

**Public Redacted Annex I to  
Registry submission pursuant to ICC-01/04-02/06-2860-Red**

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## I. Introduction

1. The Registry submits the present report pursuant to Trial Chamber II (“Chamber”)’s First Decision on the Trust Fund for Victims (“TFV”)’s Draft Implementation Plan for Reparations in the *Ntaganda* case, issued on 11 August 2023 (“11 August Decision”).<sup>1</sup> The 11 August Decision assigned to the Registry’s Victims Participation and Reparations Section (“VPRS”) the mandate of carrying out the identification of potential beneficiaries for reparations, the collection of information, and the administrative eligibility process.<sup>2</sup> The Chamber further directed the Public Information and Outreach Section (“PIOS”) to conduct general outreach activities for the duration of the two-year administrative eligibility process ending on 31 December 2025,<sup>3</sup> while the TFV is mandated to deliver reparations through an approved implementation program.<sup>4</sup>
2. In the 11 August Decision, the Chamber ordered the Registry, through the VPRS, to file the present submission, including the following information:
  - (1) the chosen mechanisms for the identification of victims and collection of information necessary to make a determination of the victims’ eligibility;<sup>5</sup>
  - (2) the chosen time-frame for the initial review of eligibility determinations;<sup>6</sup> and
  - (3) the confirmation that the VPRS will be able to make the necessary preparations and arrangements to start the process by 1 January 2024, at the latest.<sup>7</sup>
3. With this submission, the Registry provides information on the preparation phase (part II) and the activities planned (part III) for the identification of

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<sup>1</sup> Trial Chamber II, “First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations”, 11 August 2023, ICC-01/04-02/06-2860-Conf. A public redacted version was notified on 30 August 2023 (ICC-01/04-02/06-2860-Red).

<sup>2</sup> In the 11 August Decision the Chamber identified, under the “administrative eligibility process” two distinct (sub)processes: (1) the identification of potential beneficiaries, which itself is divided in the following activities: (i) outreach; (ii) identification; (iii) collection of information; and (2) the eligibility assessment. The eligibility assessment itself comprises a series of tasks to be undertaken by the VPRS, including issuing eligibility decisions, notifying eligibility decisions to the beneficiaries and the Common Legal Representatives of Victims (“CLRs”), and submitting periodic reports to the Chamber (“Update Reports”). See 11 August Decision, paras. 183 to 185.

<sup>3</sup> *Id.*, para. 184(a).

<sup>4</sup> *Id.*, para. 181.

<sup>5</sup> *Id.*, para. 184(b) and (c) and operative paragraph p. 65.

<sup>6</sup> *Id.*, para. 185(c) and operative paragraph p. 65.

<sup>7</sup> *Id.*, para. 187 and operative paragraph p. 66.

potential beneficiaries and eligibility assessment that will be carried out by the VPRS. It is expected that the VPRS will be able to start the eligibility assessment as soon as the Chamber has approved, or further amended as appropriate, the VPRS' proposed application of the criteria to assess eligibility and scope of the conviction, submitted to the Chamber as Annexes II and III to the current submission. Concurrently, the Registry will continue to implement activities in the field related to the identification of potential new beneficiaries and collection of their information, applications for reparations and supporting documents.

## II. Preparation phase

### A. Information collected and consultations held

4. As soon as the 11 August Decision was issued, the VPRS began conducting consultations with relevant interlocutors in order to design a comprehensive, meaningful and successful administrative eligibility process.
5. Owing to its duration (two years), and the fact that it will take place in a particularly challenging security situation in the field,<sup>8</sup> it is necessary that any such process is well thought through, that contingencies are identified, potential work-arounds contemplated in advance, and that relevant risks are managed.

#### 1) Consultations held with PIOS, TFV and CLR's

6. In the aftermath of the 11 August Decision, a first coordination meeting<sup>9</sup> was organised between the VPRS, including its field staff, the PIOS, the Office of the Director of the Division of External Operations, the Office of the Director of the Division of Judicial Services, and the TFV in order to take stock of the instructions of the Chamber, agree on the immediate actions to be taken and the various timelines to be followed, as well as to identify the main challenges. All actors committed to a constant and transparent flow of information. Regular meetings will continue to be held throughout the duration of the reparations cycle, to coordinate efforts, monitor the implementation of the 11 August Decision, and solve any issue that may arise in the course of these activities.
7. Additionally, as the main entities in charge of implementing the 11 August Decision, the VPRS and TFV have held meetings in order to set the contours of their respective roles and responsibilities in the overall process, exchange and

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<sup>8</sup> See Confidential *ex parte* Annex IV and *infra* para. 24.

<sup>9</sup> The meeting was held on 15 September 2023, and was also attended by a representative of the Chamber.

reflect on their respective experiences and expertise, and identify ways to integrate their parts of the process and avoid duplication of activities. The Registry wishes to express its gratitude to the TFV for the fruitful bilateral meetings on topics such as the TFV handover to the VPRS of the eligibility process related to the urgency screening in the context of the TFV's Initial Draft Implementation Plan ("IDIP"),<sup>10</sup> and the TFV's lessons learnt regarding identification and verification processes carried out to date.<sup>11</sup> Moving forward, both offices will continue to identify areas of cooperation and synergies.

8. Lastly, the VPRS had fruitful meetings and exchanges with CLR1<sup>12</sup> and CLR2,<sup>13</sup> respectively.<sup>14</sup> Discussions have been held, notably, on the current situation of participating victims, the identification process for potential beneficiaries and the eligibility assessment process. The VPRS expresses its gratefulness to both CLRs for their cooperation and engagement.

