On 4 October 2021, the Defence submitted observations thereon.¹⁷

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 the administrative eligibility assessment and urgency screening and encouraging the TFV to provide additional details on said proposal and on information relating to outreach.¹⁸

13. On 23 November 2021, the TFV submitted its Second Update Report,¹⁹ to which the CLRAs and the Defence submitted their respective response on 6 December.²⁰

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.

¹⁷ See 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.

¹⁸ 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”, [No. ICC-01/04-02/06-2718-Conf](#) and [No. ICC-01/04-02/06-2718-Red](#), 28 October 2021.

¹⁹ 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.

²⁰ 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.

14. On 24 January 2022, the TFV submitted its Third Update Report on the implementation of the IDIP.²¹
15. On 4 February 2022, the Legal Representative²² and the Defence²³ filed their respective observations on said Report, requesting an order from the Chamber to instruct the TFV to promptly provide additional information.
16. On 10 February 2022, the Chamber issued its Decision, ordering the TFV to provide the concrete information on all topics required in its next report.²⁴
17. 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 its Fourth report on the IDIP on 24 March by midnight, with notification of said document on 25 March 2022.²⁵ The same day, the Chamber granted said request.²⁶
18. On 25 February 2022, the Fourth Update Report²⁷ was filed in the record of the case.

²¹ 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.

²² 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.

²³ 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](#) and [No. ICC-01/04-02/06-2744-Red](#), 4 February 2022.

²⁴ 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.

²⁵ See the email sent by the TFV Legal Team on 23 March 2022 at 12:06.

²⁶ See the email sent on behalf of Trial Chamber II on 23 March 2022 at 13:46.

²⁷ See the Fourth Update Report, *supra* note 1.

IV. SUBMISSIONS

19. The Legal Representative submits the below observations following the order followed by the TFV in its Fourth Update Report.

A. Update on the security situation

20. The Legal Representative notes the updated information provided by the TFV²⁸ and confirms that the situation remains volatile and continues to hamper the flow of communication with her clients. As underlined in the Fourth Update Report, the population keeps moving within and outside Ituri,²⁹ including some of the Legal Representative's clients, which not only renders contacting them difficult, but also poses the question of the implementation of the reparation measures and their adequacy for beneficiaries whose living conditions have changed, or are changing. The Legal Representative therefore reiterates her concerns in this regard and calls for the attention of 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.³⁰

B. The eligibility and urgency screening

21. The Legal Representative welcomes the sharing by the TFV of the way it is applying the Chamber's criteria³¹ and agrees that it is bound to evolve.³² In this regard,

²⁸ *Idem*, paras. 10 and 11.

²⁹ *Idem*, para. 10.

³⁰ See, *inter alia*, the "Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims", *supra* note 9, para. 25; 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", *supra* note 22, para. 22; 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)", *supra* note 20, para. 15.

³¹ See Annex 1 to the Fourth Update Report, *supra* note 1.

³² See the Fourth Update Report, *supra* note 1, para. 14 and the Annex 1 to the Fourth Update Report, *idem*, paras. 4 and 53. See *infra* para. 29.

the Legal Representative particularly appreciates the following: the fact that the examiner must bear in mind that the CLR's themselves have estimated that these clients are in urgent needs;³³ and the fact that a contextual and flexible approach must be applied when evaluating whether the person is in a financial dire situation, by the assessment of various factors taken together.³⁴ Regarding the calculation of the age of the victim former child soldier, the Legal Representative calls the attention of the TFV to the fact that the victim must simply have been born at the most 15 years prior to the date of his or her recruitment within the charged period, rather than before the 6 August 1987 for a recruitment by 1 September 2002 as mentioned by the TFV.³⁵

22. In relation to the unilateral decision made by the TFV to reject from the IDIP those victims who are already beneficiaries to the *Lubanga* programme, on the basis that they cannot be *considered* in urgent needs,³⁶ the Legal Representative reiterates her concerns as expressed in her previous correspondence on this issue with the TFV.³⁷ Indeed, the Legal Representative posits that her clients facing urgent needs could only be considered to be *no longer* in urgent needs if : (i) they have already benefitted from services that precisely addressed their urgent needs through the *Lubanga* programme, which means that the *assessment* made by [REDACTED] indeed has prioritised the urgency and that the Legal Representative's clients are *currently* benefitting from the relevant services *comprehensively* (and are not waiting for those services); and (ii) they are victims whose urgent needs do not stem from sexual and gender-based violence ("SGBV") (which are not covered by the *Lubanga* programme).

23. The Legal Representative notes that she received an email responding to her 23 March 2022 correspondence the day prior to the present submissions deadline.³⁸

³³ See Annex 1 to the Fourth Update Report, *supra* note 1, para. 52.

³⁴ *Ibid.*

³⁵ *Idem*, para. 13.

