

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **28 June 2021**

**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**

**Public redacted version of “Observations on the responses and observations submitted on the Initial Draft Implementation Plan”, submitted on 28 June 2021**

**Source:** The Trust Fund for Victims

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

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## BACKGROUND

1. On 8 March 2021, Trial Chamber VI (the ‘Trial Chamber’) issued an order for reparations against Mr Ntaganda (the ‘Reparations Order’).<sup>1</sup>
2. On 8 June 2021, the Trust Fund for Victims (the ‘Trust Fund’) submitted its initial draft implementation plan<sup>2</sup> (the ‘Initial Draft Implementation Plan’ or ‘IDIP’) to the Trial Chamber.<sup>3</sup>
3. On 23 June 2021, the Common Legal Representative of the Victims of the Attacks (the ‘LRV Victims of the Attacks’),<sup>4</sup> the Common Legal Representative of the former Child Soldiers (the ‘LRV Child Soldiers’, jointly with the LRV Victims of the Attacks, the “LRVs”),<sup>5</sup> the Defence<sup>6</sup> of Mr Ntaganda and the Registry (the ‘VPRS’)<sup>7</sup> submitted observations.
4. On 24 June 2021, the Trial Chamber granted a Trust Fund’ request for authorisation to submit a reply to the LRVs Observations,<sup>8</sup> directing that the reply is to be submitted by 28 June 2021 at noon at the latest.<sup>9</sup>

## OBSERVATIONS

5. The LRVs, the Defence and the Registry raise concerns about the IDIP, in particular in relation to (i) the proposal to use existing assistance programmes as a delivery mechanism for

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<sup>1</sup> [Reparations Order](#), ICC-01/04-02/06-2659, paras 249-253 and 257, and disposition.

<sup>2</sup> The Trial Chamber and the participants used the full title ‘initial draft implementation plan’, hence the acronym ‘IDIP’; therefore, the Trust Fund will adopt this abbreviation in these observations.

<sup>3</sup> [Public redacted version of “Report on Trust Fund’s Preparation for Draft Implementation Plan”, submitted on 8 June 2021](#), ICC-01/04-02/06-2676-Red, with [Annex A, Public redacted version of “Initial Draft Implementation Plan with focus on Priority Victims”](#), ICC-01/04-02/06-2676-AnxA-Corr-Red (the ‘Initial Draft Implementation Plan’).

<sup>4</sup> [Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan](#), ICC-01/04-02/06-2680-Conf (the ‘LRV Victims of the Attacks Observations’).

<sup>5</sup> [Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims](#), ICC-01/04-02/06-2681 (the ‘LRV Child Soldiers Observations’, jointly with the LRV Victims of the Attacks Observations, the ‘LRVs Observations’).

<sup>6</sup> [Defence Observations on the TFV initial draft implementation plan](#), ICC-01/04-02/06-2682-Conf, (the ‘Defence Observations’).

<sup>7</sup> [Registry Observations on the Trust Fund for Victims’ Initial Draft Implementation Plan](#), ICC- 01/04-02/06-2683 (the ‘Registry Observations’).

<sup>8</sup> Email from Trust Fund to Trial Chamber copying the participants on 24 June 2021 at 13:36. On the same day, by way of email, the LRVs opposed the Trust Fund’s request (Joint response by the LRVs sent by email at 15:27).

<sup>9</sup> Email from Trial Chamber to Trust Fund copying the participants on 24 June 2021 at 17:43.

reparations to priority victims, (ii) the proposal to use implementing partners in the identification and verification of beneficiaries, and (iii) the fact that the IDIP proposes to take any kind of action at all even though a reparation programme has not yet been fully devised and the possible risks that a reparation programme entails in the current security situation in the DRC have not yet been conclusively assessed. The concerns as expressed seem to take issue with the very concept of an initial draft implementation plan, also engaging in a debate on what an initial draft implementation plan should, could and would accomplish. The Trust Fund notes that there is no precedent of an IDIP. Accordingly, the expectations expressed in the four submissions as to the content and scope of the IDIP are not only diverse but also wide-ranging.

