

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date of Original: **11 August
2023**
Date: **30 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 Redacted Version of

**First Decision on the Trust Fund for Victims' Draft Implementation Plan for
Reparations, ICC-01/04-02/06-2860-Conf**

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

Legal Representatives of Victims

Ms Sarah Pellet
Ms Caroline Walter
Mr Tars van Litsenborgh
Ms Ana Peña

Mr Dmytro Suprun
Ms Fiona Lau
Ms Cherine Luzaisu

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Benjamin Willame
Ms Kate Gibson

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

Office of the Prosecutor

Mr Karim A. Khan
Ms Nicole Samson

States' Representatives

Democratic Republic of Congo

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Mr Philipp Ambach

Trust Fund for Victims

Ms Deborah Ruiz Verduzco

Others

INDEX

I.	PROCEDURAL HISTORY	4
II.	INTRODUCTION	6
III.	ANALYSIS	10
A.	First Element of the DIP: Objectives, Outcomes, and Activities.....	11
1.	TFV proposal.....	11
2.	Parties' submissions	12
3.	Chamber determination	13
B.	Second Element of the DIP: The Reparations Projects.....	14
1.	Projects Proposed to address Outcome One - Resilience in mental health and social functioning	14
a)	TFV proposal	14
b)	Chamber determination.....	15
2.	Projects Proposed to address Outcome Two - Resilience in physical health and mobility through physical rehabilitation & medical care and treatment.....	16
a)	TFV proposal	16
b)	Parties' submissions.....	16
c)	Chamber determination.....	17
3.	Projects Proposed to address Outcome Three – Resilience in socio-economic status and outlook.....	17
a)	Socio-economic starter sum	17
b)	Educational Assistance	19
c)	Income Generating Activities	24
4.	Projects Proposed to address Outcomes Four and Five.....	27
a)	Community Outreach.....	27
b)	Community centres and other symbolic measures.....	29
c)	Measures for victims of rape and sexual violence	33
d)	Measures related to missing persons.....	34
e)	Apology from Mr Ntaganda.....	36
5.	Lump Sum in Lieu of Programming.....	37
a)	Parties' submissions.....	38
b)	Chamber determination.....	39
C.	Third Element of the DIP: Methods of Implementation	41
1.	Steps to be Taken and Expected Timeline.....	41
2.	Direct and Indirect Costs (Including the expected Amount the TFV will use to complement).....	42
3.	Other Implementation Considerations	44
a)	Integration of IDIP	44
b)	Outreach and Risk Mitigation	46
c)	Programme Management, Monitoring and Evaluation	48
d)	Assistance of the DRC Government	51
D.	Fourth Element of the DIP: Eligibility Assessment.....	52
1.	TFV proposal.....	52
a)	Identification of Potential Beneficiaries.....	53
b)	Verification Process	54
2.	Parties' submissions	55
3.	Chamber determination	57
IV.	GENERAL OBJECTIONS	62
A.	Premature to Approve Updated DIP	62
B.	The TFV's Alleged Misunderstanding of the Reparations Principles	64
C.	Persecution and Deportation	65

Trial Chamber II of the International Criminal Court (the ‘Court’), in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), having regard to articles 75 and 79 of the Rome Statute (‘Statute’), Rule 98 of the Rules of Procedure and Evidence (‘Rules’), and Regulation 81(4) of the Regulations of the Court (‘Regulations’), issues this Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations (‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI delivered the Reparations Order,¹ *inter alia*, directing the Trust Fund for Victims (‘TFV’) to submit a Draft Implementation Plan (‘DIP’).² On 16 March 2021, Trial Chamber VI was dissolved and the case was assigned to Trial Chamber II.³ Hereafter, both Trial Chamber VI and Trial Chamber II are referred to as the ‘Chamber’.

2. On 23 July 2021, the Chamber approved the TFV’s Initial DIP with focus on priority victims (‘IDIP’).⁴ On 20 December 2021, as authorised by the Chamber,⁵ the TFV’s DIP was notified (‘First DIP’).⁶ On 24 March 2022, as instructed by the Chamber,⁷ the TFV submitted an updated version of the DIP (‘Updated DIP’).⁸

3. On 6 and 16 May 2022, as authorised by the Chamber, the Registry transmitted the observations of the Democratic Republic of the Congo (‘DRC’)⁹ on the Updated DIP.

¹ Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#).

² Reparations Order, [ICC-01/04-02/06-2659](#), p. 97.

³ Presidency, Decision assigning judges to divisions and recomposing Chambers, 16 March 2021, [ICC-01/04-02/06-2663](#), p. 7.

⁴ Decision on the TFV’s initial draft implementation plan with focus on priority victims (‘Decision on the IDIP’), 23 July 2021, [ICC-01/04-02/06-2696](#).

⁵ Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan, 23 July 2021, [ICC-01/04-02/06-2697](#), p. 6.

⁶ Trust Fund for Victims’ submission of Draft Implementation Plan, dated 17 December 2021 (submitted on 18 December 2021 at 00:30:53 and notified on 20 December 2021), [ICC-01/04-02/06-2732](#), with Annex A, public redacted version filed on 25 January 2022, [ICC-01/04-02/06-2732-AnxA-Red](#) (‘DIP’).

⁷ 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 (‘January 2022 Decision’), 21 January 2022, [ICC-01/04-02/06-2739](#), p. 8; and Decision on the Trust Fund for Victims’ Request for Extension of Time to Submit Additional Information on Draft Implementation Plan, 24 February 2022, [ICC-01/04-02/06-2749](#), p. 7.

⁸ Trust Fund for Victims’ second submission of Draft Implementation Plan (‘Submission of Updated DIP’), 24 March 2022, [ICC-01/04-02/06-2750](#), with Annex 1, corrigendum to public redacted version filed on 14 April 2022, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#) (‘Updated DIP’).

⁹ 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 (‘DRC Observations on Updated DIP’), 6 May 2022, [ICC-01/04-02/06-2760](#), with Confidential Annexes I-III; and 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 », 6 May 2022, [ICC-01/04-02/06-2760-Addendum](#).

4. On 18 May 2022, as authorised by the Chamber,¹⁰ the Common Legal Representative of the former child soldiers ('CLR1'),¹¹ the Common Legal Representative of the Victims of the Attacks ('CLR2')¹² (CLR1 and CLR2, together, the 'CLRs'), the Defence,¹³ and the Registry¹⁴ submitted their observations on the Updated DIP.
5. On 20 June 2022, the Chamber directed the Registry and the TFV, by way of email, to submit a joint filing with a workable solution on the verification process.¹⁵
6. On 21 July 2022, the TFV and the Registry filed the Joint Submission on the process of eligibility ('Joint Submission').¹⁶
7. On 1 August 2022, the CLR1¹⁷ and the Defence¹⁸ submitted their observations on the Joint Submission. The CLR2 did not file a response.

enregistrée le 6 mai 2022, ICC-01/04-02/06-2760, 16 May 2022, [ICC-01/04-02/06-2762](#), with public Annex [ICC-01/04-02/06-2762-Anx.](#)

¹⁰ Order for the submission of observations on the draft implementation plan, 17 December 2021, [ICC-01/04-02/06-2731](#); January 2022 Decision, [ICC-01/04-02/06-2739](#), p. 5; Email from the Chamber's Legal Officer, 8 April 2022, at 10:54 hrs., extending the deadlines for observations and responses; and Decision on the 'Request on behalf of Mr Ntaganda seeking a limited extension of the page limit to respond to the Second Draft Implementation Plan of the Trust Fund for Victims', 25 April 2022, [ICC-01/04-02/06-2759](#), authorising the parties to file observations on the Updated DIP of up to 40 pages each.

¹¹ Common Legal Representative of the Former Child Soldiers' Response to the "Trust Fund for Victims' second submission of Draft Implementation Plan" (ICC-01/04-02/06-2750) ('CLR1 Observations on Updated DIP'), 18 May 2022, public redacted version filed on 20 May 2022, [ICC-01/04-02/06-2763-Red.](#)

¹² Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims' Updated Draft Implementation Plan ('CLR2 Observations on Updated DIP'), 18 May 2022, ICC-01/04-02/06-2764-Conf, with public Annex A, [ICC-01/04-02/06-2764-AnxA.](#)

¹³ Observations on behalf of the convicted person on the Trust Fund for Victims' Updated Draft Implementation Plan ('Defence Observations on Updated DIP'), 18 May 2022, ICC-01/04-02/06-2765-Conf, public redacted version notified on 13 September 2022, [ICC-01/04-02/06-2765-Red.](#), with public redacted versions of confidential annexes A and B, [ICC-01/04-02/06-2765-AnxA-Red](#) and [ICC-01/04-02/06-2765-AnxB-Red.](#)

¹⁴ Registry Observations on the Trust Fund for Victims' Draft Implementation Plan ('Registry Observations on Updated DIP'), 18 May 2022, [ICC-01/04-02/06-2766-Red.](#)

¹⁵ Email from the Chamber's Legal Officer, 20 June 2022, at 12:11 hrs., indicating that, after having considered the TFV's proposals for the Draft Implementation Plan (DIP)'s verification process and the Registry's observations to the TFV's proposal, '[i]n light of the different views as to the way forward, the Chamber deems it necessary, before a decision is rendered on the DIP, that the TFV and the Registry find together a workable solution, in line with the Chamber's prior orders for the TFV to rely on the Registry as much as possible and as appropriate in light of their mandate and expertise, combining the limited resources available in order to ensure that the verification process complies with all Principles on Reparations and is as efficient and effective as possible.'

¹⁶ Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility with 3 Public Annexes ('Joint Submission'), 21 July 2022, [ICC-01/04-02/06-2774.](#)

¹⁷ Observations of the Common Legal Representative of the Former Child Soldiers on the "Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility" (ICC-01/04-02/06-2774) ('CLR1's Observations on the Joint Submission'), 1 August 2022, [ICC-01/04-02/06-2778.](#)

¹⁸ Observations on behalf of the convicted person on the Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility ('Defence's Observations on the Joint Submission'), 1 August 2022, [ICC-01/04-02/06-2779.](#)

8. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (the ‘Appeals Judgment’).¹⁹ The Appeals Judgment remanded the matter to the Chamber, partially reversing the Reparations Order as it considered that the Chamber failed to, *inter alia*, lay out at least the most fundamental parameters of a procedure to carry out the eligibility assessment.²⁰

9. On 14 July 2023, the Chamber issued the Addendum to the Reparations Order of 8 March 2021 (‘Addendum’),²¹ in which it, *inter alia*, detailed the substantive aspects of the procedure for carrying out the eligibility assessment of victims at the implementation stage and indicated that the procedural aspects of the mechanisms for the determination of eligibility would be dealt with when ruling on the DIP.²²

II. INTRODUCTION

10. At the outset, the Chamber underlines the unique nature of reparations proceedings before the Court. Specifically regulated by one article in the Statute²³ and a handful of rules²⁴ and regulations,²⁵ the substantive and procedural framework of reparations proceedings before

¹⁹ Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Appeals Judgment’), 12 September 2022, [ICC-01/04-02/06-2782](#).

²⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), p. 11.

²¹ Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659 (‘Addendum’), 14 July 2023, ICC-01/04-02/06-2858-Conf (with Public Annex I, Confidential *ex parte* and Confidential Annex II, and Public Annex III), public redacted version of the same date, [ICC-01/04-02/06-2858-Red](#).

²² Addendum, [ICC-01/04-02/06-2858-Red](#), paras 34-148, 362.

²³ Article 75 of the Statute, which ‘outlined only in very general terms’ the ‘substantive legal principles and procedures for reparations’, see P. Lewis and H. Friman, ‘Chapter 6 - Reparations to Victims’ in R. S. Lee (ed.) *The International Criminal Court, Elements of Crimes and Rules of Procedure and Evidence*, p. 476, see also p. 490. Reparations are also referred to in two articles of the Statute that do not regulate the proceedings of reparations as such, namely, article 82(4), providing for the appeal of the order for reparations; and article 110(4)(b), recognising voluntary assistance of the convicted person enabling the enforcement of reparations orders as a factor to consider when reviewing a reduction of sentence.

²⁴ Rules 94 to 99, providing for: the procedure for reparations upon request (rule 94), the procedure on the motion of the Court (rule 95), the publication of reparation proceedings (rule 96), the assessment of reparations (rule 97), the role of the TFV (rule 98), and cooperation and protective measures for the purposes of forfeiture (rule 99). Other rules that mention reparation(s), but do not regulate the reparation proceedings as such include: rule 40(1)(c), publication of reparations orders in official languages; rule 91(4), lifting restrictions on questioning by LRVs during reparations hearings; rule 143, scheduling of an additional hearing for the purpose of sentence or reparations; rule 144, public hearing for issuance of decision on reparations; rule 146(1) consideration to be given to any order for reparation when imposing fines; rules 150 to 153, providing for, *inter alia*, appeals against reparations orders; rule 212, referring to information on location of the person for enforcement of reparation measures; rules 217 to 222, referring to enforcement of, *inter alia*, reparation orders; rule 224(1), (4), referring to the procedure for review concerning reduction of sentence where the State of enforcement of any reparation order shall be invited to participate.

²⁵ Regulation 56, providing for hearing of evidence for the purposes of reparations and regulation and regulation 88, providing for the formal requirements for requests under rule 94. Other regulations that mention reparations but do not regulate the proceedings as such include regulation 57(b), outlining the details required in a notice of appeal filed pursuant to rule 150; regulation 86(9), referring to the specialised unit dealing with victims’ participation and reparations (VPRS); regulation 113(1)(b), providing for the enforcement unit within the

this Court has been mostly developed, and will continue maturing over the years, by an evolving – at times differing – body of jurisprudence.

11. Within this context, reparations are not to be treated as criminal, civil, or human rights proceedings, directly applying the relevant rules of these areas of law. As noted in the Court’s prior jurisprudence ‘the rules applying to criminal proceedings brought against an accused person do not necessarily find application at the reparations phase.’²⁶ At the same time, the Chamber underlines the distinction between, on the one hand, the judicial stage of reparations proceedings, during which chambers will play a preponderant role, providing the necessary framework for the reparations to be awarded in the case under examination; and, on the other hand, the administrative stage of the reparations proceedings, where other organs shall be tasked with the execution, implementation, and enforcement of the reparations orders. As such, reparations proceedings before this Court are neither exclusively judicial nor exclusively administrative.

12. In accordance with the Court’s legal framework, the judicial stage of the reparations proceedings commences with the conviction of a person for the commission of crimes under the Court’s jurisdiction. It continues with – preferably – the same trial chamber that ruled on the conviction hearing submissions and additional evidence relevant to determine the way in which the harm caused to the victims of the crimes included in the conviction should be repaired. Lastly, it concludes with the issuance of the reparations order, in which the relevant trial chamber will set out the framework for the appropriate reparations in the instant case.

13. As is the case with the other two main decisions that culminate the relevant judicial proceedings at the trial stage – the conviction or acquittal and the sentence – the reparations

Presidency to assist in exercising its functions relating to the enforcement of reparation orders; regulation 116, referring to arrangements concerning the enforcement of reparations orders; regulation 117, providing for the ongoing monitoring of the financial situation of the sentenced person in order to enforce reparations orders.

²⁶ Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Corrected version of the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, 21 December 2017, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 55, referring to Appeals Chamber, Decision on the Admissibility of Appeals against Decision on Reparations, [ICC-01/04-01/06-2953](#), 14 December 2012, para. 70; see also Trial Chamber II, *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute (with public Annex I and confidential *ex parte* Annex II) (*Katanga Reparations Order*), 24 March 2017, [ICC-01/04-01/07-3728-tENG](#), para. 16.

order²⁷ can also be appealed directly before the Appeals Chamber. All final appeals²⁸ are subject to the same procedure pursuant to rules 150 to 153 of the Rules. When the reparations order is appealed – as is the case when a conviction, acquittal, or sentence is appealed – the judicial proceedings will only conclude when the appeals judgment is rendered and, in case of an amendment, total or partial reversal, and/or remand, when such appeals judgment is implemented and the reparations order becomes final.

14. Once the reparations order becomes final, the judicial proceedings conclude and the stage of execution, implementation or enforcement of the order commences.²⁹ The stage of implementation of the reparations order is then administrative in nature and is no longer judicial. This is true even though the Court may remain seized regarding the required supervision, cooperation, and any other measures required, as is also the case during the enforcement of sentences of imprisonment, fines or forfeitures, in accordance with Chapter 12 of the Rules. However, when the relevant chamber deems it appropriate, the administrative stage of implementation may commence even before the reparations order becomes final. In such a case, the stage of implementation of the reparations is still administrative in nature and will run in parallel with the judicial proceedings. This may occur, particularly, in cases where the appeal proceedings related to the reparations order are ongoing but the conviction of the person has already become final, thus the obligation to repair the harm caused to the victims of the crimes for which the person was convicted is undisputed.