³⁶ See the Fourth Update Report, *supra* note 1, para. 15.

³⁷ See the email sent by the Legal Representative to TFV Legal, 9 March 2022, 17:06.

³⁸ See the email sent by the TFV Legal Team on 6 April 2022 at 11:14.

Apart from the fact that said email, at the eleventh hour, is definitely overcomplicating the process, she notes it forces her to address issues that were not put in the record of the case by the TFV for reasons she fails to understand. However, for the sake of completeness, she will address the matters directly relevant to the present observations. In its recent email, the TFV drew the Legal Representative's attention to the possibility for her, in line with the DIP,³⁹ to challenge the TFV's eligibility determination in relation to her clients.⁴⁰ In this regard, the Legal Representative submits that, as a first step, it would be more relevant for the TFV to correctly apply the substantive criteria as determined by the Chamber and as set out in the TFV's *questionnaire d'entretien*.⁴¹ Indeed, in its questionnaire, the TFV put forward that, based on the Chamber's determination, urgent needs are those : (i) which result from the harm suffered as a result of the crimes for which Mr Ntaganda has been convicted; and (ii) for which victims cannot wait until the start of the reparation programme; such needs are to be understood as needs for which victims require immediate medical, physical or psychological care, or support because of financial difficulties putting their life at stake.⁴² As such, 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.

24. Moreover, the TFV's rejection of these victims seems all the more illogical since it first decided to meet with them, through its implementing partner, in order to assess their eligibility, while it was fully aware that those victims were also recognised as beneficiaries in the *Lubanga* case. If these victims are then excluded from the IDIP on the mere basis of their status as beneficiaries in the *Lubanga* case, their assessments are

³⁹ 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 [Conf-Exp-Anx2](#), 25 March 2022, para. 383(a).

⁴⁰ See the email sent by the TFV Legal Team on 6 April 2022 at 11:14.

⁴¹ See Annex 1 to the "Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan", *supra* note 21.

⁴² *Ibid.*

to be considered as a waste of valuable time and resources, as well as contrary to the *do no harm* principle,⁴³ which is to be applied when conducting victim eligibility screening.⁴⁴

25. In its eleventh hour email, the TFV also indicated that the *Lubanga* programme, although not designed to cater specifically for SGBV victims, does address physical or psychological harm which can be a consequence of SGBV.⁴⁵ The Legal Representative submits that this does not change the fact that victims who are determined as having urgent needs, in accordance with the criteria set out *supra*,⁴⁶ are to be found eligible for the purpose of the IDIP.

26. In conclusion, the Legal Representative underlines that, for her to be able to agree with the TFV's assessment, she needs to know exactly what services her clients have been or will be provided with, and – for those waiting – when exactly the intake will take place (*i.e.* on an urgent basis). This position has been reiterated in her most recent exchanges with the TFV,⁴⁷ and she was informed that, although the TFV is currently collecting updated information relevant to the services provided *or to be provided to her clients*, the situation in the field has been problematic and consequently there are some delays in transmitting such information.⁴⁸ Although the Legal Representative is aware of the situation in the field and understands the difficulties faced by the TFV, she however underlines that taking such a principled position (*i.e.* excluding some of her clients from the benefit of the IDIP), based on mere theory rather than on tangible facts collected previously to taking such a major decision, is

⁴³ See *infra*, para. 27.

⁴⁴ See, *inter alia*, the "Trust Fund for Victims' observations relevant to reparations", [No. ICC-01/04-02/06-2476](#), 28 February 2020, para. 31.

⁴⁵ See the email sent by the TFV Legal Team on 6 April 2022 at 11:14.

⁴⁶ See *supra* para. 23.

⁴⁷ See the emails sent by the Legal Representative to TFV Legal, respectively on 23 March 2022, at 16:32; and on 16 March 2022, at 12:36.

⁴⁸ See the email sent by TFV Legal to the Legal Representative, 23 March 2022, 15:39.

problematic to say the least. She would therefore encourage the TFV to review its processes and ensure that their decision-making relies on updated facts and information rather than on educated guesses, which so far have proved to be detrimental to the interests of victims and in violation of their rights to access reparations and urgent support as per the Chamber's Reparations Order.⁴⁹

27. The Legal Representative stresses that the unilateral decision made by the TFV to reject from the IDIP those victims who are already beneficiaries of the *Lubanga* programme, taken after [REDACTED] had started calling the *Ntaganda* beneficiaries and filling in the *questionnaire d'entretien*⁵⁰ with them, has an adverse impact on victims. Indeed, beneficiaries do not understand the reasons why they, although having been contacted and having been through the intake, were called to benefit from a vocational training, and eventually were sent back home with the only explanation, on the spot, that they have benefitted from reparations in the *Lubanga* case and are not to benefit from any further assistance within the *Ntaganda* IDIP framework.⁵¹ Other victims have been contacted by the implementing partner and left in the dark as to the next steps.⁵² She clearly disapproves the conclusion drawn by the TFV in its email dated 6 April 2022 according to which it would now be her responsibility to deal with the adverse consequences of the unilateral decision of the TFV,⁵³ and she calls for the TFV and the implementing partner to avoid unduly raising expectations and to set clear messages in the future in order to avoid an escalation of the issues. The Legal Representative also draws the attention of the Chamber to the fact that said issues in turn impact on her

⁴⁹ See the "Reparations Order", *supra* note 3.