6. In submitting the IDIP, the Trust Fund complied with the Reparations Order, which requested the Trust Fund to rely ‘as much as possible on existing mechanisms, identified intermediaries, and partnerships already established’ in order to present ‘options for addressing the most urgent needs of victims that require priority treatment’.<sup>10</sup> In the view of the Trust Fund, the IDIP did not require the Trust Fund to establish a programme for *all* Priority Victims as submitted by the LRV Victims of the Attacks;<sup>11</sup> rather, the Trust Fund had to develop projects based on *existing mechanisms* that address *urgent needs* of such Priority Victims.

7. Based on this specific instruction of the Trial Chamber, the Trust Fund identified three existing mechanisms/partners that can be resorted to immediately for the purposes of addressing urgent needs of Priority Victims of the *Ntaganda* case. The Trust Fund recalls that relying on existing projects and partners allows it to act swiftly and, at the same time, to remain in control of the implementation of the proposed measures.<sup>12</sup> Moreover, the Trust Fund identified, together with the LRVs, and upon consultation with VPRS, victims that require priority treatment and possibly have urgent needs. The Trust Fund also held consultations with the implementing partners at issue to discuss the general feasibility of this approach. However, the Trust Fund decided to not yet further engage these partners in detailed discussions and planning pending the

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<sup>10</sup> [Reparations Order](#), para. 252.

<sup>11</sup> See also IDIP, paras 73 and 77.

<sup>12</sup> [IDIP](#), para. 20.

Trial Chamber's approval of the IDIP.<sup>13</sup> Both identified partners of the *assistance projects* have confirmed that additional resources (i.e. an allowable maximum of EUR 150,000 for each project) would assist them to respectively extend their geographical scope within Ituri Province for additional beneficiaries ([REDACTED]) and take on additional beneficiaries ([REDACTED]).

8. As set out in the IDIP (paras 22 -26), the scopes of work of these existing mechanisms and projects are already determined and can only be subject to minor adaptations within their established operational scope. Therefore, the Trust Fund was not required to develop the *content* of a separate project, an aspect that made it possible to submit this IDIP within the time limit of three months. In the Trust Fund's assessment, the two assistance projects are amply geared towards addressing urgent needs of respectively a limited number of Victims of the Attacks and a limited number of Child Soldiers who are girl-mothers and children born out of rape or sexual violence. Insofar as one of the proposed project requires development to enable an appropriate intake of *Ntaganda* priority victims (i.e. the 'annex' project to the *Lubanga* reparation programme), the IDIP (para. 71) foresees to involve the LRVs in that process.

### *Urgent Needs*

9. The Trust Fund considers that it may not have explained in detail how the IDIP addresses the urgent needs of victims that require priority treatment, partly because the relevant assistance programmes are already designed to focus on vulnerable victims, including victims of sexual and gender-based violence ('SGBV').<sup>14</sup>

10. Victims of the Attacks: By inclusion in the project of [REDACTED], Victims of the Attacks that fall within the category of Priority Victims and, in addition, have urgent needs<sup>15</sup> – be it in terms of material support, physical or psychological rehabilitation, or as SGBV victims – will receive such services or financial support. Besides addressing their urgent needs, other needs of

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<sup>13</sup> See [IDIP](#), paras 71 and 92.

<sup>14</sup> See e.g. website of the Trust Fund, under 'Our impact', available at: [trustfundforvictims.org/en/about/our-impact](https://trustfundforvictims.org/en/about/our-impact).

<sup>15</sup> See [IDIP](#), para. 77, explaining how urgent needs will be assessed.

this category of victims may also be satisfied by the existing range of project services, such as (but not limited to) training and education, as these victims will become part of the project.<sup>16</sup> The Trust Fund observes that there seems to be confusion based on the title of the project of [REDACTED] as to the scope of possible beneficiaries that can be included in the project.<sup>17</sup> Having partnered with [REDACTED] in this project for the past year, the Trust Fund appreciates that the title of the project may not fully cover its scope of intervention, as [REDACTED] has – in line with the scope of work – a broader range of beneficiaries in its project than the title suggests. Its main focus is to provide rather expensive medical treatments to beneficiaries with urgent medical needs, but it also addresses urgent psychological and material needs of beneficiaries.<sup>18</sup> While a title of a project may be indicative of its extent, the project’s perimeter is determined by the scope of work that, in the case of [REDACTED], encompasses physical, psychological and/or material harm and current needs that arise from this harm, including financial and material needs.

