

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/04-02/06**

Date: **13 January 2023**

**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 Eighth Update Report on the Implementation of the Initial Draft  
Implementation Plan**

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

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Mr Philipp Ambach

**Trust Fund for Victims**

Ms Franziska Eckelmans

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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 Eighth Update Report on the Implementation of the Initial Draft Implementation Plan (the ‘Decision’).

## I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI delivered the Reparations Order,<sup>1</sup> *inter alia*, directing the Trust Fund for Victims (‘TFV’) to submit an initial draft implementation plan to deal with the urgent needs of priority victims.<sup>2</sup>
2. On 8 June 2021, the TFV submitted the initial draft implementation plan with focus on priority victims (the ‘IDIP’).<sup>3</sup>
3. 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 directed the TFV to file bi-monthly progress reports its implementation (‘Decision on the IDIP’).<sup>4</sup> Reports on the IDIP’s implementation were filed by the TFV on 23 September 2021,<sup>5</sup> 23 November 2021,<sup>6</sup> 24 January 2022,<sup>7</sup> 24 March 2022,<sup>8</sup> 24 May 2022,<sup>9</sup> 25 July 2022,<sup>10</sup> and 26 September 2022.<sup>11</sup>

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<sup>1</sup> Reparations Order (‘Reparations Order’), 8 March 2021, [ICC-01/04-02/06-2659](#).

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

<sup>3</sup> 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](#)).

<sup>4</sup> Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#).

<sup>5</sup> 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 (‘First Report’), 23 September 2021, ICC-01/04-02/06-2710-Conf (public version 7 October 2021, [ICC-01/04-02/06-2710-Red](#)).

<sup>6</sup> 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 (public redacted 28 December 2021, [ICC-01/04-02/06-2723-Red](#)).

<sup>7</sup> 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 (public version same date, [ICC-01/04-02/06-2741-Red](#)).

<sup>8</sup> 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 version 20 May 2022, [ICC-01/04-02/06-2751-Red](#)) and Annex 1, ICC-01/04-02/06-2751-Conf-Anx1.

<sup>9</sup> 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 version 20 July 2022, [ICC-01/04-02/06-2767-Red](#)).

<sup>10</sup> Trust Fund for Victims’ Sixth Update Report on the Implementation of the Initial Draft Implementation Plan, 25 July 2022, ICC-01/04-02/06-2775-Conf (public version same date, [ICC-01/04-02/06-2775-Red](#)).

<sup>11</sup> Trust Fund for Victims’ Seventh Update Report on the Implementation of the Initial Draft Implementation Plan, 26 September 2022, ICC-01/04-02/06-2783-Conf (public version 25 October 2022, [ICC-01/04-02/06-2783-Red](#)).

4. Following the parties' observations, on 28 October 2021,<sup>12</sup> 17 December 2021,<sup>13</sup> 10 February 2022,<sup>14</sup> 12 May 2022,<sup>15</sup> 6 July 2022,<sup>16</sup> and 16 November 2022,<sup>17</sup> the Chamber issued decisions on the IDIP's First, Second, Third, Fourth, Fifth, Sixth and Seventh Reports.

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

6. On 28 November 2022, the TFV filed its Eighth Update Report on the IDIP's implementation ('Eighth Report').<sup>19</sup>

7. On 9 December 2022, the Defence submitted its observations on the Eighth Report ('Defence's Observations').<sup>20</sup> The Legal Representatives of Victims ('LRVs') did not file observations.

## II. SUBMISSIONS AND ANALYSIS

8. Taking into account the context of the Eighth Report and the Defence's Observations, the Chamber will address hereby the following issues pertaining to the IDIP's implementation: (i) security situation; (ii) further eligibility assessments; (iii) outreach measures and other issues; and (iv) publicity.

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<sup>12</sup> 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 First Report'), 28 October 2021, [ICC-01/04-02/06-2718-Red](#).

<sup>13</sup> 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](#).

<sup>14</sup> 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](#).

<sup>15</sup> Decision on the TFV's Fourth Update Report on the Implementation of the Initial Draft Implementation Plan ('Decision on the Fourth Report'), 12 May 2022, [ICC-01/04-02/06-2761](#).

<sup>16</sup> 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 2 November 2022, ICC-01/04-02/06-2772).

<sup>17</sup> Decision on the TFV's Sixth and Seventh Update Reports on the Implementation of the Initial Draft Implementation Plan ('Decision on the Sixth and Seventh Report'), 16 November 2022, ICC-01/04-02/06-2792-Conf (reclassified as public 24 November 2022, [ICC-01/04-02/06-2792](#)).

<sup>18</sup> 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](#).