## **2) Consultations in the field**

9. Between [redacted] September 2023, the VPRS conducted two initial missions to, respectively, [redacted]. Both localities mark hubs from where activities to reach out to potential beneficiaries can be organised by the Registry. The purpose of these missions was to prepare the ground for future activities and meet with current as well as potential intermediaries, victims' groups, community-based organisations, representatives of international organisations, and local authorities. Interlocutors were consulted on the whereabouts of victims of the Case entitled to claim reparations, including those living in remote areas; and in order to establish a network of intermediaries and partners who can support Registry activities, including to channel victims seeking to contact the Registry (VPRS) in order to exercise their rights to participate in the reparations proceedings and claim reparations.
10. During the missions the VPRS held [redacted] meetings.
11. The VPRS intends to carry out the next mission in [redacted], notably to provide further groundwork as above, and also to meet with potential beneficiaries.

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<sup>10</sup> Pursuant to the 11 August Decision in which the Chamber instructs the VPRS to conduct the eligibility assessment. The meeting between the VPRS and the TFV took place on 28 September 2023.

<sup>11</sup> A first meeting took place on 23 October 2023.

<sup>12</sup> Ms Sarah Pellet, representing the group of former child soldiers in the proceedings.

<sup>13</sup> Mr Dmytro Suprun, representing the group of Victims of the Attacks in the proceedings.

<sup>14</sup> As regards the legal representation of potential beneficiaries, the Chamber recalled in the 11 August Decision (at para. 182) that "(...) the LRVs [CLR1 and CLR2], 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".

## *B. Preliminary results from consultations and information gathered*

### **1) General guidelines**

12. The Registry operates under the overarching principles that (i) the reparations process has to ensure that potential beneficiaries are treated with humanity, dignity and respect; and (ii) the process safeguards the victims' safety, physical and psychological well-being, and respects their right to privacy and safety. To implement these principles in Registry activities in the field, the following guidelines emerged:<sup>15</sup>

- the implementation of reparations, as spelled out by the Chamber in the 11 August Decision, calls for efficient cooperation and coordination between the different Court actors, including the TFV, that will carry out their respective activities - which are themselves closely connected;
- victims entitled to claim reparations, community leaders and victims' communities need to be involved in the design of the identification and eligibility processes, including by providing their views on how the VPRS identifies and collects information from potential beneficiaries;
- the eligibility process should not place an undue burden on victims claiming reparations. It is therefore important to carefully assess which information needs to be requested from victims in light of the guidance and eligibility criteria set out by the Chamber in the Addendum;
- the eligibility process shall be inclusive and accessible, and cognisant of victims' rights; it must cater for the diversity of the potential beneficiaries' population, taking into account vulnerabilities – which may, for some potential beneficiaries, link directly to their victimhood - their location and any other difficulties and challenges they may face when applying for reparations;<sup>16</sup>
- the identification of beneficiaries, collection of information and eligibility assessment processes are intertwined. While they shall run simultaneously, each has an impact on the other. It is for example usually the case that meetings with victims to assist them to apply

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<sup>15</sup> The guidelines are also in line with the principles of reparations established by Trial Chamber VI in the Reparations Order. *See* Trial Chamber VI, "Reparations Order", 8 March 2021, ICC-01/04-02/06-2659 ("Reparations Order"), paras. 30 and following.

<sup>16</sup> *See*, for example, Reparations Order, paras. 62 and 65.

for reparations inevitably lead to the identification of further potential beneficiaries. Likewise, as the process of identification and collection advances in the field, this leads to a more acute understanding of the events by those who are carrying the eligibility assessment;<sup>17</sup>

- the process in place must strike the right balance between efficiency/effectiveness, on one hand, and ensuring its reparative and dignifying potential on the other.<sup>18</sup> Moreover, as the identification and eligibility processes will be carried out throughout the next two years, sufficient planning and resources must be put in place to ensure that the various activities can be carried out in a sustainable manner in order to be as inclusive as possible;<sup>19</sup>
- each individual workflow that is part and parcel of the overall process must be tested, closely monitored and re-adjusted if need be. This includes conducting regular reviews and evaluation exercises of (i) the manner in which victims are informed; (ii) their experience accessing the application process; and (iii) the follow-up they receive after submitting their request for reparations. Victims' views and concerns will be taken into account during all relevant phases of the process.

## 2) Assumptions

13. The VPRS has set forth the following assumptions necessary for the successful implementation of activities that are in line with the 11 August Decision and the above guidelines.

### a. Evidentiary criteria, standard of proof, conditions of eligibility and scope of the conviction

14. The VPRS will be issuing eligibility determinations on the basis of the evidentiary criteria, standard of proof and the scope of the conviction as

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<sup>17</sup> The Registry obviously operates within the outer margins of the Chamber's findings as to the relevant acts subject to Mr Ntaganda's conviction.

<sup>18</sup> See International Center for Transitional Justice, "Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violation", 2017 ("ICTJ Guide"), p. 43.

<sup>19</sup> *Ibid.*

stipulated in the Judgment,<sup>20</sup> the Reparations Order<sup>21</sup> and the Chamber's Addendum to the Reparations' Order ("Addendum").<sup>22</sup>

15. In order to ensure transparency on how it intends to conduct the eligibility process, the VPRS submits two documents to the Chamber. These are:

- Annex II: a document detailing how the VPRS understands the evidentiary criteria, standard of proof and scope of the conviction; and
- Annex III: graphics summarizing the scope of the conviction, notably in light of Annex I of the Addendum.<sup>23</sup>

16. The VPRS stands ready to amend these documents if necessary as per the Chamber's orders, or may do so following a final determination of the pending appeals from CLR2<sup>24</sup> and the Defence.<sup>25</sup> The VPRS will inform the Chamber of any such modification in its periodic Update Reports.

17. In accordance with the practice established in the instant Case regarding the victim's participation process,<sup>26</sup> the VPRS proposes to consult the Chamber on any issue that would deserve its intervention and may arise in the course of the assessment of the victims' dossiers, to ensure the resolution of the issue before any determination is made on eligibility. This may serve to minimise eligibility litigation of singular cases pursuant to paragraph 185(d) of the 11 August Decision.

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<sup>20</sup> Trial Chamber VI, "Judgement", 8 July 2019, ICC-01/04-02/06-2359.

<sup>21</sup> *See supra* fn 15.

