

## Annex A

Public redacted version of “Initial Draft  
Implementation Plan with Focus on  
Priority Victims”

(“Initial Implementation Plan” or “IIP”)

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## I. INTRODUCTION

1. The Trial Chamber directed the Trust Fund to submit “an initial draft implementation plan focused exclusively on the options for addressing the most urgent needs of victims that require priority treatment, relying as much as possible on existing mechanisms, identified intermediaries, and partnerships already established”.<sup>1</sup> The Trial Chamber set out that “priority ought to be given to victims who are in a particularly vulnerable situation or require urgent assistance.”<sup>2</sup> The Trial Chamber went on to develop this principle, initially set out in the 2015 *Lubanga* Amended Reparations Order, by ruling that, when determining priorities, attention should be given to 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.<sup>3</sup>

2. The Trust Fund has drawn from this order the following guiding principles:

- a. The purpose of this IIP is to enable the Trust Fund, within the scope of its abilities and prevailing operational circumstances, to provide interim redress of the harm suffered by the most vulnerable victims and those in urgent need, pending the development and implementation of a full Draft Implementation Plan (“DIP”) to be approved by the Trial Chamber.
- b. The IIP must focus on the period starting with the approval of the IIP and ending with the approval of the DIP, on the basis that the DIP will also address Priority Victims and propose additional measures that will cover the period until all projects are operational; however, these measures and projects will be part of the full reparations programme and may remain operational until other measures are in place.
- c. As it pertains to *initial* implementation, any measures enacted pursuant to the IIP should (i) endeavour to support victims without prejudice to their possible access to reparative measures under the DIP; (ii) avoid creating a prejudicial advantage for participation over victims enrolling later in the full reparations programme; and (iii) envisage a smooth transition into the full reparations programme, pursuant to the

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<sup>1</sup> Reparations Order, para. 252.

<sup>2</sup> Reparations Order, para. 214, see also, para. 92.

<sup>3</sup> Reparations Order, paras 93 and 214.

reparation principle of “no over-compensation”,<sup>4</sup> which will be addressed in the DIP.

3. The Trust Fund notes that the Trial Chamber left ample discretion to the Trust Fund in the design of the DIP and also provided specific directions and suggestions throughout the Reparations Order. Directions, which are critical to the IIP are addressed herein. However, as consultations are still ongoing, the Trust Fund has refrained from fully assessing yet in the IIP the harm suffered by the victims and all possible types and modalities of reparations.

4. In this context, the Trust Fund proposes comprehensive reparations for Child Soldiers in the IIP, based on the delivery mechanism in place in the *Lubanga* case. Other existing partnerships of the Trust Fund also offer the prospect to take directly measures to address more comprehensively the situation of Child Soldiers who suffered from rape or sexual slavery and children born out of rape or sexual slavery. However, the Trust Fund will only address in the DIP whether other modalities of reparations are appropriate compared with the ones proposed in this IIP, and provide full reasons for the chosen approach in the DIP.

5. Similarly, the eligibility assessments proposed in this IIP are proposed in consideration of the urgency of the situation of Priority Victims. They will be further detailed and built on in the DIP, upon conclusion of the relevant consultations. Nevertheless, the proposed eligibility assessments will adhere to the required level of scrutiny and objectivity for this assessment by applying the standard of proof set out in the Reparations Order.

6. More generally, the Trust Fund considers that it will draw lessons learned from the experience of implementing the IIP, which it expects to apply to the design and implementation of the measures proposed in the DIP.

## II. ELEMENTS

### 1. Priority Victims

7. The IIP shall address only victims who “require priority treatment” (“Priority Victims”).<sup>5</sup> In the reparations principles developed in the Reparations Order, the Trial Chamber recognised the need to prioritise certain victims who are “in a particularly vulnerable situation or require urgent assistance”.<sup>6</sup> The Trial Chamber went on to develop this principle by ruling that, when determining priorities, attention should be given to individuals who require

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<sup>4</sup> Reparations Order, paras 99-100.

<sup>5</sup> Reparations Order, para. 252.

<sup>6</sup> Reparations Order, para. 92.

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.<sup>7</sup>

8. The categories of Priority Victims determined by the Trial Chamber are based on a combination of factors: the common element of some categories is the harm experienced (for instance, that of former child soldiers or victims of sexual or gender-based violence) while that of other categories is the current situation of the victim (for instance, that of individuals who require immediate physical and/or psychological medical care, victims who are homeless or experiencing hardship, as well as the elderly). The categories do not distinguish between direct and indirect victims<sup>8</sup> and do not distinguish between represented and unrepresented victims.