<sup>19</sup> Trust Fund for Victims' Eighth Update Report on the Implementation of the Initial Draft Implementation Plan ('Eighth Report'), 28 November 2022, ICC-01/04-02/06-2796-Conf (public redacted version filed on same date [ICC-01/02-02-06-2796-Red](#)).

<sup>20</sup> Observations on behalf of the convicted person on the Trust Fund for Victims' Eighth Update Report on the Implementation of the Initial Draft Implementation Plan ('Defence Observations'), 9 December 2022, ICC-01/04-02/06-2802-Conf.

### a) Security situation

9. In its Eighth Report, the TFV reiterates that the security situation remains ‘volatile and unpredictable.’<sup>21</sup> However, the TFV reassures the Chamber that the security situation ‘has not significantly evolved to a point that allows it to provide further details on [its] scope and importance’.<sup>22</sup> In particular, the TFV reports increased instability in the Nyakunde and Kilo axes, Bambu, Mongbwalu outskirts, and Goma (connecting airport).<sup>23</sup> Nonetheless, the TFV reiterates that the situation has *not prevented* its implementing partners from monitoring IDIP beneficiaries very closely and implement reparations, due to the extent to which they are rooted in the localities where the beneficiaries reside.<sup>24</sup> In particular, the TFV explains that the implementing partners have the ability to easily adapt to the rapidly changing and highly unpredictable security situation, because their staff is based within the affected communities and are thus best placed to assess when it is feasible to proceed with the implementation of reparation measures. Nevertheless, the TFV reaffirms its commitment to inform the Chamber in the event that there is a variation in the impact of the security situation on the IDIP’s implementation.<sup>25</sup>

10. In the argument of the Defence, the TFV has yet to address the Chamber’s request for further details on the scope and importance of the impact of the security situation on the IDIP’s implementation.<sup>26</sup> In addition, the Defence reiterates that the TFV has not provided substantive information to address the Defence’s ‘genuine concerns’ regarding the risk of ‘potential beneficiaries being involved in the events undermining the security situation’ and possible ‘tensions, animosity and jealousy among affected communities’.<sup>27</sup>

11. The Defence submits that, despite the TFV having acknowledged the risk that IDIP beneficiaries could be involved in events undermining the security situation, it has not done much and ‘its sole objective appears to be to implement and award reparations to potential beneficiaries in the abstract’.<sup>28</sup> Within this context, the Defence reiterates its concern for the ‘potential devastating consequences [...] of awarding reparations to potential beneficiaries belonging to the Lendu ethnic group, either affiliated to former Lendu combatants or the

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<sup>21</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), para. 18.

<sup>22</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), para. 17.

<sup>23</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), paras 18, 20.

<sup>24</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), para. 18.

<sup>25</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), para. 19.

<sup>26</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para 6.

<sup>27</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para. 7.

<sup>28</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, paras 8-9.

CODECO armed militia, or worse, personally involved in the events undermining the security situation'.<sup>29</sup> Going even further, the Defence submits that the risk 'of financing militias responsible for the dire security situation through reparations awards, is real'.<sup>30</sup>

12. Accordingly, the Defence submits that the TFV should be ordered to obtain and share with the Chamber and the parties a long list of additional information that would require the TFV to explore, in detail, any potential linkage between the victims and CODECO or other armed actors, mostly based on the victims' ethnicity.<sup>31</sup> This assessment should serve, according to the Defence, to develop an eligibility assessment that will allow to identify whether potential beneficiaries should be disqualified from obtaining reparations 'due to their affiliation to an armed group or involvement in the events undermining the security situation'.<sup>32</sup> The Defence submits that this approach would comply with the do no harm principle.<sup>33</sup>

13. In its Decision on the Sixth and Seventh IDIP Reports, the Chamber instructed 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'.<sup>34</sup> The Chamber is satisfied with the information provided by the TFV, which reinforces its previous submissions that the security situation *does not* currently have a broader impact on the IDIP's implementation, beyond the difficulties to locate and contact victims and ensure provision of services.<sup>35</sup> The Chamber is further reassured by the TFV's commitment to keep the Chamber informed of any variation on the impact of the security situation on the IDIPs' implementation.

14. Regarding the Defence's other claims, particularly the concerning – although wholly unfounded – allegation that the IDIP's implementation may run the 'real' risk of 'financing militias responsible for the dire security situation',<sup>36</sup> the Chamber emphasises that such risk is close to non-existent in this case. In effect, in light of the type and modalities of reparations awarded in the case – collective reparations with individualised components<sup>37</sup> – the service

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<sup>29</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para. 9.

<sup>30</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para. 10.

<sup>31</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para. 11.

<sup>32</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, paras 11-13.

<sup>33</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para. 13.

<sup>34</sup> Decision on the Sixth and Seventh Report, [ICC-01/04-02/06-2792](#), para. 14.