<sup>22</sup> Trial Chamber II, "Public Redacted version of "Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659", 14 July 2023, ICC-01/04-02/06-2858-Red. The VPRS will also gradually take over (from the TFV) the responsibility of identifying and assessing (as per the Chamber's guidance) eligibility of priority victims with urgent needs for their immediate access to the TFV's emergency response provided in the context of the IDIP. When conducting the urgency screening, the VPRS will apply the same standard and burden of proof than those applied for the eligibility assessments. *See* Trial Chamber II, "Decision on the TFV's Ninth to Twelfth Update Reports on the Implementation of the Initial Draft Implementation Plan" 31 August 2023, ICC-01/04-02/06-2868, operative paragraph p.14, and Trial Chamber II, "Decision on the TFV's initial draft implementation plan with focus on priority victims", 23 July 2021, ICC-01/04-02/06-2696, para. 32.

<sup>23</sup> The graphics may not necessarily be fully comprehensive regarding all the details of the scope of the conviction, as outlined in the Judgment's factual findings.

<sup>24</sup> CLR2, "Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the "Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659"", 30 October 2023, ICC-01/04-02/06-2875-Conf ("CLR2 Appeal Brief"). A Public Redacted version was notified on 31 October 2023, ICC-01/04-02/06-2875-Red.

<sup>25</sup> [redacted].

<sup>26</sup> Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67, para. 32.



### **b. Simplified and flexible approach**

18. In the 11 August Decision, the Chamber encouraged the VPRS to use a “simplified system that would allow it to collect the information necessary to make a determination of the victims’ eligibility”.<sup>27</sup> In this regard, the VPRS notes the Chamber’s adoption of many factual presumptions which override the need for victims to provide numerous documents in support of their victim status and harms suffered.<sup>28</sup> On the eligibility process itself, the Chamber specified that there was no need to “rule on the merits of individual applications for reparations”.<sup>29</sup>
19. The above guidance from the Chamber allows the VPRS to explore what would be the appropriate amount and mode(s) of collection of information necessary to make the eligibility assessment, adapted to the particular context at hand. This includes solutions to tackle difficulties as *inter alia* 1) a particularly complex scope of the conviction, 2) a high number of potential beneficiaries, many of whom continue to be displaced and/or have urgent needs, and 3) an ongoing volatile situation on the ground.<sup>30</sup> The VPRS will use relevant IT tools and solutions as well as support networks on the ground to address these challenges, as shall be further elaborated in the following.

### **c. Necessary resources to carry out the VPRS activities**

20. Identifying victims who have suffered harm as a result of crimes that were committed by Mr Ntaganda requires a secure and effective approach.
21. In the field, activities related to the identification of potential beneficiaries require, *inter alia*, a well-resourced VPRS team, working with a reliable network of local partners who will be able to support the VPRS activities, owing to their skills, knowledge of the context and access to relevant victims’ communities.<sup>31</sup> Furthermore, the VPRS is in the process [redacted]<sup>32</sup> to ensure that victims can contact the Registry if they want to apply for reparations, and that the information collected from them can be safely collected and channelled back to headquarters for the ensuing eligibility assessment.

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<sup>27</sup> 11 August Decision, para. 184(c).

<sup>28</sup> Addendum, paras. 57-59, 123-126.

<sup>29</sup> 11 August Decision, para. 184(c).

<sup>30</sup> The method of collecting the information proposed by the VPRS is further developed *infra*, at paras. 43 to 54.

<sup>31</sup> The VPRS resource in the DRC Country Office was abolished in 2021. Despite this, the VPRS kept a minimum regular contact to the extent possible with its main interlocutors, victims and intermediaries.

<sup>32</sup> [redacted].

22. As soon as further VPRS partners (individuals and/or organisations) who will assist it to carry on its activities are identified,<sup>33</sup> they will be trained to ensure that they have a solid knowledge of *inter alia*, the parameters of the Case. This entails in particular the eligibility criteria to benefit from reparations in the instant Case.<sup>34</sup> Moreover, the VPRS will ensure, through regular trainings and ongoing monitoring, that any individual who is interacting with potential beneficiaries follows best practices, including by respecting ethical rules and confidentiality.
23. The eligibility assessment will take place predominantly at ICC Headquarters throughout the entire two-year period. To ensure the quality and sustainability of the process over this period, the VPRS will need to dedicate a sufficient number of staff, for which the approved 2023 VPRS staffing levels are a minimum requirement.<sup>35</sup>

### 3) Identified challenges

24. The following challenges and contingencies in relation to the identification of potential beneficiaries and eligibility assessment have been identified:

- *Volatile security situation in Ituri*: reparations for victims of this Case are taking place in a political and security environment in Ituri that has deteriorated sharply since last year, with a recent surge of violence against civilians.<sup>36</sup> In Confidential *ex parte* Annex IV, the Registry provides the Chamber with an update on the security situation from its Country Analysis Unit.

In case the security situation in Ituri continues to deteriorate to the point that impedes the Registry's operations, the VPRS will provide a contingency plan to the Chamber;

- *High number of potential new applicants, many of whom are displaced*: it is expected that a number of potential beneficiaries will be particularly difficult to identify in light of the fact that many have been displaced since

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<sup>33</sup> This will be an ongoing process, as new partners will be identified on a continuous basis.

<sup>34</sup> To this end, the VPRS is developing tools such as *inter alia* interview scripts and check lists, and documents that detail the scope of the conviction.

<sup>35</sup> In its organisation of the legal processing of applications, the VPRS divides the victims' dossiers in batches, and assigns each batch to various team members, who organize their work around the following three tasks: (1) level 1: preliminary assessment of the applications; (2) level 2: cross-check of the assessment; and (3) level 3: quality check of the assessment. Moreover each level of review is performed by a different member of the team.

