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PRE-TRIAL CHAMBER II

Before: Rosario Salvatore Aitala, Single Judge

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

**Prosecution’s Response to “Requête et observations sur les réparations en vertu de
l’Article 75-1” (ICC-02/05-01/20-98)**

Source: Office of the Prosecutor

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I. INTRODUCTION

1. On 17 July 2020, the Defence for Mr Abd-Al-Rahman requested the Single Judge (“Single Judge”) acting for Pre-Trial Chamber II (“Chamber”) to implement an unprecedented reparation regime detached from any ICC criminal proceedings and independent from any conviction. The Defence also requested the Single Judge to invite observations from *amici curiae* with respect to its proposal (“Request”).¹ The cumbersome regime proposed by the Defence has no basis in the Rome Statute, which already caters for the victims’ right to reparations in accordance with the Court’s mandate. Since the Court is designed to establish individual criminal responsibility for crimes under the Statute, the Court’s reparations regime reflects this context. Accordingly, an ICC Chamber may order reparations only *after* a conviction has been rendered. A reparations order is directed against the convicted persons who must account for their acts and repair the harm that they caused. Beyond the court-ordered reparations regime, the Trust Fund for Victims (“TFV”) may also provide assistance to victims within a situation and independently from any ongoing judicial proceedings.

2. Because the Defence misapprehends the Court’s reparations regime, the Request should be dismissed.

II. SUBMISSIONS

3. The Defence requests the Single Judge to implement a new reparations regime detached from the Court’s judicial proceedings. The Defence argues that the first sentence of article 75(1) (“The Court shall establish principles relating to reparations [...]”) permits a Chamber to award reparations regardless of the existence of a

¹ [ICC-02/05-01/20-98](#) (“Request”). The Request is 56 pages and thus exceeds the 20 pages page-limit set out in regulation 37(1) of the Regulations of the Court.

conviction and without a reparations order having been made under article 75(2).² According to the Defence, a Chamber may award reparations to any victim of an article 5 crime within a situation, even if no person has yet been arrested (let alone convicted).³ Under this suggested regime, a Single Judge or the Pre-Trial Chamber would be appointed to deal with reparations within each situation.⁴ The Single Judge or the Pre-Trial Chamber would direct and supervise the TFV which—in the context of its assistance mandate—would collect reparations applications, obtain funding and submit a report on the reparations requested by the victims. The Single Judge or the Pre-Trial Chamber would approve (or not) the report and order reparations not exceeding the funds collected.⁵ This suggested regime envisages no participation from either the Defence or the Prosecution.⁶ OPCV and legal representatives could appeal any such order.⁷ Such a proceeding would be additional to the reparations proceedings emanating from a conviction, and reparations order pursuant to article 75(2).⁸ The Defence relies on “soft-law” instruments⁹ and domestic practice to sustain this model.¹⁰

4. The cumbersome regime proposed by the Defence has no basis in the Statute. *First*, an ICC Chamber may only award reparations pursuant to article 75 *after* a conviction decision. Once the criminal responsibility of a person is established, the convicted person shall be responsible for repairing the harm and/or damages caused by his or her crime. *Second*, principles under the first sentence of article 75(1) are general concepts formulated in light of the circumstances of a specific case and on the basis of which the order for reparations may be rendered. *Third*, the TFV's

² [Request](#), para. 49.

³ See e.g. [Request](#), paras. 74, 76 (asking the Single Judge to set out “principes séparant la procédure de réparation de la procédure pénale”), 81, 93. Although, the Defence requests the Single Judge to adopt and implement “additional principles”, these principles entail a new reparation proceeding culminating with a reparation order: see p. 50-56.

⁴ [Request](#), para. 81.

⁵ [Request](#), p. 50-54 (principles 1 to 7)

⁶ [Request](#), para. 81.

⁷ [Request](#), p. 55 (principe 8).

⁸ [Request](#), para. 86; see also p. 55 (principe 9).

⁹ [Request](#), paras. 9-24.