11. The Trust Fund observes that this assistance project of [REDACTED] is the only existing project that satisfies the broad range of urgent needs of a first limited group of Priority Victims of the Attacks. While the exact number of available spots beyond the 30 immediately<sup>19</sup> available spots will be subject to budget discussions with [REDACTED], in any case, the total number of beneficiaries that will be covered by [REDACTED] with a maximum budget increase of EUR 150,000 can include the [REDACTED] victims to whom the LRV Victims of the Attacks already reached out in person.<sup>20</sup> As set out by the LRV Victims of the Attack in the table he submitted,<sup>21</sup> the needs of these [REDACTED] victims appear to be urgent financial needs, medical and/or

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<sup>16</sup> See [IDIP](#), paras 27, 28, 29, that addresses the transfer of this project to the reparation programme and para. 35 that describes the project.

<sup>17</sup> [LRV Victims of the Attacks Observations](#), paras 23, 36 and 39, making reference to ‘mutilated victims’ and making the assumption that only mutilated victims are placed in this project and that therefore the ‘intended target group’ would be stigmatised if included in this project.

<sup>18</sup> See [IDIP](#), para. 35. It should be noted that, *inter alia*, beneficiaries of such projects do not usually meet at the partner’s office or know each other, as apparently assumed by [LRV Victims of the Attacks Observations](#), para. 39.

<sup>19</sup> This is a time-sensitive matter because, latest by early July, [REDACTED] needs to start the intake of the new beneficiaries for the second year.

<sup>20</sup> [LRV Victims of the Attacks Observations](#), para. 25.

<sup>21</sup> [IDIP](#), para. 16.

psychological needs, depending on the individual situation of the victims. Whether the conditions of the victims pre-identified by the LRV Victims of the Attacks satisfy the urgent need criteria<sup>22</sup> will be established in the field by the partner under the supervision of the Trust Fund; this decision cannot be taken in the abstract at Headquarters level.

12. Child Soldiers: As to the Child Soldiers, the Trust Fund posits that it has included options that address more than merely their urgent needs. This is due to the fact that the existing projects already allow addressing the harm of Child Soldiers more fully. Accordingly, one proposal aims at including the *Ntaganda* Child Soldiers in the *Lubanga* reparation programme in order to enable these Child Soldiers to begin benefitting from reparation measures without delay. In that respect, it needs to be kept in mind that rolling out a programme and reaching all victims takes time as well. Contrary to the expressed ambition of the LRV Victims of the Attacks in relation to the proposal for the Victims of the Attacks,<sup>23</sup> this is usually an iterative process.

13. The Trust Fund proposed in the IDIP (paras 56-59) a simplified way for the represented Child Soldiers to apply to, and benefit from this programme, i.e. by channeling their applications (for participation in the *Ntaganda* case) and any additional information as deemed necessary by the LRV Child Soldiers through VPRS to the Trust Fund for decision-making in line with the existing eligibility assessment process in *Lubanga*. The Trust Fund already received the preliminary assessment of VPRS of these applications. As expressed in the IDIP (para. 59), for non-represented Child Soldiers that have not yet applied before the final 1 October 2021 deadline for the *Lubanga* Child Soldiers, a separate eligibility assessment will need to be devised, including with the cooperation of the LRV Child Soldiers and the Registry. As expressed in the IDIP (para. 59), this eligibility assessment will likely<sup>24</sup> not be carried out with the involvement of the communities.

14. Child Soldiers who were victims of rape or sexual slavery and their children: One proposal included in the IDIP (para. 68(a)) is that the specific harm recognised only in the *Ntaganda* case,

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<sup>22</sup> See [Initial Implementation Plan](#), para. 77.

<sup>23</sup> [LRV Victims of the Attacks Observations](#), para. 25.