<sup>36</sup> As acknowledged by the Chamber in the Addendum, at para. 57.

the events,<sup>37</sup> with many having also fled to neighbouring countries, [redacted]. In this regard, both CLRs have reported having difficulties locating some of their clients;<sup>38</sup>

- *Parameters of the conviction:* the VPRS expects that the large,<sup>39</sup> yet at times very precise, parameters of the conviction will necessitate the VPRS team members, intermediaries and partner organisations working on the identification, collection of information and eligibility assessment to have an advanced understanding of the context. This will ensure that the process is properly conducted in full respect of the eligibility criteria set up by the Chamber. One of the main difficulties expected by the VPRS will be to assess whether villages where victims suffered relevant harm are considered inside or outside the scope of the conviction.<sup>40</sup> In order to assess the distances, the VPRS will 1) retrieve and cross-check the information from local authorities, and, whenever feasible 2) use a software that calculates the distances on maps, in straight line.<sup>41</sup> The VPRS will provide the results of these measurements to the Chamber on a rolling basis, as it assesses the concerned applications for reparations. [redacted] the VPRS has not yet been able to confirm with a degree of certainty the relevant distances between the victims' villages and the locations for which the Chamber made a positive finding in the Conviction Judgment, as instructed by the Chamber in the Addendum. [redacted].
- *Ongoing appeals to the Addendum:* the appeals to the Addendum submitted by, respectively, the Defence<sup>42</sup> and CLR2,<sup>43</sup> may directly affect VPRS activities, such as its communication to victims and partners, including on the criteria of eligibility for victims to obtain reparations<sup>44</sup> and the scope of the conviction.<sup>45</sup> [redacted].<sup>46</sup>

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<sup>37</sup> In this regard, see statistics on displacements provided by the International Organization for Migration, [RDC – Ituri: Suivi des mobilités \(Mars 2023\) | Displacement Tracking Matrix \(iom.int\), published on 24 May 2023](#) (last accessed on 3 November 2023).

<sup>38</sup> See, for example, CLR2, “Submissions by the Common Legal Representative of the Victims of the Attacks on the dossiers of the victims included in the Sample”, 3 March 2023, ICC-01/04-02/06-2836, para. 25.

<sup>39</sup> In terms of localities/events, time-frame and number of crimes.

<sup>40</sup> For details on the scope of the conviction, see Annex III.

<sup>41</sup> The VPRS is considering [redacted] one of the softwares to be used for this purpose.

<sup>42</sup> [redacted].

<sup>43</sup> CLR2 Appeal Brief.

<sup>44</sup> [redacted].

<sup>45</sup> The CLR2 Appeal Brief refers, *inter alia*, to the Chamber's approach of the scope of the conviction in the Addendum, for example in relation to “the victims who suffered harm in the forest or bush surrounding the villages for which positive findings were entered in the Judgment (para. 107).

<sup>46</sup> [redacted].

As a mitigating measure, pending a final determination of the issues presently on appeal, the VPRS will ensure that its partners in the field are informed of the particular issues that are currently subject to appeal. As much as possible, the VPRS will also remain cautious in its communication in order not to raise any victims' expectations regarding their eligibility until there is legal certainty on the criteria to obtain reparations. It is proposed that the VPRS postpones the actual issuance of eligibility determinations until a final judicial determination of the eligibility criteria is made.

### **III. Activities to be carried out**

#### *A. Identification process*

##### **1) Public Information and Outreach**

25. In the 11 August Decision, the Chamber directed the Registry, through PIOS, to “design and conduct all general outreach activities for the duration of the administrative eligibility process [by 31 December 2025 at the latest], designing the communication materials in consultations with the parties, the TFV, the VPRS, the OPCV, and the Country Office”.<sup>47</sup>
26. Acknowledging that the content as well as the timing of any public message regarding reparations are likely to have an impact on their respective activities, all relevant Court actors have agreed on the need to be consulted on the content of any communications about reparations, with a view to (i) managing their impact on their respective activities, and (ii) creating a maximum of synergies.
27. Outreach activities concerning reparations will take place at two levels, concurrently. The PIOS will be conducting outreach sessions and deliver key messages on reparations to affected communities, while the VPRS will prepare and disseminate targeted messages to potential beneficiaries, ahead and during the identification process and collection of information.

##### *Information campaign and community awareness*

28. Consultations between relevant actors on outreach activities have started and will continue throughout the reparations cycle.

##### *VPRS targeted messages to potential beneficiaries*

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<sup>47</sup> 11 August Decision, para. 184(a) and operative paragraph, p. 65.

29. It is important for potential beneficiaries to be well informed about the reparations process and the eligibility criteria to receive reparations, ahead of any collection of information. To this end, the VPRS plans to carry out the following targeted informative activities:
- a. conveying messages on reparations, including the scope of the conviction, eligibility criteria and types of reparations approved by the Chamber, to key interlocutors (community leaders/representatives; local/regional human rights organisations; etc.);
  - b. once it identifies potential beneficiaries, the VPRS will first organise information sessions with pre-identified victims and victims' groups, so they can be informed of the entire process, and provided with sufficient information regarding the criteria to be eligible for reparations, the types of reparations that have been approved by the Chamber and the expected timelines. They will also be informed about how to provide supplementary information and how to further liaise with the VPRS.
30. All messages will be prepared in collaboration with the TFV and the CLR. The Registry will ensure that they are communicated in a language and format that victims and interlocutors understand, and that their queries are systematically answered in a prompt and comprehensive manner.