15. The administrative, as opposed to judicial, nature of the enforcement or implementation stage of reparations is further specified in article 75(5) of the Statute and rules 217 to 222 of the Rules, which provide for the steps to be taken when States are required to give effect to a reparations order. In accordance with these provisions, enforcement of the reparations order is

²⁷ See *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 16, noting that the reparations order is the culmination of reparation proceedings. See also para. 17, noting that the reparations order must be treated in the same manner as a decision on conviction and sentence, *referring to Appeals Chamber, Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2 (*‘Lubanga Judgment on Principles’*), 3 March 2015, [ICC-01/04-01/06-3129](#), para. 67, indicating that an order for reparations should be classified as a ‘fundamental’ decision, treated in the same manner as a decision of conviction, acquittal or sentence.

²⁸ V. Nerlich, ‘Article 82 - Appeal against other decisions’ in O. Triffterer and K. Ambos (eds.) *The Rome Statute of the International Criminal Court, A Commentary*, Third Edition (2021), noting that the appeal provided for in article 82(4) of the Statute against reparation orders is better qualified as a ‘final’ appeal and therefore systematically incorrectly included in article 82, but treated in the Rules systematically correctly as part of the appeals against ‘final decisions’, p. 1955.

²⁹ H. Brady, ‘Chapter 10 – Appeal and Revision’ in R. S. Lee (ed.) *The International Criminal Court, Elements of Crimes and Rules of Procedure and Evidence*, p. 584.

the responsibility of the Presidency,³⁰ which shall transmit the order, request cooperation, and assist the State with the service of any relevant notification or the carrying out of any other measures necessary for the enforcement of the order.³¹ Beyond that, in such cases the implementation of the reparations order will remain the responsibility of the relevant State. Regarding reparations orders through the TFV pursuant to article 75(2) of the Statute and rules 98(2)-(4) of the Rules, lacking equivalent rules to those provided when States are required to give effect to the order, beyond what is provided by regulations 57 and 58 of the Regulations of the TFV, within their discretion, chambers of the Court have adopted different approaches as to their involvement during the implementation stage.³²

16. Having considered the different possible approaches, in order to ensure a prompter, more efficient, and practical approach to the implementation of the collective reparations with individualised components awarded in the case, within its discretion, the Chamber decides that its role during the administrative stage of implementation consists of retaining limited oversight over the process for the proper compliance of the Reparations Order. In the view of the Chamber, this approach will provide for the necessary balance between the protection of the rights of the convicted person and those of the victims, and will ensure that the administrative stage of implementation remains fair and expeditious. Accordingly, the Chamber considers that

³⁰ As also noted by Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order ('*Al Mahdi* Reparations Order'), 17 August 2017, [ICC-01/12-01/15-236](#), para. 114.

³¹ See also G. Bitti and G. Gonzalez Rivas, 'The Reparations Provision for Victims Under the Rome Statute of the International Criminal Court', in International Bureau of the Permanent Court of Arbitration (ed.), *Regressing injustices through mass claims processes: innovative responses to unique challenges* (Oxford: Oxford University Press, 2006), pp. 317-318.

³² In the *Lubanga* case the Appeals Chamber instructed the newly composed Trial Chamber to 'monitor and oversee the implementation stage of the present order, including having the authority to approve the draft implementation plan submitted by the Trust Fund. The Chamber may be seized of any contested issues arising out of the work and the decisions of the Trust Fund', see Annex A to the *Lubanga* Judgment on Principles, Order for Reparations (amended) ('*Lubanga* Amended Reparations Order'), [ICC-01/04-01/06-3129-AnxA](#), para. 76; in the *Katanga* case, Trial Chamber II, in its prior composition, ruled that '[t]he decision whereby the Chamber approves the Draft Plan will enjoin the TFV to carry it out in its every respect – individual and collective. The Chamber will require regular updates from the TFV in order to monitor and oversee the implementation of the Draft Plan [...] Lastly, it must be made clear that any matter of contention arising from the activities and decisions of the TFV may be brought before the Chamber at any point in the procedure', see *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), paras 313-314; lastly, in the *Al Mahdi* case, Trial Chamber VIII indicated that it 'sees the reparations proceedings in terms of three core judicial decisions: the Reparations Order; the DIP Decision approving the TFV's draft implementation plan; and the present decision, whereby the Chamber will approve the selected projects identified in the UIP. After the present decision, the Chamber regards its role in the implementation of the reparations as limited to considering the TFV's periodic reports, reviewing any decisions by the TFV to reject applications for individual reparations during the administrative screening, and resolving any exceptional matters unrelated to the reparations. That said, the Chamber will retain oversight over the entire process for the implementation of the Reparations Order and will invite submissions or intervene *proprio motu* whenever warranted', see Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on the Updated Implementation Plan from the Trust Fund for Victims ('*Al Mahdi* Decision on Updated DIP'), 4 March 2019, [ICC-01/12-01/15-324-Red](#), para. 14.

its judicial role after issuing the reparations order includes deciding on the TFV's DIP and, as instructed by the Appeals Chamber,³³ retaining oversight over the administrative eligibility assessment of victims. After the DIP is fully approved, the Chamber regards its role during the administrative stage of implementation of reparations as limited to overseeing the administrative eligibility determinations of victims, considering the TFV's periodic reports, and ruling on exceptional matters only. As part of its oversight role, the Chamber may invite submissions or intervene *proprio motu* whenever warranted.

17. The Chamber further notes that this Decision addresses the Updated DIP proposed by the TFV and the parties' submissions therein. To this end, the Chamber has considered all submissions on the Updated DIP and the First DIP. However, consistent with its approach at trial, and as also noted in the Addendum, the Chamber will not address below all the arguments raised by the parties, but emphasises that it has discussed hereafter the submissions that it considers necessary to provide its full and reasoned findings and conclusions.³⁴ More specifically, the Chamber will not address the parties' submissions on the First DIP and the related annexes to the extent they are separately addressed in the Addendum, or were addressed by the TFV in its Updated DIP. The Chamber will also not address the parties' arguments that are addressed in the Addendum, including: (i) the number of potentially eligible victims (including the carrying out of mapping exercises); (ii) the calculation of the monetary award against Mr Ntaganda; and (iii) the substantive criteria applied in an eligibility assessment.³⁵

III. ANALYSIS

18. As to the issues to be dealt with in this Decision, the Chamber recalls that it has previously held that the DIP should include, at least, 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

³³ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 387, 419.

³⁴ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 23.

³⁵ Addendum, [ICC-01/04-02/06-2858-Red](#), paras 37-143, 287-319, 336-357.

implementation; and (iv) a detailed proposal as to the way in which it expects to conduct the administrative eligibility assessment.³⁶

19. The Chamber further recalls its instruction that, to the extent possible, the TFV should resort to pre-existing structures, programmes, and partners to optimise the costs of implementation of reparations.³⁷

20. The Chamber notes that there appear to be discrepancies between the TFV's and parties' expectations about the level of detail required in the DIP regarding the projects proposed by the TFV. In relation to this question, the Chamber notes that it follows the approach taken by Trial Chamber VIII in *The Prosecutor v. Ahmad Al Faqi Al Mahdi* case ('*Al Mahdi* case') which stressed that it would only 'render an *overall* decision to approve, modify or reject proposed measures'.³⁸ Trial Chamber VIII specified that each proposed project would 'subsequently entail a series of further consultations and modalities in order to ensure its execution' and as such the Chamber would 'not seek to regulate all aspects of the proposed measures, nor [would] it specify the exact funds required to ensure their proper implementation'.³⁹ The Chamber finds this approach appropriate to the level of detail required and 'delegates authority to the TFV to facilitate the reallocation of funds in light of evolving circumstances' and 'makes implementation more flexible so that the TFV may have a continuing dialogue with all concerned within the scope of the selected projects approved by the Chamber'.⁴⁰ This approach is supported by the need to proceed expeditiously, efficiently, and effectively, taking into account the victims' right to prompt reparations considering that they have waited for more than two decades.⁴¹

A. First Element of the DIP: Objectives, Outcomes, and Activities

1. TFV proposal

21. The Chamber has held that the DIP should put forward the objectives, outcomes, and activities identified as necessary to give effect to the Reparations Order.⁴²

³⁶ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 10; Reparations Order, [ICC-01/04-02/06-2659](#), para. 249.

³⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 249; Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 10.

³⁸ *Al Mahdi* Decision on Updated DIP, [ICC-01/12-01/15-324-Red](#), para. 17.

³⁹ *Al Mahdi* Decision on Updated DIP, [ICC-01/12-01/15-324-Red](#), para. 17.

⁴⁰ *Al Mahdi* Decision on Updated DIP, [ICC-01/12-01/15-324-Red](#), para. 18.

⁴¹ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 7, Reparations Order, [ICC-01/04-02/06-2659](#), para. 5; Addendum, [ICC-01/04-02/06-2858-Red](#), para. 22.

⁴² Reparations Order, [ICC-01/04-02/06-2659](#), para. 249; Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 10. *See also*, *Al Mahdi* Decision on Updated DIP, [ICC-01/12-01/15-324-Red](#), para. 136.

22. In the Updated DIP, the TFV has proposed an overall objective and five specific outcomes. The overall objective is that ‘victim beneficiaries are enabled to overcome their harm and to achieve resilience in terms of mental, physical and socio-economic rehabilitation through access to quality and timely multi-sectoral services’.⁴³ The five specific outcomes of the programme are as follows:

- a. Outcome One: Beneficiaries are resilient in their mental health and social functioning;
- b. Outcome Two: Beneficiaries are resilient in their physical health and mobility through physical rehabilitation & medical care and treatment;
- c. Outcome Three: Beneficiaries are resilient in their socio-economic status and outlook;
- d. Outcome Four: Beneficiaries are satisfied that the harm they suffered has been recognised and that their right to reparation is adequately addressed; and
- e. Outcome Five: Families and communities of beneficiaries have an understanding of the severity of the crimes that occurred and accept the reparation programme as an adequate response to the consequent harms.⁴⁴

2. Parties’ submissions

23. The Chamber notes that none of the parties has made comments on the proposed overall objective and the CLRs do not object to the five specific outcomes proposed by the TFV. The Defence does not comment on outcomes one to three, but argues that outcomes four and five exceed the Reparations Order.⁴⁵ With respect to outcome four, the Defence argues that the satisfaction of beneficiaries is not an objective that flows from the Reparations Order and that the TFV puts excessive emphasis on victims’ satisfaction, to a point where their wishes are afforded greater weight than the TFV’s strategic decisions.⁴⁶ The Defence thus requests that the projects described in relation to outcome four ‘at a minimum be reviewed’ by the Chamber.⁴⁷ The Defence also submits that outcome five does not flow from the Reparations Order, and as such, the projects described in relation to this outcome should be rejected.⁴⁸

⁴³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 136.

⁴⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 137.

⁴⁵ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 32-34.

⁴⁶ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 32-33, 93.

⁴⁷ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 33.

⁴⁸ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 34.

3. Chamber determination

24. The Chamber reiterates that none of the parties objects to the overall objective of the Updated DIP. As to the Defence's objection to outcome four and its assertion that the satisfaction of beneficiaries is not an objective that flows from the Reparations Order, the Chamber notes that it explicitly ruled in the Reparations Order that measures of satisfaction which 'acknowledge the harm individual victims experienced' are an appropriate modality of reparation.⁴⁹ In addition, the Chamber considers that the vague nature of the Defence's assertion that the TFCV has prioritised victims' satisfaction over strategic decision-making is not sufficiently substantiated to allow the Chamber to reject this outcome based on this objection. Notwithstanding the above, the Chamber notes that the projects the TFCV proposes in relation to outcome four are assessed and dealt with by the Chamber in section III.B.4 below.

25. With respect to the Defence's objection to outcome five, asserting that it does not flow from the Reparations Order,⁵⁰ the Chamber recalls its holding in the Reparations Order that satisfaction measures include steps that contribute to society's awareness of the crimes committed by Mr Ntaganda, which can help to reduce the stigma attached to these crimes and acknowledge the harms suffered by victims.⁵¹ The Chamber considers that society's awareness of the crimes committed by Mr Ntaganda may include information about their severity. However, the Chamber underlines that, as detailed in section III.B.4 below, any projects proposed under outcome five must specifically address the harm caused by the crimes for which Mr Ntaganda was convicted.

26. In light of the above, having assessed the proposed overall objective and five specific outcomes of the Updated DIP, and given that the CLRs do not object to them and the Defence's objections to outcomes four and five have been found insufficient to reject them, the Chamber is satisfied that the proposed overall objective and outcomes respond adequately to the Reparations Order. Accordingly, the Chamber approves the overall objective and five specific outcomes as proposed by the TFCV and considers this element of the Updated DIP satisfied.

⁴⁹ Reparations Order, [ICC-01/04-02/06-2659](#), paras 88, 199, 207.

⁵⁰ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 34.

⁵¹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 207. *See also* Lubanga Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(vi).

B. Second Element of the DIP: The Reparations Projects

27. The Chamber has held that the DIP must describe 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.⁵²

28. As noted above, the Chamber is aware that many of the proposed projects discussed below will require further planning and consultation in order to guarantee their execution and success. Similarly, the Chamber does not seek in this Decision to regulate all aspects of the proposed projects, but will rule on their appropriateness in order to address the approved objectives.⁵³ That said, while the Chamber is of the opinion that it has sufficient information from the TFV to consider the overall merits of the projects proposed, it wishes to express its dismay at the lack of clarity provided in some portions of the Updated DIP. While the Chamber understands that the proposals require flexibility and may need to be adjusted after the Updated DIP is approved, the plan presented to the parties and the Chamber should nevertheless contain clear and concise descriptions about each of the projects proposed. The Chamber has indicated below concrete instances where it considers that more details should have been provided by the TFV.

1. Projects Proposed to address Outcome One - Resilience in mental health and social functioning

a) TFV proposal

29. The TFV proposes several measures with respect to outcome one.⁵⁴ These projects broadly fall into two categories: psychological assistance and psychosomatic treatments.⁵⁵

30. Regarding psychological assistance, the TFV submits that it will be tailored to the individual needs of beneficiaries and that psychologists ‘must show experience in handling transgenerational trauma, SGBV crimes related trauma, former child soldiers and other related trauma direct and indirect victims may suffer from.’⁵⁶ The TFV proposes that psychological assistance may include intensive group therapy, individual psychotherapy, therapy through discussion groups, and the creation of support network groups.⁵⁷ As to the psychosomatic

⁵² Reparations Order, [ICC-01/04-02/06-2659](#), para. 249; Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 10.

⁵³ *Al Mahdi* Decision on Updated DIP, [ICC-01/12-01/15-324-Red](#), para. 17.

⁵⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 162-170.

⁵⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 162-170.

⁵⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 163.

⁵⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 166-168.

treatments, the TFV submits that they will be organised in a similar way to psychological therapies provided, with the implementing partner ensuring that effective treatments and medicines are provided as necessary.⁵⁸

31. The Chamber notes that none of the parties has raised specific concerns with respect to the projects proposed to meet outcome one.

b) Chamber determination

32. The Chamber first notes the TFV's proposal that 'psychological assistance will be specifically tailored to the *needs* of beneficiaries'.⁵⁹ On this point, the Chamber stresses that, although the collective reparations with individualised components awarded in the case are meant to 'holistically address the multi-faceted harm that the victims suffered on a collective basis, while focusing on the individual members of the group by responding to their specific needs in their current situation',⁶⁰ they are not meant to respond to the victims' needs in general. Reparations shall address the victims' current needs *in relation to* the harms they suffered as a result of the crimes for which Mr Ntaganda was convicted. Thus, any psychological assistance must be directly related to the harm suffered by beneficiaries as a result of the crimes for which Mr Ntaganda was convicted.

33. Having assessed the projects proposed by the TFV with respect to outcome one, the Chamber is generally satisfied with the activities they entail and therefore approves them, subject to the modification below.

34. The Chamber recalls that the TFV has proposed providing victims with 'social rehabilitation' under outcome three, which is aimed at helping beneficiaries integrate better socially, as well as with their friends and relations.⁶¹ On this proposal, the CLR2 has voiced concern that it lacks sufficient detail, making it difficult for him to bring this proposal to his clients.⁶² On this point, while the Chamber is of the view that the proposal is indeed vague, and could benefit from further elaboration, it considers that social rehabilitation is an important goal for beneficiaries, and is better placed within the ambit of outcome one, as it relates to beneficiaries' resilience in mental health and social functioning. The Chamber therefore

⁵⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 170.

⁵⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 163 [emphasis added].

⁶⁰ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 19, *referring to* Reparations Order, [ICC-01/04-02/06-2659](#), para. 189.

⁶¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 197.

⁶² CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 65. Specifically, the CLR2 argued that there was no concrete proposal that he could take to his clients.

instructs the TFV to ensure that the forms of therapies discussed above include the option of social rehabilitation.

