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TRIAL CHAMBER II

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF**

THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public Redacted Version

“Trust Fund’s Reply to the LRV01, LRV02 and OPCV’s Responses of 28 April 2023 to the Twentieth progress report on the implementation of collective reparations and its Addendum”, dated 10 May 2023, ICC-01/04-01/06-3549-Conf-Exp

Source: The Trust Fund for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**Legal Representatives of Victims V01**

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I. BACKGROUND

1. The Trust Fund hereby submits a Reply to the LRV01, LRV02 and OPCV's responses to its Twentieth progress report and its Addendum following Trial Chamber II's ("Trial Chamber") decisions of 21 October 2016, 6 April 2017 and 7 February 2019, approving, respectively, the programmatic framework for collective symbolic reparations as submitted by the Trust Fund for Victims ("Trust Fund"),¹ the programmatic framework for the service-based collective reparations as submitted by the Trust Fund,² and the Trust Fund's proposal in relation to the process for locating new applicants and determining their eligibility,³ and recalling its progress reports in this regard.

II. CLASSIFICATION OF THE PRESENT SUBMISSION

2. Pursuant to regulation 23 *bis* (2) of the Regulations of the Court, the Trust Fund has classified the present Reply as *ex parte* only available to the LRV01, LRV02, OPCV, Registry and to the Trust Fund for Victims, as it refers to filings with the same classification.

III. RELEVANT PROCEDURAL HISTORY

3. The Trust Fund refers to the procedural history set out in the Eighteenth progress report on the implementation of collective reparations ("Eighteenth progress report") submitted on 4 August 2022,⁴ and in the Twentieth progress report on the implementation of collective reparations ("Twentieth progress report") submitted on 6 March 2023.⁵

¹ Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparation, 21 October 2016, [ICC-01/04-01/06-3251](#).

² Order approving the proposed programmatic framework for collective service-based reparations submitted by the Trust Fund for Victims, 6 April 2017, [ICC-01/04-01/06-3289](#).

³ Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations, 7 February 2019, [ICC-01/04-01/06-3440-Red-tENG](#).

⁴ Eighteenth progress report on the implementation of collective reparations as per Trial Chamber II's decisions of 21 October 2016, 6 April 2017 and 7 February 2019 ("Eighteenth progress report"), With Confidential *ex parte* Annex A only available to the LRV01, the Trust Fund for Victims and the VPRS and Confidential *ex parte* Annexes B only available to the LRV01, the LRV02, the OPCV and the Trust Fund for Victims, 4 August 2022, [ICC-01/04-01/06-3537-Red](#).

⁵ Twentieth progress report on the implementation of collective reparations as per Trial Chamber II's decisions of 21 October 2016, 6 April 2017 and 7 February 2019, With Confidential *ex parte* Annexes A and D only available to the LRV01, the Trust Fund for Victims, and the VPRS, B only available to the LRV02, the Trust Fund for Victims, and the VPRS, C only available to the LRV02 and the Trust Fund for Victims, E, F, H and I only available to the LRV01, LRV02, OPCV and the Trust Fund for Victims, G only available to the LRV01, OPCV and the Trust Fund for Victims, and J only available to the OPCV and the Trust Fund for Victims, 6 March 2023, [ICC-01/04-01/06-3913-Conf](#). ("Twentieth progress report, 6 March 2023, [ICC-01/04-01/06-3913-Conf](#)").

4. On 17 April 2023, the Trust Fund submitted an Addendum to its Twentieth progress report.⁶

5. On 28 April 2023, the Office of Public Counsel for Victims (“OPCV”),⁷ the Legal Representatives V01 (“LRV01”)⁸ and the Legal Representatives V02 (“LRV02”)⁹ submitted responses to the Twentieth progress report (“the OPCV, LRV01 and LRV02’s Responses” or “the LRVs’ Responses”).

