



Original: English

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

Date: 15 August 2023

TRIAL CHAMBER II

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

**Public
With Public Annex A**

**Public Redacted Version of the “Observations of the Common Legal
Representative of the Victims of the Attacks on the Trust Fund for Victims’
Updated Draft Implementation Plan”
(ICC-01/04-02/06-2764-Conf, dated 18 May 2022)**

Source: Office of Public Counsel for Victims (CLR2)

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

The Office of the Prosecutor

Counsel for the Defence

Mr Stéphane Bourgon

Ms Kate Gibson

Legal Representatives of the Victims

Mr Dmytro Suprun

Legal Representatives of the Applicants

Ms Sarah Pellet

Ms Caroline Walter

Mr Tars Van Litsenborgh

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Detention Section

Victims and Witnesses Unit

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Ms Deborah Ruiz Verduzco

I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative” or “CLR2”) hereby submits his observations on the “Trust Fund for Victims’ second submission of the Draft Implementation Plan” (the “Second Submission”), in particular on the second version of the Draft Implementation Plan (the “Updated DIP”).¹

2. Despite having been ordered to address, to the extent possible, all matters requiring further clarification as identified by the parties² – the Trust Fund for Victims (the “TFV”) repeatedly failed to submit a workable DIP – even with the benefit of an extension of time to submit the required additional information.³ Rather, a *concept* that lacks specificity in key aspects was again presented, and continues to fail to take into account both the wishes previously expressed by the participating victims, and the principles of fair and equal reparations. Many matters continue to remain unspecified and/or unresolved. Many proposals continue to lack the required details. Some proposals come as a surprise since they were not at all discussed with the Legal Representative, such as symbolic monetary awards for sexual and gender based violence (“SGBV”) victims, starter sums for all beneficiaries or lump sums *in lieu* of

¹ See the “Trust Fund for Victims’ second submission of the Draft Implementation Plan”, [No. ICC-01/04-02/06-2750](#), 24 March 2022 (the “Second Submission”), with confidential Annex A, which contains the second version of the Draft Implementation Plan, [No. ICC-01/04-02/06-2750-Conf-Anx1](#), and confidential and *ex parte* Annex B, [No. ICC-01/04-02/06-2750-Conf-Exp-Anx2](#), only available to the Common Legal Representative of the Former Child Soldiers and the Legal Representative. A corrigendum of public redacted version of ICC-01/04-02/06-2750-Conf-Anx1 was filed on 14 April 2022 as [No. ICC-01/04-02/06-2750-Anx1-Red-Corr](#) (the “Updated DIP”). See also the “Trust Fund of Victims’ submission of Draft Implementation Plan”, [No. ICC-01/04-02/06-2732](#), 20 December 2021 (the “First Submission”), with confidential Annex A, which contains the Draft Implementation Plan [No. ICC-01/04-02/06-2732-Conf-AnxA](#), 20 December 2021 (the “DIP”). A public redacted version of the DIP was filed on 25 January 2022 as [No. ICC-01/04-02/06-2732-AnxA-Red](#).

² See the “Decision on the ‘Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan’ and additional request by the TFV” (Trial Chamber II), [No. ICC-01/04-02/06-2739](#), 21 January 2022 (the “Decision on CLR1’s Request”), p. 8.

³ See the “Decision on the Trust Fund for Victims’ Request for Extension of Time to Submit Additional Information on Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2749](#), 24 February 2022, p. 7.

socio-economic rehabilitation measures. Having been provided with an opportunity to supplement the initial version of its DIP, the TFV did not make use of the opportunity to consult with the Legal Representative prior to submitting its Updated DIP. After carefully analysing the Updated DIP, the Legal Representative observes it is necessary to comment on a number of important matters.

3. The Updated DIP still does not clearly or exhaustively set out the eligibility criteria. Likewise, the modalities of the reparations for the victims of the attacks remain unspecified and are only referred to by analogy with the ones intended for the former child soldiers. The key issue of ensuring access to intended reparations programmes for displaced potential beneficiaries remains unaddressed. The TFV's suggested method to benefit displaced victims with reparations through the provision of an unspecified but nominal sum of money is neither appropriate nor in line with the wishes of the participating victims as conveyed to the Court since the commencement of the reparations phase. Any details on the proposed reparations programmes and the locations where they are intended to be implemented continue to be missing.

4. The overall lack of specificity in the Updated DIP continues to prevent the Legal Representative from meaningfully consulting with his clients during this crucial phase of the reparations proceedings. These consultations are of utmost importance but can only be carried out when the necessary details to the TFV's proposals are provided, which unfortunately are still missing and continue to cause delays to the implementation of the long-awaited reparations in the present case.

5. The fact that the Legal Representative does not provide comments on all proposals contained in the Updated DIP, does not mean that he agrees with them. Rather, his silence means that there is nothing specific to comment on at this stage.

II. CLASSIFICATION

6. Pursuant to regulation 23bis (1) and (2) of the Regulations of the Court, the present submissions are classified as confidential, since they refer to the content of the documents likewise classified as confidential.

III. SUBMISSIONS⁴

7. At the outset, while the Legal Representative can agree with the TFV that the DIP is a “*living document*” to the extent that it must remain flexible to adapt to changing circumstances,⁵ he contends that the DIP must still contain sufficient details to enable the Legal Representatives to consult with their respective clients, for the parties to make meaningful observations, and ultimately for Trial Chamber II (the “Trial Chamber”) to make informed decisions on key matters. In this regard, the Trial Chamber recently reiterated that the DIP must be as specific as possible and contain at a minimum, the following four elements:

*“(i) the objectives, outcomes, and activities identified as necessary to give effect to the Reparations Order; (ii) the reparation projects the TFV intends to develop, indicating the details of the proposed collective awards, each of the collective projects with individualised components, and the modalities of reparations considered appropriate to address each of the harms; (iii) the methods of implementation, steps to be taken, direct and indirect costs, the expected amount that the TFV will use to complement the awards, and the expected timeline necessary for the projects’ development and implementation; and (iv) a detailed proposal as to the way in which it expects to conduct the administrative eligibility assessment”.*⁶

8. Regrettably, the Updated DIP continues to lack the abovementioned details as required by the Trial Chamber, and continues to prevent the Legal Representative from the possibility to consult with his clients on the TFV’s proposals and to make

⁴ The Procedural Background is provided in Annex A to the present submissions.

⁵ See the Updated DIP, *supra* note 1, para. 30.

⁶ See the Decision on CLR1’s Request, *supra* note 2, paras. 9-10 which recalls the elements set out by Trial Chamber VI in the “Reparations Order”, [No. ICC-01/04-02/06-2659](#), 8 March 2021 (the “Reparations Order”). See also the “Decision on the TFV’s initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2696](#), 23 July 2021 (the “Decision on IDIP”), para. 10.

meaningful observations thereon. Instead of providing details on key matters in the Updated DIP, the TFV now highlights the limited funding currently available, the challenges of fundraising for the future, and the “*extremely ambitious*” funding goal scenarios underlying the Updated DIP, citing in particular the unpredictable consequences of the COVID-19 pandemic and the Ukraine crisis.⁷ Furthermore, the TFV states that resources will only become available incrementally, that the measures in the DIP can only be gradually implemented,⁸ and that a full complement of the reparations in the present case cannot be guaranteed.⁹ Finally, the TFV states that it is not bound to fully complement the sum of liability ordered by Trial Chambers.¹⁰ While understanding that the TFV might have funding challenges, the Legal Representative submits that this is not a valid reason to avoid providing clear and workable proposals in line with the four elements set out by the Trial Chamber above.

9. The Legal Representative takes note of the TFV’s submission that the Updated DIP’s proposals are informed by the current security situation in Ituri,¹¹ which is described as that of an active internal conflict.¹² He further notes that the security situation to date is volatile and has rapidly deteriorated over the past months, particularly in the Djugu and Irumu territories, despite a state of martial law proclaimed by the Democratic Republic of the Congo (the “DRC”) authorities and the presence of the DRC Armed Forces,¹³ which has resulted in an increase in the number of people estimated to be currently displaced in Ituri.¹⁴

10. The Legal Representative observes that the TFV requests the Trial Chamber’s permission to amend the Updated DIP, should the Appeals Chamber amend the

⁷ See the Updated DIP, *supra* note 1, paras. 34, 37, 148 and 151.

⁸ *Idem*, paras. 36 and 39.

⁹ *Idem*, para. 148.

¹⁰ *Idem*, para. 276.

¹¹ *Idem*, para. 10.

¹² *Idem*, para. 17.

