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**International
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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 Sixth and Seventh Update Reports 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 Sixth and Seventh Update Reports 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 initial draft implementation plan for the urgent needs of 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 On 23 July 2021, following observations and reply, the Chamber approved the IDIP, subject to certain amendments and additional information to be provided by the TFV, and directing the TFV to file bi-monthly progress reports its implementation (‘Decision on the IDIP’).⁵ Reports on the IDIP’s implementation were filed by the TFV on 23 September 2021,⁶ 23 November 2021,⁷ 24 January 2022,⁸ 24 March 2022,⁹ and 24 May 2022.¹⁰

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. 252.

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 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](#).

⁶ 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, 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](#)).

⁷ Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan, 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](#)).

⁸ Trust Fund for Victims’ Third Update Report on the Implementation of the Initial Draft Implementation Plan, 24 January 2022, ICC-01/04-02/06-2741-Conf (a public redacted version was filed on the same date, [ICC-01/04-02/06-2741-Red](#)).

⁹ Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 March 2022, ICC-01/04-02/06-2751-Conf (public redacted version filed on 20 May 2022, [ICC-01/04-02/06-2751-Red](#)) and Annex 1, ICC-01/04-02/06-2751-Conf-Anx1.

¹⁰ Trust Fund for Victims’ Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 May 2022, ICC-01/04-02/06-2767-Conf (public redacted version filed on 20 July 2022, [ICC-01/04-02/06-2767-Red](#)).

3. Following the parties' observations, on 28 October 2021,¹¹ 17 December 2021,¹² 10 February 2022,¹³ 12 May 2022,¹⁴ and 6 July 2022,¹⁵ the Chamber issued decisions on the IDIP's First, Second, Third, Fourth, and Fifth Reports.

4. On 25 July 2022,¹⁶ the TFV submitted its Sixth Update Report on the IDIP's implementation ('Sixth Report'), to which the Defence responded on 5 August 2022 ('Observations on the Sixth Report').¹⁷

5. On 12 September 2022, the Appeals Chamber issued its judgment on the Reparations Order ('Appeals Judgment').¹⁸

6. On 26 September 2022, the TFV submitted its Seventh Update Report on the IDIP's implementation ('Seventh Report'),¹⁹ to which the Defence responded on 7 October 2022 ('Observations on the Seventh Report').²⁰

7. On 25 October 2022, the Chamber issued its Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order" ('Order on the Appeals Judgment's Implementation').²¹

¹¹ 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](#).

¹² 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](#).

¹³ 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](#).

¹⁴ Decision on the TFV's Fourth Update Report on the Implementation of the Initial Draft Implementation Plan ('Decision on the IDIP's Fourth Report'), 12 May 2022, [ICC-01/04-02/06-2761](#).

¹⁵ Decision on the TFV's Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, 6 July 2022, ICC-01/04-02/06-2772-Conf (reclassified as public on 2 November 2022, ICC-01/04-02/06-2772).

¹⁶ Trust Fund for Victims' Sixth Update Report on the Implementation of the Initial Draft Implementation Plan, 25 July 2022 ('Sixth Report'), ICC-01/04-02/06-2775-Conf (public redacted version filed on the same day, [ICC-01/04-02/06-2775-Red](#)).

¹⁷ Observations on behalf of the convicted person on the Trust Fund for Victims' Sixth Update Report on the Implementation of the Initial Draft Implementation Plan ('Observations on the Sixth Report'), 5 August 2022, ICC-01/04-02/06-2780-Conf (public redacted version filed on 26 August 2022, [ICC-01/04-02/06-2780-Red](#)).

¹⁸ Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order" ('Appeals Judgment'), 12 September 2022, [ICC-01/04-02/06-2782](#).

¹⁹ Trust Fund for Victims' Seventh Update Report on the Implementation of the Initial Draft Implementation Plan ('Seventh Report'), 26 September 2022, ICC-01/04-02/06-2783-Conf (public redacted version filed on 25 October 2022, [ICC-01/04-02/06-2783-Red](#)).