⁵⁰ See Annex 1 to the "Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan", *supra* note 21.

⁵¹ See *inter alia* a/0038/13, a/00631/13, and a/01307/13.

⁵² See *inter alia* a/20021/14, a/30230/15, and a/30044/15.

⁵³ See the email sent by the TFV Legal Team on 6 April 2022 at 11:14: "As some of the victims were in contact with [REDACTED], they now seem to have understood that they may not receive reparations in *Ntaganda*. They have expressed to [REDACTED] that they are not content with this solution. We assume that you may wish to communicate with them about this and to decide together with them whether you wish to challenge this (for all or only for some of them)".

ability to carry out her mandate since she now faces the adverse consequences jeopardising her ability to consult her clients on very important issues, notably on the DIP. Accordingly, it is all the more important for her to finally obtain clear and detailed information of the services available to her clients.⁵⁴

28. Additionally, the Legal Representative underlines that the issue raised by the TFV with regard to applications possibly raising doubts as to whether they fall within the scope of the case is not a scenario that might apply to her clients, whose recognition of harms is not affected by the current appeals proceedings.⁵⁵ In any event, all of her clients are falling within the scope of the case, having been recruited within the *Forces Patriotiques pour la Libération du Congo* during the relevant period.

29. Lastly, regarding the information collected by the implementing partner for the purpose of the TFV's assessment, the Legal Representative is concerned by the information provided that [REDACTED] apparently had to go back to eight of the victims concerned to collect "*additional information*".⁵⁶ As underlined before in the present proceedings, the Legal Representative insists on the implementation of good practices and recalls the applicability of the *do no harm* principle.⁵⁷ As a result, she insists on the need to analyse the reasons why there was some missing information after a first intake made by [REDACTED], in order to learn the lesson immediately and apply the

⁵⁴ See *supra* para. 26. The Legal Representative notes the attachment contained in the email sent by the TVF Legal Team on 6 April 2022 at 11.14 entitled "*Point de la prise en charge des victimes*", which cannot in any way be considered to provide said clear and detailed information.

⁵⁵ See the Fourth Update Report, *supra* note 1, para. 16; and the Annex 1 to the Fourth Update Report, *idem*, paras. 5-21.

⁵⁶ *Idem*, para. 21.

⁵⁷ 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", *supra* note 22, para. 22. See also the "Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims", *supra* note 9, para. 34.

necessary corrections to the process, with the aim of avoiding this kind of situation in the future.

C. New TFV proposal for inclusion of former child soldiers in the IDIP⁵⁸

30. At the outset, the Legal Representative stresses that her clients in urgent needs on an emergency basis⁵⁹ – identified as of April last year⁶⁰ – are still waiting for urgent support, despite her repeated calls for such support. Consequently, she finds the lack of implementation of any urgent measures, and the inertia of the whole process, not to be in line with the urgency of her clients' recognised needs as set out in the Reparations Order.⁶¹ In addition, the recent unilateral decision made by the TFV to reject from the IDIP those victims who are already beneficiaries of the *Lubanga* programme⁶², absent of any clear explanation to the already contacted victims, is having an adverse impact on the victims.⁶³

31. This being said, the Legal Representative confirms her support for the new TFV proposal consisting in using the scope of the TFV's current contract with [REDACTED] for the purpose of the IDIP (*i.e.* the use of the assistance programme for the benefit of the *Ntaganda* SGBV victims and their children born out of rape and sexual slavery only), for the benefit of all the other victims which she represents and who are facing urgent needs stemming out of different kinds of harms.⁶⁴ The Legal Representative's agreement is based on the TFV's confirmation that the [REDACTED] assistance

⁵⁸ See the Fourth Update Report, *supra* note 1, paras. 26-32.

⁵⁹ See, *inter alia*, 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", *supra* note 22, para. 31.

⁶⁰ See 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)", *supra* note 20, para. 14.

⁶¹ See *supra*, para. 26.

⁶² See *supra*, para. 22.

⁶³ See *supra*, para. 27.