¹³ *Idem*, paras. 17-19.

¹⁴ *Idem*, para. 22.

Reparations Order.¹⁵ However, should the Appeals Chamber grant the appeals in full or in part, an amended or new reparations order will have to be issued as a matter of procedure, which will in turn be the basis for submitting a new or a further updated version of the DIP. Independently from this procedure, the Updated DIP continues to lack the elements required by the Trial Chamber, such that it appears that a further version of the DIP will be required regardless of the outcome of the appeals proceeding.

1. The TFV's general approach to reparations

11. In the Reparations Order, Trial Chamber VI awarded collective reparations with individualised components that were expected to provide a more holistic approach to the multi-faceted harm suffered by the victims. It further specified that: (i) an individual assessment of harm was not necessary; (ii) victims should be provided with sustainable and long-term livelihood means; (iii) victims should receive equal reparations so as to avoid creating perceptions of hierarchy between victims and to avoid placing a higher value on some forms of harm; and (iv) reparations should respond to the victims' harms and needs.¹⁶

12. The Legal Representative observes an emerging general trend underpinning the DIP in which the TFV appears to put forward proposals for specific reparations awards only based on the nature of harm suffered by the different categories of victims in order to respond to the victims' harms only – and not also to their needs. This approach contrasts directly with the requirements of the Reparations Order which states that reparations should respond to the victims' harms *and* needs.¹⁷ In accordance with the Reparations Order, all victims, regardless of the nature of their harm should be provided with equal opportunities to have their harm repaired through different forms

¹⁵ *Idem*, para. 77.

¹⁶ See the Reparations Order, *supra* note 6, paras. 189 and 194.

¹⁷ *Ibid.*

of rehabilitation depending on their specific needs and current individual situation, with the aim to achieve sustainable and long-term livelihood.¹⁸

13. With respect to victims of transgenerational harm, for example, the TFV seems to suggest that victims who did not suffer either physical or material harm but only psychological, can only be provided with psychological assistance or support.¹⁹ The Legal Representative posits that while any persisting psychological harm must be primarily addressed through psychological rehabilitation measures, this harm can and should also be repaired through other forms of reparations, including socio-economic rehabilitation measures and educational opportunities, should the specific needs and current individual situation of the victim require this. In this regard, it must be emphasised that the purpose of the present proceedings is to *repair* harm and not simply to *assist* the victims. It is also unclear, for instance, how the TFV intends to address the harms of victims of the crimes of persecution, or the deportation or forcible transfer of a population who, 20 years subsequent to the events, do not currently need any form of physical or psychological rehabilitation, but are nevertheless entitled to reparations as a result of Mr Ntaganda's crimes which have undoubtedly impacted on their current individual situation and their specific needs. In this regard, Trial Chamber VI held that "*the effect of individuals having to leave their homes against their will put them in a worse situation than they were in to begin with, and therefore caused them harm*",²⁰ and also recognised that "*persecution [...] constitutes, in and of itself, one of the most serious*

¹⁸ *Ibid.* See also footnote 586 referring to the « Rectificatif de la Version publique expurgée de la Décision faisant droit à la requête du Fonds au profit des victimes du 21 septembre 2020 et approuvant la mise en oeuvre des réparations collectives prenant la forme de prestations de services », [No. ICC-01/04-01/06-3495-Red-Corr](#), 14 December 2020 (public redacted version filed on 4 March 2021, corrigendum filed on 5 March 2021), paras. 117-118, noting *inter alia* the appropriate nature of the programmes proposed by the TFV as they address the diverse and evolving needs of the victims according to their specific circumstances, in a flexible manner.

¹⁹ See the Updated DIP, *supra* note 1, paras. 94, 133 and 217.

²⁰ See the "Sentencing Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019, para. 162.

*crimes against humanity, as it amounts to a denial of fundamental rights of one or more persons by virtue of their belonging to a particular group or collectivity”.*²¹

2. Harm suffered by indirect victims

14. The above considerations also apply to ways to repair harm suffered by indirect victims. Indeed, the TFV misinterprets the Reparations Order by operating on the assumption that the harm suffered by indirect victims is first and foremost psychological.²² However, Trial Chamber VI recognised that the psychological harm experienced by the indirect victims may have resulted in a range of long-lasting behavioural disorders, and that intense psychological trauma may also lead victims to develop medical conditions and alter their capabilities.²³ In the Reparations Order, Trial Chamber VI concretely speaks of children of direct victims who, on the account of suffering transgenerational harm, may qualify as indirect victims.²⁴ Thus, the Legal Representative disagrees with the TFV’s interpretation offered in the Updated DIP, that even though the four categories of indirect victims recalled by Trial Chamber VI²⁵ “*appear very broad, the Chamber considerably limited the recognized harm of some of the indirect victims*”.²⁶ As previously submitted,²⁷ Trial Chamber VI did not limit the recognised types of harm in relation to victims who suffered transgenerational harm. It merely stated that individuals *may* have suffered transgenerational trauma if they can show that their harm is the result of the crimes for which Mr Ntaganda was found guilty.²⁸ In fact, Trial Chamber VI did not limit the harm suffered by indirect victims to psychological or mental harm only, as the TFV seems to suggest at various points in

²¹ *Idem*, para. 175.

²² See e.g. the Updated DIP, *supra* note 1, paras. 133 and 215.

²³ See the Reparations Order, *supra* note 6, para. 181.

²⁴ *Idem*, para. 183(d)(vi).

²⁵ *Idem*, para. 36.

²⁶ See the Updated DIP, *supra* note 1, para. 85.

²⁷ See the “Response of the Common Legal Representative of the Victims of the Attacks to the Defence’s Appeal Brief (ICC-01/04-02/06-2675)”, [No. ICC-01/04-02/06-2701](#), 9 August 2021 (the “CLR2 Response to Defence Appeal”), paras. 80-86.

²⁸ *Idem*, para. 79, *referring to* the Reparations Order, para. 182.

the Updated DIP.²⁹ Ultimately, the TFV states that if victims of transgenerational harm can demonstrate additional material or physical harm, they would gain access to other aspects of the programme.³⁰

15. Despite this recent statement added to the Updated DIP to address the queries raised by the parties, the TFV's proposals regarding transgenerational harm continue to lack clarity and specificity, which are required to enable the Legal Representative to meaningfully consult with his clients on the matter.

16. In light of the definition of transgenerational harm as adopted in the Reparations Order,³¹ the Legal Representative submits that transgenerational harm suffered can encompass not only psychological trauma but can also manifest itself in various other forms of harmful effects on the individual, family and at community levels. On an individual level, psychological trauma incurred as part of transgenerational harm can manifest itself in the loss or diminution of cognitive and/or behavioural skills and capacities, *i.e.* capacity to study, learn, develop or build and maintain social relations, which can lead to the loss of socio-economic opportunities. On the family and community level, inherited trauma and social violence can affect the structure of families and communities, their way of life, and impact any cultural, social and community-related networks. This all affects the subsequent generations beyond the direct victims themselves. Accordingly, the Legal Representative submits that this is the comprehensive interpretation of the types of consequences – and not just psychological harm – that may arise as a result of transgenerational harm.³²

²⁹ See the Updated DIP, *supra* note 1, paras. 94, 133 and 217.

³⁰ *Idem*, para. 217.

³¹ See the Reparations Order, *supra* note 6, para. 73.

³² See the "Final Observations on Reparations of the Common Legal Representative of the Victims of the Attack", [No. ICC-01/04-02/06-2633-Conf](#), 18 December 2020 (the "Final Observations on Reparations"), para. 45. A public redacted version was filed on 21 December 2020 as [No. ICC-01/04-02/06-2633-Red](#).

3. The TFV's assumptions on the number of beneficiaries

17. The Legal Representative takes issue with the TFV's "*very conservative approach*" on the number of potential beneficiaries.³³ The TFV states, solely referring to meetings and consultations with community leaders that it estimates the number of victims who suffered material, psychological and possibly physical harm to be 7,500.³⁴ The TFV provides no basis or identifiable sources for this estimate. Again, providing no basis for its estimate, the TFV states that it further considers there are beyond 14,000 indirect victims who suffered harm as a result of what they witnessed during and after the attacks, as well as children born by direct victims after the commission of the crimes,³⁵ and a "*percentage of beneficiaries*" reside outside of the Ituri province, such as in Uganda or other parts of the DRC.³⁶

18. The Legal Representative observes that the TFV maintains being in no position to provide an estimate of the number of victims even though it is required to identify relevant services with an anticipated allocated budget within the amount of liability for reparations as set in the present case.³⁷ However, no details on the budget allocated for this initiative has been provided. Further, the TFV submits that the "*figures provided*" are not estimates of the "*objective number of individuals having suffered from the crime for which Mr Ntaganda was convicted*", but are instead, numbers that the TFV currently deems that it is capable of accommodating within the amount of liability as set.³⁸ The Legal Representative submits that the TFV's said approach is of great concern.