2. Projects Proposed to address Outcome Two - Resilience in physical health and mobility through physical rehabilitation & medical care and treatment

a) TFV proposal

35. In order to achieve outcome two, the TFV proposes to hire implementing partners that can conclude memoranda of agreement with various healthcare facilities located close to where beneficiaries reside in Ituri.⁶³ The TFV explains that the implementing partners will administer, either on their own or through a network of healthcare providers, the treatments necessary to remedy the harm suffered by each beneficiary.⁶⁴ The TFV proposes that the implementing partners will be responsible for ensuring that support is provided with transport and admission of the victims to the healthcare centres for the required treatment, which will be financed by the programme.⁶⁵ The TFV further notes that the implementing partners will be responsible for monitoring the results of the treatments and suggesting preventative and corrective measures to ensure the best outcome for beneficiaries post-treatment.⁶⁶

36. With respect to the treatments, the TFV notes that the harm suffered by each victim is unique, and as such, treatment will be customised to the beneficiaries.⁶⁷ According to the TFV, treatment options are voluntary and will be discussed individually with beneficiaries so that their ‘concerns and wishes can be taken into account,’ including locations and dates of their treatment.⁶⁸

b) Parties’ submissions

37. The Chamber notes that the CLR2 and Defence have not raised specific concerns regarding the projects proposed by the TFV in relation to outcome two. The CLR1, in her first submission on the DIP, asked for additional information regarding plans to address drug and alcohol addiction and expressed concerns regarding the lack of detailed information as to the intended modalities to be put in place.⁶⁹

⁶³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 172.

⁶⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 172, 174.

⁶⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 173.

⁶⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 174.

⁶⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 171, 175.

⁶⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 173.

⁶⁹ URGENT 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 (‘CLR1’s Request for Extension

c) *Chamber determination*

38. Having reviewed the projects above, the Chamber is satisfied that they appear fit to address the physical harm suffered by victims on an individualised basis. As to the CLR1's concern regarding treatment for drug and alcohol addiction, the Chamber indicates that these specific health issues can be addressed in the programme proposed, given that the programme is tailored to the current needs of each beneficiary in relation to the harm suffered. Further, while it is noted by the TFV in the Updated DIP,⁷⁰ the Chamber wishes to reiterate that the physical injury or illness treated through the reparations programme must be linked to the harm suffered as a result of the crimes for which Mr Ntaganda was convicted.

3. Projects Proposed to address Outcome Three – Resilience in socio-economic status and outlook

39. According to the TFV's proposal, outcome three envisions that beneficiaries are resilient in their socio-economic status and outlook.⁷¹ In order to achieve this outcome, the TFV proposes several measures: (i) a socio-economic support starter sum; (ii) educational assistance; (iii) assistance with income generating activities; (iv) support with social rehabilitation; and (v) a lump sum *in lieu* of socio-economic activities.⁷² Regarding (i), the Chamber recalls its ruling above that support with social rehabilitation is to be addressed under outcome one, and as such, it will not address it hereafter. Similarly, the Chamber will address the proposal of a lump sum *in lieu* of socio-economic activities when addressing lump sum payments generally at paragraphs 111-122 below.

a) *Socio-economic starter sum*

(1) *TFV proposal*

40. The TFV submits that consultations with victims and organisations active in Ituri province have shown that 'it is advantageous to the acceptance of the programme and good practice to provide beneficiaries' with a cash payment prior to commencing physical, psychological, or socio-economic programming.⁷³ The TFV explains that providing victims with a modest cash transfer at the start of the programme would ensure that the basic needs of victims are covered so that they are in a better position to benefit from rehabilitation

to Respond to DIP'), 18 January 2022, ICC-01/04-02/06-2735-Conf-Exp, public redacted version filed on the same day, [ICC-01/04-02/06-2735-Red](#), para. 22(iii) and (vii).

⁷⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 176-178.

⁷¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 137.

⁷² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 182-203.

⁷³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 182.

programmes.⁷⁴ The TFV further submits that such a payment would strengthen victims' trust in the Court, as they would 'finally see a tangible result of their involvement with the Court'.⁷⁵ The TFV bases this proposal on 'lessons learned from the *Lubanga* implementation' where beneficiaries have asked for a cash lump sum before rehabilitation measures.⁷⁶ The TFV adds that the victims of the attacks consulted also expressed a need to receive a cash payment to accommodate urgent needs they have.⁷⁷

(2) *Parties' submissions*

41. The CLR1 argues that her clients like the idea of a starter sum, but believe that it must be the same for all victims and that the Chamber should determine the amount.⁷⁸ The CLR1 notes, however, that without the TFV providing a proposed amount, it is difficult for her to discuss this option with her clients.⁷⁹

42. The CLR2 also raises concerns about the lack of detail in the TFV's proposal, specifically with respect to when the victims would receive this sum and the amount they would receive.⁸⁰ The CLR2 further argues that he opposes this proposal in principle for two reasons. First, because the TFV has proposed that the date and sum of money distributed are matters for each programme to determine, there is potential for inconsistencies, confusion, and potential tension between eligible victims.⁸¹ Second, the CLR2 questions whether such a measure is aimed at supporting sustainable and long-term livelihood and well-being.⁸² Finally, the CLR2 disagrees that a lump-sum payment will increase victims' trust in the Court, which he says can only be achieved through meaningful reparations.⁸³

43. The Defence also opposes this proposal, noting that the TFV 'failed to justify how this measure serves any real purpose.'⁸⁴ The Defence further argues that the benefit of victims being in a better mental space to benefit from rehabilitation or to enhance trust in the actions of the Court are far outweighed by the risks associated with cash payments.⁸⁵

⁷⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 185.

⁷⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 185.

⁷⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 183.

⁷⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 183.

⁷⁸ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 37.

⁷⁹ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 35(ii).

⁸⁰ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 58.

⁸¹ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 59.

⁸² CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 59.

⁸³ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 59.

⁸⁴ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 103.

⁸⁵ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 103.

(3) *Chamber determination*

44. Having assessed the TFV's proposal and the parties' submissions, the Chamber notes that without having clarity as to the intended amount, the specific harm it is meant to address, and whether it is to be considered compensation or a symbolic payment, the Chamber does not have sufficient information to approve such a proposal. As noted by the Defence,⁸⁶ the TFV has indeed failed to fully explain how a cash payment will increase the likelihood of the beneficiaries' success in the rehabilitation programs.

45. Further, as also pointed out by the CLR2,⁸⁷ the Chamber recalls that in the Reparations Order, it stressed the importance of reparations 'supporting sustainable and long-term livelihood and well-being' rather than simply addressing victims' needs on a short-term basis.⁸⁸ The Chamber notes that a potential risk of providing victims with a lump sum payment is that it may remove the incentive to engage in the programme envisioned in outcomes one to three.

46. As to the TFV's argument that such a measure will enhance victims' trust in the Court,⁸⁹ the Chamber finds that while this is an important objective, it would be better obtained through successful and timely deployment of reparations programmes as opposed to cash payments. The Chamber, however, notes that the CLR1 indicates that her clients were in favour of this proposal.⁹⁰ The Chamber also recalls that, as noted in the Addendum, this practice seems to have been already adopted in the *Lubanga* case.⁹¹ As such, the Chamber is concerned that rejecting this proposal may have the unintended effect of creating an unequal treatment between the child soldiers victims already benefiting from the *Lubanga* reparations programme and the *Ntaganda* victims. Accordingly, the Chamber instructs the TFV to provide further information as to the exact amount paid to the *Lubanga* victims and whether it is considering that the same amount should be paid to all the victims in the *Ntaganda* case and under what conditions.

b) *Educational Assistance*

(1) *TFV proposal*

⁸⁶ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 103.

⁸⁷ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 59.

⁸⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 9.

⁸⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 185.

⁹⁰ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 37.

⁹¹ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 329, *referring to* Trust Fund for Victims' Submission pursuant to Trial Chamber II's decisions on the implementation of the Appeals Chamber Judgment against the Reparations Order, 30 January 2023, [ICC-01/04-02/06-2819](#), para. 12.

47. The TFV proposes an educational assistance programme with two components. According to the TFV, the first component covers refresher courses, university scholarships, and English and/or French language courses, in which all tuition costs will be covered.⁹² With respect to refresher courses, the TFV explains that there will initially be a process to determine the appropriate level of studies a beneficiary should enrol in to regain lost skills.⁹³ The TFV explains that university scholarships will enable beneficiaries to cover their university fees and that the place of study, which should be in Ituri, or exceptionally elsewhere in the DRC, will be determined in coordination between the implementing partner and the beneficiary.⁹⁴ English and/or French language courses will be made accessible to beneficiaries who do not wish to take part in the refresher trainings or university scholarship programmes.⁹⁵ The TFV further proposes that beneficiaries will be provided with an allowance to pay for the cost of living during their studies, based on Ituri Province cost of living standards.⁹⁶

48. According to the TFV, the second component of the programme entails a budget to cover the school fees of dependants of beneficiaries, insofar as those dependants are not themselves beneficiaries who can make use of the socio-economic component.⁹⁷ The TFV proposes that each beneficiary will receive a fixed budget for school fees for their dependants, which will need to be determined based on the specific programme.⁹⁸ The TFV further proposes that a budget for a fixed number of school kits will also be provided and will be available in the form of reimbursement from the date of intake.⁹⁹

(2) *Parties' submissions*

49. Regarding the first component of the education programme, the CLR1 states that victims voiced concern over the duration of the programmes and expressed their desire for the programme to cover the entire period of their studies, arguing that anything less would be

⁹² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 188-190.

⁹³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 188.

⁹⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 189.

⁹⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 190.

⁹⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 191.

⁹⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 192.

⁹⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 192.

⁹⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 192.

ineffective and even harmful.¹⁰⁰ The CLR1 explains that consulted victims also indicated that the allowance would need to cover all basic needs, such as travel and accommodation.¹⁰¹

50. The CLR2 notes that the TFV's proposals regarding both educational programmes are 'generally agreeable', though expresses concern as to the lack of concrete details provided.¹⁰² The CLR2 also raises a concern with the language used by the TFV regarding victims of transgenerational harm, noting that the TFV refers to victims of transgenerational harm as indirect beneficiaries of the reparations programme, when they are in fact indirect victims, but direct beneficiaries of the reparations programme.¹⁰³ The CLR2 also reiterates that transgenerational harm should not be limited to psychological harm as providing educational support could be one of the 'most relevant ways' to repair the harm these children have suffered.¹⁰⁴

51. With regard to the second component of the education programme, the CLR1 expresses concern that the Updated DIP does not provide sufficient detail on how long this modality will last and stresses the importance of victims being able to complete their studies.¹⁰⁵ The CLR1 agrees with the TFV's proposal that school fees should be determined within the context of each programme, but notes that it should include the possibility of university level education, rather than being equivalent to the value of secondary school fees exclusively.¹⁰⁶ The CLR1 also stresses the need for transparency and clear communication regarding discrepancies in school fees.¹⁰⁷ The CLR1, in her submissions on the First DIP, also expressed concern that the DIP remained silent as to the potential for literacy classes.¹⁰⁸

52. The Defence adds that the TFV should favour direct payments to the relevant service providers instead of providing cash to victims, and where this is not possible, an expense pre-approval or reimbursement regime should be enforced.¹⁰⁹ The Defence argues that if a cash payment is unavoidable, the TFV should implement a reporting system to track how cash

¹⁰⁰ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 38; *see also* CLR1's Request for Time Limit to Respond to DIP, [ICC-01/04-02/06-2735-Red](#), para. 22(v).

¹⁰¹ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 38.

¹⁰² CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 60-61.

¹⁰³ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 62.

¹⁰⁴ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 14, 63.

¹⁰⁵ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), paras 35(iii), 39.

¹⁰⁶ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 39.

¹⁰⁷ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 39.

¹⁰⁸ CLR1's Request for Time Limit to Respond to DIP, [ICC-01/04-02/06-2735-Red](#), para. 22(v).

¹⁰⁹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 105.

distributed to victims has been spent.¹¹⁰ The Defence argues that this should be applied to educational fees and courses, as well as material support for income generating activities ('IGA') and all microfinance activities proposed by the TFV.¹¹¹

(3) *Chamber determination*

53. Having assessed the TFV's proposal and the parties' submissions, the Chamber approves both components of the education programme, for the reasons detailed below. Regarding the first component of the education programme, which covers tuition for refresher courses, university scholarships, and English and/or French language courses, the Chamber finds that these programmes are an adequate way to address the harm suffered by the victims, as identified in the Reparations Order. Specifically, the Chamber finds that this proposal may address the following harm suffered by victims of the attacks and former child soldiers: loss of productivity capacity; reduced standard of living and socio-economic opportunities; interruption and loss of schooling and vocational training; loss of childhood; and, loss of life plan.¹¹² The Chamber also finds that this measure attempts to rectify the economic harm suffered by direct victims of rape and sexual slavery and the material deprivation that accompanies the loss of the family member's contribution, which is suffered by indirect victims.¹¹³

54. With respect to the CLR1's submission that all of the beneficiaries' basic needs must be met, the Chamber considers it reasonable that the TFV has to provide the means for victims to actually be able to benefit from the education component, which, depending on the personal circumstances, could include covering travel and accommodation expenses related to schooling. As to the CLR1's concerns regarding the duration of the programme, the Chamber notes that within the context of service-based reparations programmes that are designed to last for five years, this is indeed the maximum time that victims are entitled to receive this component. In the view of the Chamber, five years of courses, which is the equivalent to the entire duration of a university degree in most parts of the world, and in some cases including first degree and Master studies, fulfils the aim of providing victims with sustainable and long-term livelihood means, as determined in the Reparations Order.¹¹⁴

¹¹⁰ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 105.

¹¹¹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 105.

¹¹² Reparations Order, [ICC-01/04-02/06-2659](#), paras 183(a)(v)-(vi), (viii)-(ix), 183(b)(v), (vii)-(viii).

¹¹³ Reparations Order, [ICC-01/04-02/06-2659](#), paras 183(c)(i)-(ii), 183(d)(i).

¹¹⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 194.

55. As to the CLR2's concern that victims of transgenerational harm should be entitled to access educational programmes, the Chamber notes that the TFV specifically states that victims of transgenerational harm will have access to educational and physical rehabilitation programmes if they can demonstrate eligibility for those programmes.¹¹⁵ Accordingly, the Chamber considers this proposal is appropriate, in light of its own findings in the Addendum, where it indicated that children of direct victims who can demonstrate having suffered transgenerational harm will qualify as indirect victims and, as such, should be provided with collective reparations with individualised components, in accordance with the extent of the individual harm suffered as a result of the crimes for which Mr Ntaganda was convicted.¹¹⁶

56. Finally, with respect to the CLR2's concern with the language used by the TFV regarding victims of transgenerational harm,¹¹⁷ the Chamber confirms that the CLR2's understanding is correct – victims of transgenerational harm are indirect victims, but direct beneficiaries of the programme – and notes that the TFV has equally indicated the same understanding of terminology in the Updated DIP.¹¹⁸

57. The Chamber also approves the second component of the education programme for direct and indirect victims, noting that dependants of beneficiaries who do not qualify themselves as direct or indirect victims cannot benefit from reparations. On this point, the Chamber notes the TFV's indication that the second component would benefit 'dependants of beneficiaries', insofar as they are not themselves 'beneficiaries' who can make use of the socio-economic component.¹¹⁹ However, the Chamber clarifies that, in order to be able to benefit from this component, dependants of beneficiaries should qualify as indirect victims who have personally suffered harm as a result of the commission of a crime against a direct victim, and as such, they shall be entitled to reparations on account of their personal harm.

58. The Chamber notes that, as stated by the TFV and the CLR1,¹²⁰ school fees should be determined within the context of each programme and clear messaging is necessary to ensure that victims understand why there may be discrepancies in the cost of different schools. As to the CLR1's argument that the cost should also include university level education rather than just secondary school fees, the Chamber notes, in regard to both components of this

¹¹⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 215.

¹¹⁶ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 184.

¹¹⁷ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 62.

¹¹⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 46, 215.

¹¹⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 192.

¹²⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 192; CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 39.

programme, that what is necessary is for the TFV to first determine the relevant harm of each of the victims as a result of the crimes for which Mr Ntaganda was found guilty, and then provide reparations measures that address this harm. What exactly is necessary for each of the victims in terms of reparations measures will depend on the victims' level of education and/or the education level they aim to attain. As such, as noted by the CLR1, the programme should also include the option of literacy classes.¹²¹ However, the Chamber reiterates that the duration of the programmes is set at five years, and the decision on which type of education the victims would opt for to address their harm will necessarily need to take into account this aspect.