<sup>24</sup> It will need to be discussed e.g. whether, in case of doubt, the Trust Fund may seek recourse to certain authorities to assist in verification.

i.e. the conviction of Mr Ntaganda for the war crime and crime against humanity of rape and sexual slavery of Child Soldiers, is taken into account by developing a residual *Ntaganda* SGBV project as an annex to the *Lubanga* reparation programme. In that respect, the Trust Fund observes that a number of victims who are now part of the *Lubanga* reparation programme may also be victims of *Ntaganda* and may have suffered of such crimes. Accordingly, this project is proposed to address the specific harm suffered by Child Soldiers, both male and female, who suffered of rape or sexual slavery and, insofar as they were child-mothers, their children born out of rape or sexual slavery. This measure is proposed because the Trust Fund – as well as the LRV Child Soldiers<sup>25</sup> – consider these victims as particularly vulnerable victims. Developing such a project requires careful consideration and consultations; accordingly, in order to address without delay this particularly vulnerable group, the Trust Fund proposes that the Trial Chamber approve that the Trust Fund start the development of these measures, which would entail that the Trust Fund could commence the procurement process for this annex project to an existing programme before the DIP is approved.

15. Another proposal set out in the IDIP (para. 68(b)) addresses the primarily the urgent needs of child soldiers who have been child mothers due to rape or sexual violence and their children born out of rape or sexual violence. As the Trust Fund is running one assistance project specifically for the benefit of this group of victims, the Trust Fund proposes to use this project, implemented by [REDACTED], to address, effectively and without delay, the harm currently suffered by these victims. In addition, a number of victims who suffered of rape or sexual violence (without having children due to it), be it male or female, may also be included in this project. As this project is not active in all relevant parts of Ituri yet, it is necessary to extend its geographical reach to other areas where those victims, or at least a considerable number of them, as indicated by the LRV Child Soldiers, reside.

16. The Trust Fund observes that it needs to account all its activities under the IDIP ultimately to reparations and to the liability of Mr Ntaganda, as expressed in the IDIP.<sup>26</sup> The implementation

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<sup>25</sup> See [IDIP](#), para. 15; [REDACTED].

<sup>26</sup> See [IDIP](#), para. 29; a misapprehension on this point by the LRV Victims of the Attacks emerges in [LRV Victims of the Attacks Observations](#), para. 31.



of the IDIP will already be part of the reparation programme in the *Ntaganda* case. Accordingly, the Trust Fund needs to ensure that the beneficiaries are – to the standard of proof set by the Court – victims of the crimes for which Mr Ntaganda has been convicted. Consequently, all potential beneficiaries need to be found eligible under this standard of proof, including Child Soldiers who participated in the proceedings.<sup>27</sup> To allow the above-referred to second project for Child Soldiers who suffered from rape or sexual violence to start without delay, the Trust Fund proposes to prioritise an assessment of their eligibility by 21 July 2021 to determine whether (i) they were child soldiers under the age of 15 and (ii) victims of the crimes for which Mr Ntaganda was convicted. If both conditions are met, this will allow them to be found eligible as Child Soldiers and be formally included in the *Lubanga* reparation programme. As the *Lubanga* reparation programme does not address the specific harm of Child Soldiers who suffered of rape and sexual slavery, [REDACTED].

17. The Trust Fund cannot discern from the LRV Child Soldiers' submission where her disagreement with the Trust Fund's proposals lies,<sup>28</sup> considering that the Trust Fund fully took into consideration, in the development of the IDIP (paras 49, 56 *et seq.*), that all Child Soldiers are Priority Victims, that it proposes options for all Child Soldiers, and that it proposes an eligibility assessment that does not require the represented Child Soldiers to reapply or fill in a second form.

#### *Eligibility assessment for Victims of the Attacks*

18. The Trust Fund notes the Registry's submissions on the need to have one eligibility assessment for all beneficiaries in the case and for the preparedness of VPRS to be involved in this process.<sup>29</sup> In that regard, the Trust Fund notes that any eligibility assessment will be carried out equally for all victims in the case according to the same standard of proof and the eligibility criteria set out by the Trial Chamber in the Reparations Order.<sup>30</sup>

<sup>27</sup> See for a possibly different view [LRV Child Soldiers Observations](#), paras 21, 23.

