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Pénale
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**International
Criminal
Court**



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TRIAL CHAMBER II

Before: Judge Marc Pierre Perrin de Brichambaut
Judge Olga Herrera Carbuccion
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public Document

Order issued pursuant to Rule 103 of the Rules of Procedure and Evidence

Source: [COOPERAZIONE INTERNAZIONALE – COOPI]

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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Sir,

Herewith some observations submitted further to your publication of 15 July 2016, No. ICC-01/04-01/06, in accordance with the Order issued pursuant to rule 103 of the Rules of Procedure and Evidence.

I. COOPI'S BACKGROUND IN THE PROVISION OF ASSISTANCE AND PSYCHOSOCIAL CARE TO CHILD SOLDIERS

Since 2003, COOPI has run over fifty projects to combat sexual/gender-based violence [SGBV] in Orientale Province and its various administrative subdivisions, in Ituri in particular, and over forty or so child-protection projects concerning children recruited/used by armed forces and armed groups/gangs and other grave violations of the rights of the child ("1612 [UN Security Council Resolution 1612(2005)] cases"). COOPI has run the projects in all five Territories of Ituri (Mambasa, Djugu, Mahagi, Irumu, Mahagi and Aru). The projects include:

- assistance to and reintegration of ESFGAs [*enfants sortis des forces et groupes armés* (children released from armed groups and armed forces)] in Ituri (2003-2011), UNICEF funding; – COOP/0046&151&127&089 (2007-2010), PF [Pooled Fund] funding;
- psychosocial rehabilitation of teenage mothers (Children Associated with Armed Forces and Groups [*Enfants associés dans les forces et groupes armés*] (EAFGAs)) in and around the city of Bunia, from 2009 to date, ICC/TFV funding;
- EIDHR/2010/222-810 (2010-2012), EU funding; - Multisector Support Programme for SGBV/GBV-AMS STAREC (2012-2013) through UNICEF, project for the prevention of and protection against SGBV "Agreement no. 0000000178, 0000000446, HCR/COD01/2015/Pillar 4/0000000477/000", from 2010 to date with HCR funding;
- COOPI has been based in Bunia since 2000 and has set up several projects in various sectors. COOPI is very familiar with all five Territories of Ituri.

1. Up until 2013, COOPI worked in all five Territories of Ituri with projects to combat SGBV-GBV [sexual and gender-based violence and gender-based violence]; COOPI currently has a presence in two Territories, Djugu and Irumu, where it runs three projects:

- one (1) post-conflict project to prevent sexual violence towards children and protect them against it and “1612 cases”, in conjunction with the EU for two years, for the holistic and multi-sector care of around **4500** children/young victims of sexual/gender-based violence;
- one (1) post-conflict project for one year to prevent sexual and gender-based violence towards children and protect them against it, in conjunction with the Trust Fund for Victims/ICC, for around **500** girl victims of sexual/gender-based violence, **200** children associated with armed forces and groups and over 330 vulnerable children who are the girls’ dependents (young people associated with the armed groups);
- the TFV’s programme in eastern DRC addresses victims of the crimes committed from 2002 to date in Ituri, North Kivu and South Kivu. The TFV supports victims through activities centred on psychological rehabilitation and material support. In November 2008, COOPI started to provide care for teenage mothers who are victims of sexual violence and for young former child soldiers, as of 2010 to date, as part of its general assistance remit, which includes the provision of physical rehabilitation, psychological support and material support to a limited number of them because others have not received such TFV support through these partners. Future reparations could, therefore, fill this gap, so that all communities feel supported and rehabilitated. We have provided services to and assisted 200 former EAFGAs: 80 in Bunia, 40 in Shari, 40 in Katoto and 40 in Nizi. The work was not easy given the complexity of the case and the fact that the other former child soldiers felt marginalized as they were not part of the programme during the years when the assistance was provided.

