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TRIAL CHAMBER II

Before: Judge Chang-ho Chung, Presiding Judge
Judge Péter Kovács
Judge Maria del Socorro Flores Liera

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

Public Redacted Version of the “Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan” (ICC-01/04-02/06-2680-Conf)

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I. INTRODUCTION

1. Pursuant to the “Order for the submission of observations on the initial draft implementation plan with focus on priority victims”,¹ the Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) herewith submits his Observations on the Trust Fund for Victims’ (the “TFV”) “Report on the Trust Fund’s Preparation for Draft Implementation Plan”² and “Initial Draft Implementation Plan with Focus on Priority Victims” (the “IDIP”).³

2. The Legal Representative largely opposes the IDIP presented by the TFV given that many fundamental pillars of the implementation process have been left vague or simply unaddressed. A revised plan should be provided that addresses relevant key elements, as well as objectives and ways to achieve them in a comprehensive manner, and contains a concrete timeline and roadmap for the process ahead.

II. PROCEDURAL BACKGROUND⁴

3. On 8 July 2019, Trial Chamber VI found Mr Bosco Ntaganda guilty of 18 counts of war crimes and crimes against humanity.⁵

4. On 7 November 2019, Mr Ntaganda was sentenced to 30 years of imprisonment.⁶

¹ See the “Order for the submission of observations on the initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2677](#), 10 June 2021.

² See the “Report of the Trust Fund’s Preparation for Draft Implementation Plan”, [No. ICC-01/04-02/06-2676-Red](#), 9 June 2021 (the “TFV Report”).

³ See the “Initial Draft Implementation Plan with Focus on Priority Victims (‘Initial Draft Implementation Plan’ or ‘IIP’)”, No. ICC-01/04-02/06-2676-Conf-AnxA, 9 June 2021. All references to the Initial Draft Implementation Plan in these submissions will be made to its corrected version, namely the “Corrigendum of Initial Draft Implementation Plan with Focus on Priority Victims (‘Initial Draft Implementation Plan’ or ‘IIP’), [No. ICC-01/04-02/06-2676-AnxA-Corr-Red](#), 14 June 2021 (the “IDIP”).

⁴ The procedural background recounted in these observations is not exhaustive, but limited to the most relevant procedural steps with regard to the present observations.

⁵ See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

⁶ See the “Sentencing Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019.

5. On 5 December 2019, the Single Judge of Trial Chamber VI issued the “Order setting deadlines in relation to reparations”.⁷

6. On 26 June 2020, Trial Chamber VI issued the “First Decision on Reparations”.⁸

7. On 8 March 2021, Trial Chamber VI issued an Order for Reparations against Mr Ntaganda (the “Reparations Order”)⁹ ordering collective reparations with individualised components to be awarded to direct and indirect victims of the crimes for which Mr Ntaganda was convicted, and setting Mr Ntaganda’s liability for reparations at USD 30,000,000.

8. In the Reparations Order, Trial Chamber VI further set deadlines for the TFV to submit an urgent plan for priority victims, and a general draft implementation plan (the “DIP”) by 8 June 2021 and 8 September 2021, respectively.

9. On 16 March 2021, the Presidency assigned the present case to the newly constituted Trial Chamber II (the “Trial Chamber”).¹⁰ Judge Chang-ho Chung was subsequently elected Presiding Judge of the Trial Chamber.¹¹

10. On 8 April 2021, both the Legal Representative¹² and the Defence¹³ provided their respective notices of appeal against the Reparations Order.

⁷ See the “Order setting deadlines in relation to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), 5 December 2019.

⁸ See the “First Decision on Reparations Process” (Trial Chamber VI), [No. ICC-01/04-02/06-2547](#), 26 June 2020 (the “First Decision on Reparations”).

⁹ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021 (the “Reparations Order”).

¹⁰ See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

¹¹ See the “Decision on the Election of the Presiding Judge” (Trial Chamber II), [No. ICC-01/04-02/06-2664](#), 22 March 2021, para. 2.