9. Victims in the *Ntaganda* case are, on the one hand, victims of crimes against child soldiers (“Child Soldiers”) who formed part of the armed forces of the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo (UPC/FPLC).<sup>9</sup> The UPC/FPLC had the “common plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC’s military campaign against the Rassemblement Congolais pour la Démocratie Kisangani Mouvement de Libération (RCD-K/ML), and to prevent them from returning to the assaulted localities”;<sup>10</sup> accordingly, the targeted Lendu population is the other group of victims in this case (“Victims of the Attacks”). Victims of these two groups applied to participate in the proceedings and were allowed to participate, thereby showing *prima facie*<sup>11</sup> that they are victims of the charges against Mr Ntaganda. A total of 1,837 Victims of the Attacks, including 776 female victims and 1061 male victims, and 284 Child Soldiers, including 62 female victims and 222 male victims, participated in the trial proceedings.<sup>12</sup> The participating victims are represented respectively by two legal representatives (“LRVs”): the LRV Victims of the Attacks, and the LRV Child Soldiers.

10. In order to become reparation beneficiaries, direct and indirect victims must be found, pursuant to the applicable standard of proof set out in the Reparations Order, to have suffered

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<sup>7</sup> Reparations Order, paras 93 and 214.

<sup>8</sup> See Reparations Order, paras 31 *et seq.* on indirect and direct victims.

<sup>9</sup> Child Soldiers are victims of conscription and enlistment between on or about 6 August 2002 and 31 December 2003 as well as victims who were used to participate actively in hostilities between on or about 6 August 2002 and on or about 30 May 2003, with respect to the participation in the first Operation in May 2003, victims who were used as bodyguards for UPC/FPLC soldiers and commanders and those who were used to gather information about the opposing forces and MONUC personnel.

<sup>10</sup> Reparations Order, para. 25.

<sup>11</sup> Decision on victims' participation in trial proceedings, 6 February 2015, ICC-01/04-02/06-449, para. 44.

<sup>12</sup> Reparations Order, para. 22.

harm from a crime for which Mr Ntaganda has been convicted.<sup>13</sup> As part of one of the five essential elements of a Reparations Order, the Trial Chamber also set out the eligibility criteria that the Trust Fund needs to apply in determining the eligibility of beneficiaries of reparations in this specific case.<sup>14</sup> In short, eligibility is determined “by reference to the territorial, temporal and subject-matter scope of the crimes for which Mr Ntaganda was convicted”.<sup>15</sup> The Trial Chamber also established, by reference to the 2015 *Lubanga* Reparations Order, the criteria relevant to the eligibility of indirect victims.<sup>16</sup>

11. The Trial Chamber refrained from making specific rulings on the eligibility of individuals for reparations and instead tasked the Trust Fund with the development of “a detailed proposal as to the way in which it expects to conduct the administrative eligibility assessment, based on the eligibility requirements established by the Chamber”.<sup>17</sup>

12. Accordingly, as the IIP intends to start providing reparations to Priority Victims, the Trust Fund is required to develop an administrative eligibility assessment procedure that suits the proposed measures.

*Consultations on identification of priority victims*

13. On 17 March 2021, the Trust Fund met the LRV Child Soldiers and the LRV Victims of the Attacks, thereafter holding repeated meetings alongside more informal discussions; the most recent meeting took place on 4 June 2021. Specifically, the Trust Fund and LRVs discussed the identification of victims requiring urgent reparations. It was agreed that, while Child Soldiers fall as a whole within the category of Priority Victims, certain victims within this group are particularly vulnerable; mid-April was agreed as a first deadline for submission of the most vulnerable Child Soldiers. The LRVs expressed concerns pertaining to difficulties in communicating with their clients, due to the security situation in Ituri that required many of their clients to temporarily or permanently leave their place of residence, leading to the consideration that conducting a full-fledged eligibility assessment, in support of the IIP, in these circumstances would be difficult.

14. With a view to enabling the uniform transmission of information by the LRVs to the Trust Fund, the Trust Fund held meetings in March 2021 with VPRS on the properties of its database and the transfer of data concerning represented victims to the Trust Fund. With regard

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<sup>13</sup> Reparations Order, para. 31.