6. On 3 May 2023, the Trust Fund submitted a Request for leave to reply to the LRVs’ Responses.¹⁰

7. On 4 May 2023, the Trial Chamber approved the Request for leave to reply to the LRVs’ Responses and directed the Trust Fund to file a Response to the LRVs’ Responses by 10 May 2023.¹¹

8. On the same day, the OPCV submitted a Response to the Request for leave to reply.¹²

IV. REPLY

A. Preliminary remarks

9. The Trust Fund recalls that pursuant to regulation 58 of the Regulations of the Trust Fund for Victims (“TFV Regulations”), it submits progress reports on the implementation of Court-ordered reparations to the Trial Chamber relevant to a specific reporting period as determined by

⁶ Addendum to the Trust Fund’s Twentieth progress report on the implementation of collective reparations as per Trial Chamber II’s decisions of 21 October 2016, 6 April 2017 and 7 February 2019 pursuant to Regulation 57 of the Regulations of the Trust, 17 April 2023, [ICC-01/04-01/06-3914-Conf-Exp.](#)

⁷ *Réponse du BCPV au Vingtième rapport de progrès sur la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à l’Addendum déposé le 17 avril 2023*, 28 April 2023, [ICC-01/04-01/06-3916-Conf.](#)

⁸ *Réponse des Représentants légaux des victimes V01 au vingtième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à son Addendum le 17 avril 2023 avec annexe A confidentielle ex parte accessible uniquement à V01, V02 au BCPV, au Greffe et au Fonds au profit des victimes*, 28 April 2023, [ICC-01/04-01/06-3915-Conf-Exp.](#)

⁹ *Réponse des Représentants légaux des victimes du groupe V02 au vingtième rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 06 mars 2023 (ICC-01/04-01/06-3913-Conf avec annexes) et à l’addendum déposé le 17 avril 2023 (ICC-01/04-01/06-3914-Conf avec annexes)*, 28 April 2023, [ICC-01/04-01/06-3917-Conf-Exp.](#)

¹⁰ Trust Fund’s Request for Leave to reply to the LRV01, LRV02 and OPCV’s Responses of 28 April 2023 to the Twentieth progress report on the implementation of collective reparations and its Addendum, 3 May 2023, [ICC-01/04-01/06-3918-Conf-Exp.](#)

¹¹ Email from Trial Chamber II to the TFV on 4 May 2023, at 14.46.

¹² Email from the OPCV to Trial Chamber II on 4 May 2023, at 17.21.

the Trial Chamber. The Twentieth progress report's reporting period ended on 6 March 2023 and is referred in this Reply as the TFV Regulation 58 Report. In addition, the Trust Fund also uses these reports as a means to inform the Trial Chamber of "*any questions that arise in connection with the implementation of the awards*" pursuant to TFV Regulation 57. The Trust Fund has included in its Twentieth progress report and the Addendum thereto specific requests relevant to 1) a mechanism to address violent behaviour and/or repeated misbehaviour of beneficiaries and 2) the behaviour of two specific beneficiaries ("TFV Regulation 57 Requests"). The LRVs submitted Responses to the Twentieth progress report and its Addendum. The Trust Fund considers that, after having considered the submissions of the LRVs, it should further provide a number of clarifications, which generally coincide with the requirements of regulation 24 (5) of the Regulations of the Court. This reply will be structured pursuant to issues relating to respectively the TFV Regulation 57 Requests and the TFV Regulation 58 Report.

B. TFV Regulation 57 Requests

10. In relation to the TFV Regulation 57 Requests set out in the Twentieth Update Report and its Addendum and [REDACTED], the Trust Fund notes that the LRVs have put forward diverse standpoints and views, in [REDACTED]. Based on prior conversations and meetings held with the LRVs, the Trust Fund had not anticipated some of the substance of the submissions of the LRVs. With the aim of expediting a constructive process and taking into account the LRV01's¹³ and the OPCV's¹⁴ request for the LRVs to be included in the process [REDACTED], the Trust Fund respectfully submits that it may be in the best interest of all stakeholders to further confer on the matter and thus proposes to [REDACTED], jointly with the LRVs, [REDACTED], before seeking the Trial Chamber's approval thereto.