¹² See the “Notice of Appeal of the Common Legal Representative of Victims against the Reparations Order”, [No. ICC-01/04-02/06-2668](#), 8 April 2021.

¹³ See the “Defence Notice of Appeal against the Reparations Order ICC-01/04-02/06-2659”, [No. ICC-01/04-02/06-2669](#), 8 April 2021.

11. On 7 June 2021, the Legal Representative¹⁴ and the Defence¹⁵ filed their respective appeal briefs.

12. On 9 June 2021, the TFV submitted its “Report on the Trust Fund’s Preparation for Draft Implementation Plan”¹⁶ and “Initial Draft Implementation Plan with Focus on Priority Victims”.¹⁷

13. On 11 June 2021, the Trial Chamber issued its “Order for the submission of observations on the initial draft implementation plan with focus on priority victims”, whereby it directed the parties and the Registry to submit observations on the TFV’s IDIP by 23 June 2021.¹⁸

14. A corrigendum of the IDIP as well as a public redacted version of the accompanying report were filed on 14 June 2021.¹⁹

III. CONFIDENTIALITY

15. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, the present observations are classified as confidential as they respond to the submissions likewise classified as confidential. A public redacted version will be filed in due course.

IV. SUBMISSIONS

16. The Legal Representative is unable to agree with most of the proposals put forth by the TFV in its IDIP. Moreover, the Legal Representative notes that the TFV’s Board

¹⁴ See the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks”, [No. ICC-01/04-02/06-2674](#), 7 June 2021.

¹⁵ See the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675](#), 7 June 2021.

¹⁶ See the TFV Report, *supra* note 2.

¹⁷ See the IDIP, *supra* note 3.

¹⁸ See the “Order for the submission of observations on the initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2677](#), 10 June 2021.

¹⁹ See the “Corrigendum of Initial Draft Implementation Plan with Focus on Priority Victims (“Initial Draft Implementation Plan” or “IIP”), [No. ICC-01/04-02/06-2676-AnxA-Corr-Red](#), 14 June 2021 and “Public redacted version of ‘Report on Trust Fund’s Preparation for Draft Implementation Plan’ submitted on 8 June 2021”, [No. ICC-01/04-02/06-2676-Red](#), 14 June 2021.

of Directors considered the complement to the payment of the awards in the present case on 27 May 2021²⁰ – more than two months after the issuance of the Reparations Order – and that the TFV has not yet conveyed the decision on the amount which has been earmarked for that purpose. As funding is an absolutely crucial element to the matter of addressing the needs of prioritised victims, this decision, as well as the timeline and modalities of financing, should have been conveyed forthwith and, at the very least, been included in the TFV’s Report. The fact that the amount of available funds remains unknown furthermore negatively impacts the adequacy of the proposed IDIP.

A. GUIDING PRINCIPLES

17. The Legal Representative generally agrees with the ‘guiding principle’ that the purpose of the IDIP should provide redress to the most vulnerable victims and those in urgent need within the abilities and prevailing operational circumstances of the TFV. He also agrees with the principle that the IDIP should be limited in time to the period between approval of such plan and the beginning of the implementation phase of a full DIP.²¹

18. While pointing to an “*ample discretion*” afforded to it by Trial Chamber VI in the design of an implementation plan, the TFV endeavoured to apply specific directions and suggestions throughout the Reparations Order.²² It is submitted that in the design of its IDIP the TFV, however, misapplied and/or misinterpreted the key principles set out in the Reparations Order. As will be demonstrated below, the TFV’s proposals are irreconcilable with the ‘do no harm’ principle and Trial Chamber VI’s direction that the reparations process must avoid creating jealousy and hierarchy between victims or groups of victims.²³

²⁰ See the TFV Report, *supra* note 2, para. 45.

²¹ See the IDIP, *supra* note 3, paras 2(a) and (b).

²² *Idem*, para. 3.

²³ See the Reparations Order, *supra* note 9, para. 194.