59. With respect to educational programmes generally, the Chamber approves the Defence's proposal¹²² that the TFV should direct payments to the relevant service providers, and where this is not possible, create an expense pre-approval or reimbursement regime. The Chamber further rules that this system should be implemented for the IGA programme discussed below. Regarding who can benefit from each component, the Chamber notes that they both should be available to direct and indirect victims, depending on their current level of education.

c) Income Generating Activities

(1) TFV proposal

60. The TFV's proposal for IGA programme consists of three elements. The first is vocational training courses, through which victims will be paired with an advisor who will help them to assess the viability of their project and provide advice on its successful development.¹²³ The TFV has proposed certain vocations that are covered, such as fishing or hairdressing, while others can be presented and approved by the TFV on a case-by-case basis.¹²⁴ The TFV proposes providing beneficiaries with a kit containing the supplies necessary for training, financial assistance during the training, and a starter kit for their IGA project for which they received training, which will be composed of the basic materials necessary for performing their business activity.¹²⁵

¹²¹ CLR1's Request for Time Limit to Respond to DIP, [ICC-01/04-02/06-2735-Red](#), para. 22(v).

¹²² Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 105.

¹²³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 193.

¹²⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 193.

¹²⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 193.

61. The second element proposes to provide beneficiaries with material assistance in conducting an IGA, such as covering the cost of purchasing and shipping merchandise.¹²⁶ Similar to training, regarding material assistance to conducting an IGA, the TFV proposed certain vocations that will be covered, while others can be presented and evaluated by the TFV on a case-by-case basis.¹²⁷ The TFV explains that this also applies to groups of victims who wish to form cooperatives or similar structures within Ituri Province.¹²⁸

62. The final element suggested by the TFV is creating a savings and credit association to support the economic initiatives of beneficiaries in order to improve their chances of success in the projects they undertake.¹²⁹

(2) *Parties' submissions*

63. The CLR1 argues that those enrolled in vocational training courses would require financing to cover their basic needs and that starter kits for IGAs should include 'all materials needed to conduct their project independently'.¹³⁰ Given that beneficiaries will inevitably receive different forms of support through the IGA programme based on their chosen IGA, the CLR1 notes the need to communicate clearly and transparently to beneficiaries as to why there are differences in what beneficiaries receive in order to set expectations and reduce potential frustration.¹³¹ The CLR1 further advises that most consulted victims welcome the creation of a savings and credit association, though some do not believe in the effectiveness of community based projects.¹³²

64. The CLR2 expresses concern that the TFV's proposals regarding IGAs lack concrete details and, as such, he can only express support for projects in the abstract.¹³³

65. The Defence points out that the TFV has diverged from the *Lubanga* reparations programme in this proposal, by excluding a proposal to provide a pension-like support for those who are not able to pursue IGAs on their own.¹³⁴ Responding to this concern, the TFV explains that, upon reflection, it does not believe this is the best way to rehabilitate victims, since the

¹²⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 194.

¹²⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 194.

¹²⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 194.

¹²⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 195.

¹³⁰ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 40.

¹³¹ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 40.

¹³² CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 41.

¹³³ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 64.

¹³⁴ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 105; Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 210.

programme is time-limited, and instead suggests that it may be beneficial in the long term to allow family members to participate in an IGA.¹³⁵ The Defence disagrees with the idea of allowing family members to participate in an IGA, as they are not beneficiaries of the reparations programme.¹³⁶

(3) *Chamber determination*

66. Having assessed the submissions from the TFV and the parties, the Chamber approves all elements of the IGA proposal.

67. Regarding the first and second elements, the Chamber is satisfied that, as argued by the CLR1,¹³⁷ those enrolled in vocational training courses will require financing to cover their basic needs and that the starter kits for IGAs should include all materials needed to conduct their project independently. For the sake of transparency and clarity, the TFV shall set in advance, and clearly inform the victims about, the basic needs that will be covered and materials that will be provided to conduct each potential IGA. The Chamber is also of the opinion, expressed by the CLR1,¹³⁸ that clear communication with respect to the discrepancies in materials the beneficiaries receive is important to limit tensions within communities, and that this information should be provided and made clear from the beginning to victims as they make their choices. The Chamber reiterates that the TFV should direct any payments under the IGA programme to the relevant service providers and where this is not possible, create an expense pre-approval or reimbursement regime, and as a last resort, an expense reporting system. Accordingly, the Chamber approves the first and second elements of the IGA programme proposed by the TFV.

68. As to the Defence's submissions that family members who are not eligible victims should not be able to participate in IGA activities, the Chamber underlines that, indeed, only direct and indirect victims can benefit from the IGAs, to the extent that the harm they suffered so requires. The Chamber notes, however, that family members of eligible beneficiaries may participate in a business that has been established by a beneficiary through the IGA program. For example, if an eligible victim uses the IGA programme to begin a successful farming venture, his family members should not be prevented from becoming involved in the business, as this could contribute to its success and longevity.

¹³⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 210.

¹³⁶ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 106.

¹³⁷ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 40.

¹³⁸ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 40.

69. Finally, the Chamber also approves the third element of the IGA, which entails the creation of a savings and credit association, as it appears to be a measure with the potential to address the harm suffered by victims.

4. Projects Proposed to address Outcomes Four and Five

70. In order to achieve outcomes four and five, the TFV proposes a number of symbolic and satisfaction measures. The TFV has categorised the projects associated with outcomes four and five as follows: (i) community outreach; (ii) community centres and other symbolic measures; (iii) measures for victims of rape and sexual violence; (iv) measures related to missing persons; and (v) a voluntary apology from Mr Ntaganda. Each of these measures are discussed in detail below.

a) Community Outreach

(1) TFV proposal

71. The TFV proposes to ‘carry out outreach and advocacy within the DRC and beyond to raise the awareness of the communities, families, children who attend school and the public at large about the severity of the crimes and about their consequences’.¹³⁹ The TFV states that they will also raise ‘awareness about the crime of rape and sexual slavery and about children born out of rape and sexual violence, with a view to sensitising the communities to their situation and needs’.¹⁴⁰

(2) Parties’ submissions

72. The CLR2 opposes the TFV’s proposal to carry out outreach within the DRC regarding Mr Ntaganda’s conviction.¹⁴¹ The CLR2 argues that the victims have been kept informed of matters related to the case and that the TFV’s outreach activities should be aimed at informing the affected population about ‘what the eligible victims can expect to be provided with, rather than general information on the conviction of Mr Ntaganda.’¹⁴²

73. The Defence also opposes this proposal, arguing that information regarding the trial of Mr Ntaganda has been and continues to be disseminated, and is not a task incumbent on the TFV.¹⁴³ The Defence further argues that the distribution of information related to the severity

¹³⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 222.

¹⁴⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 222.

¹⁴¹ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 41-42.

¹⁴² CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 42.

¹⁴³ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 34.

of the crimes poses a risk of ‘doing more harm than good by highlighting crimes by members of one of many militias in Ituri [...]’.¹⁴⁴ The Defence also argues that such a message goes beyond the Reparations Order and gives the impression that all victims of serious crimes in Ituri will be able to access reparations.¹⁴⁵

(3) *Chamber determination*

74. The Chamber is of the view that, in general terms, it indeed falls outside the specific role of the TFV as the organ entrusted with implementing reparations to conduct ‘outreach and advocacy within the DRC and beyond to raise the awareness of the communities, families, children who attend school and the public at large about the severity of the crimes and about their consequences’.¹⁴⁶ As such, the Chamber is not convinced that the TFV should assume this general role within the context and scope of the implementation of reparations in the case under examination. The Chamber does not deny that the need to raise such awareness exists, but such a function should be undertaken by the competent organs of the Registry, i.e., the Public Information and Outreach Section (‘PIOS’).

75. Notwithstanding the above, as determined in the Reparations Order,¹⁴⁷ the Chamber considers that raising awareness about the crimes within the victims’ communities ‘with a view to sensitising the communities to [the victims] situation and needs’,¹⁴⁸ is a measure of satisfaction that may help reducing stigmatisation and marginalisation of victims and support their rehabilitation and reintegration.

76. As such, the Chamber is not convinced that the TFV should refrain from conducting awareness activities within the victims’ communities in order to help foster improved attitudes toward the crimes and ensure that victims play an active role within their communities.¹⁴⁹ However, the Chamber reminds the TFV that these activities must be tied to the reparation of the harm suffered by the victims. Accordingly, community awareness activities concerning the severity of the crimes, undertaken with the goal of supporting the rehabilitation and reintegration of victims, can be done by the TFV. General outreach activities with the purpose

¹⁴⁴ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 34.

¹⁴⁵ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 69.

¹⁴⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 222.

¹⁴⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 207.

¹⁴⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 222.

¹⁴⁹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 207.

of generally informing the population about Mr Ntaganda's crimes should be done by the Registry through the PIOS.¹⁵⁰

77. The Chamber further notes that neither the CLR2 nor the Defence has opposed the TFV's proposal to raise awareness about the crimes, with a view to sensitising the communities to the victims' situations and needs. As such, the Chamber approves the TFV's proposed community awareness activities only, reiterating that other organs within the Court are responsible for conducting general outreach. The Chamber therefore orders the TFV to consult and coordinate with the Registry's PIOS in order to avoid duplication of efforts.

b) Community centres and other symbolic measures

(1) TFV proposal

78. The TFV proposes the following as symbolic reparation measures that may also contribute to the process of rehabilitation: a) community centres for former child soldiers; b) the construction of a community centre to be named after Abbé Bwanalanga; and c) a plaque at the health centre in Sayo.¹⁵¹

79. With regard to community centres for former child soldiers, the TFV proposes to use the commemoration centre plan that was approved by the Chamber in the *Lubanga* case.¹⁵² The TFV informs that it concluded a contracting process on 1 November 2021 for a two-year reparation programme with one implementing partner.¹⁵³ The TFV submits that using this already established plan could also 'provide satisfaction measures in relation to additional harm caused to victims of rape and sexual slavery within the UPC/FPLC, children born out of rape and transgenerational harm without additional cost'.¹⁵⁴

80. The second proposal by the TFV is the construction of a community centre to be named after Abbé Bwanalanga.¹⁵⁵ The TFV submits that it has consulted with a sample of victims, local authorities, and with clergy on this proposal and that all consulted agreed on it.¹⁵⁶ However, the TFV submits that there are differences of opinions amongst individuals consulted as to where the centre should be built.¹⁵⁷ The TFV therefore proposes that further consultations

¹⁵⁰ Reparations Order, [ICC-01/04-02/06-2659](#), para. 207.

¹⁵¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 223-236.

¹⁵² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 226.

¹⁵³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 226.

¹⁵⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 226.

¹⁵⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 228-231.

¹⁵⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 229.

¹⁵⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 230.

will be required with members of relevant communities to determine a location for the proposed centre.¹⁵⁸ The TFV explained at the time of its submission of the Updated DIP that it would have to wait for the improvement of the security situation before carrying out consultations and that it would focus its inquiry on Bunia, should the security situation not improve within the year.¹⁵⁹

81. The final measure proposed by the TFV is to erect a plaque or small monument on or before the Sayo health centre, which would ‘commemorate its destruction and underline that it is protected under international law and that the perpetrator has been punished’.¹⁶⁰ The TFV submits that consultations ‘with victims and [REDACTED] have confirmed the validity of the Trial Chamber’s suggestion to put a plaque on the Sayo health centre’.¹⁶¹ The TFV submits that this proposal is subject to whether Sayo is accessible due to the ongoing conflict and would require further consultations with the Sayo community and the health centre to ensure that this would not increase tensions.¹⁶²

(2) *Parties’ submissions*

82. None of the parties has raised concerns regarding the TFV’s proposal to adopt the *Lubanga* community centre programme for former child soldiers in the *Ntaganda* case.

83. With respect to the proposal to construct a community centre named after Abbé Bwanalunga, the CLR2 submits that he agrees with the TFV that further consultations with communities are needed in relation to the location of the community centre.¹⁶³ The Defence does not oppose naming a community centre after Abbé Bwanalunga, but submits that the TFV must undertake a risk assessment before deciding where the community centre should be built.¹⁶⁴

84. Finally, regarding the proposal for a plaque at the Sayo health centre, the CLR2 argues that his clients do not believe that memorial sites are an adequate form of reparation.¹⁶⁵ The CLR2 further argues that while the proposal is ‘generally agreeable’ a plaque on its own is not

¹⁵⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 231.

¹⁵⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 231.

¹⁶⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 233.

¹⁶¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 232.

¹⁶² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 234-235.

¹⁶³ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 39.

¹⁶⁴ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 109.

¹⁶⁵ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 40.

sufficient to address the loss of adequate healthcare provision to the community that benefitted from it, which was recognised by the Chamber as the harm caused.¹⁶⁶

85. The Defence argues that including a line on a plaque stating that the perpetrator has been punished, risks exacerbating tensions amongst communities living in or around Mongbwalu and goes beyond the Chamber's instructions in the Reparations Order.¹⁶⁷ The Defence also argues that due to the number of times the Sayo health centre has been targeted in the past 20 years, a plaque referencing one attack will be perceived as a one-sided measure, which could increase tensions in the community. The Defence therefore proposes that the TFV explore the following before erecting a plaque or monument: (1) who is currently living in Sayo; (2) who left Sayo, when, and why; (3) the ethnic composition of the people living in Sayo; and, (4) the presence of armed groups before erecting a plaque or monument.¹⁶⁸

(3) *Chamber determination*

86. Regarding the TFV's proposal to use the commemoration centre plan that was approved by Trial Chamber II in the *Lubanga* case, which would also benefit victims of sexual and gender based crimes, children born out of rape, and victims who suffered transgenerational harm,¹⁶⁹ the Chamber approves it on the understanding that it would benefit only child soldier victims of these crimes. In effect, as the Chamber previously held in the context of the IDIP, child soldiers and victims of the attacks shall not be placed within the same programmes, to avoid animosity and conflict between two groups of victims.¹⁷⁰ The Chamber further recalls its direction that the TFV should resort to pre-existing programmes when possible to optimise the costs of implementation of reparations, which the TFV has done by proposing to adopt the *Lubanga* community centre programme.¹⁷¹

87. Regarding the TFV's proposal to construct a community centre named after Abbé Bwanalanga, the Chamber recalls its instruction in the Reparations Order that the TFV should consult with victims about this proposal to ensure general consensus and avoid tensions.¹⁷² Having regard to the submissions of the CLR2 and the TFV that further consultations are still

¹⁶⁶ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 40, *citing*, Reparations Order, [ICC-01/04-02/06-2659](#), para. 183(a)(x).

¹⁶⁷ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 107.

¹⁶⁸ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 108.

¹⁶⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 226.

¹⁷⁰ *See* Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 28.

¹⁷¹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 249; Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 10.

¹⁷² Reparations Order, [ICC-01/04-02/06-2659](#), para. 208.

required to decide on the location of such community centre, the Chamber hereby instructs the TFV to continue to carry out the consultations as described in the Updated DIP.¹⁷³ As submitted, a risk assessment must be completed to ensure that the location and naming the centre after Abbé Bwanalunga will not exacerbate tensions in the community. The Chamber is generally satisfied that the two community centres proposed by the TFV are appropriate symbolic reparations and therefore approves them.

88. Regarding the TFV's proposal to erect a plaque or small monument on or before the Sayo health centre, the Chamber recalls that it instructed the TFV in the Reparations Order to consult with victims to determine whether a sign on the health centre in Sayo, indicating that the building is protected by international humanitarian law, was regarded as an appropriate form of symbolic reparation.¹⁷⁴ The Chamber notes that the CLR2 indicates that the plaque is generally agreeable, although not sufficient to repair the harm caused to the victims of the attack on the Sayo health centre. Noting the concerns raised by the Defence, the Chamber reiterates that such plaque should only underline that the building is protected under international humanitarian law, as instructed in the Reparations Order.

89. However, noting the concern of the CLR2¹⁷⁵ and the Chamber's recent findings in the Addendum,¹⁷⁶ a plaque on its own is indeed insufficient to address the harms caused by the attack. The Chamber recalls its ruling in the Addendum that individual victims will be entitled to receive collective reparations with individualised components as any other victims of the attacks, as long as they satisfy the relevant evidentiary criteria.¹⁷⁷ Regarding the material and especially immaterial harms inflicted on the health centre and the community of Sayo and its surroundings as a whole, the Chamber determined that the total amount of USD 130,000 will fairly and appropriately repair the harms.¹⁷⁸ The Chamber reiterates that the amount awarded should 'be used to increase the existing healthcare capacities, in consultation with the local healthcare practitioners'.¹⁷⁹ The Chamber therefore instructs the TFV to consult with local healthcare practitioners and present a proposal to the Chamber.

¹⁷³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 228, 229, 230.

¹⁷⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 208.

¹⁷⁵ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 40.

¹⁷⁶ Addendum, [ICC-01/04-02/06-2858-Red](#), paras 225-245.

¹⁷⁷ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 243.

¹⁷⁸ Addendum, [ICC-01/04-02/06-2858-Red](#), paras 239-242.