²⁰ Observations on behalf of the convicted person on the Trust Fund for Victims' Seventh Update Report on the Implementation of the Initial Draft Implementation Plan ('Observations on the Seventh Report'), 7 October 2022, ICC-01/04-02/06-2785-Conf.

²¹ Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order" ('Order on the Appeals Judgment Implementation'), 25 October 2022, [ICC-01/04-02/06-2786](#).

II. SUBMISSIONS AND ANALYSIS

8. At the outset, the Chamber recalls that in its Order on the Appeals Judgment's Implementation, having already considered the Sixth and Seventh Reports and the Defence's Observations, it ruled on several matters relevant to the IDIP, as necessary to proceed with the implementation of the Appeals Judgment.²² In particular, the Chamber reiterates that: i) the IDIP is – and continues to be – fully operational, as it has not been affected by the Appeals Judgment;²³ ii) the applications of the 69 victims already found eligible for the IDIP purposes, will be included as part of the sample of applications to be considered and ruled upon by the Chamber;²⁴ iii) unless otherwise decided by the Chamber, these 69 victims should continue to benefit from the IDIP programmes.²⁵

9. As noted in the Order on the Appeals Judgment's Implementation,²⁶ the Chamber rejects the Defence's submission that the Seventh Report, and the IDIP as a whole, 'is based on a flawed premise' as '[t]he IDIP and the measures taken in its implementation stem directly from the Reparations Order, which has been reversed'.²⁷ In effect, the Chamber reiterates that the Appeals Judgment only partially reversed the Reparations Order and remanded it for the Chamber to address specific issues,²⁸ which do not include the IDIP. The Appeals Judgment itself acknowledged that the Reparations Order:

[...] represented the start of the implementation process of the award for reparations, rather than an aspect of the proceedings that has remained static and unchanged since that decision was issued. The TFV has already

²² Order on the Appeals Judgment Implementation, [ICC-01/04-02/06-2786](#), paras 17-21.

²³ Order on the Appeals Judgment Implementation, [ICC-01/04-02/06-2786](#), paras 17.

²⁴ Order on the Appeals Judgment Implementation, [ICC-01/04-02/06-2786](#), para. 20.

²⁵ Order on the Appeals Judgment Implementation, [ICC-01/04-02/06-2786](#), para. 21.

²⁶ Order on the Appeals Judgment Implementation, [ICC-01/04-02/06-2786](#), paras 17-18.

²⁷ Observations on the Seventh Report, ICC-01/04-02/06-2785-Conf, paras 14-17.

²⁸ See Appeals Judgment, [ICC-01/04-02/06-2782](#), *inter alia*, p. 11, number 1, noting that the Reparations Order was '*partially reversed* to the extent that Trial Chamber VI failed to (i) make any appropriate determination in relation to the number of potentially eligible or actual victims of the award and/or to provide a reasoned decision in relation to its conclusion about that number; (ii) provide an appropriate calculation, or set out sufficient reasoning, for the amount of the monetary award against Mr Ntaganda; (iii) assess and rule upon victims' applications for reparations; (iv) lay out at least the most fundamental parameters of a procedure for the Trust Fund for Victims to carry out the eligibility assessment; and (v) provide reasons in relation to the concept of transgenerational harm and the evidentiary guidance to establish such harm, the assessment of harm concerning the health centre in Sayo and the breaks in the chain of causation when establishing harm caused by the destruction of that health centre, and the presumption of physical harm for victims of the attacks.' [emphasis added]; para 750, stressing that the Appeals Chamber deemed 'appropriate to *reverse the findings* of the Trial Chamber on the *mentioned matters*' [emphasis added]; para. 757, noting that '[i]n light of the findings of the Appeals Chamber that require *fundamental aspects* of the Impugned Decision to be reversed, the objective at this stage of the proceedings must be to *correct the errors identified* in a way that both enables the order for reparations to be based upon an appropriately solid foundation and that causes *minimum disruption* to the overall reparation process.' [emphasis added]; para. 759, noting that the Reparations Order was '*partially reversed*' [emphasis added].