## **2) Identification of potential beneficiaries**

### **a. Information gathered so far**

31. In 2020, the Registry carried out a preliminary mapping of potential new beneficiaries of reparations, traveling to the Case locations as well as locations where victims have been displaced [redacted], in order to gather information to estimate the number of potential new applicants who may come forward to claim reparations as victims of the attack ("Preliminary Mapping"). The Registry provided an estimate of 1,100 potential additional beneficiaries, as a preliminary result, indicating that the mapping would still need to be completed, ideally with the help of the CLR. <sup>48</sup>
32. Since then, while not actively pursuing the survey of the population of potential beneficiaries village-by-village, the VPRS field staff continued to gather information on potential beneficiaries of reparations in the Case and their whereabouts. In 2022, it reported to the Chamber that it had mapped out, in different locations in Djugu territory, approximately 780 potential

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<sup>48</sup> Annex I to "Registry Observations on Reparations", 28 February 2020, ICC-01/04-02/06-2475-AnxI, para. 25. The VPRS notes that, at the time of the Preliminary Mapping, it was cautious not to raise expectations, and focused its consultations on community leaders in each of the respective locations, and did not meet directly with victims.

beneficiaries who had never been in contact with the ICC noting that most were likely to have been accounted for in the Preliminary Mapping exercise.<sup>49</sup> At the same time, the VPRS is grateful for relevant calculations and estimates by other actors such as the TFV, which serve as very useful comparative figures. Further information continues to be collected as Registry missions and activities progress in the field.

## **b. Mechanism for the identification of potential beneficiaries**

### **i. Actors involved**

33. The VPRS will identify potential beneficiaries with the assistance of the following actors:

*Civil Society Organisations and local authorities*

34. The VPRS has been actively identifying and consulting with reliable civil society organisations, local authorities and representatives<sup>50</sup> in order to retrieve information or documents on who was present at the time of the attacks and potentially suffered harm as a result of crimes attributed to Mr Ntaganda. Some of these interlocutors will assist the VPRS to locate where victims are currently displaced.<sup>51</sup> These consultations are ongoing and will continue during the entire cycle – not least as displacements are continuing due to the extremely dynamic situation on the ground.

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<sup>49</sup> These potential beneficiaries could fall within the group of victims of the attacks and the group of former child soldiers. Registry “Registry Observations on the Trust Fund for Victims’ Draft Implementation Plan”, 18 May 2022, ICC-01/04-02/06-2766-Conf, para. 19. A public redacted version was notified on 19 May 2022 (ICC-01/04-02/06-2766-Red).

<sup>50</sup> See *supra*, para. 9.

<sup>51</sup> [redacted].

*Victims and potential beneficiaries*

35. The VPRS will as much as possible also retrieve information on potential beneficiaries through the survivors themselves, who know each other and who can also refer their family members who may qualify for reparations as direct and/or indirect victims. In this regard, CLR1 provided the VPRS with information regarding the family composition of the clients she had managed to gather over the last year. CLR1 also offered to provide any further information she might receive, including updated contact information of her clients, so that the VPRS can reach out to them and assist any potential beneficiary to apply for reparations.<sup>52</sup> In the same vein, CLR2 agreed to assist the VPRS with the identification of further potential beneficiaries, to the extent possible.<sup>53</sup>
36. In particular, further beneficiaries may be identified amongst, or by victims who are currently enrolled, or are in the process of being enrolled either in the *Lubanga* or the *Ntaganda* reparations program, in the context of TFV intake interviews.<sup>54</sup> TFV and the VPRS are currently discussing how these victims could be best identified.

*Office of the Prosecutor*

37. The VPRS notes that the Judgment itself provides specific findings on potential beneficiaries of reparations for a number of crimes committed during the attacks. These findings were recalled in Annex I of the Addendum.<sup>55</sup> When appropriate, the VPRS will reach out to the Office of the Prosecutor to request information that may serve to locate these individuals.

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<sup>52</sup> Meeting held between the VPRS and CLR1 on 2 October 2023, emails from CLR1 to VPRS, 26 October 2023 at 17:39, and 1 November 2023 at 11:17. CLR1 highlighted in this regard that one of the key challenges, notably related to security, is the displacement and/or relocation of many of the victims in the past few years and the difficulty to reach them.

<sup>53</sup> Meeting held between the VPRS and CLR2 on 6 October 2023; email from CLR2 to VPRS, 1 November 2023 at 11:50. CLR2 stressed that he has been experiencing for several years huge difficulties in reaching many of his clients because of the large displacement of the local population throughout Ituri and outside. CLR2 also anticipates that such difficulties will persist in the future.

<sup>54</sup> For instance, former child soldiers who have been recognized as beneficiaries in the *Lubanga* case and who experienced sexual and gender based crimes (“SGBV crimes”) during their time with the UPC, may be eligible to (additional) reparations in the *Ntaganda* case - to the extent that their harm was not already repaired in the context of the *Lubanga* reparations programs. In the same manner, the TFV’s reparations program may be an opportunity for former child soldiers victims to evoke any children born out of rape and sexual slavery against child soldiers, or any other indirect victim who could claim reparations in the context of the *Ntaganda* case.

<sup>55</sup> For example, in Kilo, in the context of the First Operation, the crime of murder was confirmed in relation to, notably “a Ngiti man and a pregnant Lendu woman who had been detained in a pit”, and “a Nyali man”. See Annex I to the Addendum, p. 10.

## ii. Time-frame

38. While the identification of reliable sources of information regarding the whereabouts of victims will continue throughout the cycle, through its mappings the VPRS has already effectively pre-identified a number of victims who can be reached out to regarding the possibility of requesting reparations.
39. Current efforts, ideally to be tackled until year's end, concentrate on following up on leads regarding potential beneficiaries who reside in Mahagi territory, in at least [redacted] Internally Displaced Persons ("IDP") sites. The VPRS will identify and train partners who have access to these sites, so they can contact and inform potential beneficiaries about their rights.
40. [redacted] The next step, after securing said authorizations, will be to identify partners and focal points [redacted], who can assist with the identification of potential beneficiaries. The VPRS notes in this regard that according to information it already gathered, many individuals [redacted], which is likely to make their identification more challenging.
41. In relation to former child soldiers victims, following the receipt of lists of family members of direct victims gathered by CLR1,<sup>56</sup> the VPRS will proceed with locating these individuals and informing them of the reparations process and their potential eligibility to receive reparations.
42. The VPRS will keep the Chamber informed about further identification activities through its Update Reports.