19. First, as regards a relevant "*reference point*" needed "*to be able to adequately plan the implementation of reparations*",³⁹ the TFV in fact proposes to rely on purely speculative

³³ See the Updated DIP, *supra* note 1, para. 93.

³⁴ *Ibid.*

³⁵ *Idem*, para. 94.

³⁶ *Idem*, para. 95.

³⁷ *Idem*, para. 96.

³⁸ *Ibid.*

³⁹ *Ibid.*

figures rather than on any sort of objectively justified data. It is submitted that this approach goes against the very rationale of any comprehensive planning.

20. Second, it must be emphasised again that the purpose of the present proceedings is to provide *reparations* to the victims who suffered harm as a result of the commission of crimes for which Mr Ntaganda was convicted, and not to provide *assistance* to the general population as part of the TFV's assistance mandate. While access to the TFV's assistance programmes can be limited at the TFV's discretion and may be restricted by available resources, the TFV cannot artificially decide for its own convenience a maximum number of victims who would be able to benefit from reparations in the present case. The Legal Representative submits that this approach stands in stark contrast with the very purpose of reparations under the Rome Statute, which is to repair to the fullest possible extent harm suffered by *all* victims concerned, and not only by a limited number of them.

21. Third, the TFV cannot reasonably justify being "*in no position*" to provide an estimate of the number of potential beneficiaries of reparations based on the fact that such estimates were previously not provided by the parties, Registry, Appointed Experts and Trial Chamber VI.⁴⁰ The question as to whether an estimate of the number of potential beneficiaries was due to be obtained for the purpose of the determination of the scope of Mr Ntaganda's liability for reparations is one of the key issues pending before the Appeals Chamber. Regardless of this pending decision, an estimate of the number of potential beneficiaries is one of the key parameters required for the design of reparations programmes and should be obtained at this stage. As previously argued, such an estimate can and should be obtained by the TFV as part of a mapping exercise in the framework of an outreach campaign. This is the only way for the TFV to obtain fact based and objective criteria for the comprehensive planning of reparations programmes. It also serves to mitigate the risks of overburdening programmes

⁴⁰ *Ibid.*

founded on a speculative basis and set out in a rush at the implementation stage, should a much larger number of victims than anticipated come forward.

22. As a separate matter, the Legal Representative notes with concern that the TFV includes the “*dependents of beneficiaries*” in relation to its proposal to enable beneficiaries to pay for their dependents’ school fees even if these dependants “*are not themselves beneficiaries who can make use of the socio-economic component*”.⁴¹ In the TFV’s further attempt to explain its understanding of indirect beneficiaries, confusion arises when the TFV adds the new term “*interlocutors of direct beneficiaries*” in the Updated DIP.⁴² The TFV’s proliferation of terminology is not helpful, and it is submitted that only victims – direct or indirect – are entitled to reparations. The Reparations Order clearly defined who may qualify under either category.⁴³ “*Dependents of beneficiaries*” or “*interlocutors of direct beneficiaries*” are not useful terms within the legal framework of reparations before the Court. The Legal Representative submits that the Trial Chamber and parties would be assisted if the TFV adhered to the definitions set out in the Reparations Order, or clarified with specificity how such terms are to be applied when determining who is entitled to reparations due to the harm suffered as a result of Mr Ntaganda’s crimes.

(a) Funding reparations, and the expected number of victim beneficiaries

23. The Updated DIP continues to reinforce that the number of beneficiaries remains unknown, in particular for the victims of the attacks⁴⁴ and that resources are predictable only to a limited extent.⁴⁵ Without elaborating further, the TFV states that “[t]he cost assumption of rehabilitation measures are based on the experience of the Lubanga programme”.⁴⁶ Whether this translates into an average *per capita* cost as set in the *Lubanga*

⁴¹ *Idem*, para. 192.

⁴² *Idem*, para. 46.

⁴³ See the Reparations Order, *supra* note 6, paras. 31-40.

⁴⁴ See the Updated DIP, *supra* note 1, para. 148.

⁴⁵ *Idem*, para. 151.

⁴⁶ *Idem*, para. 150.

case (8,000 USD)⁴⁷ applicable to both the former child soldiers and the victims of attacks, remains unclear.⁴⁸ Should this only be the case for the former child soldiers, the Legal Representative reiterates his concerns that, given the limited resources, such an approach will necessarily result in unequal treatment favouring the former child soldiers.⁴⁹

24. The Legal Representative shares the TFV's view that in the present case, like in other cases, the majority of the victims will start to come forward once the implementation of reparations commences.⁵⁰ However, in the event that many potential beneficiaries of reparations are located far away from the programmes put in place, and without anticipating this scenario at an early stage, victims who are entitled to reparations will simply be unable to access these programmes. For this and other reasons as argued above, it is crucial for the TFV to plan reparations programmes on fact based and objective criteria which should include as accurate as possible estimates of the number of potential beneficiaries and their current location. Obtaining this data at the outset as part of a mapping exercise is necessary to enable the TFV to proceed with a comprehensive planning and to design the reparations programmes in a cost effective and tailored manner, and importantly, to ensure accessibility.

25. As acknowledged by the TFV, due to a deterioration of the security situation in Ituri, there is now an increased number of displaced persons in that province⁵¹ which underscores the importance of a mapping exercise to determine where the relevant programmes should be put in place and to understand the number of potential beneficiaries currently located outside of Ituri. If the TFV intends to proceed without first estimating the number of potential beneficiaries and determining their location

⁴⁷ See the "Public Redacted Corrected version of the 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable" (Trial Chamber II), [No. ICC-01/04-01/06-3379-Red-Corr-ENG](#), 21 December 2017, para. 259.

⁴⁸ See the Updated DIP, *supra* note 1, para. 150.

⁴⁹ See the "Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order", [No. ICC-01/04-02/06-2674 A4](#), 7 June 2021, para. 116.

⁵⁰ See the Updated DIP, *supra* note 1, para. 148.

⁵¹ *Idem*, para. 22.

before the programmes are deployed, then it should propose a contingency plan as to how it anticipates to adjust the initial programmes put in place in order to reinforce the capacities of the programmes and to ensure their accessibility to victims.

26. It is simply futile to have programmes which are either not capable of accommodating all potential beneficiaries of reparations or not accessible to many of them. It also remains unclear how potentially eligible victims can access such programmes at the outset given the security, logistical and financial challenges outlined by the TFV.

4. **Reparation modalities**

27. While the Legal Representative concurs with the TFV that an equal approach to the access to reparations awards for victim beneficiaries in both categories should be ensured,⁵² he cannot agree that any differences in reparations modalities for the two groups of victims are only justified as a *“consequence of circumstances specific to the attacks, such as the attack on the Sayo Health Centre or the death of Abbé Bwanalonga”*.⁵³ Although the types of harm suffered by the two groups of victims, the former child soldiers and the victims of the attacks, can be similar in nature,⁵⁴ the long-term impact of such harm may be significantly different due to the different underlying crimes each group suffers from. It is therefore of concern that the TFV seeks to apply as much as possible the same reparations modalities to the victims in both categories without recognising the different crimes they have each been impacted by and suffered from, and the different underlying consequences thereof.

28. Accordingly, it is not appropriate for the modalities of reparations for the victims of the attacks to be simply copied from those of the former child soldiers, and *vice versa* for expediency.

⁵² *Idem*, para. 118.

⁵³ *Ibid.*

⁵⁴ See the Reparations Order, *supra* note 6, para. 183.

(a) *Symbolic financial assistance to SGBV victims*

29. The Legal Representative notes that the TFV decided to not propose individualised compensation, or compensation for specific harm as a form of collective reparations.⁵⁵ However, paradoxically, the TFV then proposes a “*symbolic form of financial assistance* (‘*symbolic compensation*’)” of [REDACTED] to SGBV victims and children born out of rape or sexual slavery.⁵⁶ It is irrelevant whether this sum of money is labelled “*symbolic financial assistance*” or “*symbolic compensation*”, as the consequences regarding the potential to create tensions within such communities by the selective disbursement of money to an exclusive category of victims is the same.