undertaken steps in relation to the implementation of the order for reparations; and the parties are able to make submissions in relation to those further developments during the course of the implementation process. Those developments are *outside the scope of the present appeal* [...].²⁹

10. The Chamber further notes that the Defence's submissions regarding whether the TFV has the authority to continue conducting eligibility assessments of additional IDIP's victims,³⁰ is dealt with in the present decision. In addition, the submissions regarding the need to conduct *de novo* the eligibility assessment of the 69 victims already found eligible,³¹ have already been addressed as the Chamber has included them as part of the sample of applications to be assessed and ruled upon by the Chamber. Consequently, the Chamber hereby also rejects, as premature, the Defence's suggestion that the TFV should ask for the Chamber's authorisation, on an extraordinary basis, to include these 69 victims as beneficiaries of the TFV's assistance programme.³²

11. In light of the above, in what follows, the Chamber will consider the remainder of matters raised in the Sixth and Seventh Reports and the Defence's Observations, which relate to (i) the impact of the security situation on the IDIP's implementation; (ii) the eligibility assessment and information to be provided to the Defence about additional victims to benefit from the IDIP; (iii) training of implementing partners' personnel and outreach; and (iv) the timing for the TFV's submission of update reports.

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

12. In the Sixth and Seventh Reports the TFV reiterates that 'the security situation in Ituri has not improved' and that this 'continues to have an impact on the implementation of the IDIP, in particular on the ability of the Trust Fund through its implementing partners to locate and contact victims and ultimately to ensure provision of services'.³³

13. In its Observations on the Sixth Report, the Defence 'deplores the fact that the information provided by the TFV regarding the security situation is both slim and devoid of any details' and that it 'continue to be addressed solely from the perspective of its impact on

²⁹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para 755 [emphasis added].

³⁰ Observations on the Seventh Report, ICC-01/04-02/06-2785-Conf, paras 18-23.

³¹ Observations on the Seventh Report, ICC-01/04-02/06-2785-Conf, paras 24-29.

³² Observations on the Seventh Report, ICC-01/04-02/06-2785-Conf, paras 30-32.

³³ Sixth Report, [ICC-01/04-02/06-2775-Red](#), paras 12-13; Seventh Report, [ICC-01/04-02/06-2783-Red](#), paras 13-14.

the ability to locate victims whereas its impact on the ground is much broader in scope and importance'.³⁴

14. The Chamber notes that, in its Decision on the IDIP's Fourth Report, it stressed the TFV's submissions that the impact of the security situation on the IDIP's implementation *primarily* concerned the ability of the TFV and its implementing partners to locate and contact victims and ultimately to provide them with services.³⁵ In light of the above, and considering the Defence's submissions, the Chamber instructs the TFV to provide further details in its next Report, addressing in particular the issue as to whether the security situation indeed has a 'much broader impact in scope and importance' on the IDIP's implementation, as argued by the Defence.

b) Eligibility assessments of additional victims and information to be provided to the Defence

15. In the Seventh Report, the TFV informs that it will continue with the eligibility assessment of any additional participating victims referred to it by the victims' common legal representatives ('CLRs').³⁶ In addition, the TFV indicates that it has started to liaise with the Registry, to address the situation of non-participating victims who had been interviewed by the Registry in 2021 and to determine a process on how to best identify those with urgent needs with the aim of integrating them into the IDIP programme.³⁷ As noted above, in its Observations on the Seventh Report, the Defence submits that the TFV has no authority to continue conducting eligibility assessments, challenging the validity of the process implemented by the TFV prior to the Appeals Judgment.³⁸ The Defence submits that, in light of the Appeals Judgment, the Chamber must first rule on either all applications, or a representative sample, before it can set the eligibility procedure.³⁹

16. The Chamber recalls that the Appeals Judgment indicates that in considering the matter of the number of beneficiaries and the amount of the award, the Chamber should take at least a sample of applications into account.⁴⁰ The Appeals Chamber determined that ruling on applications from a representative sample, would allow the Chamber to extrapolate the makeup of the entire group of beneficiaries, which is relevant to the ultimate determination of the

³⁴ Observations on Sixth Report, [ICC-01/04-02/06-2780-Red](#), para. 7.