¹⁰ [Request](#), paras. 25-45.

assistance mandate already permits the TFV (an administrative body) to provide assistance to victims independently from a conviction. Their activities are subject to oversight by the TFV's Board of Directors and not to judicial direction or decision. Conversely, the TFV's reparations mandate, that is when the TFV implements a reparations order made by a Chamber following a conviction, is subject to judicial oversight.

A. The Court's reparations regime depends on a conviction

5. The Defence's proposed regime has no basis in the Statute; instead, it disregards the unique and key features of the Court's reparations scheme and its goals, that is to "oblige those responsible for serious crimes to repair the harm they caused to the victims and [...] enable the Court to ensure that offenders account for their acts".¹¹ Under the Court's regime, reparations are ordered *after* a conviction and against the convicted person.

6. *First*, an ICC Chamber may order reparations only when a person has been convicted. The Rome Statute is clear; the jurisprudence is consistent¹² and so is the commentary¹³ and drafting history.¹⁴ Accordingly, reparations proceedings under

¹¹ [ICC-01/04-01/06-3129-AnxA](#) ("Lubanga Amended Order"), para. 2.

¹² [ICC-01/05-01/08-3653](#) ("Bemba Final Reparations Decision"), para. 3 ("no reparations order can be made against Mr Bemba under Article 75 of the Statute. The Chamber must respect the limitations of this Court and recalls that it can only address compensation for harm suffered as a result of crimes when the person standing trial for his or her participation in those crimes has been found guilty"); *see also* ICC-01/09-01/11-2038 ("[Ruto and Sang Reparations Decision](#)"), paras. 6-7 ("a criminal court can only address compensation for harm suffered as a result of crimes if such crimes have been found to have taken place and the person standing trial for his or her participation in those crimes is found guilty"). *But see* ICC-01/09-01/11-2038-Anx ("[Judge Eboe-Osuji's Dissenting Opinion Ruto and Sang Reparations Decision](#)"), para. 12. *See also* Judge Fremr's Reasons in ICC-01/09-01/11-2027-Red-Corr ("[Ruto and Sang Judgment of Acquittal](#)"), para. 149 ("As a result of the case ending without a conviction, no reparations order can be made by this Court pursuant to article 75 for the benefit of the post-election violence. While I recognise that this must be dissatisfactory to the victims, a criminal court can only address compensation for harm suffered as a result of crimes if such crimes have been found to have taken place and the person standing trial for his or her participation in those crimes is found guilty."). *But see* Judge Eboe-Osuji's Reasons, paras. 195-210.

¹³ Muttukumaro C., "Reparation to Victims", in Lee, R. (ed.), *The International Criminal Court: the Making of the Rome Statute—Issues, Negotiations, Results* (Kluwer: The Hague, 1999) ("Muttukumaro"), p. 262-263 ("Article 75 of the Rome Statute provides a framework within which the Court may award reparations to, or in respect of, victims against convicted defendants"); *see also* Donat-Cattin D., "Article 75", in Triffterer, O. and Ambos, K. (eds.), *The Rome Statute of the International Criminal Court: a Commentary*, 3rd Ed. (C.H.

article 75 are only triggered once the criminal responsibility of the person has been established in a conviction decision under article 74(2).¹⁵ As Judge Ibáñez Carranza has noted, a conviction is followed by two proceedings: (i) sentencing proceedings under article 76 “which aim [...] to punish perpetrators for their criminal conduct”, and (ii) reparations proceedings under article 75 which “have the ultimate goal of awarding reparations to redress the harm that victims suffered as a consequence of the atrocious crimes that form the basis of the conviction”.¹⁶

7. Further, reparations proceedings can be divided into two parts: 1) the proceedings leading to the issuance of an order for reparations under article 75(2); and 2) the implementation of the order for reparations, which the TFV may be tasked with carrying out.¹⁷ During the first part of the proceedings, the Trial Chamber will establish principles relating to reparations to, or in respect of, victims and will conclude with the issuance of an order for reparations under article 75(2), or conversely, a decision not to award reparations.¹⁸ The second part of the reparations proceedings consists of the implementation phase,¹⁹ which is generally carried out by the TFV with judicial oversight.²⁰ The Court deposits assets seized from a convicted person into the TFV and directs the TFV to distribute those assets in a

Beck/Hart/Nomos: München/Oxford/Baden Baden, 2016) (“Donat-Catting”), p. 1853, mn. 5, 1857, mn. 10 and 1863, mn. 19-20.