30. The Legal Representative opposes this proposal for a number of reasons. First, he already conveyed the participating victims’ views on the matter according to which a monetary award, if any, must be provided at an equal value for all victims and not only to some categories, in order to ensure equal treatment and to avoid possible tensions and/or stigmatisation,⁵⁷ rather than on the basis of “*insofar as possible*”.⁵⁸ On this topic, the Legal Representative notes that his position has been misrepresented by the TFV regarding his support for a symbolic form of financial assistance.⁵⁹ He clarifies that he was, and remains, of the view that should financial awards be approved, this must be disbursed to *all* victims at an equal value.

31. Second, given the unknown number of potential beneficiaries at this stage, and the limited amount of currently available funds that are far less than the USD 30 million ordered as a reparations award, it cannot be discerned on what basis – if any – the TFV calculated the sum of [REDACTED] for SGBV victims and children born out of rape or sexual slavery, other than using [REDACTED] as a reference.⁶⁰ To date, the TFV’s Board of Directors only allocated EUR 1,5 million towards the reparations programmes in the

⁵⁵ See the Updated DIP, *supra* note 1, para. 125.

⁵⁶ *Idem*, paras. 126-127.

⁵⁷ See the Final Observations on Reparations, *supra* note 32, para. 53.

⁵⁸ See the Updated DIP, *supra* note 1, para. 124.

⁵⁹ *Idem*, para. 123.

⁶⁰ *Idem*, para. 127.

present case from the TFV's reparations resources, with an additional voluntary contribution of EUR 189,013 by the Australian government earmarked to the present case specifically to address harm suffered by SGBV victims.⁶¹ As acknowledged by the TFV itself, its ability to raise funds in the current donor climate with reference to the Ukraine crisis and the consequences of the COVID-19 pandemic, for the current funding goal scenarios are "*extremely ambitious*".⁶² It is therefore questionable whether such a disbursement of money is the best use of funds with reference to the victims' wishes to receive awards to support sustainable long term livelihood and wellbeing,⁶³ and the current fundraising situation alluded to by the TFV.

32. Third, the provision of this sum impacts the overall fairness of reparations as, according to the "*do no harm*" principle and the principle of fairness, all victims are to be treated equally. This is impossible to achieve if the TFV intends to award a sum of money in the form of symbolic financial assistance to a certain category of victims without ascertaining concrete estimates regarding the overall number of beneficiaries. This in turn impacts the design of a cost-effective and adequate reparations programme to equally benefit all victims.

33. Fourth, handing out a sum of money to the select group of SGBV victims and children born out of rape or sexual slavery is problematic on a number of levels. Even if this is a "*symbolic financial amount*",⁶⁴ it could be understood as an award. Furthermore, in close-knit communities, victims receiving cash payments – as opposed to other victims – are being specifically exposed, which, especially in the context of SGBV, should be avoided at all costs. In line with the concerns expressed by the participating victims, the beneficiaries of symbolic monetary awards will further be subjected to jealousy and potential confrontation from persons within their

⁶¹ See the "Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director's decision pursuant to regulation 56 of the Regulations of the Trust Fund, [No. ICC-01/04-02/06-2710-Conf](#), 23 September 2021, para. 62. A public redacted version of the report was filed on 28 October 2021 as [No. ICC-01/04-02/06-2718-Red](#).

⁶² See the Updated DIP, *supra* note 1, para. 151.

⁶³ See the Reparations Order, *supra* note 6, para. 9.

⁶⁴ See the Updated DIP, *supra* note 1, para. 135.

communities who will not receive the same kind of awards. This should be avoided as it negatively affects the safety and wellbeing of all victims.

34. Finally, it must again be underlined that this measure would also appear to favour the former child soldiers *vis-à-vis* the victims of the attacks. Amongst the participating victims, 250 SGBV former child soldiers⁶⁵ and only around 40 victims of the attacks⁶⁶ will be provided with this award. Given the high proportion of SGBV victims and children born out of rape or sexual slavery among the former child soldiers, they will disproportionately benefit from cash payments *vis-à-vis* the victims of the attacks, if the estimated number of 3,000 former child soldiers indeed come forward as beneficiaries.⁶⁷

35. All the reasons outlined above militate against the cash pay-out to the singular group of SGBV victims and children born out of rape or sexual slavery. The Legal Representative considers that non-pecuniary symbolic reparation may be more appropriate to specifically recognise the unique suffering of this group of victims. Based on the information provided by several victims, the Legal Representative is aware that some local initiatives have recently been launched in holding awareness campaigns on SGBV in the Ituri province.⁶⁸ It is submitted that the TFV could possibly explore ways to join efforts with the relevant actors in this regard to strengthen the activities, and/or to launch similar projects in order to reach more people in the region.

⁶⁵ See the “Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2723-Conf](#), 23 November 2021, para. 27.

⁶⁶ See the “Sentencing Submissions of the Common Legal Representative of the Victims of the Attacks”, [No. ICC-01/04-02/06-2422-Conf](#), 30 September 2019 (the “Sentencing Submissions”), para. 40. A public redacted version of the Sentencing Submissions was filed on 24 January 2020 as [No. ICC-01/04-02/06-2422-Red](#), and a lesser redacted version of the Sentencing Submissions was filed on 12 February 2021 as [No. ICC-01/04-02/06-2422-Red2](#).

⁶⁷ See the Updated DIP, *supra* note 1, paras. 109 and 272.

⁶⁸ For example, in December 2021, approximately 40 police officers participated in a programme designed to combat SGBV in Ituri. See, [« Bunia : les policiers s’engagent à lutter contre les violences sexuelles »](#), 10 December 2021.

(b) *Rehabilitation measures for SGBV victims and children born out of rape or sexual slavery*

36. The TFV specifically addresses UPC/FPLC former child soldiers who have been victims of rape or sexual slavery and children born out of rape or sexual slavery.⁶⁹ As raised on several occasions, the Legal Representative recalls that there are also victims of rape and sexual slavery amongst the victims of the attacks. There are also children who have been born as a consequence of such SGBV. These victims deserve the same attention and ultimately the same treatment as the former child soldiers and their children.

37. In the Updated DIP, the TFV indicates that the envisaged activities will be implemented through a separate programme for the victims of the attacks.⁷⁰ The Legal Representative welcomes the TFV's recent clarification that such a programme mirrors the measures put in place for SGBV victims amongst the former child soldiers and their children born out of rape or sexual slavery. He underlines that any differential treatment is unacceptable and does not conform with the Reparations Order.

(c) *Symbolic reparations and satisfaction measures*

38. Apart from the symbolic financial assistance to SGBV victims as discussed *supra*, the TFV's proposals regarding other symbolic reparations measures continue to lack concrete detail and sufficient information⁷¹ that would enable the Legal Representative to have informed consultations with his clients.

39. With respect to the Abbé Bwanalongwa community centre, the Legal Representative notes the generic nature of the proposal. While further consultations with the impacted communities is necessary, he expected more concrete proposals and details regarding this particular symbolic reparation. After consultation with his clients, the Legal Representative can convey that the participating victims believe that

⁶⁹ See the Updated DIP, *supra* note 1, paras. 211-214.

⁷⁰ *Idem*, para. 218.

⁷¹ *Idem*, paras. 134 and 219-236.

the centre should be erected either in Mongbwalu where the Abbé worked, or in his native village of Gety, where his family still resides and is a location that the Abbé maintained strong ties with throughout his life, but in any case not in Bunia as suggested by the TFV.⁷² In fact, the Abbé was engaged in providing educational assistance to the children of Gety while he was stationed in Mongbwalu. Victims have further reported that in order to commemorate the Abbé an educational institute, *Institut supérieur pédagogique*, was built in Gety in 2020, and is the only educational institution in the region. Some victims believe that the TFV could reach out to the relevant authorities to initiate the possibility of a community centre being joined to said educational institution to create a complex. However, given the sensitivity of the question and in accordance with the “do no harm” principle, the Legal Representative agrees with the TFV that further consultations with communities are needed in relation to the location of the intended community centre.⁷³ Despite these open issues, there is still no available financial proposal that would allow all stakeholders involved to appreciate how much of the currently available funds can and will be expended on the community centre,⁷⁴ thus impacting on the implementation of other parallel programmes.

40. As regards the installation of a plaque or monument at the Sayo Health Centre,⁷⁵ the Legal Representative reiterates his previous submissions that the participating victims do not consider memorial sites or monuments an adequate form of reparation.⁷⁶ In relation to the installation of a plaque, while this proposal is generally agreeable, the Legal Representative recalls that Mr Ntaganda must repair the *harm* caused which includes not only damage to the health centre itself but also the “loss of adequate

⁷² *Idem*, para. 231.