19. Thus, remarkably, at the very beginning of its IDIP, the TFV expresses its endeavour to propose comprehensive reparations for former child soldiers based on the delivery mechanism in place in the *Lubanga* case,²⁴ but omits to even mention the other group of the victims in the present case, the victims of the attacks.

20. Moreover, the Legal Representative takes with issue the fact that the TFV “*does not yet have a full picture as to possible tensions, jealousy and animosity among affected communities and between co-habiting groups*”,²⁵ let alone between the former child soldiers and the victims of the attacks. The TFV provides no strategy in terms of mitigating the risk of possible tensions, animosity and jealousy. Its submissions on the communication with community leaders and affected communities²⁶ are too simplistic and insufficient; they do not rise beyond general comments and declared goals, and fail to properly address the concrete issues at hand that are unique to the present case.

21. More specifically, while the TFV somehow addresses the risk of confusion and misinformation about the scope and purpose of the IDIP in victim communities,²⁷ it seems that the suggested mitigation measure relates to the former child soldiers only since it refers to additional priority victims not yet included in the *Lubanga* reparations programmes.

22. It is submitted that before any outreach activities can be launched and any reparations measures implemented, it is crucial for the TFV to define and to include in its IDIP a clear strategy in terms of mitigating the risks of possible tensions, animosity and jealousy among affected communities and between co-habiting groups in the areas where the victims of the attacks reside.

²⁴ See the IDIP, *supra* note 3, para. 4.

²⁵ *Idem*, para. 45.

²⁶ *Idem*, paras. 81-82.

²⁷ *Idem*, para. 97.

B. PROPOSED MEASURES AND ELIGIBILITY

23. While the TFV correctly lists the priority groups identified in the Reparations Order,²⁸ it remains entirely unclear in the IDIP, which ‘programmes’ under the existing mechanisms are meant to target the priority victims of the attacks. The TFV’s proposed measures are formulated in an extremely vague manner, namely *“recourse to the relevant rehabilitation services and other forms of redress as provided similarly under the relevant TFV assistance project run by the organisation mentioned above”*,²⁹ the organisation referred to as ‘above’ seems to be [REDACTED],³⁰ being the TFV’s implementing partner for the *Lubanga* collective service-based reparation programme³¹ and for an assistance programme aimed at psychological and socio-economic reintegration of girl-mothers victims.³² It is unclear whether and to which extent the priority victims of the attacks are meant to be targeted by the [REDACTED] assistance project for the benefit of victims of [REDACTED].³³ Even assuming this is indeed the case, the proposed programmes are very specifically targeting only a fraction of persons belonging to the priority group of the victims of the attacks, namely girl-mothers and [REDACTED] persons. A marked absence of initiatives for the vast majority of the priority victims of the attacks, namely the elderly, or disabled is particularly striking.

24. The TFV declares that it will start providing reparations to the priority victims according to an administrative eligibility assessment procedure which suits the proposed measures,³⁴ but indicates that said procedure will be detailed and built on in the DIP.³⁵ Leaving the matter unaddressed, the TFV goes on to set out at its discretion the procedure for determining who among the priority victims of the attacks qualifies as a ‘priority’ victim, and in doing so again disregards the principle that the

²⁸ *Idem*, para. 7.

²⁹ *Idem*, para. 74.

³⁰ *Idem*, para. 71.

³¹ *Idem*, para. 31.

³² *Idem*, para. 33.

³³ *Idem*, para. 35.

³⁴ *Idem*, para. 12.