- one (1) 20-month emergency project to combat sexual and gender-based violence in South Irumu, from Gety to Boga and the surrounding area.
2. **COOPI has a good working relationship with beneficiary communities, community leaders,** State technical services for combating SGBV, local authorities, and the security services (FARDC [*Forces armées de la République démocratique du Congo* (Armed Forces of the Democratic Republic of the Congo)], PNC [*Police nationale congolaise* (Congolese National Police)] and ANR [*Agence nationale de renseignements* (National Intelligence Agency)]) which have a presence in the area.
 3. **COOPI is an active member of technical working groups for combating violations of the rights of the child:** Multi-sector assistance, working group and child protection, and cluster protection, etc. at national, provincial and Territory level.
 4. **COOPI continues to work on these community-based projects** by involving various civil society organizations, local associations, national NGOs and even the children associated with the militias and armed groups, and young children under the age of 15 who are victims of war crimes and crimes against humanity; where a number of their rights have been violated, we are taking action to combat all forms of abuse and violation.
 5. **COOPI has recorded the data below on the reintegration of children formerly associated with armed forces and groups (EAFGAs):**

The table provides some data on children receiving psychosocial care:

LOCATION/PROVINCE	TOTAL NUMBER OF FORMER EAFGAs REINTEGRATED	DONORS
HAUT-UELE	1200	UNICEF
BAS-UELE	200	POOLED FUND

LOCATION/PROVINCE	TOTAL NUMBER OF FORMER EAFGAs REINTEGRATED	DONORS
ITURI (PROJECT: TRANSIT AND ORIENTATION CENTRE FOR CHILD SOLDIERS)	1432	UNICEF
CENTRAL AFRICAN REPUBLIC	750	UNICEF
ITURI (DJUGU-IRUMU TERRITORY)	200	ICC/TFV
	3782	

6. Main problems/harm identified (on an individual and a family level) in children as a result of their being used in the hostilities

(a) On an individual level:

- anxiety;
- loss of the will to live;
- depression and dejection;
- recollection or recurring memories;
- phobia connected to a place and people;
- feelings of guilt;
- feelings of shame and humiliation within the community;
- feelings of vengeance;
- mutism;
- suicidal thoughts;
- memory disorders;
- delusions or hallucinations or difficulties in perceiving objects and people;
- anger/irritability/aggressive behaviour;
- phobia connected to a place;

- phobia connected to people;
- mutism;
- vengeance;
- anger;
- physical disability;
- night terrors (wakes up afraid, crying);
- nightmares;
- isolation;
- refusal to go to school;
- in the case of girls, disrupted or absence of menstruation due to erratic sexual activity;
- alcohol and drug abuse;

(b) On a family level

- some instances of rebellion against parents;
- drop in educational attainment;
- delinquency (as a result of time spent in the armed groups);
- rejection of authority;
- rejection and abandonment by parents and other members of the community;
- loss of parental role in the care of and assistance to [text missing];
- survivor guilt;
- social rejection, exclusion of former child soldiers;
- social stigmatization, distrust, ridicule;
- less able to communicate with the child soldiers, who the families perceive as rapists, thieves and criminals;
- family breakdown, difficulties experienced by the parents and other members of the community as a result of the former EAFGAs' behavioural problems.

7. A number of factors have contributed to the success of the many COOPI project interventions in post-conflict areas thanks to a combination of holistic approaches and the communities' overall ownership of the achievements. The communities were involved, including in identifying the victims who might benefit from the assistance.

The psychological and/or psychosocial care of young child soldiers under the age of 15 is a long process for providing support or treatment to persons who are traumatized by the various situations which distressed them physically, emotionally, physiologically and socially and who also require a comprehensive response or holistic care. In reintegrating former EAFGAs, the following steps are to be followed, depending on the categories to which the boys and girls belong.

Criteria:

- ❖ The criteria: Children Associated with Armed Forces and Groups. The category of children to be documented must encompass the term “child soldier” in its broadest sense, as laid down by the official document of the 1997 Cape Town Principles in South Africa. According to that approach, the term “child soldier” denotes any person under 18 years of age who is part of a regular or an irregular armed force or armed group in any capacity, including cooks, porters, messengers, girls recruited for sexual purposes and for forced marriage and anyone accompanying such groups, other than family members.
- ❖ The IDTR process:
 - ✓ I: identification
 - ✓ D: documentation

- ✓ T: tracing (tracing family members)
- ✓ R: reunification with the family or community (CTO: transit and orientation centre)
- ❖ Psychological care [PEC (*prise en charge*)], taking account of pre-established criteria:
 - counselling;
 - a relationship which provides psychological help;
 - psychological follow-up;
 - psychological assistance;
 - mediation;
 - reunification;
 - educational/socio-economic reintegration;
 - family and social/community reintegration;
 - help young people become independent.