⁷³ *Ibid.*

⁷⁴ *Idem*, paras. 230-231.

⁷⁵ *Idem*, para. 232.

⁷⁶ See the “Public Redacted Version of the ‘Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations’”, [No. ICC-01/04-02/06-2477-Red](#), 28 February 2020 (the “CLR2 Submissions on Reparation”), para. 67.

healthcare provision to the community that benefited from it".⁷⁷ A plaque in itself is not sufficient to address the loss of the provision of adequate healthcare. As a consequence, the Legal Representative submits that the TFV should revise this proposal accordingly.

41. In underlining Mr Ntaganda's conviction as a source of satisfaction,⁷⁸ the TFV ventures outside of the purpose of its DIP. The victims have been kept informed of all matters relevant to their personal interests, which includes the proceedings, the conviction and post-conviction matters. During the current reparations phase of the proceedings, and pursuant to the unique mandate of the Court, it is specifically for the TFV to define its proposals for reparations, including symbolic and satisfaction measures, in concrete terms.

42. The outreach activities that now fall with the TFV should aim at informing the affected population in relation to who qualifies and what the eligible victims can expect to be provided with, rather than general information on the conviction of Mr Ntaganda.

(d) Apology, ID documents for children born out of rape and missing persons

43. The TFV puts forth the proposal of a voluntary apology by Mr Ntaganda.⁷⁹ The majority of the Legal Representative's clients are of Christian faith and believe in repentance and forgiveness. They have expressed their view that they could accept a *genuine* apology of Mr Ntaganda for the harm and suffering he has caused in addition to other reparations measures. However, they recall that a generalised statement, like the one Mr Ntaganda made at trial⁸⁰ would not meet the requirement of a genuine statement of repentance. Should Mr Ntaganda wish to make a statement of apology, the participating victims have indicated that the most effective means of communicating it to them would be the following: radio broadcasts, a video that could

⁷⁷ See the Reparations Order, *supra* note 6, para. 183(a)(x).

⁷⁸ See the Updated DIP, *supra* note 1, para. 221.

⁷⁹ *Idem*, para. 244.

⁸⁰ See the Transcript of the hearing held on 20 September 2019, [No. ICC-01/04-02/06-T-268-Red-ENG-WT](#), p. 51, line 4 to p. 52, line 22.

be broadcast as part of outreach sessions, and social network platforms, such as WhatsApp groups and Facebook.

44. Regarding the proposed activities in relation to securing ID cards and other legal documentation for children born out of rape,⁸¹ the Legal Representative notes that there are no legal impediments in the DRC that prevent mothers from obtaining legal documentation for their children without naming a father in the official documents.⁸² This proposal seems to concern a non-issue, and, in any event, none of the victims represented by the Legal Representative at this stage are without valid documents for the reasons given by the TFV.

45. With respect to engaging a consultant to research the whereabouts of missing persons, the Legal Representative's clients expressed support for the TFV's proposal.⁸³ However, they question the feasibility of the proposal given that almost twenty years have passed since the events. Finally, in the Updated DIP the TFV again does not provide concrete details regarding the proposal, such as the terms of reference of this consultant which should include, amongst other details, the anticipated professional level of the consultant, the duration envisaged, and the estimated budget.⁸⁴ In order for the Legal Representative to consult with his clients and comment meaningfully on such a proposal, a cost benefit analysis needs to be provided, given the overall restrictive budget available at this stage and in the near future.

(e) Outreach and perception of the population

46. As previously argued,⁸⁵ the Legal Representative reiterates that the TFV needs to ensure that it has a solid strategy in place to manage the expectations of the affected

⁸¹ See the Updated DIP, *supra* note 1, para. 239.

⁸² See the [Code de la Famille de la RDC](#), adopted by Law No. 87-010 dated 1 August 1987, paras. 59 and 126-127.

⁸³ See the Updated DIP, *supra* note 1, para. 241.

⁸⁴ *Idem*, paras. 241-243.

⁸⁵ See the "Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims' Draft Initial Implementation Plan", [No. ICC-01/04-02/06-2680-Conf](#), 23 June 2021. A public redacted version of these observations was filed on 28 June 2021 as [No. ICC-01/04-02/06-2680-Red](#), paras. 20-22. See also the "Response of the Common Legal Representative of the Victims of the

communities. Beyond stating that the TFV has been working on the outreach and risk mitigation strategy and is monitoring the risks associated with conducting outreach,⁸⁶ the Updated DIP does not provide any detail on who will do what and when, regarding ways to manage the affected communities' expectations and to address other associated risks. A comprehensive strategy is essential to mitigate all possible risks arising from the potential misinformation and assumptions as a result of a potentially phased and staggered implementation of the DIP and IDIP.

(f) Availability of services in the Ituri province and the cooperation of the DRC authorities

47. The TFV submits that in order to limit additional cost, the rehabilitation services and collective reparations measures are intended to only be provided in the Ituri province.⁸⁷ It then specifies that the programmes will be rolled out in the five territories of the Ituri province,⁸⁸ namely Aru, Mahagi, Djugu, Irumu and Mambasa.⁸⁹ However, the TFV does not specify where precisely in the Ituri province – which covers a large area – it intends to put in place relevant reparations programmes. The Legal Representative underscores the importance of providing services to beneficiaries in the areas they reside, or in close proximity to the areas in which they are currently located. Setting up programmes in itself is not sufficient. It is also crucial to ensure that beneficiaries can effectively *access* the programmes. Given the extent of the displacement, the victims will not be served by programmes put in place far away from their actual locations. Moreover, the security situation in Ituri puts in jeopardy the timely commencement and operations of programmes in the region, so that additional alternatives must be found.

Attacks to the "Trust Fund's Second Update report on the Implementation of the Initial Draft Implementation Plan", [No. ICC-01/04-02/06-2724-Conf](#), 6 December 2021, para. 17.

⁸⁶ See the Updated DIP, *supra* note 1, paras. 255-258.

⁸⁷ *Idem*, para. 154.

⁸⁸ *Idem*, para. 205.

⁸⁹ *Idem*, Attachment 1 – Contextual Information, para. 4.

48. It is therefore absolutely essential, as already argued *supra*, that the TFV carry out a comprehensive mapping exercise to ascertain where the potential beneficiaries of reparations are located as a matter of priority. The location of such reparations programmes would therefore be determined with reference to the location of the beneficiaries to ensure they are accessible and effective. Reparations, and accordingly the right to reparations, cannot be realised if the reparations programmes are not *accessible*.

49. As regards the TFV's suggested reliance on the DRC authorities,⁹⁰ and its expectation that the DRC government fulfils its obligation to establish necessary structures, the Legal Representative observes that the DRC government has not submitted any substantive observations on the Updated DIP.⁹¹ In this regard, the TFV should be requested to provide more detail on what can be expected from its engagement with the DRC authorities, in particular with respect to how it intends to ensure the currently displaced victims can access and therefore benefit from the reparations programmes.

(g) Lump sum payments

50. It appears that a common theme of the TFV's DIP concept is that it seeks to satisfy beneficiaries with an unspecified "*lump sum payment in lieu of services*".⁹² Essentially, the proposal of a payment of lump sums "*in lieu of rehabilitation*"⁹³ and more specifically "*in lieu of socio-economic rehabilitation*"⁹⁴ is a substitute for an actual

⁹⁰ *Idem*, para. 154.

⁹¹ See the "Transmission des observations des autorités de la République Démocratique du Congo relatives à la version publique expurgée du projet mis à jour du Plan de mise en œuvre du Fonds au profit des victimes", [No. ICC-01/04-02/06-2760](#), 6 May 2022 which *transmits* the DRC's observations in confidential Annex III, [No. ICC-01/04-02/06-2760-Conf-AnxIII](#), 6 May 2022. See also, the "Addendum à la « Transmission des observations des autorités de la République Démocratique du Congo relatives à la version publique expurgée du projet mis à jour du Plan de mise en œuvre du Fonds au profit des victimes » enregistrée le 6 mai 2022, ICC-01/04-02/06-2760", [No. ICC-01/04-02/06-2762](#), 16 May 2022 which *transmits* the DRC's further observations in public Annex, [No. ICC-01/04-02/06-2762-Anx](#), 16 May 2022.

⁹² See the Updated DIP, *supra* note 1, paras. 154, 180 and 198-203. .

⁹³ *Idem*, para. 205.