<sup>35</sup> Decision on the Fourth Report, [ICC-01/04-02/06-2761](#), para. 28; Sixth Report, [ICC-01/04-02/06-2775-Red](#), paras 12-13; Seventh Report, [ICC-01/04-02/06-2783-Red](#), paras 13-14.

<sup>36</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para. 10.

<sup>37</sup> The Chamber underlines that the types and modalities of reparations awarded in the case have not been affected by the Appeals Judgment, which remanded the Reparations Order to for Chamber to, *inter alia*, determine how

package that the Chamber approved for the victims to receive within the IDIP's context addresses the victims' harm through the provision of services, as opposed to cash payments. Such services are directed at the victims' individual rehabilitation of their physical, psychological and/or socio-economic harm.<sup>38</sup>

15. In the view of the Chamber, no risk of funds being deviated to other activities may exist when vulnerable victims with urgent needs are provided directly, and depending on the specific harm they have suffered as a consequence of the crimes for which Mr Ntaganda was convicted, with psychological and medical care, schooling or vocational training. The only possible cash payments these victims may receive within the IDIP context may be limited to (i) possible subsistence allowances that could be granted when required to address urgent needs of material character of priority victims under financial hardship that endanger their lives;<sup>39</sup> (ii) possible schooling support or microfinancing of IGAs,<sup>40</sup> which are both subject to close monitoring of effective implementation by the TFV and its implementing partners.<sup>41</sup> The Chamber is satisfied that, in both cases, the risk of funds being deviated is extremely limited and almost negligible. In light of the above and reiterating once again that the IDIP is an interim and emergency measure aimed at addressing the most urgent needs of vulnerable victims requiring urgent assistance, the Chamber rejects the Defence's suggestion that the IDIP's implementation in this case may have 'potential devastating consequences'.

16. In light of the Defence's submissions,<sup>42</sup> the Chamber also deems necessary to clearly distinguish the Defence's unfounded allegations from the concerns previously raised by the LRVs. In effect, in a previous submission, the Common Legal Representative of the Victims of the Attacks noted the need of developing a mitigation strategy in order to address the risk of possible tensions among affected communities and co-habiting groups which could arise, for instance, because only few persons would benefit from the IDIP.<sup>43</sup> The Defence, however,

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many victims are likely to come forward to benefit from reparations in the present case, precisely considering the individual component of the collective award. *See* Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 157-174.

<sup>38</sup> First Report, [ICC-01/04-02/06-2710-Red](#), paras 18-21; 31-34.

<sup>39</sup> Decision on the Fourth Report, [ICC-01/04-02/06-2761](#), para. 10.

<sup>40</sup> First Report, [ICC-01/04-02/06-2710-Red](#), paras 20, 34.

<sup>41</sup> As recently noted in the *Lubanga* case, the TFV is closely monitoring the effective implementation of the service-based reparations in the DRC, introducing additional performance indicators, trainings and awareness raising campaigns, *see* Public Redacted Version of Nineteenth 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, 28 November 2022, [ICC-01/04-01/06-3544-Red](#).

<sup>42</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para. 13.

<sup>43</sup> Public Redacted Version of 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"', ICC-01/04-02/06-2724-Conf, dated 6 December 2021, 7 January 2022, [ICC-01/04-02/06-2724-Red](#), para. 17.



introduces unsupported generalised affirmations that, in the current security context, can be considered reckless and may reinforce stigmatisation and discrimination against some groups of victims. Contrary to the Defence's argument, the Chamber considers that these allegations go directly against the reparations principles upheld in this case, particularly the principles of dignity, non-discrimination, non-stigmatisation, victim-centred approach, and do no harm.<sup>44</sup>

17. The Chamber underlines that at this stage of the reparation proceedings, the Chamber, the parties, participants, and the Registry should focus their attention and resources in devising the most efficient system for repairing the harm caused to the victims of the crimes for which Mr Ntaganda has been convicted, with due respect to the rights of the victims and the convicted person.

18. In case the Defence has concrete and verifiable information about specific cases of victims deviating reparations funds to other activities, it should bring the issue to the Chamber's and the TFV's immediate attention. Any other issue related to the groups involved in the current conflict situation should be brought to the attention of the Office of the Prosecutor and to the relevant local authorities.

#### **b) Further Eligibility Assessments**

19. The TFV reports that it has taken good note of the Chamber's instructions in relation to the IDIP's urgency screening and eligibility determinations.<sup>45</sup> The TFV also reports that no new victims have been assessed during the reporting period and that it stands ready to receive new transmissions from the LRVs and Registry.<sup>46</sup>

20. In its observations, the Defence reiterates its complaints for being 'isolated from the process *at this stage*' and argues that it should, at a minimum, be informed of any further eligibility determinations made by the TFV and have access to the supporting documents.<sup>47</sup> The Defence further observes that the IDIP should not be used to determine the eligibility of potential beneficiaries who do not meet the urgency and/or priority requirements.<sup>48</sup>

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<sup>44</sup> The Reparations Order developed in detail the content of these set of principles, *see* Reparations Order, [ICC-01/04-02/06-2659](#), paras 41-52. See also, Appeals Judgement, [ICC-01/04-02/06-2782](#), paras 441-452.