¹⁷⁹ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 243.

c) *Measures for victims of rape and sexual violence*

(1) *TFV proposal*

90. The TFV proposes three symbolic measures related to victims of sexual and gender based violence ('SGBV') and children born out of rape and sexual violence: a) a symbolic payment of [REDACTED];¹⁸⁰ b) collaborating with local officials to advocate for the issuance of ID cards and other legal documents for children born out of rape;¹⁸¹ and c) hiring a sexual violence expert as a consultant to 'provide capacity strengthening to the experts (e.g. psychologists) working for the implementing partners and other stakeholders in Bunia'.¹⁸²

(2) *Parties' submissions*

91. The CLR1 informs that she was able to consult with 'a few SGBV victims who expressed their support' for the lump sum payment but noted that such a payment 'should not merely be symbolic but should allow them to take proper and effective care of their children born out of rape'.¹⁸³ The CLR1 therefore submits that there is a large discrepancy between the proposed amount of [REDACTED] and the reasonable expectations of her clients.¹⁸⁴ The Defence and the CLR2 oppose this proposal. Both are concerned that this measure is contrary to the principle that victims should receive equal treatment, which could lead to tension in communities.¹⁸⁵ The Defence further argues that the TFV does not explain how an award of [REDACTED] remedies the specific harm suffered by this group of victims.¹⁸⁶ The CLR2 also argues that the TFV has provided no basis for the [REDACTED] figure.¹⁸⁷

92. Regarding the issuance of ID cards, the CLR2 submits that his clients do not believe there are legal impediments in the DRC that prevent mothers from obtaining documentation for their children.¹⁸⁸ The CLR1 and Defence raise no objections to this proposal.

93. With respect to the TFV's proposal to hire a sexual violence expert as a consultant,¹⁸⁹ the CLR1 submits that they need additional information on this proposal as it remains 'widely

¹⁸⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 238.

¹⁸¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 239.

¹⁸² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 240.

¹⁸³ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 43.

¹⁸⁴ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 43.

¹⁸⁵ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 102; CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 30, 32, 33.

¹⁸⁶ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 102.

¹⁸⁷ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 31.

¹⁸⁸ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 44.

¹⁸⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 240.

theoretical and rhetorical and does not provide more concrete information as to the consultant's expected scope of work and impact'.¹⁹⁰

(3) *Chamber determination*

94. Having assessed the TFV's proposal and the parties' submissions, the Chamber does not consider it appropriate to award a symbolic payment of [REDACTED] to only victims of SGBV and children born out of rape and sexual violence. At the outset, the Chamber notes that, as also indicated by the CLR2,¹⁹¹ it is not clear which harm this symbolic payment would address. In addition, as noted by the CLR2 and the Defence,¹⁹² the Chamber is concerned that a symbolic lump sum payment for one group of victims only is contrary to the principle that all victims are to be treated equally and that reparations awards must avoid creating tensions, jealousy, or animosity.¹⁹³ As a result, the Chamber rejects this proposal.

95. Regarding the issuance of ID cards, the Chamber notes the submission of the CLR2 that there is no impediment to the issuance of cards.¹⁹⁴ The Chamber therefore instructs the TFV to consult with victims to determine what the barriers are, and present the Chamber with a concrete plan to support victims in obtaining the ID cards.

96. The Chamber further finds that the TFV's proposal with respect to hiring a consultant specialised in gender-sensitive programming lacks specificity and does not explain what tasks the consultant will undertake or how it relates to the reparation of harm suffered by victims.¹⁹⁵ The Chamber therefore rejects the proposal in its current form and instructs the TFV to provide additional information regarding the consultant's envisioned role and how it relates to the reparation of the victims' harm.

d) *Measures related to missing persons*

(1) *TFV proposal*

97. The TFV proposes hiring a consultant (either by the TFV or the implementing partner) to locate and identify victims' missing loved ones, who were former child soldiers or other

¹⁹⁰ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 35(i).

¹⁹¹ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 31.

¹⁹² Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 102; CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 30, 32, 33.

¹⁹³ Reparations Order, [ICC-01/04-02/06-2659](#), paras 41-44.

¹⁹⁴ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 44.

¹⁹⁵ See also CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 35(i).

persons missing since the two attacks (deceased or alive).¹⁹⁶ The TFV submits that determining the fate of a loved one may bring closure to victims, which is an ‘essential part of satisfaction measures’.¹⁹⁷

(2) *Parties’ submissions*

98. The CLR2 submits that his clients are in favour of this proposal, but question how effective it will be given that approximately 20 years have passed since victims’ loved ones may have disappeared.¹⁹⁸ The Defence argues that this proposal was not directed in the Reparations Order and that ‘deploying one consultant with this purpose will be nothing but ineffective’.¹⁹⁹ The Defence also submits that there are other organisations, such as the International Committee of the Red Cross (‘ICRC’), that specialise in this area and would be better suited to undertake this work.²⁰⁰

(3) *Chamber determination*

99. Having assessed the TFV’s proposal and the parties’ submissions, the Chamber partially approves this measure, subject to the conditions below.

100. At the outset, the Chamber notes the CLR2’s concern regarding the efficacy of such a measure given the length of time individuals may have been missing.²⁰¹ However, the Chamber is of the opinion that at this point, this concern remains speculative, and the possibility of bringing closure to victims should not be foreclosed on the basis of speculation.

101. Further, contrary to the argument of the Defence,²⁰² the Chamber does not find that hiring a missing person consultant is outside of the scope of the Reparations Order. The Reparations Order held that satisfaction was an appropriate modality of reparation and that satisfaction measures ‘may be appropriate to repair non-pecuniary harms, and include a wide array of measures’.²⁰³ The Chamber considers the unknown whereabouts of victims’ loved ones, whose disappearance related to either their status as child soldiers or victims of the

¹⁹⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 241.

¹⁹⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 241.

¹⁹⁸ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 45.

¹⁹⁹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 110.

²⁰⁰ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 110.

²⁰¹ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 45.

²⁰² Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 110.

²⁰³ Reparations Order, [ICC-01/04-02/06-2659](#), para. 88.

attacks, as a harm victims continue to suffer that could be at least partially repaired by understanding what happened to them.

102. The Chamber also notes the Defence's argument that there are other organisations that specialise in finding missing persons in the DRC, including the ICRC, which, according to the Defence, has a field office in Kinshasa.²⁰⁴ The Chamber is of the opinion that if there are local organisations in the DRC that undertake this work, they should be relied upon by the TFV so that efforts are not duplicated, and financial resources are optimised. The TFV should therefore consult with these organisations to explore whether they are appropriate resources for victims in this case, considering factors such as location and cost.

103. Furthermore, the Chamber notes that, while it does not oppose as such the TFV's proposal to hire a consultant to locate and identify victims' missing loved ones,²⁰⁵ the Chamber considers that the proposal lacks details and elaboration, i.e. whether the consultant's task would include the location and identification of victims or whether it is only expected to prepare a plan of action. As such, the Chamber directs the TFV to engage in consultations with local organisations and/or provide more details on how it envisions a consultant would be successful in carrying out this task.

e) Apology from Mr Ntaganda

(1) TFV proposal

104. The TFV informs that it has consulted with a 'limited sample of Victims of the Attacks' and that the CLR1 has indicated that certain victims consider an apology to be appropriate in the present case.²⁰⁶ The TFV proposes to undertake further consultations with the victims when the security situation allows it, after which it will liaise with Mr Ntaganda to determine if he would voluntarily apologise to the victims, and if so, in what form.²⁰⁷ The TFV further explains that it would ensure that apologies are presented in a manner that coincides with the wishes of the victims.²⁰⁸

(2) Parties' submissions

²⁰⁴ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 110.

²⁰⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 241.

²⁰⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 245.

²⁰⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 246.

²⁰⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 246.

105. The CLR1 submits that the ‘vast majority of consulted victims are open to the idea of Mr Ntaganda apologising publicly’ though some oppose it.²⁰⁹ The CLR1 states that she welcomes the TFV’s proposal to ensure that apologies are presented in a ‘scenery that respects different trends of opinions amongst victims’.²¹⁰

106. The CLR2 submits that his clients have expressed the view that they could accept a genuine apology from Mr Ntaganda and that the most effective means of communicating the apology would be via radio broadcasts, a video that could be broadcast as part of outreach sessions, and social network platforms such as WhatsApp groups and Facebook.²¹¹

107. The Defence did not comment on the proposed apology.

(3) *Chamber determination*

108. The Chamber recalls that in the Reparations Order it ruled that Mr Ntaganda may offer a voluntary apology to individual victims or to groups of victims, on a public or confidential basis, so long as victims are consulted first to determine whether an apology would be welcome, and if so, in what manner.²¹²

109. Having reviewed the TFV’s proposal and the LRVs’ submissions, the Chamber considers that while a voluntary apology from Mr Ntaganda appears to be welcome by the victims, consultations are still required to determine the best manner to do it, to respect the ‘different trends of opinions amongst victims’.²¹³

110. Consequently, the Chamber hereby directs the Defence to consult with their client to determine whether he is willing to apologise, and if so, in what manner, and to advise the TFV and CLRs of his answer. Thereafter, depending on Mr Ntaganda’s position, the TFV and the CLRs should carry out consultations on how concretely this measure would be effected. The TFV should inform the Chamber accordingly after having conducted consultations.

5. Lump Sum *in Lieu* of Programming

111. In its Updated DIP, the TFV also addresses the situation of victims who are residing outside of Ituri Province, and proposes to provide them with a lump sum payment *in lieu* of the

²⁰⁹ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 45.

²¹⁰ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 45.

²¹¹ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 43.

²¹² Reparations Order, [ICC-01/04-02/06-2659](#), para. 210.

²¹³ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 45.

services described above.²¹⁴ The TFV makes specific reference to lump sums being provided *in lieu* of socio-economic programming, as well as a more general lump sum payment *in lieu* of services related to outcomes one to three.²¹⁵

a) Parties' submissions

112. The Defence and CLR2 raise a number of concerns about the proposal to provide cash payments in any form.

113. The CLR2 argues that lump sum payments are contrary to the terms and spirit of the Reparations Order, which should aim to provide victims with a sustainable livelihood and well-being, and is contrary to the TFV's undertaking not to make individual payments to victims.²¹⁶ The CLR2 further argues that providing cash payments to some victims and services to others will create unequal treatment between victims and creates an expectation that further payments or assistance will follow.²¹⁷

114. The Defence also argues that providing cash payments to victims departs from the Reparations Order.²¹⁸ The Defence submits that there are risks involved in utilising cash payments, which include: the risk of financing armed groups in Ituri; the risk of encouraging non-eligible victims to come forward; and, the risk that disbursing money to a potentially high number of victims is likely to worsen the insecurity in the region and is thus contrary to the do no harm principle.²¹⁹ The Defence further argues that the TFV's 'large-scale outreach campaign will provide all the information necessary to submit a claim, using a simplified form, and to meet the basic requirements for eligibility' which combined with the 'low standard of proof seemingly applied by the TFV' and the 'lack of independent verification' heightens the risk of non-eligible victims coming forward.²²⁰

115. The Defence also argues that the TFV should explain why providing payments *in lieu* to victims outside of Ituri was not invoked in the *Lubanga* reparations programme²²¹ and that an alternate pre-approval and subsequent reimbursement system should be implemented

²¹⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 154.

²¹⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 198-205.

²¹⁶ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 51, 53, 56.

²¹⁷ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 51.

²¹⁸ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 98.

²¹⁹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 100-101.

²²⁰ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 101.

²²¹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 104.

instead of a cash payment.²²² Further, the Defence and CLR2 argue that the TFV should provide an amount it proposes to distribute as a lump sum.²²³

b) Chamber determination

116. The Chamber notes that from the TFV's proposal it is not clear whether the TFV considered distinct payments or whether the lump sum *in lieu* of socio-economic programming is included in the general lump sum payment. However, the Chamber sees no reason to have a distinct payment for socio-economic programming and will thus proceed on the basis that the proposal is for a lump sum payment, of the same value, to be provided to beneficiaries located outside of Ituri *in lieu* of rehabilitation under outcomes one to three.

117. The Chamber, having considered the TFV's proposal and the arguments of the Defence and the CLR2,²²⁴ finds that providing victims outside of Ituri with compensation is appropriate, and does not consider it to be contrary to the Reparations Order. In effect, the Chamber recalls that the Reparations Order endorsed the TFV's request for flexibility to prepare a plan that adjusted to the realities of the field and specifically ordered the TFV to suggest a recommendation as to compensation for harm in these circumstances.²²⁵ The Chamber defers to the experience of the TFV in the DRC and accepts its submission that it would be impractical and would incur an unacceptable level of indirect costs to deploy programming outside of Ituri.²²⁶

118. As to the CLR2's concerns that providing a lump sum to some victims and not to others creates unequal treatment between victims, the Chamber considers that this approach is justified and necessary in the circumstances given the impracticality of running programming outside of Ituri. Regarding the CLR2's argument that cash payments may create an expectation that additional money will follow, the Chamber is of the view that this risk should be mitigated through proper communication to victims about the scope of the reparations program.

119. The Chamber notes the Defence's concerns regarding the 'indirect financing of militias' and considers that this potential risk should be addressed in a risk assessment, which is discussed below. However, the Chamber notes that the Defence's submissions at this time are

²²² Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 104.

²²³ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 104; CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 51.

²²⁴ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 51, 53, 56; Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 98.

²²⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 202.

²²⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 154.

wholly unfounded. To this end, the Chamber reiterates its previous instruction that if the Defence has concrete and verifiable information about specific cases of victims diverting reparations funds to other activities, it should bring the issue to the Chamber's and the TFV's immediate attention, so that the issue can be addressed.²²⁷ Any other issue related to the groups involved in the current conflict situation should be brought to the attention of the Office of the Prosecutor and to the relevant local authorities.²²⁸ The Chamber is of the same view with respect to the Defence's submission that cash payments could lead to greater insecurity in the region.²²⁹ Nevertheless, the TFV should closely monitor the possible impact that the provision of cash payments *in lieu* of services may have in terms of the overall security in the region and implement a risk-mitigating strategy if so required.

120. Furthermore, the Chamber acknowledges the Defence's argument that cash payments could encourage non-eligible victims to come forward, but does not consider this to be a reason to rule against payments *in lieu*. The Chamber recalls that the Reparations Order and the Addendum clearly state the evidentiary criteria that the victims must fulfil to become eligible as beneficiaries of reparations in this case.²³⁰ Ineligible victims will therefore be screened out during the eligibility process, which will be done in accordance with the detailed instructions provided by the Chamber and, as discussed in detail below, it will be conducted by the Registry as a neutral organ of the Court.²³¹

121. The Chamber considers that the TFV is not required to explain why a lump sum *in lieu* of service-based programmes was not implemented in the *Lubanga* reparations. The TFV has indicated that it intends to implement such a programme now.²³² Unless the Defence is aware of compelling reasons as to why this alternative was not implemented in the *Lubanga* case, that are relevant to this case, the TFV's prior reasoning in the *Lubanga* case, which it is no longer adopting, is not relevant to the Chamber.

122. In light of the above, the Chamber approves the proposal by the TFV to have the flexibility to provide beneficiaries residing outside of Ituri with a lump sum *in lieu* of all or some of the benefits they would receive under outcomes one to three, when necessary and to

²²⁷ Decision on the TFV's Eighth Update Report on the Implementation of the Initial Draft Implementation Plan ('Decision on the TFV's Eighth Update Report') 13 January 2023, ICC-01/04-02/06-2811-Conf, para. 18.

²²⁸ Decision on the TFV's Eighth Update Report, ICC-01/04-02/06-2811-Conf, para. 18.

²²⁹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 100-101.

²³⁰ Reparations Order, [ICC-01/04-02/06-2659](#), paras 76, 106; Addendum, [ICC-01/04-02/06-2858-Red](#), paras 34-40.

²³¹ See paras 179-188.

²³² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 209.

the extent required. However, the Chamber recalls the submissions of the CLR2 and the Defence,²³³ and rules that the TFV should provide additional information regarding the amount of money it intends to provide as a lump sum *in lieu* – as well as the amount it intends to devote to this aspect of the programme. The Chamber also encourages the TFV to consider whether an expense pre-approval or reimbursement procedure would be possible instead of a lump sum *in lieu*, as the Chamber agrees that this would be preferable to a cash payment, though defers to the TFV as to the practicality of such a mechanism.

C. Third Element of the DIP: Methods of Implementation

123. As previously indicated, the third criteria the Chamber will analyse is whether the TFV has outlined the methods of implementation for the Updated DIP. This includes the steps to be taken for each project, the direct and indirect costs of the projects, the expected amount that the TFV will use to complement the awards, and the expected timeline necessary for the projects' development and implementation.²³⁴

124. Overall, the Chamber notes that the Updated DIP contains some information on the implementation, as required within the third element of the DIP and as instructed by the Chamber. However, the Chamber is of the view that the information provided concerning the steps to be taken, direct and indirect costs (including the expected amount the TFV will use to complement the award), and the expected timeline necessary for the projects' development and implementation must be updated given the time that has passed since the Updated DIP was submitted. The Chamber elaborates and rules upon these issues below.