<sup>14</sup> Reparations Order, paras 30 *et seq.*, and paras 105 *et seq.*

<sup>15</sup> Reparations Order, para. 106.

<sup>16</sup> Reparations Order, paras 124 *et seq.*

<sup>17</sup> Reparations Order, para. 253.

to the represented victims, following initial consultations held with the LRVs and VPRS, the Trust Fund acquired approval from the LRVs to attain information held by VPRS on their clients.<sup>18</sup> VPRS submitted by 13 April 2021 the relevant tables by email in different batches, which the Trust Fund forwarded to the respective LRV. Amongst the information provided from VPRS was a list of victims represented in the cases of both *Lubanga* and *Ntaganda*.

15. On 7 April 2021, the LRV Child Soldiers transmitted to the Trust Fund a list of the represented 283 clients. The list includes an assessment of victims deemed particularly vulnerable; namely, all female child soldiers having suffered sexual violence (42 victims), male child soldiers having suffered sexual violence (3 victims), people with disabilities/wounds (5 victims), people with mental health issues (3 victims), and victims considered elderly (7 victims).<sup>19</sup> The LRV Child Soldiers transmitted the list with the caveat that, pursuant to the Trial Chamber's Reparations Order, all the clients of the LRV Child Soldiers fall within the category of Priority Victims, i.e. all 283 Child Soldiers. In making this assessment, the LRV Child Soldiers was not in a position, due to the current security situation, to consult directly with the 60 victims indicated as particularly vulnerable.

16. At a meeting with the LRV Victims of the Attacks, it was decided that information on vulnerable victims would be provided on a rolling basis to ensure that it was current, in light of communication difficulties due to insecurity in the region. Indeed, the LRV Victims of the Attacks specified that he could not reach out to a large number of victims who appear to be displaced despite reliance on their focal points network. On 31 May 2021, a list of 730 elderly victims (above the age of 60 years) was provided to the Trust Fund, 37 of whom had been contacted to retrieve updated information, out of which two were identified as persons with disabilities.<sup>20</sup> Additionally, the LRV Victims of the Attacks transmitted a list of 15 victims deemed to be in a particularly difficult situation on 31 May 2021,<sup>21</sup> and 13 victims of sexual violence on 19 April 2021.<sup>22</sup> The lists contained updated information on victims' wishes for reparations, the harm suffered, and their current location. To date, the LRV Victims of the Attacks transmitted up to date information on 65 clients, indicated as particularly vulnerable and in need of urgent assistance.

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<sup>18</sup> Email from LRV Victims of the Attacks to the Trust Fund on 22 March 2021, at 09:08; email from LRV Child Soldiers to the Trust Fund on 22 March 2021, at 09:54.

<sup>19</sup> Email from LRV Child Soldiers to the Trust Fund on 7 April 2021, at 16:33.

<sup>20</sup> Email from LRV Victims of the Attacks to the Trust Fund on 31 May 2021, at 08:32.

<sup>21</sup> Email from LRV Victims of the Attacks to the Trust Fund on 31 May 2021, at 08:32.

<sup>22</sup> Email from LRV Victims of the Attacks to the Trust Fund on 19 April 2021, at 09:19.

17. By the time of the submission of this IIP, based on the information obtained from the LRVs, a total number of 125 particularly vulnerable victims have been identified by the LRVs, including 58 victims of sexual violence, 42 elderly victims, 7 victims with disabilities, 3 victims with mental health issues, and 15 victims in a particularly difficult situation.

18. The TFV and the LRV Victims of the Attacks also held a meeting with the VPR Country Office staff on 14 April 2021. VPR Country Office staff had interviewed and received applications from potential new beneficiaries from the Victims of the Attacks, who were not yet represented until the issuance of the Reparations Order and conveyed to the Trust Fund their experience and knowledge. At this meeting, it was discussed that non-represented victims who submitted application forms may require a legal representative; accordingly this IIP requests the Trial Chamber to consider appointing the LRV Victims of the Attacks as representative for these new victims who already submitted ICC applications forms. Different from victims who have not yet been identified, victims with ICC application forms filled in may need to be able to be represented before the Court, even though the judicial proceedings as such concluded. Once the matter of the appointment of the LRV Victims of the Attacks is decided by the Trial Chamber and as soon as the data of these victims has been included in the VAMS database, the data will be transferred to the Trust Fund and also to the LRV Victims of the Attacks, for him – with the assistance of VPR Country Office staff – to identify Priority Victims.