¹⁴ Pellet, S., “Article 75”, in Fernandez, Pacreau and Ubéda-Saillard (eds.), *Statut de Rome de la Cour pénale internationale : commentaire article par article*, 2nd Ed. (Éditions A. Pedone: Paris, 2019) (“Pellet”), p. 1989 (“lors des débats ayant présidé à l’adoption du Statut, la possibilité pour la Cour d’ordonner des réparations à la charge d’une personne déclarée coupable a été largement partagée par les délégations”).

¹⁵ [ICC-01/04-01/06-3466-AnxII](#) (“Judge Ibáñez Carranza Separate Opinion”), para. 25.

¹⁶ [Judge Ibáñez Carranza Separate Opinion](#), para. 25.

¹⁷ [ICC-01/04-01/06-2953](#) (“*Lubanga* Admissibility AD”), para. 53.

¹⁸ [Lubanga Admissibility AD](#), para. 54 (further noting that these proceedings are regulated by articles 75 and 76 (3) of the Statute and by rules 94, 95, 97, and 143 of the Rules of Procedure and Evidence); see also [Judge Ibáñez Carranza Separate Opinion](#), para. 79 (“In judicial reparation proceedings, trial chambers are mandated to determine the scope and extent of harm and the scope of victimhood, pursuant to article 75(1) of the Rome Statute. They ultimately issue reparation orders against a convicted person pursuant to article 75(2) of the Rome Statute and rule 97(1) of the Rules”).

¹⁹ [Lubanga Admissibility AD](#), para. 55; this phase is regulated primarily by article 75(2) and rule 98.

²⁰ Trial Chambers may order that reparations are made through the TFV pursuant to rules 98(3) and 98(4), or that the award for reparations is deposited with the TFV pursuant to rule 98(2). See [Lubanga Admissibility AD](#), para. 55.

certain way.²¹ However, when the convicted person is unable to immediately comply with an order, for example because of indigence, the TFV may use its “other resources” pursuant to regulation 56 of the Regulations of the Trust Fund to satisfy the reparations award.²² Such intervention falls however within the determination of the TFV Board of Directors.²³ Moreover, it does not exonerate the convicted person from liability: the convicted person remains liable and must reimburse the Trust Fund.²⁴

8. In implementing court ordered reparations, the TFV acts pursuant to its “reparations mandate”.²⁵ The victim beneficiaries are persons who have suffered harm as a result of a crime for which the convicted person has been held criminally responsible and convicted.²⁶ As developed below, the TFV’s reparations mandate is different from the TFV’s “assistance mandate”, whereby the TFV provides assistance to victims of crimes within the Court’s jurisdiction independently of judicial proceedings.²⁷

²¹ See Statute, article 79(2) (“The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund”); see also article 75(2)(second sentence) and Rules, rules 98(2) to (5); see De Baan, P. and Saabel E., “Article 79”, in Fernandez, Pacreau and Ubéda-Saillard (eds.), *Statut de Rome de la Cour pénale internationale : commentaire article par article*, 2nd Ed. (Éditions A. Pedone: Paris, 2019) (“De Baan and Saabel”), p. 2043-2044.

²² [ICC-01/04-01/06-3129](#) (“Lubanga First Reparations AD”), para. 115.

²³ [Lubanga First Reparations AD](#), paras. 109-114 (explaining that the Court cannot oblige the TFV to use its “other resources” pursuant to regulation 56 of the TFV Regulations to complement reparations awards; this falls within the determination of the Board of Directors); see Pellet, p. 1999.