N.B. The above points might require some further, minor steps to be followed.

- ❖ The psychological treatment of former EAFGAs (particularly young people under the age of 15) may take **three years** – perhaps longer, even five years – depending on the individual victim's resilience. The provision of psychological assistance to young people associated with armed forces and groups is very complex due to several, discernible behavioural disorders such as drug and alcohol dependence and hypersexuality.

8. Following implementation and delivery, which were accomplished despite the difficulties surrounding material assistance or socio-economic reintegration, there has been some degree of success including:

- ❖ Mechanisms for the provision of assistance to the young people were put in place to pre-empt the failure of individual support within the collective system, by arranging income-generating activities [IGA] for families which involved parents and siblings.
- ❖ When the young people were identified, they had already received psychological and socio-economic care and counselling and psychological assistance, and so had already agreed to live in their communities with members of their families, and some of them, boys and girls, managed to get married. We encouraged those young people to enroll in a community-based savings and credit groups [*mutuelles de solidarité*] so that they would get into the habit of saving money; this tool for combating poverty is a facility which gives access to credit. Were we now to provide individual reparations, we would run the risk of sparking revenge. Symbolic psychosocial reparations would be ideal or the other components could form part of it, as could material and physical support, because if a hospital offering plastic surgery were ever to be built, it would take the pressure off many of the mutual health insurance schemes. The building of schools would allow young people whose education was disrupted to finish their schooling and to put their children through education and that would be a way of passing that on.
- ❖ As we have also experienced difficulties in the socio-economic reintegration of teenage mothers who are victims of armed conflict, we support the initiative for them to engage in teamwork. It must be pointed out that the teenage mothers have dependents to support through the community-based savings and credit group, and through the mutual health insurance schemes [*mutuelle de santé*] – a factor which differentiates this category of beneficiary from the former child

soldiers who have no responsibilities. According to analyses, the circumstances of our environment mean that people live together and this unity is a source of strength.

II. THE ACTORS' COMMENTS

9. We have set out some of the comments below:

A. From the beneficiaries

- ✓ Some young former child soldiers have not been identified by the demobilization, disarmament and reintegration programme (most of them are girls).
- ✓ The former child soldiers did not make the correct choice of trade or income-generating activity since they lack maturity and experience and some of the equipment used for reintegration has not worked for some considerable time because it was found locally and comes from Asia; sometimes it is good, but sometimes it deteriorates rapidly.
- ✓ The unstable socio-economic situation has not been conducive to the young people developing income-generating activities.
- ✓ Some beneficiaries have not been able to make progress because they were robbed as a result of unrest in the community, which has prevented them from renewing the kits because of ongoing unrest in some areas.
- ✓ According to the beneficiaries, business training should not be limited to three days, as is usually the case, because comprehension levels vary and they may have further time for thought when choosing socio-economic reintegration activities.
- ✓ The young child soldiers do not have a high opinion of the kits, given their responsibilities: they already have dependents. This is particularly the case for the girls, on whom a number of demands are

being made – subsistence, education, and healthcare, which is costly – and they are struggling to use the same kits to also sometimes support other family members.

B. From the community

- ✓ In several areas, the population did not really accept the support given to former fighters, who were once criminals, rapists and looters.
- ✓ The community was expecting community reparations rather than the individual reintegration of former EFGAs, who are in the minority and receive care from COOPI, whereas the majority does not.
- ✓ Building of infrastructure, such as schools, hospitals and vocational training centres.

III. ANALYSIS OF REPARATIONS IN THE LUBANGA CASE IN ITURI PROVINCE:

10. Our analysis of reparations is centred on our experience of the socio-economic reintegration we provided in the form of material support as part of our general assistance remit, with the financial support of several donors, including the ICC/TFV.

11. We suggest that the reparations measures take the form of collective interventions for the following reasons:

- ✚ Reparations will not encompass every single young person who fell victim to armed conflict.
- ✚ The young former child soldiers are looked down on by the community, the fact that the NGOs support them as they are victims of war crimes and crimes against humanity.
- ✚ If reparations are not collective, there is a risk of sabotage by other young people whose rights were also violated.
- ✚ To avoid stigmatizing beneficiaries in the community.