1. Steps to be Taken and Expected Timeline

125. In its Updated DIP, the TFV provides information on the steps to be taken and outlines an expected timeline with respect to the implementation of activities for outcomes one to three in the Updated DIP.²³⁵ The parties did not make any submissions on this point.

126. As the information and the expected timeline provided by the TFV is from early 2022, the Chamber hereby instructs the TFV to provide updated information based on developments that have taken place since the Updated DIP was submitted. The Chamber also instructs the TFV to provide the next steps and timeline, where appropriate, regarding outcomes four and five, which it notes are limited in the Updated DIP. The Chamber underlines that it does not

²³³ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 104; CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 51.

²³⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 249; Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 10.

²³⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 247-249, also the two work plans as Annex 1.

require detailed plans, but rather a high level understanding of what next steps are necessary for the projects that have now been approved to be implemented.

127. The Chamber notes that, as stressed in the Addendum, consistent with the Reparations Order,²³⁶ the Chamber has decided to follow the approach taken in the *Lubanga* case, providing all victims with service-based collective reparations with individualised components directed at their physical, mental, and socio-economic rehabilitation, together with other symbolic and community measures.²³⁷ The *Lubanga* service-based rehabilitation programme is scheduled to last for five years.²³⁸ As such, the Chamber finds it appropriate that the *Ntaganda* programme should also last for five years, from the effective commencement of the implementation of reparations. The Chamber underlines that, in line with its commitment to proceed as expeditiously as possible,²³⁹ it would expect that the TFV commences with the implementation of the reparations programme in the case as from 1 January 2024, proceeding for as long as possible in parallel with the administrative eligibility process discussed below. As such, the Chamber instructs the TFV to indicate how the next steps it envisages fit within the five-year timeframe set for the implementation of reparations in the case.

2. Direct and Indirect Costs (Including the expected Amount the TFV will use to complement)

128. At the outset, the Chamber notes the concerns of the parties that the Updated DIP lacks sufficient and specific information on the direct and indirect costs of the projects described above in order for the Chamber to approve the Updated DIP. However, in line with the approach taken by Trial Chamber VIII in the *Al Mahdi* case, and the developments in this case, the Chamber does not consider that it was realistic to have expected the TFV to be in a position to provide exact costs for specific projects at this stage.²⁴⁰ As was discussed in the *Al Mahdi* case:

The Chamber [will only consider] the TFV's budgetary figures to the extent that they are proportionate with the expected benefits of the proposals. In the course of implementation, it may turn out that the exact costs differ from the estimates. It is then the TFV's responsibility to reallocate funds - subject to

²³⁶ Reparations Order, [ICC-01/04-02/06-2659](#), paras 220, 241-244.

²³⁷ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 20.

²³⁸ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 328; Trust Fund for Victims' Submission pursuant to Trial Chamber II's decisions on the implementation of the Appeals Chamber Judgment against the Reparations Order ('TFV January 2023 Submissions'), 30 January 2023, [ICC-01/04-02/06-2819](#), para. 10.

²³⁹ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 22.

²⁴⁰ *Al Mahdi* Decision on Updated DIP, [ICC-01/12-01/15-324-Red](#), para. 73.

available funds and applicable procedures - in order to ensure appropriate financing for all approved projects.²⁴¹

129. The Chamber is aware of the funding estimations put forward by the TFV in the Updated DIP, but notes that they will have to be updated given that some of the projects it has accounted for were not approved by the Chamber.²⁴² Similarly, the Chamber considers that the TFV will have to adjust its costs and funding estimates to the estimated number of victims and the amount of liability as set up in the Addendum and the considerations regarding the overlapping victims and harms with the *Lubanga* case.²⁴³

130. The Chamber, however, underlines that the estimations considered in the Addendum for the purposes of making conclusions as to the number of potential victims and the monetary award against Mr Ntaganda are only estimates and shall not be understood as limiting the TFV's flexibility to distribute and reallocate funds in the most efficient manner possible. As stressed in the Addendum, the estimations as to the number of victims do not limit the number of individuals who may come forward and be able to benefit from the award.²⁴⁴ In effect, the Chamber underlines that, for example, when reaching its conclusions as to the total number of potential child soldiers, it took into account the potential additional victims already known to the Court²⁴⁵ and accounted for them as potential additional SGBV child soldier victims.²⁴⁶ However, that does not mean that additional overlapping *Lubanga/Ntaganda* victims or *Ntaganda*-only victims, who do not qualify as SGBV child soldier victims, cannot come forward and be found eligible to benefit from reparations. Similarly, the calculations made as to the estimated amount required to repair the additional *Ntaganda*-only child soldier

²⁴¹ *Al Mahdi* Decision on Updated DIP, [ICC-01/12-01/15-324-Red](#), para. 73.

²⁴² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 264-286.

²⁴³ Addendum, [ICC-01/04-02/06-2858-Red](#), paras 336-360.

²⁴⁴ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 314.

²⁴⁵ As detailed by the Registry when informing on the details of the assembled Sample, which included participating victims, potential victims that submitted long forms during the Registry's mapping exercise, and potential victims that submitted application forms outside the mapping. *See* Registry submission in compliance with the "Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'", 8 November 2022, [ICC-01/04-02/06-2788](#), para. 14.

²⁴⁶ In effect, although the Registry attempted to exclude from the Sample the victims known to be participating in the *Lubanga* reparations proceedings, from its assessment of the Sample the Chamber concluded that all additional child soldiers victims included in the Sample (who should not have qualified as *Lubanga* victims) were all in fact eligible as *Lubanga* victims as well. Since a high percentage of them were also eligible as SGBV child soldiers victims, the Chamber considered that the additional potential eligible victims not accounted for within the SGBV child soldiers victims would be only a marginal number. Addendum, [ICC-01/04-02/06-2858-Red](#), paras 293, 295-296.

victims,²⁴⁷ or the different harms suffered by the victims of the attacks,²⁴⁸ do not limit the TFV's flexibility to design and implement the programmes following an approach that will realise the TFV's goals of advancing victim-centred, harm and incident-based, community-based, conflict-sensitive, gender, and intersectional-sensitive programming.²⁴⁹

131. As such, the Chamber instructs the TFV to provide updated estimates as to the direct and indirect costs of the approved projects and information as to the TFV's projections of its ability to complement the award.

3. Other Implementation Considerations

132. There are several other considerations regarding the implementation of the Updated DIP, including: the integration of the IDIP program; outreach and mitigation; and programme management, monitoring, and evaluation. Each of these issues are discussed below.

a) Integration of IDIP

(1) TFV proposal

133. In the Updated DIP, the TFV proposes that IDIP projects will continue until beneficiaries are inducted into their relevant programme, i.e. the programme for former child soldiers or the programme for victims of the two attacks.²⁵⁰ The TFV further proposes that beneficiaries will transition from the IDIP programme to the DIP programme by completing an intake assessment in order to determine 'whether harm suffered by the beneficiaries has already been addressed' and the type of services the beneficiaries are entitled to receive under the relevant reparation programme.²⁵¹

(2) Parties' submissions

134. The CLR1 emphasises that victims who entered the IDIP programme were meant to see their most urgent needs addressed on a temporary basis, pending the full deployment of the reparations programme.²⁵²

135. The CLR2 argues that the TFV fails to provide 'an actual DIP into which the IDIP could be integrated' and states that it remains unclear as to how the IDIP will integrate into the

²⁴⁷ Addendum, [ICC-01/04-02/06-2858-Red](#), paras 340-341.

²⁴⁸ Addendum, [ICC-01/04-02/06-2858-Red](#), paras 346, 349, 355.

²⁴⁹ See [Trust Fund for Victims Strategic Plan 2023-2025](#), Goal 1, Priority Areas 1.1-1.3, p. 5.

²⁵⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 251.

²⁵¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 253.

²⁵² CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 47.

Updated DIP.²⁵³ The CLR2 further states that there is insufficient detail as to how the IDIP and Updated DIP interrelate while taking into account that the IDIP's purpose is to address the most urgent needs of priority victims only.²⁵⁴ The CLR2 emphasises that victims receiving assistance under the IDIP should not be prevented from benefitting from the comprehensive reparations programmes set out in the Updated DIP.²⁵⁵ The CLR2 also takes issue with the idea that harm suffered by victims would in some cases have already been addressed by the IDIP projects, given that it was only meant to address the most urgent needs of priority victims.²⁵⁶

(3) *Chamber determination*

136. At the outset, the Chamber recalls that the IDIP is an interim and emergency measure aimed at addressing the needs of the victims requiring urgent assistance, i.e. urgent needs, pending the development and implementation of the full DIP.²⁵⁷ Accordingly, the Chamber has stressed that the IDIP should be operational and the victims should be able to benefit from its projects during the time-period between the IDIP's approval and the effective implementation of the Updated DIP.²⁵⁸ This section addresses the TFV's proposal for the victims' transition from the IDIP to the Updated DIP programme.

137. Having assessed the TFV's proposal, the Chamber finds that the TFV has presented a clear plan regarding the transition from the IDIP to the Updated DIP, explaining that beneficiaries in the IDIP programme will continue to benefit from this programme until the Updated DIP programmes are running.²⁵⁹ The Chamber also considers that the TFV has not suggested that victims receiving assistance under the IDIP are prevented from benefiting from the Updated DIP programme. Indeed, the Chamber recalls its previous findings that urgent needs are those for which the victims need to receive immediate physical and/or psychological medical care, and/or support due to financial hardship that endangers the person's life.²⁶⁰ As such, the Chamber finds reasonable the TFV's proposal that beneficiaries should complete an intake assessment to determine which harm still needs to be addressed, and commence the

²⁵³ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 70.

²⁵⁴ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 70.

²⁵⁵ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 71.

²⁵⁶ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 72.

²⁵⁷ Decision on the IDIP, [ICC-01/04-02/06-2696](#), paras 6, 8.

²⁵⁸ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 8.

²⁵⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 251.

²⁶⁰ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 7.

appropriate programming.²⁶¹ The Chamber views this as a reasonable way to integrate the IDIP beneficiaries into the Updated DIP programming.

138. Similarly, the Chamber notes the CLR2's contention that a victim's harm could not have been rectified during the IDIP programme,²⁶² but finds that is something that needs to be evaluated on a case-by-case basis, given the nature of the IDIP program, and the content of the services provided within that context.²⁶³ The Chamber finds that the intake procedure proposed by the TFV is the best mechanism to evaluate this.

b) Outreach and Risk Mitigation

(1) TFV proposal

139. The TFV provides a brief outreach and risk mitigation strategy in the Updated DIP. The Chamber understands the strategy as having the following four components:

- a. conducting outreach to potential beneficiaries and sensitising the population to the eligibility criteria;
- b. raising awareness on the content of the reparations programme;
- c. raising awareness within the population on the 'situation of victims of crimes' (which the Chamber understands to mean information on the severity of the crimes and about their consequences), particularly with respect to children born of rape and victims of SGBV; and
- d. monitoring risks associated with conducting outreach and adopting mitigating measures regarding the volatile security situation in the DRC.

(2) Parties' submissions

140. The CLR1 does not comment on risk mitigation or outreach extensively, but does emphasise the importance of regular communication and cooperation between the TFV staff and the CLR teams as a mitigating measure to defuse and clarify misunderstandings or confusion with respect to victims.²⁶⁴

²⁶¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 253.

²⁶² CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 72.

²⁶³ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 24.

²⁶⁴ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), footnote, 88.

141. The CLR2 argues that the Updated DIP does not provide details on ‘who will do what and when, regarding ways to manage the affected communities’ expectations and to address other associated risks’.²⁶⁵ The CLR2 states that ‘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’.²⁶⁶

142. The Defence argues that reparations cannot be implemented given the current security situation in Ituri.²⁶⁷ The Defence further states that the TFV has not demonstrated a comprehensive understanding of the security situation in Ituri, and thus has failed to provide a ‘concrete mitigating strategy’.²⁶⁸ The Defence therefore provides a ‘brief overview’ of the current conflict in Ituri for the Chamber ‘to be able to consider the impact of the security situation on reparations’.²⁶⁹ The Defence argues that reparations have the potential to impact the security situation in Ituri, which would be contrary to the do no harm principle.²⁷⁰ For example, the Defence reiterates its argument that there is a concrete risk that the provision of reparations could indirectly finance militias and submits that the TFV should implement a risk-mitigating strategy aimed at ensuring reparations are not used to indirectly finance militias.²⁷¹ The Defence also argues that there are victims of crimes committed during the conflict who are outside the scope of the reparations programme, and that this disparity in access to reparations could cause further conflict.²⁷²

(3) *Chamber determination*

143. The Chamber views the TFV’s proposal as entailing two forms of outreach: the first one about the content of the reparations programmes, who can be potential beneficiaries in accordance with the eligibility criteria, risks, and mitigating measures; and the second one about awareness on the severity of the crimes and about their consequences, particularly with respect to children born of rape and victims of SGBV.

144. As such, the Chamber considers that, in light of its expertise and experience, the Registry, through the PIOS, is ideally equipped to carry out the first form of outreach as described above, by reaching out and engaging with the relevant communities. As to the

²⁶⁵ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 46.

²⁶⁶ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 46.

²⁶⁷ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 24, 43.

²⁶⁸ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 35, 39.

²⁶⁹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 35-38.

²⁷⁰ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 40.

²⁷¹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 42.

²⁷² Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 21.

proposal regarding awareness raising, the Chamber considers that this falls within the symbolic and satisfaction measures discussed above in relation to outcomes 4 and 5.

145. The Chamber notes the Defence's concerns regarding the security situation in Ituri and reminds the TFV that the implementation of any reparations programme must take into account the security situation on the ground at the time. As a result, the Chamber instructs the TFV to undertake a new security assessment closer to the time of implementation, taking into account the concerns raised by the Defence, to ensure that the implementation of reparations can be carried out safely and will not exacerbate conflict or tensions in the region.

146. Finally, the Chamber understands the Defence's concern that the *Ntaganda* reparations programme is limited in its scope and that there may be people who experienced harm during the conflict in Ituri who do not qualify for the reparations programme. The Chamber has noted this concern in the Addendum.²⁷³ Accordingly, the Chamber instructs the Registry through the PIOS to take this matter into account when developing its outreach strategy, which should include clear communication with communities regarding the scope of the *Ntaganda* reparations programme in order to manage expectations.

c) Programme Management, Monitoring and Evaluation

(1) TFV proposal

147. **Management.** With respect to the management of the reparations programme, the TFV submits that it will hire implementing partners to oversee the projects described in the proposal.²⁷⁴ The TFV notes that it will work closely with the implementing partners on a daily basis.²⁷⁵ Recalling its experience in the *Lubanga* reparations, the TFV notes that its staff are involved in all matters 'arising in respect of the implementation'²⁷⁶ including risk management, as the implementing partners closely coordinate with the TFV staff 'to effectively manage any issues arising from implementation in a timely way'.²⁷⁷ Further, the TFV proposes to mitigate risks by setting up a complaints system with the implementing partner.²⁷⁸

148. **Monitoring.** With respect to monitoring, the TFV proposes to use a reporting system, through which the implementing partner submits quarterly service-related and financial reports

²⁷³ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 17.

²⁷⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 261.

²⁷⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 40, 43.

²⁷⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 261.

²⁷⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 42(a).

²⁷⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 261.

to the TFV, an annual report at the end of the fiscal year, and a final report at the end of the project.²⁷⁹ The TFV explains that it will use a ‘monitoring and evaluation’ system, which is ‘designed to enable relevant and consistent reporting on the results achieved in the reparation and assistance activities that it is financing’.²⁸⁰ The TFV also notes that it will conduct ‘planned and spontaneous verification checks’, at least once a year, to assess ‘efficiency and effectiveness’.²⁸¹

149. The TFV proposes that it will also submit Update Reports to the Trial Chamber pursuant to regulation 57 of the Regulations of the Trust Fund.²⁸² The TFV further proposes that matters that could lead to programme adaptation or alterations will be brought before the Chamber pursuant to regulations 57 and 58 of the Regulations of the Trust Fund.²⁸³

150. **Evaluation.** The TFV proposes that during the ‘planned and spontaneous verification checks’, TFV field staff will engage with beneficiaries to assess the satisfaction of victims who have received services from implementing partners.²⁸⁴ The TFV also notes that upon the closure of the programme, the TFV will receive a final financial report from the implementing partners and will submit a final report to the Chamber.²⁸⁵ In addition, a final evaluation of the programme will be carried out by an external evaluator procured by the TFV, which will be shared with the Chamber.²⁸⁶ The TFV also plans to commission an independent impact evaluation after three to five years of programme implementation.²⁸⁷

(2) *Parties’ submissions*

151. The CLR1 acknowledges the TFV’s proposal to closely oversee its implementing partners, and finds this approach ‘responsible and professional in light of its obligations to ensure that the Updated DIP is implemented according to the agreed terms’.²⁸⁸ However, the CLR1 argues that close oversight should not be sustained if it is unnecessary and is thereby wasting the limited resources of the TFV.²⁸⁹

²⁷⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 42(a).