<sup>28</sup> [LRV Child Soldiers Observations](#), para. 12.

<sup>29</sup> [Registry Observations](#), paras 8-12.

<sup>30</sup> See [Lubanga 2015 Reparation Appeal Judgment](#), para. 1; [Al Mahdi Reparation Appeal Judgment](#), para. 64.

19. The Trust Fund observes that the Appeals Chamber in the *Lubanga* case found that equal treatment and non-discrimination are essential considerations for the Trial Chamber's approval of a proposed eligibility assessment.<sup>31</sup> Specifically, the Appeals Chamber found that if a Trial Chamber has been involved at one point, it should remain involved throughout the process for this category of victims through judicial review of the Trust Fund's administrative review process.<sup>32</sup> At the same time, the Appeals Chamber did not postulate that a judicial review is required for collective reparation orders but suggested that an administrative review may be sufficient.<sup>33</sup> Accordingly, the issue is not one of equal treatment for the eligibility process between different categories of victims; rather one of consistency in the approach for the victims belonging to the same category.

20. The Trust Fund observes that, once an implementation plan is approved, it may be appropriate to devise different processes on how to determine the eligibility of certain beneficiaries, based on the specific category of victims and the harm they suffered. An example is e.g. the *Al Mahdi* case, where only a certain category of victims, i.e. descendants of the Saints buried in the destroyed mausolea and those whose livelihood exclusively depended on the mausolea received a symbolic financial amount as reparation (based on an individual reparation award).<sup>34</sup> Keeping in mind this Appeals Chamber jurisprudence and that Child Soldiers and Victims of the Attacks belong to two different groups of victims, which are also separately represented, the Trust Fund observes that different eligibility processes may apply to them. In addition, depending on the reparation measures proposed in the DIP, different eligibility assessments may be required for different categories of Victims of the Attacks.

21. The Trust Fund notes the VPRS's preparedness to be involved in the eligibility assessment for Victims of the Attacks as a depository for all forms and possibly for a preliminary assessment.<sup>35</sup> The Trust Fund remarks that the processes applicable to date, i.e. the assessments

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<sup>31</sup> [Lubanga 2019 Reparation Appeal Judgment](#), para. 164.

<sup>32</sup> [Lubanga 2019 Reparation Appeal Judgment](#), para. 164.

<sup>33</sup> [Lubanga 2019 Reparation Appeal Judgment](#), para. 164.

<sup>34</sup> *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII, Reparations Order, 17 August 20217, ICC-01/12-01/15-236, paras 81, 83 and 104.

<sup>35</sup> [Registry Observations](#), para. 14.

in the *Al Mahdi* as well as the *Lubanga* case, have used (with small amendments and variations) the following process, which includes both an administrative review by the Trust Fund following a preliminary assessment of VPRS and a judicial review<sup>36</sup> by the Trial Chamber: (i) a victim to fill in an application form (developed by the Trust Fund for this specific category of potential beneficiaries), supported or interviewed in this process by Trust Fund and LRVs or VPRS (the latter before 2018), (ii) submission by the LRVs of this form to VPRS, (iii) inclusion by VPRS of this data in the VAMS database,<sup>37</sup> (iv) a preliminary assessment by VPRS of whether the formal criteria have been respected and the victim appears to be a victim of the crimes of the relevant convicted person,<sup>38</sup> (v) transfer in batches by VPRS of the forms and the preliminary assessment to the Trust Fund, (vi) assessment by the Trust Fund of the eligibility of each victim, (vii) eligibility determination by the Board of Directors either by individual decision (*Al Mahdi* for all and *Lubanga if negative*) or if positive in a table (*Lubanga*), (viii) notification of the decision (in *Al Mahdi*); (ix) judicial review of the decision (either automatically as in *Lubanga* or upon request as in *Al Mahdi*). In addition, the data kept by the Trust Fund serve as a basis for payment of the individual awards in *Al Mahdi*. This combined administrative and judicial review with a main depository of all forms in the VAMS database was possible in these cases with rather modest numbers of beneficiaries. However, even for these cases, the processes proved very time-intensive and budget-intensive processes for Court and TFV and may be ill-suited to the prevailing security and public health conditions in the intervention area, hence prone to be a cause of unwarranted administrative delay. In addition, any such process would make it impossible to deliver reparations to victims close in time to their application, as these process take easily one year between identification and final decision. In conclusion and being aware that

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<sup>36</sup> The judicial review by the Trial Chamber in the *Al Mahdi* case only applies to negative decisions of the Trust Fund's Board of Directors.