<sup>45</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), paras 21-24, referring to Decision on the Sixth and Seventh Reports, [ICC-01/04-02/06-2792](#), paras 21-24.

<sup>46</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), paras 25-26.

<sup>47</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, paras 15-16.

<sup>48</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para. 17.



21. Regarding the Defence's involvement in the eligibility determinations, the Chamber reiterates its reasoning as detailed in the Decision on the Sixth and Seventh IDIP's Reports.<sup>49</sup> The Chamber further notes that the Defence will indeed be informed about the Chamber's final decisions on the approval of the applicants determined to be eligible for the IDIP by the TFV. Similarly, the Chamber will certainly ensure that only vulnerable victims requiring urgent assistance will be considered eligible to take part of the IDIP, as an interim and emergency measure aimed at addressing their urgent needs, pending the development and implementation of the full reparations in the case.

22. In order to proceed as expeditiously as possible and provide prompt rehabilitation to priority victims in need to receive immediate physical and/or psychological medical care, and/or support due to financial hardship that endangers the person's life, the Chamber instructs the Registry and LRVs to promptly transmit to the TFV all potentially eligible priority victims in dire need for their assessment for possible inclusion within the IDIP.

#### **c) Outreach Measures and other issues**

23. The TFV informs that, jointly with the LRVs and Registry, it has designed a communication piece based on six questions, in an accessible language for communities to understand the Appeals Judgment's impact on the reparations proceedings.<sup>50</sup> The TFV also reports that it will soon broadcast the messages through radio within the affected communities in general terms, which prevents the risk of delivering it to 'wrong communities.'<sup>51</sup>

24. The Defence notes that, despite the Chamber's orders for the TFV to 'include both parties in any consultation process' it has been again isolated.<sup>52</sup> In the argument of the Defence, it should not have been left out considering that the outreach message will likely have a direct impact on the number of potential eligible victims and the monetary award against Mr Ntaganda.<sup>53</sup>

25. The Chamber notes that it would indeed have expected the Defence to be included in the consultation process. Nevertheless, the Chamber stresses once again that it will rely only on the sampling exercise and other information in the case file to estimate the potential number

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<sup>49</sup> Decision on the Sixth and Seventh Reports, [ICC-01/04-02/06-2792](#), paras 18-19.

<sup>50</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), para. 35.

<sup>51</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), para. 36.

<sup>52</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, paras 25, 27.

<sup>53</sup> Defence Observations, ICC-01/04-02/06-2802-Conf, para. 26.

of victims entitled to reparations and determine the size of the monetary award.<sup>54</sup> The outreach activities will have no impact on Mr. Ntaganda's liability. However, in order to ensure that the rights of the convicted person and the victims are respected, the Chamber hereby instructs the TFV to provide to the Chamber with details not only about the questions considered for the communication piece but also the list of answers that are provided in the outreach messages.

26. Lastly, the Chamber instructs the TFV to provide further information as to the report that one victim has been subject to threats regarding the claim against Mr Ntaganda.<sup>55</sup>

#### **d) Publicity**

27. Finally, in line with its previous instructions,<sup>56</sup> the Chamber directs the Defence to review its underlying submission and either file public redacted version, 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.

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<sup>54</sup> Decision on the Procedure for the Constitution of the Sample, [ICC-01/04-02/06-2794](#), paras 13, 23-24, 37; Order on the Appeals Judgment Implementation, [ICC-01/04-02/06-2786](#), paras 34, 37-38.

<sup>55</sup> Eighth Report, [ICC-01/04-02/06-2796-Red](#), para. 30.

<sup>56</sup> Decision on the First Report, [ICC-01/04-02/06-2718-Red](#), para. 29.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,**

**REJECTS** the Defence's submissions regarding the alleged 'potential devastating consequences' that the IDIP's implementation may have in this case;

**INSTRUCTS** the Registry and LRVs to proceed as expeditiously as possible and promptly transmit to the TFV all potentially eligible priority victims in dire need for their assessment for possible inclusion within the IDIP;

**INSTRUCTS** the TFV to provide the Chamber with the list of answers that are provided in the outreach messages;

**INSTRUCTS** the TFV to provide further information as to the report that one victim has been subject to threats regarding the claim against Mr Ntaganda; and

**DIRECTS** the Defence to review its underlying submission and either file public redacted version, 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 Friday, 13 January 2023

At The Hague, The Netherlands