³⁵ *Idem*, para. 5.

reparations process must avoid creating jealousy and hierarchy between victims or groups of victims.³⁶

25. In this regard, the Legal Representative takes issue with the portrayal of the information he has provided to the TFV. In particular, he has specifically provided the TFV with a list of 758 victims falling within the priority groups set out in the Reparations Order. Of these persons, 730 qualify as being priority victims by virtue of being elderly. The list further includes 13 victims of sexual and gender-based crimes (the “SGBC victims”) and another 15 who live in a particularly dire economic situation. The figure of 65 persons offered by the TFV³⁷ as being identified as priority victims is therefore not correct and misrepresents the information transmitted to the TFV by the Legal Representative. This figure represents the number of the priority victims the Legal Representative managed to reach at the time in order to obtain an update on their current situation and their needs in terms of reparations. Collecting of updated information on the current situation of other priority victims is a work in progress which has been seriously undermined by the security situation in the region and the large displacement of the victims. But the priority victims must not be discarded from the scope of the IDIP simply based on the fact that some of them may not be reachable at this point in time. Nonetheless, and as will be discussed in more detail below, the TFV proposes to create a further ‘ranking’ amongst its own ‘shortlist’ as it identifies only [REDACTED] available spaces in the proposed IDIP. These proposals based on the sub-categorisation of priority victims are, as such, not acceptable.

26. The TFV refers to another category of victims of the attacks, the victims who “submitted ICC applications forms”, in the context of its discussion on the need for these victims to also be represented in the current reparations proceedings.³⁸ The Legal Representative recalls in this regard that in accordance with the First Decision on

³⁶ See the Reparations Order, *supra* note 9, para. 194.

³⁷ See the IDIP, *supra* note 3, para. 16.

³⁸ *Idem*, para. 18.

Reparations, the Registry was supposed to *register* new potential beneficiaries,³⁹ however, the collection of application forms was not envisaged at any stage of the reparations proceedings. In any event, and as will be addressed below, the rights and interests of another category of the victims of the attacks, those not yet identified, should equally be represented in the present reparations proceedings.

C. ASSISTANCE PROGRAMMES

27. The Legal Representative notes the TFV's proposal to include priority beneficiaries in its existing assistance programmes so as to "*allow it to act swiftly*".⁴⁰ The TFV further lists other criteria that led it to consider the inclusion of priority beneficiaries in these programmes, namely its ability to maintain control over the implementation and the ability to ensure that the implementing partners adhere to the "*criteria of priority, harm and eligibility*" and transition to the full reparations programmes.⁴¹

28. Among its other considerations is the TFV's current 'reforming' and 'streamlining'⁴² of its assistance mandate projects, although it remains open whether this is specifically related to the TFV's task at hand or a more general fulfilment of its assistance mandate. Be that as it may, the TFV uses said considerations as a further basis for its conclusion that there is only a limited number of space available in its current projects and that it would not be able to accommodate more than [REDACTED] priority victims of the attacks.⁴³ The TFV moreover reports that it is envisaging the increase in capacity of one of its programmes in order to accommodate a further [REDACTED] victims. It seems however that this latter capacity is thus far nothing more than a formulated ambition and these [REDACTED] spaces are *de facto*

³⁹ See the First Decision on Reparations, *supra* note 8, para. 34.

⁴⁰ See the IDIP, *supra* note 3, para. 20.

⁴¹ *Ibid.*

⁴² *Idem*, para. 21.

⁴³ *Idem*, para. 22.

not currently available,⁴⁴ nor is a concrete roadmap for achieving this goal included in the TFV's plan.

29. As such, the Legal Representative is not opposed to including priority victims in the TFV's assistance programmes to cover the time until the main reparations structures will be in place as these victims will be able to receive some form of reparation at this stage. As an interim measure, the use of pre-existing structures, such as the assistance programmes, is therefore a means to achieving the implementation of the Reparations Order.

30. However, the Legal Representative notes with concern that, as it stands, only [REDACTED] priority victims would be able to be included in the aforementioned assistance programmes. This number falls decidedly short of the 758 priority victims he has identified.