## 3) Collection of information

### a. Application process

43. The complexity of the parameters of the instant Case, the security situation in the field, coupled with the very high number of victims potentially eligible for reparations, mandates the use of a hands-on, yet flexible approach for the collection of information from victims. The VPRS notes the Chamber's mention of a 'simplified system' to be applied in this regard due to the collective nature of the reparations award.<sup>57</sup>
44. The VPRS is currently developing a simplified reparations form<sup>58</sup> tailored to the parameters of the *Ntaganda* case, taking into account the information that

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<sup>56</sup> Email from CLR1 to VPRS, 26 October 2023 at 17:39.

<sup>57</sup> 11 August Decision, para. 184(c).

<sup>58</sup> While the use of a form to collect information from victims is not mandatory in the context of the reparations process, a form represents a reliable tool to register information from victims, which can also be necessary in case of an appeal on an eligibility decision. Moreover, the VPRS notes that, for



needs to be collected from applicants – mindful of the Chamber’s guidance as per above -. This process requires reflecting on lessons learned so far in the instant Case as well as in the other cases,<sup>59</sup> and conducting consultations with various stakeholders, in particular the TFV and the CLR, as well as the survivors themselves and the VPRS’ partners in the field who will be associated with the exercise of collecting information. In practical terms, the VPRS is thus developing, alongside the “traditional” individual(ized) form, two additional yet complementary tools to collect information from potential beneficiaries, alongside IT solutions to render information collection more effective, immediately available at HQ and, incidentally, more secure for those operating in the field.

#### *Household approach*

45. The VPRS is considering using a ‘household’ form, which would be a tool catering for a more efficient collection of information of a sufficiently identifiable group with similarities of harm. For example, families may wish to be met as a unit and submit a combined request for reparations. The use of a household approach may also be more appropriate to collect information related to certain types of victimization, also beyond a family bond, as long as the group members remain sufficiently identifiable.
46. The VPRS is currently developing and testing a group/household form adapted to the context of Ituri and the instant Case. Based on prior VPRS experience, certain conditions must be met and a methodology needs to be put in place to ensure that victims who apply for reparations using a household form get to share their story in a meaningful way, that any individual who is part of the household/group is not unnecessarily or forcibly exposed. Likewise, it needs to be ascertained that individual experience or harm is not disregarded when using this approach. The household form and methodology are being tested in the field prior to being put to use.

#### *Data collection tool*

47. The VPRS is currently developing an electronic interactive form/questionnaire – including for the above household form -, that aims to facilitate data collection with the use of focused and skip logic questions. It is expected that using this tool will ensure, as much as possible, that all relevant information from the potential beneficiary is retrieved at the moment of the interview,

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applicants, a form is “the documentary representation of what is often a one-time, extraordinary and usually very direct and personal experience for victims of seeking justice”. See ICTJ Guide, page 10.

<sup>59</sup> For instance, a form was already used by the VPRS to register the new potential beneficiaries in late 2020/early 2021. The VPRS will also consult the TFV on, notably, the different reparations forms it used in the context of the *Al Mahdi* and the *Lubanga* cases.

reducing the future need to collect supplementary information from the victims. Moreover, it is expected that taking down answers to close-ended questions, *in lieu* of full narratives,<sup>60</sup> will result in efficiency gains in terms of data entry, as the answers will be directly exportable to the VPRS database (VAMS), and legal analysis.

48. The VPRS has identified the data-collection tool that it wishes to use, and is currently verifying the manner in which it can be used to ensure its compliance with the Court's information security framework. Moreover, the VPRS is currently testing the software to ensure its compatibility with its database as well as its capacity to be used effectively in the field, both online and offline, and on a variety of devices. The VPRS envisages a period of testing of this technology in the field, as well as a training period for individuals who will be using it.<sup>61</sup>

#### **b. Actors involved**

49. The VPRS has identified and engaged with a number of community-based and civil society organisations in Ituri and/or individuals who would have the capacity and the interest to assist victims to apply for reparations. The VPRS is assessing to which extent said interlocutors may be involved in the collection of information.<sup>62</sup> The VPRS envisages to locally recruit individuals who will be able to assist victims to apply for reparations, as they will speak the local languages, will be properly trained by the VPRS staff [redacted].

50. Regular trainings will be organised in order to ensure that every individual working with the VPRS is knowledgeable about the Case and the eligibility criteria to receive reparations, on how to use the data collection tool, as well as on good practices when interacting with victims.

#### **c. Time-frame**

51. The VPRS expects that the templates for individual and household forms will be developed rapidly, in close cooperation and consultation with the TFV and the CLR, and ready to use in the field by 1 January 2024.<sup>63</sup> Formalizing the

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<sup>60</sup> The interviewer will still have the option of taking down the victim's full narrative, through open text answers in the questionnaire. This option will be used when it is not directly evident that the events described by the victim fall inside the scope of the conviction; this, in turn, enables the VPRS to thoroughly analyse all elements of the victim's story and subsequently motivate its eligibility determination appropriately.

<sup>61</sup> Individuals who will be using such a tool would be either the VPRS staff or individuals trained and acting under the control of the VPRS.

<sup>62</sup> In assessing these potential partners' capacity to assist it for the reparations process, the VPRS is also consulting other actors of the Court who may have interacted or worked with them in the past.

<sup>63</sup> Field testing has begun in October 2023.

contractual relationship with the data-collection tool vendor, finalizing the design of the interface and deploying it in the field (including conducting the proper training of those who will be using it) is likely to be a continuous process into 2024.

52. Hence, even if not operating yet in full capacity by the beginning of 2024, the VPRS expects to be able to start the collection of reparations forms from pre-identified potential new beneficiaries at the latest as of 1 January 2024.
53. [redacted],<sup>64</sup> the VPRS will endeavour to start as of its next mission [redacted] with the collection of information from potential (non-participant) pre-identified priority victims.<sup>65</sup>
54. The VPRS will provide updates on the roll-out of the collection process in its periodic Update Reports to the Chamber.