- ✚ So that the community feels that it has been relieved of the harm done to it.
- ✚ So as not to reignite conflict as these areas remain volatile in the aftermath of the inter-ethnic war.
- ✚ To cater for a wide area and provide care to a large number of former child soldiers.

12. In our experience, symbolic reparations would lessen the stigmatization of victims because:

- o The communities believe that greater priority is being given to the young former child soldiers.
- o A number of children enlisted in the armed groups because their families had been slaughtered, although some were forcibly recruited. Such reparations would allow the communities to honour the memory of the family members who perished.

13. We also recommend symbolic reparations which encompass the following activities:

- the building of infrastructure such as vocational training centres, cultural centres for young people (libraries, and drama and recreational activities to educate them about peace and reconciliation ...), schools, hospitals or water supply schemes/wells;
- keeping livestock;
- monuments commemorating the victims by name;
- a national day of remembrance of the victims killed in these armed conflicts in Ituri;
- laying asphalt along certain stretches of road in the community to commemorate war victims.

14. The reparations measures must address some but not all areas, as they were:

- (a) combatant training camps;
- (b) the headquarters of the armed groups and their allies;
- (c) according to the statistics available, the number of child recruits was very high; and
- (d) these areas (headquarters of militias and training camps) were also battlefields and the site of enemy attacks, and they sustained some destruction; they included
 - ✓ **Mandro;**
 - ✓ **Bunia;**
 - ✓ **Shari;**
 - ✓ **Tchomia;**
 - ✓ **Bule;**
 - ✓ **Katoto; and**
 - ✓ **Nizi.**

In sum, a number of areas were affected by the armed conflict.

15. The reparations measures must address harm such as:

- ❖ young people under the age of 15 years;
- ❖ forcible enlistment into the armed forces and groups;
- ❖ young people whose limbs were mutilated and who sustained a physical disability;
- ❖ the areas where schools and hospitals were attacked;
- ❖ girl soldiers under the age of 15 years who were raped, had children born of rape and with no biological fathers, and could not stay in education; and
- ❖ former child soldiers who could not stay in education.

16. As part of reparations, we suggest that the following steps be considered before embarking on reparations proper:

- ✚ Identification of other young people who have not undergone the demobilization, disarmament and reintegration (DDR) process or those who have demobilized themselves.
- ✚ By child-protection organizations which have experience in that field, in conjunction with the other social actors (local and community leaders, women's organizations in post-conflict zones).
- ✚ The organizations must put in place criteria for re-identification with competent staff in the psychosocial field.
- ✚ This re-identification work will be carried out in the eligible areas by the International Criminal Court and may involve approaching actors *in situ*.
- ✚ That task could be completed within a year if funds are forthcoming.
- ✚ A straightforward method would entail verifying the beneficiaries' cases (DDR forms) in the databases, if possible, but also cross-checking with the other young former child soldiers associated with the armed forces and groups (former EAFGAs) because they are acquainted with one another, especially as they live in the same places (the young former child soldiers who have received an education could be recruited and trained for the purpose of this re-identification exercise and the provision of psychosocial assistance to their peers).
- ✚ The implementation of social and economic reintegration will be based on the experience garnered in the general assistance projects undertaken to date with the appropriate financial means to show that reparations are really taken seriously.

IV. RECOMMENDATION AND DESCRIPTION OF ACTIVITIES

This section will set out the types of reparations activity and justify choices on the basis of need, harm sustained, context and opportunities.

17. Role of victim beneficiaries in reparations activities

- ✓ Most of the young former child soldiers have not been identified by the TFV-supported programme.
- ✓ The former child soldiers will make the correct choice of trade or income-generating activity as a result of maturity and past experience and also some of the equipment used for reintegration has not worked properly for some considerable time because it was found locally and comes from Asia; sometimes it is good, but sometimes it deteriorates rapidly.
- ✓ The unstable socio-economic situation has not been conducive to the young people's development of income-generating activities;
- ✓ Some beneficiaries have not been able to make progress because they were robbed (livestock) as a result of the unrest in the community, which has not prevented them from renewing the kits because of ongoing unrest in some areas.
- ✓ According to the beneficiaries, business training should not be limited to three days, as is usually the case, because comprehension levels vary and they may have further time for thought when choosing socio-economic reintegration activities.
- ✓ The child soldiers did not have a high opinion of the kits, given their responsibilities: they already have dependents.