31. Furthermore, the TFV explains that if funding were increased, it would be able to expand the existing capacities. However, it remains unclear what the TFV has in mind as regards this funding increase. Whether it intends to raise additional funds for and accounted as 'assistance mandate funds' or whether it intends to earmark funds that would be accounted as coming from the reparations award, remains unclear. The TFV simply provides justification for the exceptional procurement process pursuant to regulation 110.17 of the Court's Financial Rules and Regulations.⁴⁵ At the same time, it appears that what the TFV intends to do is to raise the budget of its current on-going assistance projects.⁴⁶ It is submitted that this proposal would as such not be acceptable within the framework of the implementation of reparations in the present case. The measures of interim relief to priority victims have been ordered against Mr Ntaganda and are to be financed from the overall reparations award.⁴⁷ Even if the Appeals Chamber were to grant the appeals in this regard, there will in any event be *an award*.

⁴⁴ *Ibid.*

⁴⁵ *Idem*, para. 24.

⁴⁶ *Idem*, para. 25.

⁴⁷ The overall award is currently under dispute before the Appeals Chamber.

Irrespective of its size, the funds that are to be extended are supposed to be taken from this reparations award. While the TFV does add that “*initially, the TFV will need to separately account for measures provided to reparation victims*”,⁴⁸ the IDIP is lacking detail in this regard and the preceding explanations regarding the raising of additional funds to create more spaces appear to contradict this statement.

32. In the Legal Representative’s submissions, the separate accounting is paramount to keeping the reparations aspect of any initial interim plan separate from other programmes the TFV is running in the region. This, on the other hand, is of utmost importance in order to fulfil the requirements of the Reparations Order that the Legal Representative has not contested on appeal, namely, providing interim relief to a priority group of eligible beneficiaries.

33. Accordingly, whereas the use of pre-existing structures is agreeable, the provision of interim relief to the priority victims as part of the reparations process in the present case should be subject to separate funding and separate administration. Furthermore, the limited capacities available for priority victims would, beyond creating a hierarchy amongst victims of Mr Ntaganda’s crimes, sit uncomfortably with persons being included in the assistance programmes as the priority victims would ‘come second’ to persons who are generally provided with services under these programmes.

34. The explanations provided by the TFV in this regard⁴⁹ are rather theoretical; they do not concretely set out what specifically the TFV intends to do in practice in order to be faithful to the Reparations Order by providing interim relief reparations to identified priority victims. The TFV does not put a concrete proposal on the table on how it intends to achieve this.

⁴⁸ See the IDIP, *supra* note 3, para. 29.

⁴⁹ *Idem*, para. 28.

35. Under the heading 'Existing mechanisms' the TFV further explains that it has started consultations with implementing partners of programmes it is 'considering'.⁵⁰ This, again, offers little material for concrete discussion of the content and format of such programmes that the TFV is apparently exploring with local partners. The overall aim of the *draft* plan was indeed to put forward concrete proposals that would be presented for the scrutiny of the parties and the Trial Chamber.

36. The only concrete proposals on the table are those that concern former child soldiers, including the [REDACTED] project.⁵¹ The remainder of projects the TFV introduces in broader terms are, as such, not suited for the majority of priority victims of the attacks identified, namely the elderly, disabled and economically severely disadvantaged. The projects that are being discussed are tailored to very specific target groups and, although fulfilling a very useful and important purpose, are nevertheless very limited in their broader applicability to other groups. The [REDACTED] project specifically targets 'girl mothers', while the [REDACTED] projects target victims of [REDACTED].⁵² As such, the vast majority of priority victims of the attacks in the present case do not belong to either of these groups. Accordingly, it is submitted that the projects discussed in the IDIP are not adequately targeting the priority victims of the attacks and are therefore largely unsuitable.

37. Moreover, as far as the mentioned [REDACTED] projects aim to target former child soldiers who are also 'girl mothers' – which unfortunately remains unclear – the Legal Representative herewith recalls that former child soldiers and victims of the attacks must not be placed in the same programmes, as for the latter the former are directly and inseparably linked with the perpetrators of the crimes from which they suffered.

⁵⁰ *Idem*, para. 30.

⁵¹ *Idem*, para. 31.