⁶⁴ See the Fourth Update Report, *supra* note 1, paras. 30-32.

programme indeed has the capacity to swiftly respond to the urgent needs of all her clients in this situation, *i.e.* all former child soldiers and their family members (or other indirect victims) in an emergency situation, beyond the harms resulting from and associated with SGBV.⁶⁵ She is also pleased to read the confirmation provided by the TFV, following her requests for information,⁶⁶ that: (i) all three categories of services (medical, psychological and educational/vocational/professional) will be accessible for all victims former child soldiers and their family members in urgent needs; (ii) the services provided will be comprehensive enough and will not only consist in mere referrals; (iii) access to these services will be effective immediately; and (iv) these services are operational and accessible to all her clients whichever locality they are residing in at the moment (subject to the security situation).⁶⁷ Finally, she is satisfied with the TFV's information as to the inclusion of this new proposal in its outreach and communication plan once approved by the Chamber, noting the necessity of a clear, transparent and intelligible outreach in light of the current situation in Ituri; and importantly, in light of the fact that [REDACTED] is currently implementing, on the one hand, the reparation programme in the *Lubanga* case, and, on the other hand, and independently from the latter, this assistance programme.⁶⁸

32. Furthermore, the Legal Representative invites once again the TFV to review the data she provided in April 2021 on the number of victims in a situation of urgent needs. Indeed, the preliminary number advanced by the Legal Representative in April 2021 and reiterated in her recent correspondence with the TFV amounts to 60 persons identified so far, as per the information in her possession currently, [REDACTED] (and not "*not more than 15 victims (who are not SGBV-related victims)*") as mentioned by the TFV in its Fourth Update Report).⁶⁹ As reported in her communication with the TFV,

⁶⁵ *Idem*, para. 31.

⁶⁶ See the email sent by the Legal Representative to TFV Legal, 9 March 2022, 17:06.

⁶⁷ See the Fourth Update Report, *supra* note 1, para. 31.

⁶⁸ *Ibid.*

⁶⁹ *Idem*, paras. 26 and 37 ("*only a few individuals were referred to the Trust Fund so far*"). See also the email sent by the Legal Representative to TFV Legal, 16 March 2022, 12:36.

these numbers are provisional and cannot be considered as final in light of the continuous difficulties the Legal Representative is facing to track back some of her clients and communicate with them adequately and safely.

33. The Legal Representative has always provided the TFV with updated contact information on a rolling basis.⁷⁰ However, given the situation described *supra*,⁷¹ she will pause these updates until clear messages are prepared by the TFV and [REDACTED] in order not to risk an escalation of the issue and not to unduly raise victims' expectations.

D. Update on implementation of urgent measures

34. The Legal Representative welcomes the confirmation provided by the TFV regarding the fact that “[u]rgent needs can be not only of material character but also of physical or psychological character”.⁷² On the specification provided that “the IDIP programme does not have the same wide variety of choice of trainings and at the level of financial support offered in the Lubanga reparation programme”,⁷³ the Legal Representative recalls that the aim of the IDIP is indeed, and in any case, to provide a temporary and immediate support pending the implementation of the DIP; in the course of which the complement of services not available on an urgent basis will be accessible to all beneficiaries.⁷⁴ Accordingly, the victims beneficiaries of the IDIP will not, and cannot, be excluded from the DIP.

⁷⁰ See *inter alia*, 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)”, *supra* note 20, para. 15. See also 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”, *supra* note 22, para. 22.

⁷¹ See *supra*, para. 27.

⁷² See the Fourth Update Report, *supra* note 1, para. 34.

⁷³ *Ibid.*

⁷⁴ See Annex 1 to the Fourth Update Report, *supra* note 1, para. 49.

35. The Legal Representative further supports in this regard the assertion made by the TFV that “*any kind of assistance provided aims at improving the situation of the victims and to provide the victims with the opportunity for rehabilitation [in opposition to selective short-term assistance]*”.⁷⁵

36. In the same vein, the Legal Representative notes that additional beneficiaries can be taken in foreseeably for the purpose of the IDIP, when new victims beneficiaries are known.⁷⁶ She however underlines her hope that, by then, the DIP will be ready for immediate implementation.

V. CONCLUSION

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

- take note of her present observations;
- order the TFV to provide the Legal Representative with the information mentioned in paragraph 26 *supra*;
- order the TFV, together with the implementing partner, to design a clear communication strategy with regard to victims impacted by its unilateral decision to reject from the IDIP those victims who are already beneficiaries of the *Lubanga* programme; and to clarify that victims impacted by said decision can only be considered to be no longer in urgent needs if they meet the conditions mentioned in paragraph 22 *supra*; and

⁷⁵ See the Fourth Update Report, *supra* note 1, para. 35.

⁷⁶ *Idem*, para. 37.

- authorise the TFV to use the scope of the current contract with [REDACTED] for the purpose of the IDIP, provided that the conditions set out in paragraph 31 *supra* are fulfilled.



Sarah Pellet
Common Legal Representative of the
Former Child soldiers

Dated this 20th day of May 2022

At The Hague, The Netherlands