## **2. Existing Mechanisms, Intermediaries, Partnerships**

19. The Trial Chamber requested the Trust Fund to devise the IIP by “relying as much as possible on existing mechanisms, identified intermediaries, and partnerships already established”.<sup>23</sup> The Trust Fund entertains certain structures in the region, as it carries out its programmes through implementing partners, which are existing organisations, except where it implements reparations itself without recourse to partners, such as is the case in the reparation case *Katanga*, which also relates to victims residing in Ituri. The Trust Fund is at the implementation stage of the *Lubanga* reparation programme. Furthermore, since 1 May 2020, the Trust Fund is funding nine projects in Ituri Province and North and South Kivu under its assistance mandate, as well as a tenth project since 1 November 2020. The current implementing partners provide a range of services in physical rehabilitation including for victims of sexual and gender-based violence (SGBV), psychological rehabilitation and provide

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<sup>23</sup> Reparations Order, para. 252.



socio-economic measures for a duration of five years, subject to annual extensions; five of the assistance projects are located in Ituri Province.

20. The TFV recognises that relying on existing projects and partners allows it to act swiftly and, at the same time, to maintain control over the implementation of the proposed measures. In addition, the Trust Fund can ensure the partner's adherence to the criteria of priority, harm and eligibility and transition to the full reparation programme, upon its approval. Using these structures also has the benefit of an existing working relationship.

21. The Trust Fund is currently exploring options to reform and streamline the process of selecting implementing partners,<sup>24</sup> however, in 2021, the only way of engaging new implementing partners is through competitive bidding processes governed by the Court's Financial Rules and Regulations ("FRR"), supported by the Registry's Procurement Unit, and followed by a contracting process, which is carried out by the Trust Fund with the support of the Registry's Legal Office. This procedure takes about one year, if no re-publication is required or other risks materialise, which are inherent in procurement and contracting processes.

22. Consultations held in May and June 2021 with implementing partners of the projects under the assistance programme have made clear that ongoing assistance projects have a limited capacity to include *Ntaganda* priority victims as additional beneficiaries. Partners have already concluded the identification and eligibility of beneficiaries for upcoming periods and victims may be on waiting lists. Existing beneficiaries (those of the first contract year) need to continue receiving rehabilitation or material support. The current estimation, based on consultation with the implementing partners and without having to adapt the current scope, volume or active region of the current projects, is that [REDACTED] Priority Victims can enrol in one assistance project and about [REDACTED] Priority Victims in another, the latter of which is, however, currently not carrying out activities in the relevant regions. In addition, current assistance projects repair harm in accordance with their budget to as many beneficiaries as possible, which means that individual treatment may be standardised.

23. More Priority Victims could benefit from these projects if funding by the Trust Fund increased. This would allow the implementing partners to adapt *inter alia* the volume or active region of current projects, as long as these are within the general boundaries of the services contract between the partner and the Trust Fund. In concrete terms, increasing project funding

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<sup>24</sup> See TFV Management Brief Q4/2020, public version, available at: <https://www.trustfundforvictims.org/sites/default/files/reports/TFV%20Management%20Brief%20Q4%202020.pdf>, p. 15.

would permit providing reparations to a higher number of selected Priority Victims, by way of increasing the human and financial resources of the implementing partners, thereby also permitting them to extend their actions to (additional) localities of relevance. Such changes to the volume and active region of a Trust Fund assistance project must respect the boundaries of the original Scope of Work, which formed the basis for the procurement process that led to the selection of a project and ultimately to its inclusion in the TFV's assistance programme in the DRC. Accordingly, the TFV and the implementing partner cannot agree on activities, which are not described and required by the Scope of Work.

24. Beyond current contractual frameworks, the absorption capacity of existing projects could be extended by recourse to specific procurement procedures allowable under the FRR, including sole source procurement pursuant to rule 110.17 FRR. This may, for example, include sole source tenders, if there is a genuine exigency for the requirement or when "offers for identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered remain competitive". The applicability of these requirements needs to be assessed by the Trust Fund on a case-by-case basis and submitted to the Registrar for review and approval.

25. These methods of creating additional absorption capacity beyond the current budget of existing assistance projects, are both administratively valid and could be employed concurrently, keeping in mind that the latter method will require more time to be concluded.