⁵² *Idem*, paras. 33-35.

38. Likewise unclear are the statistics provided by the TFV in paragraph 34 of the IDIP. Since they refer to [REDACTED] beneficiaries, it is assumed that these numbers do not relate to the 'girl mothers' project. Yet, it can unfortunately not be discerned to which concrete projects they do relate and whether such projects are similarly feasible for implementation for the benefit of priority victims of the attacks in the present case.

39. The *content* of the assistance programmes for victims of [REDACTED]⁵³ is such as to – generally speaking – be of interest to the victims of the attacks in the present case. However, the concerns expressed above remain. The assistance provided must be tailored to the specific target group of beneficiaries in this case. Placing persons who are neither [REDACTED] nor victims of [REDACTED] into a programme designed for the former is not a feasible option. Doing so would harm the beneficiaries' well-being, create stigmatization and tensions between the intended target groups and the priority victims who would be placed into these programmes. It is submitted that in accordance with the 'do no harm' principle set out in the Reparations Order, such steps must be avoided at all cost and more broadly targeted solutions must be found for the priority victims in the present case.

40. The financial breakdown the TFV offers in relation to the existing projects leaves open the question how this cost relates to the specific projects, and how it intends the additional cost to be divided between projects for the benefit of former child soldiers and victims of the attacks. Within the framework of the Reparations Order as it stands now and pending the determination on the matter by the Appeals Chamber, the TFV must still set out *how* in particular it envisages to distribute the money between the two groups of victims (and which concrete amount). Whether this suggested approach will ultimately withstand the Appeals Chamber's decision is an entirely different and separate matter. Yet, the Reparations Order has conferred this discretion upon the TFV and the latter must act accordingly and in a transparent manner. It is submitted that already within the framework of the current IDIP, the information provided by the

⁵³ *Idem*, para. 35.

TFV is insufficient in this regard. Furthermore, and especially in light of the appellate proceedings, it is of utmost importance that the TFV transparently and meticulously record the intended allocation of funds, including the overall funds it intends to allocate to the realisation of priority projects and how these funds are shared between the former child soldiers and the victims of the attacks.

D. PRINCIPLES GUIDING THE DEVELOPMENT OF THE IDIP

41. The TFV sets out that it had specifically taken a gender-sensitive approach in the design of the proposed reparation measures and that one measure is specifically designed to target the “*many*” victims of the attacks belonging to the SGBC ‘category’.⁵⁴ The Legal Representative does not share this assessment. Out of the 758 priority victims identified, only 13 fall within this category. Even if the TFV were erroneously relying on the figure of 65 it puts forward elsewhere,⁵⁵ 13 is still less than a quarter of these victims. Thus, the efforts to apply a gender-based approach should not be misunderstood and ultimately lead to the creation of false hierarchies among victims. While it is important to act in accordance with such principles, other priority groups must not be de-prioritised where they do constitute the majority of victims.

42. As regards the TFV’s submissions on projects for former child soldiers,⁵⁶ the Legal Representative has only limited observations to make. In particular, he recalls that the envisaged measures should be carried out in a manner that does not unduly favour this group of priority victims over other priority victims.⁵⁷ Moreover, it is of utmost importance that any expenditure incurred will indeed be accounted for separately, as suggested by the TFV.⁵⁸ In this regard, the Legal Representative would welcome if the TFV could proceed with “*assess[ing] how the programme refers in financial terms to the liability of Mr Ntaganda, with the adaptations required for accounting purposes*”

⁵⁴ *Idem*, para. 44.

⁵⁵ *Idem*, para. 16.

⁵⁶ *Idem*, paras. 68-69.

⁵⁷ *Idem*, paras. 92-93.

⁵⁸ *Idem*, para. 62.

sooner rather than later.⁵⁹ This assessment should be carried out prior to any implementing steps being undertaken and not constitute a post-factum exercise, as the matter directly impacts on the question of how much money is expended for which group of victims.