³⁵ Decision on the IDIP's Fourth Report, [ICC-01/04-02/06-2761](#), para. 28 [emphasis added].

³⁶ Seventh Report, [ICC-01/04-02/06-2783-Red](#), para. 22.

³⁷ Seventh Report, [ICC-01/04-02/06-2783-Red](#), para. 23.

³⁸ Observations on the Seventh Report, [ICC-01/04-02/06-2785-Conf](#), para. 19.

³⁹ Observations on the Seventh Report, [ICC-01/04-02/06-2785-Conf](#), para. 22.

⁴⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 346, footnote 732.

amount of the award.⁴¹ The Appeals Chamber further held that, adding an examination of at least a sample of applications to other evidence in the case file, 'would strengthen the basis for the award'.⁴²

17. Consequently, as detailed in the Order on the Appeals Judgment's Implementation, the Chamber will rule on a limited but representative sample composed of applications for participation/joint forms/long forms, additional information and/or supporting documentation of (i) all 69 victims that have so far been found eligible to benefit from the IDIP by the TFV; and (ii) a randomly selected group from the total universe of victims,⁴³ amounting to 5% of the victims of the attacks and a 5% of the victims of crimes against child soldiers.⁴⁴ The Chamber will assess and rule on the above sample, after having given the parties the opportunity to make submissions on the applications and other matters relevant for setting the liability.⁴⁵ The Chamber will therefore set the award on liability, based on its analysis of the sample, in addition to considering the other evidence and submissions in the case record.⁴⁶

18. The Chamber reiterates that, as noted in the Order on the Appeals Judgment's Implementation, the conviction of Mr Ntaganda is final and thus his liability to repair the harm caused to the victims of the crimes for which he was convicted is under no discussion.⁴⁷ The fact that there are numerous victims rightfully entitled to reparations in this case is similarly an indisputable reality. Within this context, the Appeals Judgment remanded the Reparations Order for this Chamber to decide anew, *inter alia*, on the *amount* of Mr Ntaganda's liability, while stressing the need to ensure that reparations to victims are awarded as expeditiously as possible.⁴⁸

19. In light of the above, the Chamber underlines that the inclusion of any additional victim into the IDIP will have no impact on the total amount of the liability award. In effect, the amount of the liability award will be calculated, as explained above, based on the sample and

⁴¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 341.

⁴² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 346.

⁴³ As noted in the Order on the Appeals Judgment's Implementation, the universe of victims includes: (i) all victims who participated in the trial proceedings, including those found not to be eligible by the Registry, but excluding the individuals who also qualify as victims in the *Lubanga* case and all 69 victims already found eligible for the IDIP purposes, as the later will be necessarily assessed and not randomly selected; and (ii) all non-participating victims who have already submitted long forms to the Registry within the context of the mapping exercise. Order on the Appeals Judgment's Implementation, [ICC-01/04-02/06-2786](#), paras 26-27 and footnote 67.

⁴⁴ Order on the Appeals Judgment's Implementation, [ICC-01/04-02/06-2786](#), para. 34(b).

⁴⁵ Order on the Appeals Judgment's Implementation, [ICC-01/04-02/06-2786](#), paras 9, 34 (g)-(j), 38, 40, 42.

⁴⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 346, footnote 732.

⁴⁷ Order on the Appeals Judgment's Implementation, [ICC-01/04-02/06-2786](#), para. 18.