26. While the *Lubanga* reparation programme is designed for the direct and indirect victims of the crimes for which Mr Lubanga was convicted, the assistance programme in the DRC is intended, according to the Scope of Work, to address physical, psychological and material harm suffered by victims of war crimes and crimes against humanity in the Ituri Province after 1 July 2002 through physical and psychological rehabilitation and material support, as well as through community sensitisation. Specific attention may be given in these projects to children born out of rape and former child soldiers who had become girl-mothers. All implementing partners are required by the Trust Fund to carry out assessments of eligibility as they need to ensure that the harm they address with their projects redresses harm the victims suffer because of crimes within the jurisdiction of the Court.

27. Any TFV assistance activity is therefore necessarily linked to the jurisdiction of the Court and addresses as beneficiaries victims of crimes falling under its jurisdiction. It finds its source in Article 79 of the Statute, rule 98 (5) of the Rules of Procedure and Evidence and the TFV Regulations. While they are not judicially ordered reparation measures, assistance measures are intended to repair the harm of victims of such crimes, in the same way as

reparations falling within the scope of UNGA Resolution 60/147 of 16 December 2005. While an assistance programme is wider in scope, a judicial reparation programme is more specific, intended to address the different forms of harm of only those direct and indirect victims of the crimes for which a person has been convicted by the Court. There is no conceptual barrier to resort to assistance services as interim relief for reparation beneficiaries.

28. Nevertheless, the Trust Fund has to ensure that victims as well as communities are aware, from their first contact with the Trust Fund, that they receive reparations because they are victims of the crimes committed by Mr Ntaganda. Such knowledge and respect for the specific harm suffered is an important part of a victim-centred reparation process. In particular where whole communities have been affected, such information must be known to the affected communities from the start of the programme. Accordingly, initial reparations delivered within the framework of an existing assistance project, such as proposed by the Trust Fund for the first time in the IIP, must be clearly marked as reparation measures deriving from the *Ntaganda* Reparations Order. Providing such reparations needs to go hand-in-hand with outreach and information to victims and communities, if this is possible without exposing victims to risks, and in accordance with the overall security situation.

29. Internally, the TFV will need to separately account for measures provided to reparation victims, so as to relate this value to the liability of Mr Ntaganda.

*Existing mechanisms*

30. Of the existing mechanisms and partnerships, the Trust Fund currently considers that one programme and two projects are of relevance to this IIP and are in the best position to implement the IIP. The Trust Fund has started consultations with these implementing partners on its approach; these consultations are ongoing and await the approval of the IIP.

31. *The Lubanga collective service-based reparation programme:* The Trust Fund concluded on 15 March 2021 the contracting process for a five-year reparation programme with one implementing partner, [REDACTED]. This partner is sub-contracting other organisations active in the region to provide collective service-based reparations to the victims of the *Lubanga* case who belong to the same group of Child Soldiers as that in the *Ntaganda* case. This reparation programme aims at ensuring that the various kinds of harm suffered by Child Soldiers in the *Lubanga* case are addressed at an individual level, in particular by providing, according to the needs of the Child Soldiers, physical and psychological rehabilitation and, according to the individual situation of the Child Soldiers, various forms of socio-economic reparations, such as vocational training, assistance with income-generating

activities, as required, and the payment of school fees and pensions. The programme is active in the five territories within the Ituri Province: Mambasa, Irumu, Djugu, Mahagi and Aru.

32. A specific identification and eligibility process has been developed for this programme. On 26 March 2021, the Trial Chamber extended the cut-off date for the submission of the last complete victims' dossiers for reparations in the *Lubanga* case to VPRS to 1 October 2021.<sup>25</sup> The reparation programme is only accessible to victims that have been found eligible based on this eligibility assessment.

33. As part of the Trust Fund's DRC assistance programme, the project "Psychosocial and socio-economic reintegration of girl-mothers victims of the wars in Ituri" is conducted by [REDACTED]. In place since 1 May 2020, this project conducts the following activities in Irumu territory: (i) identify and document girl-mothers and other vulnerable girl beneficiaries, referring beneficiaries and their dependent children to health facilities for screening and appropriate medical care, and providing them with psychosocial assistance; (ii) conduct family mediations, facilitating social reintegration by supporting community centres, and economic reintegration through the provision of microcredit/microfinance for small businesses and distribution of income-generating activities ("IGA") kits for trades after vocational training; and (iii) referral of vulnerable dependent children of the beneficiaries to schools and facilitating their reintegration, capacity strengthening of community mechanisms and sensitisation training on early marriage, peace education and conflict management, and organising temporary nurseries for children of beneficiaries during literacy courses and vocational training.