E. THE TFV'S SUGGESTED ADMINISTRATIVE ELIGIBILITY ASSESSMENT

43. The Legal Representative is opposed to the administrative eligibility assessment proposed by the TFV. The proposed criteria are unacceptable in that they create 'sub-categories' and hence hierarchy between victims. This contravenes the Reparations Order which foresees that victims are to be treated fairly and equally. It is moreover not acceptable that the TFV proposes to further delegate the assessment to partners in the field.⁶⁰

44. It is insufficient for the TFV to be "*channelling the relevant information to the implementing partner*".⁶¹ The very nature of the administrative eligibility system is that the TFV, as the implementing body, take ownership of this assessment. While the Trial Chamber may delegate the eligibility assessment to the TFV, the TFV must be the entity in charge of this process.⁶² Adding further layers of delegation is neither foreseen in the legal framework of the Court, nor is it conducive to transparency and good administration.

45. The TFV's proposal to rely on a community-based approach for the purpose of the eligibility assessment,⁶³ could be an option insofar as it will comply with the principle set in the Reparations Order, namely to consult with the victims at all stages of the reparations process.⁶⁴ However, here again, the TFV does not explain what the

⁵⁹ *Ibid.*

⁶⁰ *Idem*, paras. 77-79 and 85.

⁶¹ *Idem*, para. 86.

⁶² See the "Judgment on the appeal of the victims against the 'Reparations Order' (Appeals Chamber), [No. ICC-01/12-01/15-259-Red2 A](#), 8 March 2018, paras. 6 and 62.

⁶³ See the IDIP, *supra* note 3, para. 79.

⁶⁴ See the Reparations Order, *supra* note 9, paras. 45-49.

suggested approach is in practice: Should members of the community be involved or leaders only? How is this approach meant to be applied in case of displaced victims?

46. Accordingly, once the timeline and roadmap of its steps have been provided and the strategy on the mitigation of risks defined and put forward as discussed above, the TFV as the entity charged with the eligibility screening should then proceed with the screening of all priority victims. This will economise on time and further be a strong signal to the victim communities that the process has effectively started for all priority victims, although for now only [REDACTED] may be able to enrol as a first step, but with a clear picture on the way forward, namely what the victims can expect, to which extent and when.

F. LEGAL REPRESENTATION

47. The Legal Representative submits that the Common Legal Representatives should be representing (respectively) not only the newly identified victims, as suggested by the TFV as regards the victims of the attacks,⁶⁵ but also generally the interests of all the not yet identified eligible victims. A similar representation arrangement has been used in the *Lubanga* case, where the Office of Public Counsel for Victims was appointed to represent the interests of a similar group of victims.⁶⁶ The Legal Representative stands available to provide the legal representation to the newly identified and not yet identified victims of the attacks, should the Trial Chamber decide so.

G. THE PROPOSED IDIP MUST BE REVISED

48. The Legal Representative deplores the fact that the TFV has missed the opportunity to provide a draft plan and framework that would allow swift implementation of, at the very least, interim reparation measures for the priority victims in the present case. Instead, the TFV presented a vision of set goals with little

⁶⁵ See the IDIP, *supra* note 3, para. 8.

⁶⁶ See the “Decision on the OPCV’s request to participate in the reparations proceedings” (Trial Chamber I), [No. ICC-01/04-01/06-2858](#), 5 April 2012.

concrete substance or specific detail, at least in relation to the priority group of victims of the attacks.

49. From what the TFV reports, it is already clear that the current capacities in the region or those available in the near future are extremely limited when seen against the number of identified priority victims. In addition to this, some of the fundamental cornerstones of the implementation process have either not been addressed by the TFV or do not rise beyond vaguely formulated future goals. In particular, this concerns the budget intended for the implementation of the IDIP and how this budget relates to overall funds set aside of otherwise earmarked for reparations in the present case.