## *B. Eligibility assessment process*

### **1) Eligibility assessment mechanism and time-frame**

55. The VPRS will assess all victim dossiers based on the eligibility criteria set by the Chamber in the Reparations Order and its Addendum, and as described in Annexes II and III to the current submission.
56. With the present approved resources of the VPRS legal team, it is expected that in 2024 an average of 200 to 300 victims' dossiers can be processed monthly, noting that the pace of any dossier's assessment depends on (1) any prior assessment of the dossier performed at an earlier stage of the proceeding, (2) the completeness of the dossier, (3) the complexity of the dossier, (4) the resources available to fulfil this function, and (5) the level of expertise/training of the team members involved in the eligibility assessment. The VPRS expects that the use of alternative tools to collect information – such as the household form and the electronic questionnaire - will trigger efficiencies in the time devoted to the eligibility assessment and reduce the need to seek additional information from applicants.
57. The VPRS will assess victims' dossiers on a rolling basis, starting as soon as the Chamber validates, or amends the VPRS proposed assessment criteria (in Annex II) and scope of the conviction (in Annex III).
58. The VPRS will carry the eligibility assessment, in the following order:

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<sup>64</sup> [redacted].

<sup>65</sup> These potential beneficiaries are individuals already known to the VPRS . *See infra* para 63.

### 1. *Priority victims*<sup>66</sup>

59. The TFV currently assesses the eligibility and conducts the urgency screening of priority victims. Once the handover from the TFV is finalised, the VPRS will ensure that the dossiers of victims who appear to have urgent needs will be assessed in priority. To this end, the VPRS team in the field will regularly inform the legal team in charge of the eligibility assessment of any dossier collected from a victim which features (what is preliminary assessed as) urgent needs. Upon reception, the team in charge of the eligibility determination will prioritize the assessment of said dossier and verify the urgency criteria at the same time as it conducts the eligibility assessment.

### 2. *Participating victims*

60. This group is further divided in the following subgroups: (1) former child soldier victims; and (2) Victims of the Attacks.

61. In relation to the group of the Victims of the Attacks, in 2020, following the issuance of the Judgement and pursuant to the Chamber's order,<sup>67</sup> the VPRS conducted a re-assessment of the 2,132 victims dossiers authorized to participate in the *Ntaganda* proceedings,<sup>68</sup> ("Re-Assessment Exercise"). As a result of the Re-Assessment Exercise, which took into account further guidance provided by the Chamber,<sup>69</sup> the VPRS concluded that 1460 victims (out of the 2,121 participating victims) were eligible to receive reparations.<sup>70</sup>

62. The VPRS recalls that the Re-Assessment Exercise was of a preliminary nature. Moreover, the Chamber since then provided further clarifications on the scope of the conviction in Annex I of the Addendum, which is currently under

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<sup>66</sup> As set out in the Reparations Order, "priority [in accessing reparations] ought to be given to victims who are in a particularly vulnerable situation or require urgent assistance". These include: individuals who require immediate physical and/or psychological medical care, victims with disabilities and the elderly, victims of sexual or gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers. *See* Reparations Order, para. 214.

<sup>67</sup> Trial Chamber VI, "First Decision on Reparations Process", 26 June 2020, ICC-01/04-02/06-2547, para. 29 and p. 19.

<sup>68</sup> During the exercise, the VPRS identified a number of duplicate applications, which brought the actual number of participating victims at trial down to 2,121.

<sup>69</sup> Trial Chamber VI, "Decision on issues raised in the Registry's First Report on Reparations", 15 December 2020, ICC-01/04-02/06-2630.

<sup>70</sup> All the victims' dossiers who have been preliminary assessed as falling outside the scope of the conviction belonged to the group of the Victims of the Attacks. *See* Registry, "Public Redacted Version of Annex I to the Registry Second Report on Reparations", 10 February 2021, ICC-01/04-02/06-2639-AnXI-Red, para. 9.

appeal. The VPRS therefore submits that the dossiers of all participating victims should be re-assessed *de novo*.

### 3. *Non-participating victims who are known to the VPRS*

63. This category comprises potential beneficiaries identified through: (1) 50 reparations forms (filled-in on *Lubanga* reparations forms) received by the VPRS in December 2020 [redacted]; and (2) 53 forms collected by the VPRS field staff in late 2020/early 2021, as part of the sample analysed by the VPRS in the context of the Registry reports on reparations in the instant Case.<sup>71</sup> As the forms were completed a few years ago, the VPRS considers that it first needs to contact these victims and inform them about the reparations process and answer any questions they may have. During these meetings the VPRS will also retrieve information related to their current situation. Should they be assessed by the VPRS as potential priority victims, and their eligibility is confirmed, the VPRS will provide their dossiers to the TFV for the urgency screening.
64. The VPRS also includes in this category all the beneficiaries of reparations in the *Lubanga* case<sup>72</sup> who, due to the overlap between the scope of the *Lubanga* and *Ntaganda* cases as regards the crime of enlistment or enrolment of child soldiers,<sup>73</sup> are considered eligible for reparations in the *Ntaganda* case by the

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<sup>71</sup> These forms were filled-in by potential new beneficiaries of reparations, and referred to as “Category III” victims in the Registry’s Reports on Reparations (respectively, ICC-01/04-02/06-2602-AnxI-Red, paras. 38, 42-44, and ICC-01/04-02/06-2639-AnxI-Red, paras. 38-54). Although they are not applications for reparations, these forms contain similar questions and content. Hence, the VPRS is of the view that the information collected thereon is sufficient for the purpose of determining eligibility for reparations.

<sup>72</sup> Trial Chamber II, “Public redacted version of Twelfth Decision on the TFV’s administrative decisions on applications for reparations and additional matters, ICC-01/04-01/06-3558-Conf”, p. 11.

<sup>73</sup> Mr Lubanga was convicted of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities between 1 September 2002 and 13 August 2003 in Ituri, while Mr Ntaganda was convicted of conscripting and enlisting children under 15 years of age between approximately 6 August 2002 and 31 December 2003, and their use to participate actively in hostilities, in the context of the First Operation and in the UPC/FPLC assault on Bunia in May 2003 between approximately 6 August 2002 and 30 May 2003. Additionally, Mr Ntaganda was convicted of rape and sexual slavery of child soldiers as war crimes, against children under the age of 15 years incorporated into the UPC/FPLC, between approximately 6 August 2002 and 31 December 2003.