<sup>37</sup> Making the database available to the Trust Fund (and partners) and adapt it to reparations, while possible, is a time-intensive and costly way forward; Trust Fund and VPRS had a first meeting to assess whether this is possible and what the costs and time would exactly be. Upon better understanding of the specifics of the VAMS database, requirements will be developed to make this assessment more concrete. However, results cannot be expected to be found for the *Ntaganda* eligibility assessment.

<sup>38</sup> The preliminary assessment in *Al Mahdi* is not applicable anymore since September 2020 because the identification has been carried out already by the Trust Fund, i.e. a preliminary assessment took place in the field; see *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on TFV Request for Amendment of the Screening Process, 23 September 2020, ICC-012/12-01/15-374-Conf.

the number of Victims of the Attacks is not yet finally determined, the IDIP's proposed eligibility assessment of the Priority Victims of the Attacks does not refer to either the use of the VAMS database or to a VPRS preliminary assessment.<sup>39</sup>

22. The Trust Fund also notes that the participants seem to be concerned that the Trust Fund would not carry full responsibility for the assessments of eligibility for the IDIP. To alleviate this misunderstanding, the Trust Fund hereby confirms that it will have the full responsibility for positive and negative eligibility assessments. Based on the IDIP (paras 84 *et seq.*), the following elements apply:

23. Identification: As set out in the IDIP, represented victims are considered identified. In addition, the LRV Victims of the Attacks already pre-identified [REDACTED] victims with urgent needs. The implementing partner will contact these victims within their communities. In this process, the implementing partner may also meet other potential beneficiaries with urgent needs.

24. Verification: The implementing partner together with Trust Fund staff, insofar as possible due to security reasons, will conduct an interview with the potential beneficiary to assess whether the person is a victim of the crimes and whether he or she is in urgent need.<sup>40</sup> The information will be included and kept in a form developed by the Trust Fund for the purpose of recording data in an organised manner and enabling their storage, consultation and verification. The implementing partner's and the Trust Fund's staff will consult and decide whether the person is eligible and in urgent need. In the event that the person's situation is insufficiently explained, the Trust Fund will not reject this person but rather agree on a case by case basis with the implementing partner, and the LRV as appropriate, on the most adequate manner to secure additional information. When the person is represented by the LRV Victims of the Attacks, he will be informed by the Trust Fund accordingly. The decision on eligibility will be recorded, pending further developments, in an Excel table kept by the Trust Fund, as it has proved efficient

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<sup>39</sup> As discussed with VPRS at a meeting on 7 June 2021, the Trust Fund will inform VPRS of the outcome of the eligibility assessment for all victims whose data is to date included in the VAMS database.

<sup>40</sup> The Trust Fund will develop a questionnaire that enables the assessment of whether the victims falls within the crimes for which Mr Ntaganda has been convicted, and share it in due course.

in other cases. In case of a positive decision, the beneficiary will be invited without delay for an intake into the project by the implementing partner.

25. Negative Decisions: The Trust Fund's submission in the IDIP on the negative decisions were indeed short. However, based on the above and the process set out already in the IDIP (para. 88), the Trust Fund hereby adds detail: In case of a represented person, the LRV Victims of the Attacks will be informed by the Trust Fund of the reasons for this negative assessment. In case of a non-represented person, the person will be informed by the Trust Fund and the process of administrative review will be explained to him or her orally and in writing.