⁴⁸ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 756, 758.

other evidence and submissions in the case record, calculation that will not be impacted any additional victims that may be integrated into the IDIP programmes. In addition, the total liability award is being calculated with full respect to Mr Ntaganda's rights and interests, who has had and continues to be having the possibility to make submissions on all aspects pertaining the sample and all other evidence and submissions in the case file. Accordingly, and in line with previous Appeals Chamber's jurisprudence,⁴⁹ the Chamber determines that the TFV will remain responsible for the administrative decisions on the eligibility of additional victims for the purposes of the IDIP, which shall be taken without the Defence's involvement.⁵⁰

20. However, the Chamber deems it appropriate to provide further instructions on the matter, in order to safeguard Mr Ntaganda's rights and interests and considering that one of the issues on remand relates to the fact that the Chamber 'ought already to have set out at least the most fundamental parameters' of the procedure for the TFV to carry out the eligibility assessment;⁵¹ that 'the outcome of any such screening must be judicially approved' by the Chamber;⁵² and that those 'who the TFV finds not to be eligible should be able to challenge the TFV's findings before the Trial Chamber'.⁵³

21. Regarding the parameters of the procedure for the TFV to carry out the eligibility assessments, the Chamber notes that the exact details of the methodology applied when assessing and ruling upon the sample assembled for the purpose of setting Mr Ntaganda's liability will be detailed by the Chamber when ruling on the sample.⁵⁴ Taking into account, however, that the IDIP is an interim and emergency measure aimed at addressing the *most urgent needs of vulnerable victims requiring urgent assistance*, the Chamber considers appropriate that the TFV continues applying the same eligibility assessment and urgent

⁴⁹ Appeals Chamber, *The Prosecutor vs. Ahmad Al Faqi Al Mahdi*, Judgment on the appeal of the victims against the "Reparations Order", 8 March 2018, [ICC-01/12-01/15-259-Red2](#), paras 88, 93, and 95; Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, 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. 256.

⁵⁰ For a similar approach, see, Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations ('Lubanga Decision on New Applicants'), 7 February 2019, [ICC-01/04-01/06-3440-tENG](#), paras 26-27.

⁵¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 387.

⁵² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 387.

⁵³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 387.

⁵⁴ As noted in the *Lubanga* case, the methodology was devised by the relevant Chamber when assessing the dossiers contained in the sample, see Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Corrected version of the "Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable" ('Lubanga Decision on the Size of Reparations Award'), 21 December 2017, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 38.

screening as already approved by the Chamber.⁵⁵ Nevertheless, considering the issues on remand in light of the Appeals Judgment,⁵⁶ the Chamber instructs the TFV, until otherwise decided, not to include for the IDIP purposes any victims claiming to have suffered *only* (i) transgenerational harm; or (ii) harm as a result of the destruction of the health centre in Sayo. Similarly, the TFV shall not rely on the Reparations Order's presumption of physical harm for victims of the attacks.

22. The Chamber further stresses that the procedure for the TFV to carry out eligibility and urgency assessments was approved by the Chamber after having (i) considered the parties' submissions; and (ii) taken into account that the eligibility screening had been devised by the TFV following closely: a. the parameters of eligibility as established by Trial Chamber VI in the *Ntaganda* case;⁵⁷ and b. the methodology for the screening of victims as undertaken by this Chamber in its previous composition in the *Lubanga*⁵⁸ and the *Katanga*⁵⁹ cases, while adjusting what was as required to the particularities of the present case. When ruling on the sample, this Chamber also intends to follow, adjusting it as required to the present case, the methodology applied in the *Lubanga* and *Katanga* cases.

23. In addition, in light of the issues on remand, the Chamber notes that, from now on, it will also issue final decisions on the approval of the applicants determined to be eligible for the IDIP by the TFV. To this end, the TFV is hereby directed to submit to the Chamber only, together with its periodic update report, its administrative decisions on applications of additional victims, with all the supporting documentation taken into account when ruling on the victims' eligibility. Only upon the Chamber's decisions victims will be integrated into the IDIP programmes.

24. Similarly, in light of the issues on remand, applicants determined not to be eligible for the IDIP purposes by the TFV shall be able to challenge such determination before the Chamber. For that purpose, where the TFV refuses an application for the IDIP purposes, the applicant shall be informed of his or her rights in an administrative decision, which shall also be notified to the Chamber. Notification shall include all the relevant considerations which led

⁵⁵ Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), paras 15-24; Decision on the IDIP's Fourth Report, [ICC-01/04-02/06-2761](#), paras 19-27 .