Chamber.<sup>74</sup> The VPRS will issue eligibility determinations for each dossier,<sup>75</sup> in order for the Chamber to issue judicial decisions.

#### 4. Newly identified victims

65. This category comprises all other (non-priority) potential beneficiaries identified in the course of identification activities, and whose information is collected in the course of the process.
66. In order to map out the sequence of collection of information and eligibility assessment, and avoid bottlenecks or variances in the process, regular coordination meetings will be held between the VPRS team involved in the identification of potential beneficiaries and collection of documents in the field and the team in charge of the eligibility process at headquarters, for proper resource and workflow planning. Speed will depend on how quickly VPRS resource persons can be found, trained and activated in the field – progress will be closely monitored and reported upon.

## 2) Notifications of eligibility determination and review mechanism

### a. Notification of negative assessments and review process

67. Pursuant to the 11 August Decision, if, as a result of its initial eligibility determination, the VPRS finds that a potential beneficiary is not eligible for reparations, it will notify the potential beneficiary and the OPCV.<sup>76</sup>

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<sup>74</sup> Addendum, para. 269. The VPRS would however exclude from this group those victims who have been identified as having already participated in both the *Ntaganda* and the *Lubanga* proceedings. In this regard, the VPRS continues its efforts to identify any victim who benefited from reparations in the *Lubanga* case, and participated in the *Ntaganda* proceedings. See also Registry, “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’” (ICC-01/04-02/06-2786)”, 8 November 2022, ICC-01/04-02/06-2788, para. 14; [redacted]. To this end on 19 October 2023, the VPRS provided CLR1 with a list of *Ntaganda* victims who may be beneficiaries of reparations in the *Lubanga* case, pursuant to the Chamber’s decision in the case “Decision on the joint application for information on victims involved in proceedings in both *The Prosecutor v. Thomas Lubanga Dyilo* and *The Prosecutor v. Bosco Ntaganda*”, 11 November 2020, ICC-01/04-01/06-3493. The VPRS wishes to express its gratitude to CLR1 for her assistance in this matter.

<sup>75</sup> Since the Chamber already decided that “all victims recognised as beneficiaries in the *Lubanga* case [...] will also be eligible for reparations in the *Ntaganda* case” (see Addendum, para. 269 (iii), referring to Reparations Order, para. 235), the VPRS will not re-assess their dossiers (submitted in the context of the *Lubanga* reparations), nor ask these victims to submit any (new) *Ntaganda*-specific reparations form.

<sup>76</sup> 11 August Decision, para. 185(b). As per usual practice, during the phase of completion of eligibility assessments, the VPRS is in communication with the CLR1s in order to raise any potential issue as regards the eligibility of their clients, ahead of any (formal) determination.

68. In this regard, both CLRs have confirmed to the VPRS<sup>77</sup> that, should the VPRS issue a negative initial determination, they would seek additional information from the victim concerned. This equally applies whether the victim was a participating victim, or they are newly identified victims. The VPRS stands ready to support the CLRs, if needed.
69. The VPRS notes that the CLR will have thirty days, following the issuance of the (negative) determination, or the notification to the victim, to complete their client's dossier and re-submit it to the VPRS.<sup>78</sup>
70. In the 11 August Decision, the Chamber requested the VPRS to estimate the turnaround time for reviewing its initial eligibility determination following the receipt of additional information, and inform the Chamber accordingly.<sup>79</sup> After carefully considering its internal organisation regarding the eligibility determination process, the VPRS currently estimates that it will be in a position to review an initial assessment and issue a final determination on eligibility within 30 days of its (re)submission by the CLR. While this time-frame currently seems reasonable, the VPRS would seek the Chamber's permission to re-adjust it subsequently, should it see a need.
71. Should the VPRS issue a negative final determination following the receipt of additional information, it will notify the prospective beneficiary and the OPCV accordingly, and the applicant will have 30 days to appeal said determination before the Chamber.<sup>80</sup>

#### **b. Notification of positive eligibility determinations after judicial validation**

72. As per the 11 August Decision, the VPRS will provide the result of its (positive and negative) eligibility determinations to the Chamber, on a regular basis, together with its Update Reports.<sup>81</sup>
73. Following a positive judicial decision issued by the Chamber,<sup>82</sup> the VPRS will provide the TFV with the beneficiaries' dossiers for follow-up. The Registry notes that, according to paragraph 185(g) of the 11 August Decision, it is the responsibility of the TFV to notify the beneficiary of a positive eligibility decision. The VPRS stands ready to assist the TFV in this matter.

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<sup>77</sup> See *supra* fn 52 and 53.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Id.*, para. 185(c).

<sup>80</sup> *Id.*, para 185(d).

<sup>81</sup> See *infra*, para. 75. At the same time as it submits its report, the VPRS will provide the Chamber with access to the relevant victims' dossiers.

<sup>82</sup> *Id.*, para. 185(e).

### 3) Reports to the Chamber

74. Pursuant to the 11 August Decision, the VPRS will regularly submit Update Reports to the Chamber.<sup>83</sup> Unless otherwise instructed, the VPRS proposes to submit these Update Reports once every four months.
75. These reports will include the VPRS determinations related to its eligibility assessments,<sup>84</sup> so they can be judicially approved by the Chamber, as well as, *inter alia*, statistics about the positive and negative eligibility determinations. The VPRS will also provide the Chamber with any updates on the conduct of its activities, information on issues faced and solutions implemented, and include any other element the Chamber may find appropriate.

### IV. Conclusion

76. The VPRS hereby confirms its preparedness to start its activities according to the different timelines outlined in its current submission, and at the latest by 1 January 2024.

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<sup>83</sup> *Ibid.*

<sup>84</sup> *See supra*, para. 72.