26. The LRV Victims of the Attacks or the concerned person can ask the Trust Fund for a reconsideration of the matter. In that case, the Trust Fund will re-assess the matter and inform the LRV Victims of the Attacks or the person as to whether the assessment will be maintained and the reasons therefore. In case the LRV Victims of the Attacks or the person still disagrees with the assessment, he or she can address the Board of Directors for administrative review. The Trust Fund will ensure that the staff taking part in the original decision and the re-assessment does not advise the Board of Directors in the process of administrative review, as it has proved appropriate and efficient in other reparations cases.<sup>41</sup>

27. The Trust Fund considers that the process as described in the IDIP and further explained above provides the required detail in respect of the process that applies to assessing the beneficiaries that can be included in the [REDACTED] project in the ensuing period. The Trust Fund will set out in more detail in an annex to the DIP all additional relevant aspects of the administrative eligibility assessment.<sup>42</sup>

28. The Trial Chamber will be informed by the Trust Fund of the eligibility assessment in its update reports in accordance with the Trial Chamber's directions. In any case, the relevant statistics (not the identifying details) of the beneficiaries will be made available to the Defence

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<sup>41</sup> See also *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII, Lesser public redacted version of 'Updated Implementation Plan' submitted on 2 November 2018, ICC-01/12-01/15-291-Red3, para. 35.

<sup>42</sup> See also [IDIP](#), paras 83 and 84.

in this way. Apart from that, the Trial Chamber may wish to guide the Trust Fund as to whether and how the Defence should be informed of this process and its role in that regard.

29. The Trust Fund would like to draw the attention of the Trial Chamber to a very different approach that it may wish to consider for addressing eligibility for the exceptional and urgent purposes of the IDIP, mindful of the submissions of the participants in respect of the eligibility assessment proposed in the IDIP. This option is to include already participating victims, positively pre-assessed by VPRS, *in the two assistance projects* (not the *Lubanga* reparations programme) as described in the IDIP. The implementing partner under the supervision of the LRVs would only assess whether the victims are indeed in urgent need. If they are not in urgent need, they will not receive a negative decision but merely be informed through the LRVs that they will not be included in this specific project, pending the full reparation programme.

30. Eligibility would then be assessed in line with the method approved as part of the DIP. The Trust Fund's arguments included in its observations to the Appeals Chamber would apply *mutatis mutandis* to this situation in that the risk of a victim not being a victim of Mr Ntaganda would be mitigated by the broader scope of application of the assistance project, in which they could remain; their harm suffered by this specific incident would be fully recognised nevertheless.<sup>43</sup> The eligibility assessment set out in the IDIP and explained in more detail above for the identification and verification process would then merely serve as a basis for further consultations with the LRVs and the different sections of the Court.

#### *Overall observations*

31. The participants' submissions raise concerns about the level of detail of the IDIP and contain requests to the Trial Chamber to direct the Trust Fund to submit an updated version of the IDIP. The Trust Fund notes that the four participants' views on an updated IDIP lie far apart and that some are not further specified. The Trust Fund underlines that the IDIP is a plan, i.e. a living document, that is subject to change and development and that the part entitled 'Proposals'

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<sup>43</sup> See Trust Fund, [Observations on the Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence](#), ICC-01/04-02/06-2679, 22 June 2021, para. 29.

contains the specific plan, while the first part relates to the general concepts.<sup>44</sup> The approval sought from the Chamber relates to the overall approach taken by the Trust Fund in the IDIP, not to the details of each step of the implementation, thereby allowing for swift action. This approach is in line with the Regulations of the Trust Fund (the ‘TFV Regulations’), stating that the Trust Fund ‘shall consult the relevant Chamber, as appropriate, on any questions that arise in connection with the implementation of the awards’.<sup>45</sup>

32. The Trust Fund underlines that it considers it the best way forward to, instead of submitting update(s) of the submitted initial plan, receiving approval, if any, for the proposed measures and approaches and to steer its precious available human resource capacity into preparing the main draft implementation plan and into ensuring that the approved proposals contained in the IDIP can find swift implementation. In this context, the Trust Fund observes that many of the observations of the participants already went to matters relevant to the DIP and will accordingly be taken into account for this purpose.