⁵⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 470-497, 530-550, and 698-705.

⁵⁷ Reparations Order, [ICC-01/04-02/06-2659](#), paras 105-128; Decision on issues raised in the Registry's First Report on Reparations, 15 December 2021, [ICC-01/04-02/06-2630](#).

⁵⁸ *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#).

⁵⁹ Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, [ICC-01/04-01/07-3728-tENG](#).

to the refusal. The refusal and the considerations shall be appended to the periodic update reports. In the event of a refusal, the applicant shall file, through his or her legal representative, and within 30 days of being notified of the refusal, a request for the Chamber to review the TFV's administrative decision. The request shall set out the reasons why the TFV is considered to have erred in determining that the applicant is not eligible for the IDIP purposes. Where several applications are rejected for the same reasons, the legal representatives are invited to file a consolidated request for review, where possible. Accordingly, it is for the legal representatives to act diligently and promptly.⁶⁰

c) Training of implementing partners' personnel and outreach

25. In its Sixth Report, the TFV indicates that '[i]n order to receive proper assistance with the identification of non-participating victims of the attacks with urgent needs', it will provide training to the implementing partner's staff.⁶¹ In its Observations on the Sixth Report, while generally welcoming training of implementing partner's personnel, the Defence notes that such training 'should not and cannot be' for the implementing partners to identify new potential victims, as their role should be limited to 'assist with the identification' and should not be extended.⁶² The Chamber reiterates that, as previously ruled upon, the role of implementing partners in the eligibility assessment and urgency screening should indeed be 'limited to supporting the TFV in gathering the relevant information'.⁶³

26. Regarding outreach, the TFV informs in its Sixth Report that radio messages are broadcasted reaching victims communities.⁶⁴ In its Observations on the Sixth Report, the Defence submits that '[c]onsidering the potential damage both to victims as well as to the process itself if the wrong message is broadcasted, or broadcasted in the wrong communities' the TFV should be instructed to disclose the content of these messages and as well as the identity of the targeted communities, to the Chamber and the parties.⁶⁵ The Chamber notes that the TFV had been instructed to organise outreach and information campaigns in coordination with the Registry – including the Public Information and Outreach Section, the Victims Participation and Reparations Section, and the Field Office, as necessary – taking at the same time all required mitigation measures to ensure that victims and their families have access to

⁶⁰ For a similar approach, see *Lubanga* Decision on New Applicants, [ICC-01/04-01/06-3440-tENG](#), paras 37-38.

⁶¹ Sixth Report, [ICC-01/04-02/06-2775-Red](#), para. 27.

⁶² Observations on Sixth Report, [ICC-01/04-02/06-2780-Red](#), para. 8.

⁶³ Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), para. 21.

⁶⁴ Sixth Report, [ICC-01/04-02/06-2775-Red](#), para. 33.

⁶⁵ Observations on Sixth Report, [ICC-01/04-02/06-2780-Red](#), para. 9.

adequate information and communication throughout the implementation process.⁶⁶ Although there is no reason for the Chamber to doubt that the TFV and the Registry have indeed taken all necessary measures to ensure that adequate messages are broadcasted to the proper communities, the Chamber encourages the TFV to provide further details to the Chamber and the parties on the content and target communities of the broadcasted messages.

27. Lastly, the Chamber welcomes the TFV's initiative to contact the CLR's and the Country Office to consult with them on the messages to be provided to the communities and victims in Ituri, in relation to the effects of the Appeals Judgment on the IDIP.⁶⁷ As to the Defence's involvement,⁶⁸ the Chamber encourages the TFV to include both parties in any consultation process, but reiterates that the dissemination to any messages to the victims and their families is an exclusive responsibility of the TFV and the Registry.