²⁴ [Lubanga First Reparations AD](#), para. 115.

²⁵ [Lubanga First Reparations AD](#), para. 107 (referring to TFV Regulations, regulation 50(b)); see also [Lubanga Admissibility AD](#), para. 55 (“under the Regulations of the Trust Fund, an order for reparations has to be issued in order to seize the Trust Fund and allow it to undertake implementation activities in relation to reparations”); see also [TFV Reparations Mandate](#) (“The reparations mandate allows the TFV to collect fines or forfeitures from a convicted individual in a war crimes case, in order to provide reparations awards to victims. These reparations can be individual or collective, and can take many different forms, including restitution, compensation and rehabilitation”).

²⁶ [Lubanga First Reparations AD](#), paras. 1, 32, 99, 184, 211 and [Lubanga Amended Order](#), paras. 20, 54.

²⁷ [TFV Assistance Mandate](#) (“The TFV’s assistance mandate enables victims of crimes (as defined in Rule 85 of the Rules of Procedure and Evidence) and their families who have suffered physical, psychological and/or material harm as result of war crimes, to receive assistance separately from, and prior to, a conviction by the Court. This assistance relies upon resources the Trust Fund has raised through voluntary contributions, and is distinct to reparations awards, in that it is not linked to a conviction. *The key difference between the assistance and reparations mandates is that reparations are linked to accountability, arising from individual criminal responsibility of a convicted person, whereas the assistance mandate is not.*”) (emphasis added).

9. *Second*, an order for reparations must be issued in *all* circumstances *against the convicted person*²⁸ and must contain, *at a minimum*, five essential elements.²⁹ Reparations orders are intrinsically linked to the *individual* whose criminal liability has been established in a conviction and whose culpability for those criminal acts has been reflected in a sentence.³⁰ Since the Court is designed to establish *individual* criminal liability for crimes under the Statute, reparations orders must equally reflect this context³¹—they must reflect the “principle of accountability” and “ensure that offenders account for their acts”.³² The Statute’s drafting history reflects this principle.³³ So do commentary³⁴ and other decisions of this Court,³⁵ which have already rejected proposals similar to the regime put forward by the Defence.³⁶

10. The Defence speculates³⁷ and selectively reads the Statute³⁸ and the Rules.³⁹ It improperly disregards the import of the Court’s consistent jurisprudence,⁴⁰ and

²⁸ [Lubanga First Reparations AD](#), para. 76.

²⁹ [Lubanga First Reparations AD](#), paras. 1, 32 (“1) it must be directed against the convicted person; 2) it must establish and inform the convicted person of his or her liability with respect to the reparations awarded in the order; 3) it must specify, and provide reasons for, the type of reparations ordered, either collective, individual or both, pursuant to rules 97(1) and 98 of the Rules of Procedure and Evidence; 4) it must define the harm caused to direct and indirect victims as a result of the crimes for which the person was convicted, as well as identify the modalities of reparations that the Trial Chamber considers appropriate based on the circumstances of the specific case before it; and 5) it must identify the victims eligible to benefit from the awards for reparations or set out the criteria of eligibility based on the link between the harm suffered by the victims and the crimes for which the person was convicted”).

³⁰ [Lubanga First Reparations AD](#), para. 65.

³¹ [Lubanga First Reparations AD](#), para. 65.

³² [Lubanga First Reparations AD](#), paras. 65, 69-70; [Lubanga Amended Order](#), para. 2 (noting the two goals of the Court’s reparation regime: to oblige those responsible for serious crimes to repair the harm they caused to the victims and to enable the Court to ensure that offenders account for their acts).

³³ [Lubanga First Reparations AD](#), para. 66 (noting references in the drafting history to the statement in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of power that “[o]ffenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants”). See also [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#) (A/RES/40/34, General Assembly resolution 40/34 of 29 November 1985, annex), para. 8.

³⁴ Donat-Cattin, p. 1857, mn. 10.