C. TFV Regulation 58 Report

11. The Trust Fund recalls that it has reported in its Twentieth Update Report and the Addendum thereto extensively to the Trial Chamber pursuant to TFV Regulation 58 in relation to

¹³ *Réponse des Représentants légaux des victimes V01 au vingtième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à son Addendum le 17 avril 2023 avec annexe A confidentielle ex parte accessible uniquement à V01, V02 au BCPV, au Greffe et au Fonds au profit des victimes*, 28 April 2023, [ICC-01/04-01/06-3915-Conf-Exp](#), para. 45.

¹⁴ *Réponse du BCPV au Vingtième rapport de progrès sur la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à l'Addendum déposé le 17 avril 2023*, 28 April 2023, [ICC-01/04-01/06-3916-Conf](#), para. 5.

the implementation of reparation awards that relate to the quarterly reporting period that ended with the filing of the Twentieth progress report of 6 March 2023. The Trust Fund underlines that it has been reporting to the Trial Chamber on these matters without seeking any particular ruling of the Trial Chamber. The implementation of measures taken by the Trust Fund to improve the programme is ongoing. The Trust Fund notes the LRVs' positive stance on the measures taken,¹⁵ which mirror the prior conversations and meetings held between the Trust Fund and the LRVs.¹⁶ Among others, the Trust Fund welcomes the agreement of the LRVs to the end of services process that it will start implementing.¹⁷

LRVs' submissions addressing developments outside of the reporting period

12. The Trust Fund notes that there are a number of issues which have been raised by the LRVs in their Responses to the Twentieth progress report and its Addendum that fall outside of the reporting period of the latter.¹⁸ The Trust Fund takes note of these issues, whilst noting that they had not yet been raised directly with the Trust Fund. The Trust Fund understands that the filing of an Addendum during a new reporting period may have encouraged the LRVs to raise these matters directly in these Responses, but recalls that the Trial Chamber instructed the LRVs to first raise and solve any issues related to the implementation of reparations directly with the Trust Fund in order for it to effectively address them before bringing them to the Trial Chamber's attention, after having exhausted all possible venues for agreement and understanding between the victims, the LRVs, the TFV, and its implementing partner.¹⁹ Accordingly, the Trust Fund will address these

¹⁵ See, e.g., *Réponse des Représentants légaux des victimes V01 au vingtième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à son Addendum le 17 avril 2023 avec annexe A confidentielle ex parte accessible uniquement à V01, V02 au BCPV, au Greffe et au Fonds au profit des victimes*, 28 April 2023, [ICC-01/04-01/06-3915-Conf-Exp](#) paras 37, 39, 47 and 48 ; *Réponse des Représentants légaux des victimes du groupe V02 au vingtième rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 06 mars 2023 (ICC-01/04-01/06-3913-Conf avec annexes) et à l'addendum déposé le 17 avril 2023 (ICC-01/04-01/06-3914-Conf avec annexes)*, 28 April 2023, [ICC-01/04-01/06-3917-Conf-Exp](#), paras 18, 21, 36, 38 and 40. *Réponse du BCPV au Vingtième rapport de progrès sur la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à l'Addendum déposé le 17 avril 2023*, 28 April 2023, [ICC-01/04-01/06-3916-Conf](#), paras 17, 26, 27, 28 and 31.

¹⁶ See, e.g., meeting minutes of a meeting held between the Trust Fund and the LRVs on 27 March 2023.

¹⁷ *Ibid.*

¹⁸ See, e.g., *Réponse des Représentants légaux des victimes V01 au vingtième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à son Addendum le 17 avril 2023 avec annexe A confidentielle ex parte accessible uniquement à V01, V02 au BCPV, au Greffe et au Fonds au profit des victimes*, 28 April 2023, [ICC-01/04-01/06-3915-Conf-Exp](#), paras 14, 20 and 24.

¹⁹ Ninth Decision on the TFV's administrative decisions on applications for reparations and additional matters, 22 September 2022, [ICC-01/04-01/06-3536-Red](#), para. 18.

matters with the relevant LRVs and include the outcome of this process in its Twenty-first progress report due on 6 June 2023.