d) Timing of TFV's IDIP update reports

28. In the Seventh Report, the TFV requests the Chamber to submit update reports every three months instead of every two months as it is currently the practice.⁶⁹ The TFV submits that reporting every three months: (i) is appropriate to strike the balance between ensuring the efficient use of the TFV's resources and permitting oversight of the Chamber;⁷⁰ (ii) would align the TFV's reporting to the Chamber with the implementing partner's reporting to the TFV, leading thus to more efficient reporting; (iii) would not have any adverse impact on the proper implementation of the IDIP or on the Chamber's monitoring of the IDIP; and (iv) would allow for a proper transition to the reporting regarding the implementation of the overall Reparation Order.⁷¹ To this end, the TFV requests to submit update reports on the last day of the months of February, May, August and November of each calendar year, which would enable it to include in the update reports more up to date and substantial information on the progress achieved.⁷²

29. In its Observations on the Seventh Report, the Defence submits that '[o]nce a new reparations order is in place, a new IDIP has been approved, and the re-assessment of the 69 individuals has been completed', it does not object to the TFV submitting reports every three

⁶⁶ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 44.

⁶⁷ Seventh Report, [ICC-01/04-02/06-2783-Red](#), para. 30.

⁶⁸ Observations on the Seventh Report, ICC-01/04-02/06-2785-Conf, paras 8, 33-34.

⁶⁹ Seventh Report, [ICC-01/04-02/06-2783-Red](#), paras 31-37.

⁷⁰ Seventh Report, [ICC-01/04-02/06-2783-Red](#), para. 32.

⁷¹ Seventh Report, [ICC-01/04-02/06-2783-Red](#), paras 34.

⁷² Seventh Report, [ICC-01/04-02/06-2783-Red](#), para. 35.

months to enable more efficient reporting.⁷³ However, until these procedural steps have been completed, the Defence submits that it is in the interests of the Chamber and the parties and participants to be informed every two months, as per prior practice, about the steps being taken to shift the reparations process to the version required by the Appeals Chamber.⁷⁴

30. Considering the rulings in this Decision, particularly taking into account that any final decision on the approval of the applicants determined to be eligible for the IDIP purposes shall be taken by the Chamber, before the victims can be integrated into the programmes, in order to proceed as expeditiously as possible and with full respect for the rights of both the victims and the convicted person, the Chamber does not deem it appropriate to reduce the TFV's reporting timeline.

e) **Publicity**

31. Finally, in line with its previous instructions,⁷⁵ the Chamber directs 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 within five days from the notification of the present Decision. The Chamber reiterates that it expects public redacted versions of confidential documents to be filed as expeditiously as possible, preferably simultaneously.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

INSTRUCTS the TFV to provide in its next Report further details on the scope and importance of the security situation's impact on the IDIP's implementation;

DETERMINES that the TFV will remain responsible for the administrative decisions on the eligibility of additional victims for the purposes of the IDIP, which shall be taken without the Defence's involvement;

INSTRUCTS the TFV to continue applying the same eligibility assessment and urgent screening as already approved by the Chamber;

⁷³ Observations on the Seventh Report, ICC-01/04-02/06-2785-Conf, para. 35.

⁷⁴ Observations on the Seventh Report, ICC-01/04-02/06-2785-Conf, para. 35.

⁷⁵ Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), para. 29.

INSTRUCTS the TFV not to include for the IDIP purposes any victims claiming to have suffered *only* (i) transgenerational harm; or (ii) harm as a result of the destruction of the health centre in Sayo;

INSTRUCTS the TFV not to rely on the Reparations Order's presumption of physical harm for victims of the attacks;

INSTRUCTS the TFV to submit to the Chamber only, together with its periodic update report, its administrative decisions on applications of additional victims, with all the supporting documentation taken into account when ruling on the victims' eligibility, before integrating any additional victims into the IDIP programmes;

INSTRUCTS the TFV to notify applicants deemed not to be eligible for the IDIP purposes in accordance to paragraph 24 above;

ENCOURAGES the TFV to provide further details on the content and target communities of the broadcasted messages for outreach purposes and include both parties in any consultation process;

REJECTS the TFV request to submit IDIP update reports every three months;

DIRECTS 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 within five days from the notification of the present Decision.

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 Wednesday, 16 November 2022

At The Hague, The Netherlands