³⁵ See above fn. 12; see also [Lubanga First Reparations AD](#), paras. 67-68.

³⁶ [Bemba Final Reparations Decision](#), para. 16; see [Request](#), para. 76 (erroneously distinguishing the Defence Request from the LRVs request in *Bemba* because Mr Bemba was acquitted; however, since according to the Defence no conviction is necessary to award reparations Trial Chamber III could have still ordered reparations through the TFV).

³⁷ [Request](#), paras. 93-94 (speculating that victims only participate in trial proceedings because they consider it necessary to receive reparations).

³⁸ [Request](#), paras. 49-52.

³⁹ [Request](#), paras. 57-64 (misinterpreting *inter alia* rules 94, 97 and 98); compare with Lewis, P. and Friman, H., “Reparation to Victims” in Lee, R. *et al.* (eds.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Transnational: Ardsley, 2001), p. 479-488.

ignores commentary and drafting history.⁴¹ While the Statute must be interpreted in accordance with internationally recognised human rights, a Chamber must first apply the Statute and the Rules—which clearly do not permit the Defence’s proposed regime.⁴²

11. In conclusion, an ICC Chamber may only order reparations after a conviction and against the convicted person.⁴³

B. The reparation principles inform an order for reparations

12. Pursuant to the first sentence of article 75(1) “[t]he Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation”. This means that the Court is obliged to establish principles relating to reparations in each case before it that results in a conviction.⁴⁴ The order for reparations will be informed by, and be based on, these principles.

13. In *Lubanga*, the Appeals Chamber explained the distinction, and interaction, between the principles and the reparations order:

⁴⁰ [Request](#), paras. 78-98; *see in particular* para. 78 (requesting the Single Judge to depart from previous jurisprudence “[q]uand bien même certains principes de la réparation dégagés par l’Honorable Chambre de première instance I seraient incompatibles avec les présentes Requêtes et observations - ce qui n’est pas le cas -, l’Honorable Juge Unique disposerait donc d’une autorité intacte pour s’en départir”).

⁴¹ The Defence proposed regime was not even discussed by the drafters; it was discussed the possibility of the Court being entitled to order a State to provide reparations to victims but after a conviction had been rendered by the ICC. This proposal was not adopted. *See* Pellet p. 1988-1990.

⁴² *Contra* [Request](#), para. 47.

⁴³ *Contra* [Request](#), principe additionnel No. 7 at p. 54 (referring to the “ordonnance” issued by the Pre-Trial Chamber or the Single Judge).

⁴⁴ Donat-Cattin, p. 1857, mn. 10; *see also* Friman in [Case Matrix](#) (“The Court has settled for a case specific approach to the stipulation of the Court’s reparation principles. The question of pre-established general principles has been discussed but rejected by the plenary of judges in 2006 and 2008 [...]. The case-by-case approach was also underlined by the Trial Chamber in the Lubanga decision on reparations (Prosecutor v. Lubanga, ICC T.Ch., ICC-01/04-01/06-2904, 7 August 2012, para. 181) and approved by the Appeals Chamber (Lubanga, ICC A. Ch., ICC-01/04-01/06-3129, 3 March 2015, para. 55)”; *see also* Pellet, p. 1991 (“il revenait aux chambre de première instance d’établir les principes sur lesquelles elles fonderont, le cas échéant”); [Report of the Court on principles relating to victims’ reparations](#), 8 October 2013, paras. 3 (“the issue of development of principles relating to reparations prior to any reparations proceedings before Chambers had been discussed by the plenary of Judges on two occasions in 2006 and 2008. [A]s a result of those discussions, it was left to the competent Chambers to establish principles relating to reparations within the context of specific cases, where the question would naturally arise subsequent to a conviction of an accused by the Court”) and 17, and [Report of the Bureau on the Study Group on Governance](#), 22 November 2011, paras. 26-28.