²⁸⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 53.

²⁸¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 42(b).

²⁸² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 44.

²⁸³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 44.

²⁸⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 42(b).

²⁸⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 45.

²⁸⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 45.

²⁸⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 263.

²⁸⁸ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 50.

²⁸⁹ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), paras 50, 51.

152. The CLR2 expresses concern that the TFV has not proposed which implementing partners it intends to work with.²⁹⁰

153. The Defence argues that the TFV has moved away from its *raison d'être* and has lost its identity as an independent and impartial body, instead becoming an 'operative programme management entity' that acts 'contrary to the most basic programme management principles'.²⁹¹ The Defence argues that the TFV:

cannot publicize the possibility for new beneficiaries to obtain reparations; decide what information they must provide to obtain reparations; invite them to come forward; promise them a financial benefit to convince them to do so; meet with new potential beneficiaries; inform them of their rights; tell them what information they must provide to obtain reparations; collect the relevant information; verify the information provided; rule on the eligibility of new potential beneficiaries; and, in the event of a negative determination, inform the CLR2 of what is missing and rule on the request for review. In this case, this is but the tip of the iceberg. It also casts a veil of mystery on the entire procedure.²⁹²

(3) *Chamber determination*

154. The Chamber finds merits in the concerns of the Defence listed above²⁹³ and will address them in section III.D of this Decision, which deals with the procedural aspects of the eligibility assessment, complementing the relevant section of the substantive aspects as detailed in the Addendum.²⁹⁴ Similarly, the Chamber has decided that all general outreach activities shall be conducted by the Registry, through the PIOS. Notwithstanding the above, and subject to the Chamber's instructions in section III.D, the Chamber approves the TFV's proposal for management, oversight, and evaluation. The Chamber notes the concern of the CLR1 that the TFV should not squander resources on unnecessary oversight,²⁹⁵ but finds that the TFV is best placed to make that determination.

155. Following the final approval of the DIP, the Chamber expects its involvement with the implementation of the reparations programme to be relatively limited.²⁹⁶ The frequency of the

²⁹⁰ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 66, 68.

²⁹¹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 111.

²⁹² Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 113.

²⁹³ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 113.

²⁹⁴ Addendum, [ICC-01/04-02/06-2858-Red](#), paras 34-143.

²⁹⁵ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 50.

²⁹⁶ *Al Mahdi* Decision on Updated DIP, [ICC-01/12-01/15-324-Red](#), para. 104.

reporting to the Chamber will be decided in due course when the proper implementation of the reparations programmes commences.

d) Assistance of the DRC Government

(1) TFV proposal

156. The TFV informs that it intends to rely on the cooperation of the DRC Government at national and provincial levels in order for the reparation programme to be successful.²⁹⁷ The TFV specifically states that it relies on the Government to put in place the necessary infrastructure, such as healthcare centres and schools, that can be utilised by the TFV in implementing the reparations programme.²⁹⁸

(2) DRC Government observations and parties' submissions

157. [REDACTED].²⁹⁹ [REDACTED].³⁰⁰

158. [REDACTED].³⁰¹ The CLR2 argues that because the DRC did not provide substantive submissions on the Updated DIP, the TFV should be 'requested to provide more detail on what can be expected from its engagement with the DRC authorities' with particular reference to how it intends to ensure displaced victims can access and benefit from the reparations programmes.³⁰² The Defence expresses its disappointment with the 'scarce observations filed by the DRC authorities' and notes that the DRC authorities could have provided valuable information on issues including the security situation in Ituri and the 'realistic chances of successfully implementing reparations amidst the current conflict'.³⁰³

(3) Chamber determination

159. As noted in the Addendum, in the context of reparations the role of international criminal justice is only to complement domestic systems.³⁰⁴ In addition, the Chamber notes that, in accordance with articles 75(4) and 109 of the Statute and rules 217 to 222 of the Rules, the DRC as a State Party to the Statute has the obligation to provide the necessary support for the effective enforcement of reparation orders. As such, the TFV should indeed rely as much

²⁹⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 156.

²⁹⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 156.

²⁹⁹ Annex III to the DRC Observations on Updated DIP, 6 May 2022, ICC-01/04-02/06-2760-Conf-AnxIII, p. 2.

³⁰⁰ Annex III to the DRC Observations on Updated DIP, ICC-01/04-02/06-2760-Conf-AnxIII, p. 2.

³⁰¹ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 54.

³⁰² CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 49.

³⁰³ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 118.

³⁰⁴ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 17.

as possible on the DRC Government for the successful implementation of the reparations programme in the case.

160. [REDACTED],³⁰⁵ [REDACTED]. Accordingly, the Chamber directs the TFV to ensure that this is made clear in the context of its cooperation with the DRC Government at national and provincial levels.³⁰⁶ Regarding the arguments of the CLR2 that the TFV needs to provide additional information on how it intends to work with the DRC authorities, the Chamber is of the opinion that the TFV has adequately explained that the DRC Government's involvement with the reparations programme will be limited to ensuring that critical infrastructure (e.g. roads, schools, hospitals), is in place to help the reparations programme function.³⁰⁷ The TFV should, however, present to the Chamber alternate options as to how the reparations programmes would be implemented if it turns out that the DRC Government cannot ensure that the critical infrastructure is in place. Similarly, the TFV should provide further information as to the steps taken to engage with the DRC Government on these issues.

D. Fourth Element of the DIP: Eligibility Assessment

161. The final consideration is whether the TFV has included a detailed proposal as to the way in which the administrative eligibility assessment of victims should be conducted.³⁰⁸ Further to the decision of the Appeals Chamber, the Chamber will not be addressing the parties' arguments³⁰⁹ regarding the substantive criteria for the determination of eligibility, as this was detailed in the Addendum.³¹⁰ This section, therefore, deals with the procedural aspects of the administrative eligibility assessment of victims.

1. TFV proposal

162. The TFV proposes the following administration of the eligibility assessment: (i) the identification of potential beneficiaries; and (ii) a verification process.³¹¹ Each is described below.

³⁰⁵ CLR1 Observations on Updated DIP, [ICC-01/04-02/06-2763-Red](#), para. 54.

³⁰⁶ See Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 156.

³⁰⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 156.

³⁰⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 249; Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 10.

³⁰⁹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 73-78; CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 3, 81.

³¹⁰ Addendum, [ICC-01/04-02/06-2858-Red](#), paras 34-143.

³¹¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 293-404.

a) *Identification of Potential Beneficiaries*

163. Regarding the identification process, the TFV proposes that three steps must be completed: a) outreach; b) identification of potential beneficiaries; and c) collection of information.

164. ***Outreach.*** The TFV proposes that the outreach campaign will be designed and conducted by the TFV, but carried out with the involvement of the Country Office, the VPRS and these sections' local networks and intermediaries, as well as the TFV's implementing partners.³¹² The TFV proposes that all communication materials will be designed by the TFV and the Registry, in consultation with the CLRs, to ensure that clear and harmonised messages are conveyed throughout Ituri.³¹³ The TFV further notes that the outreach campaigns will be conducted throughout the life cycle of the reparations programme and throughout the 'totality of the territory of the DRC' and potentially Western Uganda.³¹⁴

165. ***Identification.*** The TFV proposes that the identification of potential beneficiaries will take place in tandem with the outreach programme and will involve all actors who take part in the outreach campaign, i.e., the Registry, implementing partners, civil society organisations, and CLRs (including the possibility of the CLRs involved in the *Lubanga* case).³¹⁵ The TFV states that during the outreach and identification campaign, potential beneficiaries will be informed of where and how information for the purpose of eligibility is being collected.³¹⁶

166. ***Collection of Information.*** The TFV will be ultimately responsible for the collection of information, but will work together with the Registry staff, to the extent they are available, and the implementing partners to collect information from potential beneficiaries.³¹⁷ The TFV states that only the limited information necessary for the determination of eligibility be collected by way of a simplified document.³¹⁸ The TFV explains that this document will be developed by the TFV, in consultation with the parties, the Country Office, and the VPRS.³¹⁹ The TFV states that ideally, this information would be collected directly in an electronic format, but will also be available as a form that can be filled out by hand.³²⁰

³¹² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 339, 343.

³¹³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 341.

³¹⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 341, 344.

³¹⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 337-347.

³¹⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 348.

³¹⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 353.

³¹⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 351.

³¹⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 351.

³²⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 351.

b) Verification Process

167. The TFV's proposal regarding the verification process can be divided into three sections: a) the verification body; b) the review process; and c) the transfer of information.

168. **Verification Body.** The TFV states that the verification body will be responsible for making a determination of eligibility based on the information collected as a result of the identification process.³²¹ The TFV proposes itself as the verification body and will undertake the eligibility assessment of potential beneficiaries.³²²

169. **Review Process.** In its Joint Submission with the Registry, the TFV proposes that it will retain full control of the verification process and will ultimately make the final eligibility determination.³²³ However, they propose that the Registry will provide support to the TFV through a dedicated staff resource, who would be allocated at the professional level.³²⁴ The TFV and Registry explain that this solution will ensure 'immediate access to relevant information and documentation concerning potential beneficiaries already on file with the Registry as well as to available knowledge and expertise within the Registry'.³²⁵

170. Regarding the actual assessment, the TFV proposes the following:

- a. The TFV will be responsible for carrying out the eligibility assessment.³²⁶
- b. If a prospective beneficiary is found to be ineligible, the TFV will notify the prospective beneficiary and their legal representative to explain their rights and they will have 30 days to provide supplementary documents.³²⁷
- c. Within 15 days of having received additional documents or information, the TFV will review the ineligible determination based on the supplementary information received.³²⁸ If the determination of ineligibility is likely to be upheld, the reviewer may seek guidance from the TFV Board's focal point.³²⁹

³²¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 370.

³²² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 373.

³²³ Joint Submission, [ICC-01/04-02/06-2774](#), paras 15-16, *referencing* Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 383.

³²⁴ Joint Submission, [ICC-01/04-02/06-2774](#), para. 14.

³²⁵ Joint Submission, [ICC-01/04-02/06-2774](#), para. 15.

³²⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 373.

³²⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 383(a).

³²⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 383(b).

³²⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 383(b).

- d. The TFV can refer relevant underlying issues to the Chamber for guidance. In these cases, the relevant deadlines for prospective beneficiaries can be extended.³³⁰

171. **Transfer of Information.** The TFV explains that information regarding the eligibility process will be submitted to the Chamber and the Defence via the update reports of the TFV.³³¹ The TFV states that the CLR's will be informed of all 'positive' determinations relevant to their clients.³³² The TFV further submits that the CLR's may be appointed counsel in cases of negative eligibility determinations for potential beneficiaries who are not currently clients of the CLR.³³³ In this case, the TFV would, with the consent of the potential beneficiary, transfer their information to the CLR.³³⁴ Apart from that, the TFV will provide the CLR's with information about the eligibility process in the update reports of the TFV and at any meetings with the CLR's, as required.³³⁵ With respect to the VPRS, the TFV proposes that if the VPRS is the verification body or in charge of the preliminary assessment, the TFV will also inform the VPRS of any final determinations it makes during the review process, and if the VPRS is not involved, there is no need to share personal data regarding the victims.³³⁶

2. Parties' submissions

172. The CLR1 commends the TFV and Registry for their Joint Submission.³³⁷ The CLR1 raises several points to remind the TFV that both groups of victims are to be treated equally throughout the eligibility process.³³⁸ The CLR1 also asks that the TFV clarify whether the dedicated staff member for the Registry will have a role in the identification process for former child soldiers.³³⁹

173. Regarding outreach and the identification of beneficiaries, the CLR2 argues that a mapping exercise is necessary, which could be done by establishing 'call centres' that potential beneficiaries could contact to provide general personal information, contact details, and the location of the person calling, which could form the basis of the mapping.³⁴⁰ The CLR2 also

³³⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 383(c).

³³¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 388-389.

³³² Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 391.

³³³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 392.

³³⁴ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 392.

³³⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 392.

³³⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 393.

³³⁷ CLR1's Observations on the Joint Submission, [ICC-01/04-02/06-2778](#), para. 5.

³³⁸ CLR1's Observations on the Joint Submission, [ICC-01/04-02/06-2778](#), paras 6-8.

³³⁹ CLR1's Observations on the Joint Submission, [ICC-01/04-02/06-2778](#), para. 9.

³⁴⁰ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 83.

argues that the TFV's submissions on the transfer of information 'must be revised' because they are based on cases involving an application-based reparations model, which was not chosen in the present case.³⁴¹

174. With respect to outreach, the Defence also argues that the TFV should undertake a mapping exercise to determine where potential beneficiaries reside, and then carry out an outreach strategy in these areas so that new potential beneficiaries can come forward before a pre-determined cut-off date.³⁴² The Defence also argues that CLR2s should not be involved in this stage, and that outreach should be left to the VPRS or outsourced to a specialised entity or organisation.³⁴³ The Defence also argues that the message to be shared with victims must be approved by the Chamber before it is disseminated, and that the Defence should have the opportunity to make submissions before the Chamber's approval.³⁴⁴

175. Apart from this, the Defence raises three 'procedural flaws' concerning the (i) collection of information; (ii) verification; and (iii) review.³⁴⁵ Regarding the collection of information, the Defence argues that the role of the CLR2s should be limited to assisting the TFV in contacting their clients.³⁴⁶ The Defence also takes issue with the TFV's proposed use of intermediaries to assist in the collection of information process, and argues that the TFV raises concerns about the quality of information received in the past when intermediaries were used³⁴⁷ and that the TFV is not yet in a position to know whether capacity issues will necessitate the use of intermediaries.³⁴⁸ The Defence notes that it 'supports the position advanced by the CLR2, that VPRS be in charge of this process'.³⁴⁹ The Defence also reiterates its opposition to the use of simplified forms aimed at gathering the information necessary for the determination of the eligibility, and argues that at a minimum specific information and supporting documents be provided to ensure that judicial reparations are awarded only to genuine victims.³⁵⁰ The Defence notes, however, that the TFV intends to consult the parties in relation to the development of the form.³⁵¹

³⁴¹ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 84.

³⁴² Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 64.

³⁴³ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 67.

³⁴⁴ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 69-70.

³⁴⁵ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 80.

³⁴⁶ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 81.

³⁴⁷ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 82.

³⁴⁸ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 83.

³⁴⁹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 83.

³⁵⁰ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 84.

³⁵¹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 85.

176. With respect to the verification process,³⁵² the Defence contests the 15 day review proposal and argues that efficiency cannot override the need for a ‘robust, fair and thorough eligibility determination process’.³⁵³

177. The Defence also takes issue with the proposal that the TFV will ‘exercise control over the entire reparations process’ and argues that allowing the TFV to perform all steps of the eligibility process ‘in the absence of any oversight exercised by the Chamber is contrary to the most basic administrative process’³⁵⁴ and ‘casts a veil of mystery on the entire procedure’.³⁵⁵

178. Regarding the review of negative determinations, the Defence argues that ‘its involvement would be desirable, with a view to providing a valid counterbalance’.³⁵⁶ The Defence argues that its involvement is in line with the previous practice of the Court, and that a review procedure without the participation of the Defence would be ‘unprecedented’.³⁵⁷ The Defence also argues that it is fundamental that the Chamber should have a prominent role in the review process.³⁵⁸ The Defence submits that this would provide a judicial determination in cases where the TFV’s determinations on eligibility are brought into question and allow the Chamber to review the accuracy of the TFV’s decisions on a regular basis.³⁵⁹ The Defence also argues that the Chamber’s involvement would only require a ‘limited effort’ because the number of applications is likely to be less than expected and only a portion will be negatively assessed.³⁶⁰ Finally, the Defence opposes the proposition that outreach campaigns will be conducted throughout the lifecycle of the reparations programme and argues that, in line with the *Lubanga* case, the Chamber must establish a cut-off date.³⁶¹

3. Chamber determination

179. The Chamber has given detailed consideration to the TFV’s proposal, the Joint Submission, and the parties’ submissions regarding the administrative eligibility assessment. While the Chamber commends the TFV and the Registry for trying to find a workable solution, it has concluded that, in order to ensure fairness, efficiency, and avoid any perceptions of

³⁵² The Chamber is not addressing the Defence’s arguments at paragraphs 88-89 of its Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), given the recent submissions of the Defence’s Observations on the Joint Submission, [ICC-01/04-02/06-2779](#).

³⁵³ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 87.

³⁵⁴ Defence’s Observations on the Joint Submission, [ICC-01/04-02/06-2779](#), paras 6-7.

³⁵⁵ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 113.

³⁵⁶ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 91.

³⁵⁷ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 91.

³⁵⁸ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 92.

³⁵⁹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 92.

³⁶⁰ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 92.

³⁶¹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 71.

possible conflict of interests, all matters regarding the administrative eligibility process, including outreach, identification, and eligibility of potential beneficiaries, should be executed by the Registry, as the Court's organ in charge of administration, through its different units and sections.