⁹⁴ *Idem*, para. 273.

implementation *plan*. More troubling is that the TFV camouflages this proposal as presenting the victims with a choice to receive a lump sum *in lieu*,⁹⁵ and with an option to have this sum disbursed in phases.⁹⁶

51. Similar to the Legal Representative's concerns regarding the TFV's other proposals, it is submitted that this proposal: (i) fails to specify the intended sum of money that would constitute this lump sum; (ii) goes against the terms and spirit of the Reparations Order according to which reparations should aim at providing victims with a sustainable livelihood and wellbeing; (iii) creates unequal treatment between victims by paying out money to some and providing services to others; (iv) is unsustainable if the cost of programmes and the intended expenditure and available funds remain unknown; and (v) creates the expectation that further payments and/or assistance would follow.

52. At the outset, the TFV fails to specify the amount of money it envisages for this lump sum payment.⁹⁷ Without knowing the actual amount, the Legal Representative cannot hold meaningful discussions with his clients. However, he cautions that the very proposal itself makes his task very difficult. Given the extremely difficult economic situation of most of his clients, anyone would be tempted by the prospect of receiving a cash award over any other measure to satisfy immediate daily needs.

53. The Reparations Order was clear that reparations should ensure that the *harm* caused by Mr Ntaganda is *repaired* through collective reparations with individualised components⁹⁸ that will enable victims to receive tailored assistance in regaining their lives in the long-term, and the ability to provide for themselves and their families. Appeasing victims with a lump sum *in lieu* of benefiting them with comprehensive rehabilitation programmes is counter-productive to this aim.

⁹⁵ *Idem*, paras. 180 and 198.

⁹⁶ *Idem*, para. 200.

⁹⁷ *Idem*, para. 203.

⁹⁸ See the Reparations Order, *supra* note 6, para. 9.

54. The TFV refers to possibly paying lump sums to those victims who have left Ituri and cannot return.⁹⁹ This view is simplistic, offers a premature conclusion, and should be revised. First, the TFV needs to carry out a comprehensive mapping exercise to establish where exactly the potential beneficiaries are located. Second, the TFV should explore alternative options, such as moving programmes to the locations where many potential beneficiaries currently reside, at least at the start.

55. The TFV also submits that the lump sum *in lieu* would be the same for all beneficiaries in a programme,¹⁰⁰ and would be considerably higher than the starter sum.¹⁰¹ Yet, beyond leaving the amount of the proposed starter sum also unspecified, the TFV fails to explain how the amount of the lump sum *in lieu* would be determined per each programme beyond vaguely stating that concrete amounts would be subject to the available budget within each programme.¹⁰² The TFV fails to set out whether the lump sum would be higher or lower than the [REDACTED] it intends to pay out to the SGBV victims – a proposal the Legal Representative equally opposes. It is unclear whether the TFV intends to pay both the [REDACTED] and the lump sum *in lieu* to SGBV victims, who could ‘opt’ for the latter. It is unclear whether the lump sum *in lieu* comes close to the USD 8,000 average *per capita* budget of the *Lubanga* projects. It is unclear how the TFV can ensure the equal treatment of all victims if it pays out lump sums before even setting up any programmes. Likewise, it is unclear how victims are to ‘opt’ for lump sums if they are not yet presented with any concrete alternative proposals about the nature and location of the socio-economic rehabilitation programmes that they are to choose from. All of these questions remain unanswered. The TFV only states that the lump sum *in lieu* would “*be oriented on the socio-economic support received by beneficiaries in each programme and not form a full financial compensation for the socio-economic component*”.¹⁰³ It is however unclear whether, and to what extent,

⁹⁹ See the Updated DIP, *supra* note 1, para. 198 *et seq.*

¹⁰⁰ *Idem*, para. 198.

¹⁰¹ *Idem*, para. 199.

¹⁰² *Idem*, para. 203.

¹⁰³ *Ibid*

recipients of a lump sum *in lieu* would be able to access at a later stage the full package of the socio-economic component. It is also unclear why, from the perspective of the equal treatment of all victims, the TFV does not envisage a lump sum *in lieu* of physical and/or psychological rehabilitation assistance for victims located outside the Ituri province, given that the latter programmes are only expected to be available in Ituri.¹⁰⁴

56. Finally, the lump sum *in lieu* payment stands in direct contrast to the TFV's undertaking not to make individual payments to victims.¹⁰⁵

57. Overall, the proposal creates tempting incentives for displaced victims to opt for lump sum payments instead of participating in the meaningful collective reparations programmes with individualised components that are to rehabilitate victims and provide them with sustainable life opportunities.

(h) Starter sum

58. Other than the [REDACTED] to be paid to the SGBV victims and children born out of rape or sexual slavery, and the lump sum *in lieu* of socio-economic rehabilitation, the TFV proposes to pay an unspecified starter sum to beneficiaries.¹⁰⁶ Not only does the starter sum proposal continue to not be well developed, as the TFV states in the Updated DIP that it is unable to determine when victims should receive this starter sum (*i.e.* at the “intake” or at the “start of the socio-economic component”), the TFV still does not specify what exactly this “intake” constitutes, how it differs from the eligibility screening and/or how the two different processes interrelate. The TFV states that the timing and amount of the provision of a starter sum is a matter for each programme to determine, with these programmes still unfortunately lacking in details.¹⁰⁷ More importantly, the TFV offers no details on how much money it envisages to pay to all

¹⁰⁴ *Idem*, p. 124, Table, Assumption 7.

¹⁰⁵ *Idem*, para. 125.

¹⁰⁶ *Idem*, para. 182.

¹⁰⁷ *Ibid.*

beneficiaries as a starter sum, or how this payment relates to the other payments referred to *supra*.¹⁰⁸

59. The Legal Representative opposes this proposal in principle. First, the TFV's proposal that the date of provision and the amount of the starter sum are matters for each programme to determine will give rise to inconsistencies, confusion and potential tension between eligible victims, and appears to do more harm than good in the circumstances. Second and more importantly, he reiterates the participating victims' wishes, as referred to in the Reparations Order,¹⁰⁹ to receive awards aimed at supporting sustainable and long-term livelihood and wellbeing, rather than simply addressing their needs on a short-term basis. Further, he also takes issue with the TFV's assertion that "*issuing such a lump-sum to all beneficiaries permits the level of trust in the actions of the Court, the Trust Fund and implementing partner considerably increases in that victims finally see a tangible result of their involvement with the Court*".¹¹⁰ In fact, at the present stage of the proceedings, genuine trust in the actions of the Court and the TFV can only be achieved through providing meaningful reparations to the victims as opposed to those that are purely symbolic. The simple disbursement of cash to all beneficiaries, whose number is yet unknown, will be counter-productive to the very objective of reparations in light of the limited resources currently available.

(i) Educational activities

60. The TFV's intentions regarding university tuition fees, refresher courses and subsistence allowance are generally agreeable.¹¹¹ However, in the absence of a proper estimation of the number of beneficiaries, it remains to be seen how and if this can be budgeted for. At this point, it is clear that a common theme in the TFV's Updated DIP is that no concrete details are provided. While the concrete number of beneficiaries is not yet known, the Legal Representative would have expected the TFV to already

¹⁰⁸ *Ibid.*

¹⁰⁹ See the Reparations Order, *supra* note 6, para. 9.

¹¹⁰ See the Updated DIP, *supra* note 1, para. 185.

¹¹¹ *Idem*, paras. 188-191.

apportion the known overall budget currently at its disposal for the different components of the intended implementation plan, and that this information be available to the Legal Representative.

61. The same observations apply to the proposals in relation to school fees¹¹² and vocational training.¹¹³

62. Furthermore, the Legal Representative notes that the TFV seems to be of the impression that children born out of rape or sexual slavery who have suffered transgenerational harm “*will, as a rule, be indirect beneficiaries of the educational support provided to direct beneficiaries of the programme*”.¹¹⁴ As already argued *supra*, the TFV seems to misunderstand the concept of direct and indirect victims with this phrase. Rather, both direct and indirect victims of the crimes are both *beneficiaries* in their own right. There is no such category as an indirect beneficiary in a legal sense. This confusion in terminology denies the indirect victims their entitlements under the DIP, as conferred upon them by the Reparations Order.

63. Moreover, and as noted *supra* in relation to transgenerational harm, the Legal Representative again reiterates that transgenerational harm is not limited to psychological harm¹¹⁵ and providing educational support may be one of the most relevant ways to repair the harm these children – now young adults – have suffered, as this deprivation originates from the crimes committed by Mr Ntaganda.

(j) Income generation activities

64. With respect to the intention to support micro-finance and other economic opportunities,¹¹⁶ the Legal Representative again underlines that the TFV’s proposals lack any concrete detail that could be discussed with his clients in a meaningful

¹¹² *Idem*, para. 192.