[P]rinciples relevant to the circumstances of a case must be distinguished from the order for reparations, i.e. the Trial Chamber's holdings, determinations and findings based on those principles. Accordingly, principles should be *general concepts that, while formulated in light of the circumstances of a specific case*, can nonetheless be applied, adapted, expanded upon, or added to by future Trial Chambers.⁴⁵

14. These principles apply to both individual and collective reparations.⁴⁶ Accordingly, a Trial Chamber must establish general principles on reparations in the context of the case before it. Such principles will inform any reparations order in the case and can be applied to other cases, subject to necessary amendment and development. Accordingly, the principles developed by the Trial and Appeals Chambers in *Lubanga*⁴⁷ informed the reparations order in that case⁴⁸ and also influenced the reparations orders made against Mr Katanga and Mr Al Mahdi, where the Trial Chamber endorsed the principles established in *Lubanga*.⁴⁹ Notably, in *Lubanga* the Appeals Chamber drew on the UN Basic Principles to establish the reparation principles.⁵⁰

15. In conclusion, the Court must establish principles on reparations pursuant to article 75(1) in order to inform any order for reparations under article 75(2).

⁴⁵ [Lubanga First Reparations AD](#), para. 55.

⁴⁶ [Lubanga First Reparations AD](#), paras. 52-53.

⁴⁷ [Lubanga Amended Order](#), paras. 1-52.

⁴⁸ [Lubanga Amended Order](#), para. 53 et seq.

⁴⁹ ICC-01/04-01/07-3728-tENG ("[Katanga Reparations Order](#)"), para. 30 ("The Chamber takes the view that the principles established by the Appeals Chamber in *Lubanga* find application, mutatis mutandis, in the case at bar"); ICC-01/12-01/15-236 ("[Al Mahdi Reparations Order](#)"), para. 26 ("The Chamber finds that reparations of crimes against cultural heritage are adequately addressed under the same framework and thus sees no reason to deviate from the relevant principles formulated by the Appeals Chamber in *Lubanga*"); see Pellet, p. 1992.

⁵⁰ [Lubanga Amended Order](#), fn. 1-3, 16-19, 26-27, 29; see [Al Mahdi Reparations Order](#), para. 24. The Defence invokes the same principles to depart from the Court's jurisprudence: Request, paras. 49, 50, 61, 80, 89, 96.

C. The TFV's assistance activities are administered by the TFV Board of Directors

16. Finally, the Defence's proposed reparations regime misunderstands the two separate mandates of the TFV (reparations and assistance).⁵¹ In implementing Court-ordered reparations, the TFV (acting under regulation 50(b) of the TFV Regulations) is subject to "oversight and a certain degree of intervention by the Trial Chamber".⁵² For example, the Trial Chamber will approve the Draft Implementation Plan⁵³ and will review the TFV's assessment of potentially eligible victims.⁵⁴ Moreover, the TFV does not decide or directly control the reparations award.⁵⁵ Conversely, the TFV's assistance activities (under regulations 48 and 50(a) of the TFV Regulations) are not subject to judicial oversight; instead the Board of Directors administers them and makes the necessary determinations.⁵⁶ These activities assist victims who have suffered harm as a result of crimes within the Court's jurisdiction⁵⁷ and are independent from the Court's judicial proceedings and are not contingent on a

⁵¹ See e.g. [Request](#), paras. 71 and p. 52 (principle 4), 53 (principle 6), 54 (principle 7).

⁵² [Lubanga Admissibility AD](#), para. 56 (further recalling "regulations 54, 55, 57 and 58 of the Regulations of the Trust Fund, which are part of Chapter II, Section III entitled 'If the activities and projects of the Trust Fund are triggered by a decision of the Court', and regulation 69 of the Regulations of the Trust Fund which is part of Chapter IV entitled 'Collective awards to victims pursuant to rule 98(3)'"'). See also De Baan and Saabel, p. 2053-2054.

⁵³ [Lubanga Admissibility AD](#), para. 56 (referring to regulations 57 and 69 of the TFV Regulations).