50. Likewise, the TFV has missed the opportunity to provide a timeline and roadmap as to its way forward, in particular with a view to strengthening the existing mechanisms of its assistance programmes to be suitable to provide interim relief to priority victims and to actively venture beyond the 'scope of work' of its existing implementing partners to create new capacities.

51. Moreover, the TFV provides no strategy in terms of mitigating the risk of possible tensions, animosity and jealousy among affected communities and between co-habiting groups, let alone between former child soldiers and victims of the attacks.

52. Thus, in order to move the process forward, it would be preferable for the TFV to design a step by step process. It is necessary that the TFV first attain clarity about concrete measures and programmes, a concrete timeline and forecast of further available places in relevant programmes (including relevant procurement processes) before any outreach activities or enrolment of victims in programmes can begin. Victims will understand that not all of them may be reached at the same time, however, the acceptance of a gradual enrolment can only be achieved if there is a concrete plan and equally concrete timelines can be explained to victims who are entitled to reparations.

53. What the TFV has put on the table does not meet these requirements. The IDIP is too vague to constitute a safe basis for outreach activities. The ‘do no harm’ principle mandates that the most vulnerable, or any other victims in fact, are not approached unless they can rely on what is being relayed to them, including a reliable timeframe for when they can be expected to benefit. The outreach message must also clearly address and explain to victims that reparations will be implemented in stages and that therefore not all persons will be reached at the same time. It is crucial that victims are being told that others might benefit before it is their turn and that this fact does not mean that other persons are favoured. Transparency is vital in order to effectively manage the legitimate expectations of the victims of the attacks in a manner that does not create further harm or disappointment. These are delicate issues and must adequately be taken into account and planned for.

54. Therefore, the Legal Representative submits that the TFV should first focus its efforts on discussions with the Registry as regards the procurement processes and then put forward a concrete timeline and forecast of strengthening relevant field capacities. It should in parallel develop a concrete plan on how to mitigate risks of creating tensions, animosity and jealousy both among the affected communities and between Lendu and Hema co-habiting communities.

55. It seems that implementing the reparations in the present case along with putting in place relevant assistance programmes in the locations with Lendu and Hema co-habiting communities and/or where only a selected part of the inhabitants would benefit from reparations would be the most optimal way to mitigate risks of tensions, jealousy and animosity. In this regard, and as part of its implementing strategy, the TFV should consider ways of securing cooperation and synergies with all relevant stakeholders, in particular the DRC and other States Parties, and/or, as previously suggested, with international financial institutions⁶⁷ for the purpose of

⁶⁷ See the “Corrigendum of the ‘Public Redacted Version of the ‘Submissions of the Common Legal Representative of the Victims of the Attacks on Reparations’”, [No. ICC-01/04-02/06-2477-Red-Corr](#), 20 November 2020, paras. 64 and 66.

assisting the relevant communities, given in particular that the same communities have continuously been victimised over the last years by exactions committed by various armed groups.

56. Concretely, the revised IDIP should contain (i) the amount of money dedicated for the reparations in the present case;⁶⁸ (ii) the timing and steps of the financing. In addition, it should include (iii) the steps and timing of expanding the current existing field mechanisms and the timeframe for creating new ones, (iv) the estimated number of victims to be expected to be gradually enrolled and when, and (v) a clear risk-mitigation strategy.

57. In conclusion, it is submitted that the desire to expedite the reparations proceedings and the assistance that can be provided to priority victims, which is equally shared by the Legal Representative, must not unduly impact on the fairness and soundness of the process. Rushed decisions may, to the contrary, result in irreparable harm and loss of trust in the process on the side of the victims. They have already waited many years for justice and reparations, however, they are now entitled to fair and effective reparation rather than promises that cannot be kept.

⁶⁸ See in this regard the instructions of the Appeals Chamber to the TFV in the amended order for reparations in the *Lubanga* case: “Order for Reparations (amended)” (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA A A2 A3](#), 3 March 2015, para. 78.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a long vertical stroke extending downwards from the bottom of the signature.

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 28th Day of June 2021

At The Hague, The Netherlands