33. The Trust Fund has a number of observations in relation to the overall points expressed by the participants. First, observations by participants seem to underappreciate the relevant and long-standing operational experience the Trust Fund has in Ituri Province, which is the foundation on which the IDIP has been built and, as can be assumed, on which the Trial Chamber’s request for an IDIP was based. Evidently, the Trial Chamber and the participants are aware that assistance programmes have been running in Ituri since 2008 and Judges of the Trial Chamber are well informed of the Trust Fund’s activities in other reparation cases that also relate to victims of the conflict of 2002/2003. Therefore, underlying the Trust Fund’s IDIP is the principle that the Trust Fund’s experience, knowledge and partnerships can and will be made available directly and on an expedited basis in order to address the most urgent needs of a number of beneficiaries.

34. Second, the Trust Fund notes that the participants reacted strongly to the risks enumerated by the Trust Fund in the IDIP (paras 80 and 97), leading them to reject the IDIP as a whole. Risk

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<sup>44</sup> [IDIP](#), paras 39 *et seq.* for the part on ‘Proposals’.

<sup>45</sup> Regulation 57 of the TFV Regulations; see also [Al Mahdi Reparation Appeals Judgment](#), para. 71.

awareness and risk mitigation are necessary activities of programme development and implementation. The Trust Fund considers that starting the implementation of the IDIP is possible in the current security situation; in fact the Trust Fund is currently also operating the take-off phase of the *Lubanga* reparation programme, is carrying out activities in the *Katanga* case and in the projects that make part of the assistance programme. Of all the participants, only the Trust Fund and the staff of the Country Office are actually and continually present in Bunia, Ituri Province. Despite assertions by participants in their submissions to the contrary,<sup>46</sup> the Trust Fund has been in contact with communities and with victims and consulted with them throughout May/June 2021. Another mission is planned to start in mid-July 2021. In light of the submissions of the LRVs, the Trust Fund would welcome their participation in this mission, which will be essential to making progress on the draft implementation plan. In addition, the Trust Fund is well aware of its responsibility to develop an outreach strategy once the IDIP is approved, and has relied in the past for this purpose on the valuable assistance of the Country Office.<sup>47</sup> The Trust Fund notes that some participants have made observations on outreach and will certainly take them into account in developing the relevant activities.

35. The third observation is that the Trust Fund is not only requested by the Trial Chamber but even more so, it is its strong intent, to rely, to the degree possible, on the collaboration with the LRVs and the different sections of the Court. The LRVs both engaged collaboratively with the Trust Fund before the submission of the IDIP.<sup>48</sup> The Trust Fund underlines that it operates at all times in a non-adversarial mode and is approachable and ready to discuss all matters, adapt its approach, as and if required, and share information. The Trust Fund would like to mirror in the design of the implementation plan the LRVs long-standing associations with their clients and their related insights. Such cooperative approach would allow the Trust Fund to improve the design of the reparative measures. In addition, considering the monitoring role of the Chamber, this collaborative approach is meant to enable the LRVs and the Registry to engage with the Trust

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<sup>46</sup> But see [Registry Observations](#), para. 6.

<sup>47</sup> See also [Registry Observations](#), para. 13.

<sup>48</sup> See also [LRV Child Soldiers Observations](#), para. 12.



Fund on matters that have the potential for resolution through dialogue. Common missions to the field may assist in this matter.

36. Finally, the Trust Fund observes in respect of the participants' submissions relevant to the complement pursuant to regulation 56 of the TFV Regulations and fundraising, that the IDIP has been approved by the Board of Directors and that fundraising and fundraising strategies, including those relevant to all reparation cases, are currently matters addressed by the Trust Fund as a matter of priority. These matters as well as those relevant to fund management and accounting are reported in the Trust Fund's non-case related materials and reporting and accountability structures, including to the Assembly of States Parties and its bodies such as the Committee on Budget and Finance and the Review Mechanism, and are audited by the External Auditors.

#### **RELIEF SOUGHT**

37. The Trust Fund hereby respectfully submits its observations for consideration of the Trial Chamber in deciding on the approval of the initial draft implementation plan.



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Pieter W.I. de Baan  
Executive Director, Trust Fund for Victims

Dated this 28th Day of June 2021

At The Hague, The Netherlands