⁵⁴ ICC-01/04-01/06-3466-Red ("Lubanga Second Reparations AD"), paras. 163-171 and [Judge Ibáñez Carranza Separate Opinion](#), para. 82,

⁵⁵ De Baan and Saabel, p. 2045; see [TFV Regulations](#), regulation 43 ("When resources collected through fines or forfeiture or awards for reparations are transferred to the Trust Fund pursuant to article 75, paragraph 2, or article 79, paragraph 2, of the Statute or rule 98, sub-rules 2-4, of the Rules of Procedure and Evidence, the Board of Directors shall determine the uses of such resources in accordance with any stipulations or instructions contained in such orders, in particular on the scope of beneficiaries and the nature and amount of the award(s)"); see also regulations 44-45.

⁵⁶ [Judge Ibáñez Carranza Separate Opinion](#), para. 83 (referring to TFV Regulations, regulation 50(a)); see also Statute, article 79(3) ("The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties"); the ASP approved the TFV regulation which set up the Board of Directors; see also [Lubanga First Reparations AD](#), para. 111 and De Baan and Saabel, p. 2052.

⁵⁷ Statute, article 79(1) and Rules, rule 85. See [TFV Assistance Mandate](#). See De Baan and Saabel, p. 2040-2042 (explaining that under article 79(1) and the TFV's assistance mandate the definition of victims beneficiaries is broader since no link with the crimes pursued before the Court is required; however, although the texts do not contain such limitation it is likely that the beneficiaries are victims of crimes committed within the context of a situation before the Court).

reparations order.⁵⁸ These activities are funded by voluntary contributions,⁵⁹ including “[o]ther resources” under regulation 47 of the TFV Regulations.⁶⁰

17. That the TFV notifies the Court when it decides to provide assistance to victims of crimes within the Court’s jurisdiction does not contradict the above. The Court assesses whether the TFV’s intended activities would interfere with any determination to be made in the context of ongoing Court proceedings.⁶¹ This does not mean that the subsequent TFV’s activities are subject to judicial control: an ICC Chamber cannot direct, administer or supervise the implementation of the TFV’s assistance activities.⁶² This task is performed by the Board of Directors.⁶³

18. Likewise, that the TFV does not seem to operate in Sudan does not permit the Court to disregard its legal framework.⁶⁴ A Court must always respect its constitutional and statutory framework.⁶⁵

19. In conclusion, the Defence’s proposed reparations regime has no basis in the Statute and must be rejected. Likewise, the Deference’s request for observations from *amici curiae* should be dismissed. Since the Court’s legal framework is clear, the Prosecution respectfully submits that no observations from interested participants are necessary to assist the Single Judge in this determination. Instead, it is in the interests of the victims that the Parties focus their resources on the ongoing pre-trial proceedings.

⁵⁸ See [TFV Assistance Mandate](#).

⁵⁹ [Lubanga First Reparations AD](#), para. 107; see regulations 22-30 (Chapter II, Voluntary Contributions).

⁶⁰ [TFV Regulations](#), regulation 47 (“For the purpose of these regulations, “other resources of the Trust Fund” set out in of rule 98, paragraph 5, of the Rules of Procedure and Evidence refers to resources other than those collected from awards for reparations, fines and forfeitures.”); see De Baan and Saabel, p. 2047-2048.

⁶¹ [TFV Regulations](#), regulation 50(a)(ii); see [Request](#), fn. 78.

⁶² *Contra Request*, para. 71.

⁶³ [Judge Ibáñez Carranza Separate Opinion](#), para. 83; De Baan and Saabel, p. 2052, fn. 88.

⁶⁴ See [TFV Assistance Mandate](#).

⁶⁵ [Bemba Final Reparations Decision](#), para. 3.

III. RELIEF SOUGHT

20. For the above reasons, the Prosecution respectfully requests that the Single Judge reject the Defence Request.



Fatou Bensouda, Prosecutor

Dated this 23rd day of July 2020
At The Hague, The Netherlands