¹¹³ *Idem*, para. 193.

¹¹⁴ *Idem*, para. 216.

¹¹⁵ See the Updated DIP, *supra* note 1, paras. 215-217.

¹¹⁶ *Idem*, para. 195.

manner. Given the fact that the issue of income generation activities appears to already have been explored within the context of the *Lubanga* proceedings,¹¹⁷ it could reasonably have been expected that the TFV is in a position to provide concrete proposals as part of the DIP in the present case. However, without any concrete proposals for specific programmes, such as detail on their design and implementation, the Legal Representative can add no more than his initial observations on reparations in which he expressed support for such projects in the abstract.¹¹⁸

(k) *Support with social rehabilitation*

65. The TFV provides no concrete proposal under this heading.¹¹⁹ Therefore, the Legal Representative could neither consult with his clients, nor can he provide observations on social rehabilitation programmes. In relation to subsistence allowances and start-up payments envisaged in the two programmes, the TFV's proposal is devoid of detail as regards the actual sums of money it intends to disburse. Accordingly, the Legal Representative, nor the Trial Chamber or any other stakeholder are being placed in the position of assessing the feasibility of the proposals, or to compare them to the intended – and equally unspecified – lump sum payment *in lieu* of socio-economic measures to understand whether victims would indeed be treated equally.

66. In relation to the Victims of the Two Attacks programme, the Legal Representative notes with concern that the TFV has no suggestion of which actual programmes or possible implementing partners it is looking at.¹²⁰ It appears that the TFV has not ventured beyond the parameters of the IDIP and has no concrete proposal for the implementation of this programme.¹²¹ Instead, the TFV focuses on symbolic

¹¹⁷ *Idem*, para. 196.

¹¹⁸ See the CLR2 Submissions on Reparations, *supra* note 76, paras. 54-57.

¹¹⁹ See the Updated DIP, *supra* note 1, para. 197.

¹²⁰ *Idem*, para. 218.

¹²¹ *Ibid.*

reparations albeit in a vague manner,¹²² which the Legal Representative reminds again, as the type of reparations *least* favoured by the victims.

5. The Trust Fund's other related activities - ensuring that the implementing partners are in place and can carry out the activities

67. In the absence of concrete proposals and how the funds that are and will be available are being expended, it is impossible for the Legal Representative to provide meaningful observations on the appropriateness of using the *Lubanga* programmes in the implementation of reparations in this case.¹²³ As comprehensively stressed on numerous occasions, including in the Legal Representative's appeal against the Reparations Order, the implementation of reparations in this case must not result in favouring one group of victims – the former child soldiers – over the other. It was thus essential for the TFV to set out in detail in the DIP how it intends to counter this situation in concrete terms. Even though the number of beneficiaries is not yet known, what is known to the TFV, is the available budget for the actual implementation to begin. This information should have been provided in the DIP, which would in turn shape and form the parameters of the suggested proposals to date to the requisite level of detail required for the Legal Representative to consult with his clients. Furthermore, this would have provided concrete proposals for the equal and equitable expenditure of said funds in relation to both the former child soldiers and the victims of the attacks for the time being, and further allowed for the budgeting of funds that can reasonably be expected to be raised in years to come. Regrettably, the TFV has not provided this concrete information.

68. Furthermore, the Legal Representative notes that the TFV still needs to consult with the implementing partner, the Procurement Unit and the Registry's Legal

¹²² *Idem*, para. 219 *et seq.*

¹²³ *Idem*, para. 247.

Office.¹²⁴ All of these steps and consultations should already have been undertaken in order to present a concrete plan for approval. The TFV speaks of the “*approval of this approach*”,¹²⁵ whereas Trial Chamber VI has already laid out the approach in the Reparations Order. It was for the TFV to submit a *proposal* for approval, which regrettably to this date, still has not been fulfilled to the requisite standard.

69. Additionally, the TFV submits that once “*beneficiaries are found to be eligible by the Trust Fund, they can directly join the programme as soon as possible, i.e. foreseeably by mid/end of 2023*”.¹²⁶ In the absence of any proposal on the eligibility assessment mechanism, this claim has no basis.

6. Integration of the IDIP

70. Not only does the TFV fail to provide an actual DIP into which the IDIP could be integrated, but it still – despite several reminders from the Trial Chamber – does not treat the IDIP with the purpose of providing much needed interim relief measures to address the most urgent needs of vulnerable victims.¹²⁷ It remains unclear how the IDIP will be integrated into the DIP, and there is insufficient detail on how the two interrelate while taking into account the IDIP’s purpose to address the most urgent needs of priority victims only.¹²⁸

71. Notably in this regard is that the IDIP is comprised of two assistance programmes.¹²⁹ The Legal Representative observes that the TFV’s mandates for assistance programmes and reparations differ significantly for good reason – and notwithstanding the Trial Chamber’s approval of such a use as an “*emergency response*”

¹²⁴ *Idem*, paras. 247(b)-(c).

¹²⁵ *Idem*, para. 247(a).

¹²⁶ *Idem*, para. 249.

¹²⁷ See the “Decision on the TFV’s Third Update Report on the Implementation of the Initial Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2745](#), 10 February 2022, paras. 7 and 11. See also the “Decision on the TFV’s Second Progress Report on the implementation of the Initial Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2730-Conf](#), 17 December 2021 (the “Second Decision on IDIP”), paras. 11-12.

¹²⁸ See the Updated DIP, *supra* note 1, paras. 250-254.

¹²⁹ *Idem*, para. 250.

subject to certain conditions¹³⁰ – he cautions against the conflation of these two mandates. Furthermore, the Legal Representative emphasises that victims receiving assistance under the IDIP should not be prevented from benefitting from the comprehensive reparations programmes that will be set up under the DIP.

72. Given the very limited purpose of the IDIP, *i.e.* to only address the most urgent needs of the priority victims, the Legal Representative takes issue with the TFV's perception that the harm suffered by the victims concerned would in some cases have already been addressed by the IDIP projects.¹³¹

7. Outreach and risk mitigation strategy

73. The TFV – despite the Trial Chamber's decision on the second update report on the IDIP¹³² – remains undeterred in seeking to integrate or merge the *Lubanga* and *Ntaganda* programmes for the former child soldiers without having provided concrete proposals on similarly well-designed programmes for the victims of the attacks.¹³³ The Legal Representative recalls that in accordance with the Trial Chamber's decision, it is essential that the two different groups of victims in the present case are not placed within the same programmes.¹³⁴ Contrary to the TFV's update that there be two separate programmes "*ideally carried out by separate implementing partners*", the Legal Representative underscores that this is mandatory and as per the Trial Chamber's directions, in order to prevent exacerbating conflicts between the different groups of victims and to prevent further victimisation.¹³⁵

¹³⁰ See the Decision on IDIP, *supra* note 6, para. 24.

¹³¹ See the Updated DIP, *supra* note 1, para. 253.

¹³² See the Decision on IDIP, *supra* note 6, paras. 20-21. See also the Second Decision on IDIP, *supra* note 127, para. 15.

¹³³ See the Updated DIP, *supra* note 1, paras. 247 and 256.

¹³⁴ See the Decision on IDIP, *supra* note 6, para. 28.

¹³⁵ *Ibid.*

8. Amount of liability, funding and duration of implementation

74. The further explanations given under this heading in the Updated DIP provide for some further insight. However, the Legal Representative submits that the calculations therein continue to show that the former child soldiers are favoured in terms of the capital expended for their benefit.¹³⁶ This is an untenable position as the Reparations Order clearly stated that victims should receive equal reparations so as to avoid creating perceptions of hierarchy between them.¹³⁷

75. In particular, the TFV intends to allocate USD 12 727 000 for the former child soldiers and USD 17 272 000 for the victims of the attacks.¹³⁸ The TFV explains that it would allocate a maximum of USD 10 million as the direct costs to repair the harm caused by Mr Ntaganda, jointly with Mr Lubanga, to the former child soldiers,¹³⁹ while indicating that: (i) half of the sum of liability of Mr Lubanga has already been complemented by the TFV;¹⁴⁰ (ii) nearly USD 1 million is allocated to address the harm suffered by victims of rape and sexual slavery; and (iii) an additional USD 1,21 million in terms of indirect costs is budgeted.¹⁴¹ In light of these statements and despite the TFV's attempt to address the Legal Representative's previous query regarding allocation of funds,¹⁴² it remains unclear why the whole amount allocated for the former child soldiers is still expected to be fully deducted from the overall cost to repair set for Mr Ntaganda, instead of being effectively shared between the two convicted persons. This is even if USD 5 million has already been complemented by the TFV to be used for the *Lubanga* programme.