D. [REDACTED]

13. The Trust Fund has a different viewpoint on some of the observations of the LRVs, in particular on those relevant to the [REDACTED] January, February and March 2023²⁰ and to the communication with the LRVs and/or beneficiaries in the past.²¹

14. Concerning the former, the Trust Fund has discussed and addressed these matters with the LRVs on several occasions,²² and set out in the Addendum what it considers [REDACTED]. It is the Trust Fund's understanding that the LRV01's assessment supports the Trust Fund's view on these matters.²³

15. Concerning the latter, the Trust Fund has reported in the Twentieth progress report²⁴ and the Addendum²⁵ on the structure and way of communication with the beneficiaries as it had been put in place after the [REDACTED] January/February 2023. It recalls in particular that since January/February 2023, the implementing partner has been informing each new beneficiary of the measures and services that would be provided through written information at the intake.²⁶ The

²⁰ See *Réponse du BCPV au Vingtième rapport de progrès sur la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à l'Addendum déposé le 17 avril 2023*, 28 April 2023, [ICC-01/04-01/06-3916-Conf](#), para. 34 et seq.

²¹ See, e.g., *Réponse des Représentants légaux des victimes V01 au vingtième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à son Addendum le 17 avril 2023 avec annexe A confidentielle ex parte accessible uniquement à V01, V02 au BCPV, au Greffe et au Fonds au profit des victimes*, 28 April 2023, [ICC-01/04-01/06-3915-Conf-Exp](#) paras 13 to 14 and 47 to 48; *Réponse des Représentants légaux des victimes du groupe V02 au vingtième rapport sur le progrès de la mise en oeuvre des réparations collectives déposé par le Fonds au profit des victimes le 06 mars 2023 (ICC-01/04-01/06-3913-Conf avec annexes) et à l'addendum déposé le 17 avril 2023 (ICC-01/04-01/06-3914-Conf avec annexes)*, 28 April 2023, [ICC-01/04-01/06-3917-Conf-Exp](#), para. 35. *Réponse du BCPV au Vingtième rapport de progrès sur la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à l'Addendum déposé le 17 avril 2023*, 28 April 2023, [ICC-01/04-01/06-3916-Conf](#), paras 18 to 21 and 27 to 31.

²² See, e.g., meeting minutes of a meeting held between the Trust Fund and the LRVs on 27 March 2023.

²³ See, e.g., *Réponse des Représentants légaux des victimes V01 au vingtième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 6 mars 2023 et à son Addendum le 17 avril 2023 avec annexe A confidentielle ex parte accessible uniquement à V01, V02 au BCPV, au Greffe et au Fonds au profit des victimes*, 28 April 2023, [ICC-01/04-01/06-3915-Conf-Exp](#), para. 34 and Annex A.

²⁴ Twentieth progress report, 6 March 2023, [ICC-01/04-01/06-3913-Conf](#), paras 78 to 91.

²⁵ Addendum to the Trust Fund's Twentieth progress report on the implementation of collective reparations as per Trial Chamber II's decisions of 21 October 2016, 6 April 2017 and 7 February 2019 pursuant to Regulation 57 of the Regulations of the Trust, 17 April 2023, [ICC-01/04-01/06-3914-Conf-Exp](#), paras 22, 36 to 38, 40 and 45.

²⁶ See, e.g., Twentieth progress report, 6 March 2023, [ICC-01/04-01/06-3913-Conf](#), para. 48.

information at the intake will be amended for the intake that starts in May 2023, as set out in the Addendum.²⁷

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests the Trial Chamber to take note of the present reply to the LRVs' Responses pursuant to Regulation 24 (5) of the Regulations of the Court.



Deborah Ruiz Verduzco
Executive Director of the Trust Fund for Victims,

Dated this 8th of September 2023
(Date of the original: 10th of May 2023)

The Hague, Netherlands

²⁷ *Ibid.*