180. In reaching its determination on these matters, the Chamber has found merit in the Defence's objections regarding the need to ensure independence between the organ entrusted with determining who is eligible to benefit from reparations and the body responsible for providing eligible victims with the services to which they are entitled. The Chamber has also considered the clear division of roles provided by the Court's legal framework, which assigned to the Registry the key functions related to the protection, assistance, and participation of victims in the Court proceedings and during reparations,³⁶² while the TFV was created for the benefit of victims and tasked with providing them with reparations and assistance.³⁶³ The Chamber has also taken into consideration that although the Regulations of the Trust Fund for Victims provides for a role of the TFV in the identification and verification of members of the beneficiary group when individual reparations have been awarded pursuant to rule 98(2) of the Rules,³⁶⁴ no such function is envisaged in relation to collective reparations awarded pursuant to rule 98(3) of the Rules, such as those awarded in the present case.³⁶⁵

181. The Chamber has also taken into account the need to ensure consistency in the Court's approaches to victims' access to their rights in accordance with the statutory framework throughout the entire life-cycle of the Court's proceedings.³⁶⁶ In the view of the Chamber, from pre-investigation to reparations, victims should be identified by the same organ within the Court. In light of the above, and in view of their resources and expertise, the Chamber considers that the VPRS is more suited to carry out the identification and administrative eligibility process of potential beneficiaries and the PIOS should be in charge of conducting outreach.

³⁶² See, *inter alia*, articles 43(6) and 68(4) of the Statute; rules 16-19, 89, 92, 94, and 96 of the Rules; regulations 41, 81, 86, and 88 of the Regulations of the Court.

³⁶³ See, *inter alia*, article 79 of the Statute and rule 98 of the Rules.

³⁶⁴ See regulations 60-65 of the Regulations of the Trust Fund for Victims.

³⁶⁵ See regulations 69-72 of the Regulations of the Trust Fund for Victims.

³⁶⁶ Consistent with recent jurisprudence of Trial Chamber VI in the *Said* case, the Appeals Chamber in the *Ntaganda* case, and Trial Chamber I in the *Abd-Al-Ramhan* case, leading to a system where, in the future, most, if not all, potential beneficiaries of reparations arising out of a case would have been identified/mapped during the pre-trial and trial proceedings by the VPRS. Chambers have clearly stated that this task 'can only be carried out by the VPRS, as a neutral organ of the Court'. See Trial Chamber VI, *The Prosecutor v. Mahamat Said Abdel Kani*, Decision on matters relating to the participation of victims during the trial, 13 April 2022, [ICC-01/04-01/21-278](#), paras 86-90; Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 9, 340; and Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, Second decision on the admission of victims to participate in trial proceedings, 3 October 2022, [ICC-02/05-01/20-761](#), paras 13-20.

This will allow the TFV to focus its resources and expertise on the delivery of reparations. As such, the administrative execution of the Reparations Order will be properly carried out by the administrative bodies created for that purpose in the Court's legal framework within the scope of their roles and responsibilities.

182. As to the TFV's submission that the CLRs may be appointed counsel in cases of negative eligibility determinations for potential beneficiaries who are not currently their clients,³⁶⁷ the Chamber notes that, as previously decided, no legal representation of potential beneficiaries is required outside the context of judicial proceedings.³⁶⁸ As such, the LRVs, as OPCV counsel, should provide general support and assistance to any potential beneficiary during the administrative eligibility assessment, particularly regarding those assessed as non-eligible.³⁶⁹

183. In light of the above, the Chamber details below its conclusions as to the steps and responsible organs for the execution of the administrative eligibility process. The Chamber considers that the eligibility process shall be divided into: (i) the identification of potential beneficiaries; and (ii) the eligibility assessment.

184. The Identification of Potential Beneficiaries:

- a. **Outreach.** The outreach campaign will be designed and conducted by the Registry, through the PIOS. The communication materials that will be provided to victims will be designed by the PIOS after engaging in consultations with the parties, the TFV, the VPRS, the OPCV, and the Country Office. Outreach will be conducted throughout the entire duration of the administrative eligibility process until the cut-off date as set by the Chamber below. The Chamber finds merit in the TFV submission and considers the identification of potential beneficiaries shall take place in tandem with the outreach initiatives.³⁷⁰
- b. **Identification.** The Registry, through the VPRS, will be responsible for the identification of victims. As to the submission of the Defence³⁷¹ and CLR2³⁷² that mapping should be conducted and, as argued by the CLR2, that call centres should be established for the purpose of outreach and identification of potential

³⁶⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 392.

³⁶⁸ Decision on the IDIP, [ICC-01/04-02/06-2696](#), paras 40-41.

³⁶⁹ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 41.

³⁷⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 337-347.

³⁷¹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 64.

³⁷² CLR2 Observations on Updated DIP, [ICC-01/04-02/06-2764-Conf](#), para. 83.

beneficiaries, the Chamber defers to the VPRS's expertise as to how to best reach and identify potential beneficiaries. The VPRS should inform the Chamber as to the chosen mechanism for the victims' identification.

- c. ***Collection of Information.*** The Registry, through the VPRS, will be responsible for the collection of information from beneficiaries. The Chamber notes that, as ruled in the Reparations Order, having awarded collective reparations in the case there is no need to rule on the merits of individual applications for reparations.³⁷³ Accordingly, the VPRS should devise a simplified system that would allow it to collect the information necessary to make a determination of the victims' eligibility. The Chamber recalls its Addendum where it detailed the evidentiary criteria, standard of proof, and conditions of eligibility of victims.³⁷⁴ The VPRS should inform the Chamber as to the chosen mechanism to collect this information.

185. The Eligibility Assessment:

- a. The Registry, through the VPRS, will be responsible for carrying out the administrative eligibility assessment, using the substantive criteria and eligibility mechanism established by the Chamber in the Addendum;
- b. If a potential beneficiary is found not to be eligible, the VPRS will notify the potential beneficiary and the OPCV, to explain that the person has 30 days from the date of the decision, or the date the person was contacted, to provide supplementary information;
- c. Within a reasonable time after having received additional information, the VPRS will review the eligibility determination based on the supplementary information received. The VPRS should inform the Chamber as to the chosen time-frame for initial review of eligibility determinations, as this should be determined in advance to the commencement of the eligibility process;
- d. If a prospective beneficiary, after providing additional information, is still found not to be eligible, the VPRS will notify the prospective beneficiary and the OPCV to explain that the person will have 30 days from the date of the decision,

³⁷³ Reparations Order, [ICC-01/04-02/06-2659](#), para. 196.

³⁷⁴ Addendum, [ICC-01/04-02/06-2858-Red](#), paras 34-143.

or the date the person was contacted, to appeal the VPRS's decision. The Chamber considers that — consistent with the administrative nature of the implementation stage of reparations³⁷⁵— it would be appropriate for such appeals to be before the Registrar, as the principal administrative officer of the Court. However, in view of the Appeals Chamber's directions in the present case,³⁷⁶ to avoid further litigation and proceed in the most expeditious manner possible, any negative eligibility determination may be appealed before the Chamber;

- e. Update reports on the results of the administrative eligibility assessment, providing statistics about the positive and negative eligibility determinations, shall be provided to the Chamber by the VPRS;
- f. Consistent with the Appeal's Chamber's directions for the Chamber to retain oversight over the administrative screening³⁷⁷ — and notwithstanding the administrative nature of the implementation stage of reparations³⁷⁸— eligibility determinations will be judicially approved by the Chamber;

Once a person is found to be eligible to benefit from reparations, the TFV shall then contact the person within 30 days to provide the beneficiary with sufficient information as to the steps to follow and the expected time-line for the implementation of reparations.

186. As to the Defence's involvement in the process of eligibility determinations and possible appeals,³⁷⁹ consistent with the Appeals Chamber's views,³⁸⁰ the Chamber considers that no intervention of the Defence is required as Mr Ntaganda's interests at this stage of the proceedings are limited. In effect, the Chamber has already set the convicted person's monetary liability and, as such, the results of the eligibility process will have no impact on his rights.

187. The Chamber considers that the administrative eligibility process – including outreach, identification, and eligibility assessment – shall be executed within a reasonable time-frame.

³⁷⁵ See paras 11-16 above.

³⁷⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 387.

³⁷⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 387, 419.

³⁷⁸ See paras 11-16 above.

³⁷⁹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), paras 91-92.

³⁸⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 367-368, *see also* footnote 1672, in line with which the Chamber did ensure that the Defence was on notice as to how the Chamber assessed the victims' information and was able to challenge it by means of reviewing and making representations regarding the dossiers included in the Sample prior to issuing the Addendum to the Reparations Order.

Considering that the service-based collective reparations programme approved in the case will have a five-year duration from 1 January 2024, the Chamber finds it fair and reasonable that the administrative eligibility process be conducted within a two-year time frame. The Chamber considers it reasonable to expect that the Registry will be able to make the necessary preparations and arrangements to start the process by 1 January 2024, at the latest. The VPRS should inform the Chamber accordingly.

188. In light of the above, the Chamber determines that all victims shall be identified and their eligibility determined by 31 December 2025, at the latest.

IV. GENERAL OBJECTIONS

189. The Defence and CLR2 make several arguments that have not yet been addressed elsewhere in this Decision, which the Chamber addresses below.

A. Premature to Approve Updated DIP

190. The Defence's first objection is that the Updated DIP is based on unsupported data including the number or estimated number of potential beneficiaries.³⁸¹ As previously noted, the Chamber has addressed the issue of the approximate number of potential beneficiaries in the Addendum.³⁸²

191. The Defence also argues that the TFV should have identified other humanitarian actors present in the DRC, including the United Nations Office of the Coordination of Humanitarian Affairs, and its partners, to ensure that reparations in this case are not 'replac[ing] nor increas[ing] the assistance provided to the same beneficiaries'.³⁸³ The Chamber considers that the TFV should indeed consult with local actors to determine the most cost effective and timely way to advance the reparations programme. However, the Chamber does not consider that other assistance programs run by separate actors can act as a replacement for the *Ntaganda* reparations programme. In effect, as noted in the Addendum 'subsequent remedial efforts by third parties do not alter the damage originally done, the harm actually caused, and the corresponding reparations required to remedy it'.³⁸⁴ The Chamber has determined that Mr Ntaganda's actions have caused significant harm to victims, which the reparations programmes are directed to repair. Mr Ntaganda cannot shift the burden and cost of repairing that harm to

³⁸¹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 17.

³⁸² Addendum, [ICC-01/04-02/06-2858-Red](#), paras 287-320.

³⁸³ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 18.

³⁸⁴ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 231, *referring to Al Mahdi Reparations Order*, [ICC-01/12-01/15-236](#), para. 65.

separate actors. Further, if victims have had their harm rectified or mitigated through other means of assistance in the DRC, then this will be taken into account during their intake assessments, when it is being determined which treatments they require.

192. The third argument raised by the Defence is that the Updated DIP must address the reparations award ordered in the *Armed Activities on the Territory of the Congo (DRC v. Uganda)* International Court of Justice case, to ensure that beneficiaries are not over-compensated for the same harm.³⁸⁵ The Chamber notes that the reparations ordered by the International Court of Justice and those awarded against Mr Ntaganda are distinct. The former relates to the harm caused by a state, whereas the reparations in this case relate to Mr Ntaganda's personal liability. As was noted by the Chamber in the Addendum, 'reparations proceedings before the ICC deal with the very limited duty of a convicted person to repair the harm caused to victims of the crimes for which the person was ultimately convicted'.³⁸⁶ The Chamber therefore dismisses this argument.

193. The fourth argument raised by the Defence is that the Updated DIP 'lacks contextual information necessary to conceptualise a proper implementation plan' including a thorough understanding of the events that have taken place in Ituri, which make it difficult to determine what suffering was caused by Mr Ntaganda versus other events.³⁸⁷ The Chamber reminds the Defence that this concern is addressed in the Reparations Order, where the Chamber ordered that '[r]eparations are to be awarded based on the harm suffered as a result of the commission of a crime within the jurisdiction of the Court for which the defendant was convicted'³⁸⁸ and that 'victims shall provide sufficient proof of the causal link between the crime and the harm suffered'.³⁸⁹

194. The fifth argument raised by the Defence is that the Updated DIP should not be approved pending the appeal of the Reparations Order,³⁹⁰ which the Chamber considers moot since the Appeals Judgment has now been rendered.

³⁸⁵ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 19.

³⁸⁶ Addendum, [ICC-01/04-02/06-2858-Red](#), para. 17.

³⁸⁷ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 20.

³⁸⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 76.

³⁸⁹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 77.

³⁹⁰ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 22.

B. The TFV's Alleged Misunderstanding of the Reparations Principles

195. The Defence argues that the TFV ‘conflates and misapplies’ the principles of non-discrimination, victim-centred approach, and the do no harm principle in the Updated DIP.³⁹¹ The Chamber notes, however, that the Defence does not explain how the TFV conflates and misapplies these principles, but rather expresses its view as to how these principles should be applied.

196. Regarding the do no harm principle, the Defence argues that the ‘macro view’ of the do no harm principle is absent from the Updated DIP and that specifically, the proper application of the principle requires the TFV to: (i) acquire a thorough understanding of the conflict and related dynamics; and (ii) implement measures to ensure that no beneficiary is a member of or associated with Lendu combatants at the time of the events or similar militia in recent years.³⁹² The Chamber notes that these arguments largely reflect those already addressed by the Chamber above. The Chamber reiterates that it has ordered the TFV to undertake a new security assessment closer to the time of implementation to ensure that implementation measures will not exacerbate conflict and instructs the parties to advise the Chamber if there is a concrete concern that should be taken into account.

197. With respect to non-discrimination, the Defence argues that ‘treating victims equally does not mean that all potential beneficiaries *must* obtain reparations’ and does not entail an obligation for the Court to find every potential beneficiary.³⁹³ It argues that the efforts of the Court to find beneficiaries should therefore be reasonable and a cut off-date should be set by the Chamber.³⁹⁴ The Chamber considers that the Defence misunderstands what the principle of non-discrimination as elaborated in the Reparations Order entails and, in any case, it is for the TFV to give effect to the DIP to the best of its abilities. The Chamber further notes, as expressed above, that a cut-off date has been set.

198. The CLR2 argues that the TFV approach to reparations conflicts with the Reparations Order as it responds to victims harms and not also their needs.³⁹⁵ The Chamber wishes to clarify, as noted above, that references to victims needs in the Reparations Order that are to be addressed by the reparations programme must still be linked to the harm suffered. Thus, the

³⁹¹ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 26.

³⁹² Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 29.

³⁹³ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 30.

³⁹⁴ Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 30.

³⁹⁵ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 12.

TFV was correct to design a reparations programme that responds to the harm suffered by the victims.

C. Persecution and Deportation

199. The CLR2 also argues that the TFV has not addressed how it will address the harm of victims of the crime of persecution, or the deportation or forcible transfer of a population.³⁹⁶ The Chamber considers the CLR2's concern valid and as such, it directs the TFV to explain in concrete terms how it intends to address the harm of the aforementioned victims.

³⁹⁶ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 13.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

APPROVES the TFV's Updated DIP, subject to the conditions and directions set out in this Decision;

DIRECTS the TFV to engage in consultations with relevant stakeholders as described in paragraphs 77, 87, 89, 95, 103, 110, 160, and 191 of the present Decision;

INSTRUCTS the TFV to provide the Chamber with the additional information detailed in paragraphs 46, 89, 95, 96, 103, 110, 122, 126, 127, 131, 160, and 199, within sixty-days of notification of the present Decision;

INSTRUCTS the TFV to undertake a new security assessment closer to the time of implementation of reparations to ensure that they can be carried out safely;

DIRECTS the Registry, through the PIOS, to design and conduct all general outreach activities for the duration of the administrative eligibility process until the cut-off date set by the Chamber, designing the communication materials in consultations with the parties, the TFV, the VPRS, the OPCV, and the Country Office;

DIRECTS the Registry, through the VPRS, to conduct the administrative eligibility assessment of potential beneficiaries, including identification, collection of information, and eligibility determinations, in the manner described in the Addendum and the present Decision, with all victims to be identified and their eligibility determined by 31 December 2025 at the latest;

INSTRUCTS the VPRS to provide the Chamber with the information requested as detailed in paragraphs 183.b-c, 185.c, and 187 within sixty-days of notification of the present Decision;

DIRECTS the Defence to consult with Mr Ntaganda as to whether he is willing to provide an apology to the victims and to advise the TFV and CLRs of his answer within thirty-days of notification of the present Decision;

DECIDES that the parties may respond to the additional information provided by the TFV and VPRS in accordance with this Decision within ten days of notification; and

DIRECTS the parties, the TFV, and the Registry to review their underlying submissions and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential, if applicable, within five days from the notification of the present Decision.

Done in both English and French, the English version being authoritative.



Judge Chang-ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated this Wednesday, 30 August 2023

At The Hague, The Netherlands