¹³⁶ See the Updated DIP, *supra* note 1, paras. 264-281. See also the "scenario 2" table on page 80.

¹³⁷ See the Reparations Order, *supra* note 6, para. 194.

¹³⁸ See the Updated DIP, *supra* note 1, paras. 264-272.

¹³⁹ *Idem*, para. 268.

¹⁴⁰ *Idem*, para. 278.

¹⁴¹ *Idem*, paras. 269-270.

¹⁴² *Idem*, para. 267.

76. Moreover, the TFV's proposal to allocate USD 12 727 000 to address harm suffered by the estimated minimum of 3,000 former child soldiers,¹⁴³ and 6,000 indirect victims suffering transgenerational harm,¹⁴⁴ *vis-à-vis* the amount of USD 17 272 000 to address harm suffered by the estimated minimum of 21,500 direct and indirect victims of the attacks¹⁴⁵ appears disproportional and is irreconcilable with the requirement of equal treatment of the two groups of victims. In an attempt to give full effect to the *Lubanga* Reparations Order,¹⁴⁶ the TFV's current proposal for allocation of fund gives rise to a system wherein one group of victims, *i.e.* former child soldiers, is clearly favoured *vis-à-vis* the other. As the TFV itself seems to acknowledge that a difference in treatment of the two groups of victims will potentially be caused by the funding situation,¹⁴⁷ it is unclear why the TFV does not attempt to address the potential of such an inequality at the outset, for instance by putting forth a more balanced proposal for fund allocation between the two groups of victims. As it stands, the TFV's proposal is unacceptable and must be revised.

77. Furthermore, the Legal Representative observes that there is an internal contradiction within the Updated DIP regarding the number of beneficiaries from the victims of the attacks who can be included in the overall programmes before 2023. On the one hand, the TFV states that the programme of the Victims of the Two Attacks cannot be included in any overall DIP programme before 2023, such that it will be "*essential to reach a considerable number of Priority Victims of the Attacks who are in urgent needs until the Victims of the Two Attacks Programme fully starts*",¹⁴⁸ while at another point the TFV states that "*only a limited number of [Victims of the Two Attacks Programme] will benefit already in 2023 from the programme*".¹⁴⁹ The TFV should therefore be requested

¹⁴³ *Idem*, para. 272.

¹⁴⁴ *Idem*, para. 110. The Legal Representative notes that it is unclear from the Updated DIP whether this figure overlaps with the above number of former child soldiers or is to be added in its entirety to this group of victims.

¹⁴⁵ *Idem*, para. 272.

¹⁴⁶ *Idem*, para. 271.

¹⁴⁷ *Idem*, para. 278.

¹⁴⁸ *Idem*, para. 251.

¹⁴⁹ *Idem*, para. 288.

to clarify its intentions for the implementation of the programming regarding the victims of the attacks so that the Legal Representative can consult with his clients in a meaningful manner.

78. The TFV also states that approximately [REDACTED] beneficiaries residing outside of the Ituri province are budgeted to receive the lump sum *in lieu* of socio-economic rehabilitation.¹⁵⁰ It is unclear to the Legal Representative what the basis for this estimate is, and if this is indeed the case, he questions whether the money intended for this lump sum would be utilised more cost-effectively by ensuring the access of the victims concerned to socio-economic programmes instead. Further, although the TFV states that the socio-economic rehabilitation for victims of the attacks would ideally be similar to those in the *Lubanga* programme,¹⁵¹ it is unclear how this could be realistically achieved in light of the TFV's proposal for fund allocation between the two groups of victims as discussed *supra*.

79. The Legal Representative recalls that the TFV was encouraged to “engage in additional fundraising efforts to the extent necessary to complement the totality of the award”.¹⁵² He reiterates that these fundraising efforts are fundamental in order to ensure that the victims of the attacks and the former child soldiers are treated equally in terms of the reparations awarded to each group, even if there are limited resources.

9. Eligibility assessment

80. It is regrettable that the TFV is still unable to put forward a single concrete proposal at this stage as regards the eligibility assessment and the verification process, but rather, still needs to engage in further consultation with the Registry.¹⁵³ It is unclear why this process of determining who will conduct the verification process and with what criteria, is taking so much time. For the time being, the Legal Representative takes

¹⁵⁰ *Idem*, para. 273.

¹⁵¹ *Ibid.*

¹⁵² See the Reparations Order, *supra* note 6, para. 257. See also the Updated DIP, *supra* note 1, para. 276.

¹⁵³ See the Updated DIP, *supra* note 1, para. 368.

note that the TFV remains the verification body¹⁵⁴ which is in line with his general preference for option 2 and the corresponding review mechanism.¹⁵⁵

81. The Legal Representative also cannot understand why the TFV is still unable to present for the parties' review at this stage guidelines as to the applicable criteria and standard of proof for the purpose of eligibility assessment.¹⁵⁶ The TFV's lack of clarity and timeliness in the provision of the proposal for eligibility assessment, a key aspect of the DIP, to the parties for review should have been avoided and does not assist in moving the process forward. In this respect, he notes that the TFV's internal eligibility guidelines for the IDIP were recently provided to the parties¹⁵⁷ and wonders why the equivalent is not available for the DIP, other than a general reference to the Court's case law in the *Lubanga* case.¹⁵⁸

10. TFV programming and identification of potential beneficiaries

82. The Legal Representative does not agree with the TFV that "[a]s demonstrated in the present DIP [...], sufficient information exists already to design a proposed programme, including the flexibility necessary to adjust for victims who would find themselves in other locations".¹⁵⁹ To the contrary, he reiterates that a mapping exercise is an essential starting point for designing relevant programmes in accessible locations that cater for the needs of the targeted beneficiaries.

83. Despite the fact that several stakeholders may be in contact with potential beneficiaries, victims should be directed to centralized contact points to make the process as uniform as possible. During consultations with the TFV, the Legal Representative has already put forward his idea that outreach and mapping could go

¹⁵⁴ *Idem*, para. 378.

¹⁵⁵ *Idem*, para. 383.

¹⁵⁶ *Ibid.*

¹⁵⁷ See the "Annex 1 to the Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan", [No. ICC-01/04-02/06-2751-Conf-Anx1](#), 25 March 2022.

¹⁵⁸ See the Updated DIP, *supra* note 1, para. 368.

¹⁵⁹ *Idem*, para. 324.

hand in hand by establishing “call centres”.¹⁶⁰ Such call centres could be accessible to potential beneficiaries by making the telephone numbers known through radio campaigns in which potential beneficiaries could be encouraged to get in touch with these focal points. The focal points staffing the call centres would record the basic information, such as general personal information, contact details and the location of the person calling which could form the basis of the mapping.

84. On a separate matter, the TFV’s submissions on the transfer of information, in which it heavily relies on the practice in previous cases¹⁶¹ must be revised. These prior cases involved an application-based reparations model, a mechanism specifically not chosen in the present case. Accordingly, the TFV has not put forth workable solutions to adapt to the different circumstances in this case.

85. Furthermore, the TFV should have presented to the Trial Chamber actual proposals of who should be conducting what kind of assessment in concrete terms, rather than presenting which questions must be asked to identify beneficiaries not yet participating in the proceedings.¹⁶²

86. It is disappointing that despite extensive consultations and the passing of more than a year since the issuance of the Reparations Order, the TFV has not put final proposals on the table, in particular on the body to be in charge of the verification process, but presents option 2 as still being subject to further consultations.

87. Finally, following the TFV’s suggestion,¹⁶³ the Legal Representative is available to provide submissions on the role of the legal representatives of victims during the reparations phase should this be required.

¹⁶⁰ See the Email correspondence from the Legal Representative to the TFV and parties on 1 December 2021 at 16:10.

¹⁶¹ See the Updated DIP, *supra* note 1, paras. 384-395.

¹⁶² *Idem*, para. 331.

¹⁶³ *Idem*, paras. 394-395.

IV. CONCLUSION

88. The TFV's Updated DIP still lacks the depth and concrete proposals that would have enabled meaningful consultations and the collection of the victims' views on key aspects of programmes that are to be designed for their benefit. In order to achieve this, the TFV should be requested to present a further revised DIP addressing the lacunae mentioned above.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'D. Suprun', followed by a period.

Dmytro Suprun
Common Legal Representative of the Victims of Attacks

Dated this 15th day of August 2023

At The Hague, The Netherlands