18. Role of the victims' families:

- To take ownership of the reparations project.
- To play an active part in the reparations projects.
- To discourage young people from re-joining the armed forces and groups.

19. Role of members of the communities:

- ✓ To raise awareness among young people and members of the communities about the advantages of collective reparations projects in which most of the young people are taking part, through the NGOs which are to be selected to support the ICC/TFV.
- ✓ To raise awareness among most of those communities where the population did not really accept the support given to former fighters, who were once criminals, rapists and looters.

20. Role of civil society organizations and NGOs

As the budget is insufficient for the socio-economic reintegration of all beneficiaries, the NGOs may:

- o prompt members of the community to take part in the infrastructure projects when the reparations programme is being implemented;
- o encourage the beneficiaries to enroll in the mutual health insurance scheme and the community-based savings and credit group;
- o build the capacity of beneficiaries as regards entrepreneurship, business plans and the management of income-generating activities, once individual reparations have been awarded to girls and community reparations have been awarded to the young boys and community members;

- o encourage the girls to attend the various training sessions to be held in the vocational training centres that will be set up, should this point be of interest to the Court, so that they can help their community, be independent and be able to support their dependents in the future;
- o bolster the training of young people who practised a trade in the vocational training centres, and entrepreneurship in business plans so as to avoid a poor choice of IGA, given the immaturity in the beneficiaries' choice of socio-economic reintegration activities and the lack of experience in socio-economic activities;
- o ensure that the training in a trade is for the long term, since it is vocational training for beneficiaries who practise a trade (cutting and sewing, carpentry, and hairdressing), leaving them unable to engage in IGAs – six months to a year would be needed;
- o duly manage the young former child soldiers' departure from the project, as they were expecting a reintegration kit upon leaving it. They heard on the radio that there would be reparations. The answer is imminent and the process is ongoing.

21. Role of the TFV/ICC

- 🚩 The community was expecting reparations for the community, rather than the individual reintegration of former EFGAs, since they make up only a minority and are receiving care from COOPI, whereas the majority does not.
- 🚩 To build infrastructure, such as schools, hospitals, vocational training centres, cultural centres for young people (libraries, drama activities, education about peace and reconciliation ...).
- 🚩 To arrange individual IGAs through partners *in situ* for girl victims of sexual violence who have had children as a result of rape during

armed conflict, so that those children receive an education, which is one of their basic rights.

- ✚ To engage in community reparation to prevent the risk of conflict from arising in connection with the identification of the victims as a minority.
- ✚ To take account of the choice of projects put forward and the needs as perceived by community members when they were consulted in May 2015, such as:
 - The building of schools and hospitals;
 - Vocational training centres, centres for young people (libraries, cultural activities, drama and recreational activities to be held every time);
 - Water supply schemes/wells.
- ✚ To bolster reconciliation, cohesion has long since been sustained by general assistance projects through community activities, such as community dialogue and community therapy.
- ✚ To foster the participation of community members and victim beneficiaries in devising and monitoring the future reparations programmes.
- ✚ To establish a standard framework for the monitoring and evaluation of the projects so as to avoid frustration and discontent.

22. Role of the government

- ❖ To contribute funds to raise public awareness of the reparations.
- ❖ To support the organizations which are working with the categories of child soldiers.
- ❖ To bring security to the areas, as there remain isolated areas of unrest.

- ❖ To impose penalties on the other armed groups which continue to recruit children into their groups and forces.

23. Role of the international community

- ✚ To attract the funds necessary to make this reparations project a success;
- ✚ To continue to support the Criminal Court in the fight against impunity;
- ✚ To urge donor countries to provide financial support to the ICC/TFV.

IV. CONCLUSION:

Given all of the above comments, we urge the TFV/ICC to ensure that communities are not divided over the reparations programme. Attention and consideration must be given to the views of actors *in situ* as regards the impact of the projects.

[signed]

Alessandro PONTI

Head of Mission

COOPI, DRC

[stamped: COOPI COOPERAZIONE INTERNAZIONALE D.R. CONGO]

[stamped: ALESSANDRO PONTI Head of Mission COOPI-DRC]

Dated this 30/09/2016

At Bunia, Democratic Republic of the Congo