34. To date, the partner's assistance project has provided [REDACTED]. Since the contract extension on 1 May 2021, the project is continuing to provide assistance to the beneficiaries of the first year and will be able to include about 120 new beneficiaries.

35. As part of the Trust Fund's DRC Assistance Programme, the project [REDACTED] is carried out by [REDACTED]. Since 1 May 2020, the organisation conducts this Trust Fund project in Ituri [REDACTED] for the benefit of war crime victims. The project has three main components: (i) medical assistance, including referrals for orthopaedic services, surgery, physiotherapy, care for persons living with HIV/AIDS; (ii) psychosocial rehabilitation, including counselling, psychological follow-up and monitoring before and after medical referrals, psychoeducational sessions for families on symptoms, causes and consequences of

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<sup>25</sup> Decision on the submissions by the Legal Representative of Victims V01 in its Response to the Twelfth Report of the Trust Fund for Victims on the implementation of collective reparations, filing ICC-01/04-01/06-3500-Conf-Exp, 26 March 2021, ICC-01/04-01/06-3508-Conf-Exp; Reclassified as public on 13 April 2021: [ICC-01/04-01/06-3508](#).

trauma, and capacity-building by training community leaders on psychotherapy; and (iii) socioeconomic reintegration, including by providing training, monitoring, and support to beneficiaries on entrepreneurship and the management of IGAs.

36. In 2020, the organisation carried out an identification and eligibility assessment for the beneficiaries of the coming years. To date, it has provided [REDACTED].<sup>26</sup>

37. Upon contract extension on 1 May 2021, the organisation is in the process of assessing the measures provided to beneficiaries during the first year of the programme and continues its work with the beneficiaries of the first year. In addition, it plans to add 60 new beneficiaries to its project in the coming weeks.

38. The contract value of all nine projects under the TFV assistance programme that were extended by 1 May 2021 has not increased for the second contract year and remained at the level of [REDACTED], while the original funding schedule, documented in the PRC process, would allow for a maximum budget of [REDACTED]. This situation includes the two projects selected for the IIP. Accordingly, upon approval of the IIP, the Trust Fund is in a position to increase the funding of these projects with each [REDACTED] for the period until 30 April 2022.

### III. PROPOSALS

#### 1. Trust Fund's approach to the IIP

##### *Overall objective*

39. Pending the approval and implementation of the DIP, the IIP enables Priority Victims in the *Ntaganda* case to access rehabilitation services and other forms of redress (such as material support and IGAs) available under existing Trust Fund delivery structures, including the *Lubanga* collective service based reparation programme and selected assistance projects in Ituri funded by the Trust Fund. The aim of the IIP is to start alleviating the harm suffered by Priority Victims through these activities, and allow them to retain access to further reparation measures available upon the DIP's approval of the full *Ntaganda* reparations programme. As an *initial* implementation plan that is carried out by TFV partners with a pre-existing portfolio of measures, the focus of the Trust Fund is to provide measures that, while not necessarily addressing the totality of the harms of the victims, provide for some redress and permit the victim to be placed in a situation that is such that the victim recovers dignity and can await more comprehensive reparations.

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<sup>26</sup> It should be noted that beneficiaries may receive more than one form of rehabilitation or support.

40. Priority Victims are eligible to participate in the IIP as beneficiaries if found to be eligible either as Child Soldiers or as Victims of the Attacks. Considering the absorptive qualities of the Trust Fund's existing delivery structures, further selection of Priority Victims of the Attacks to benefit from the IIP will take place in consideration of, among others, the current severity of harm and the related rehabilitation needs as set out in paragraph 77.

41. In so far as the *Lubanga* reparations programme does not address specific harm suffered by Child Soldiers identified as Priority Victims in *Ntaganda*, such as harm resulting from SGBV, the Trust Fund endeavours to ensure relevant additional services to be provided, including through the portfolio of existing assistance projects. In so far as relevant assistance projects funded by the Trust Fund do not yet adequately provide geographical coverage related to the harm suffered by Priority Victims, the Trust Fund endeavours to ensure to provide this coverage within the administrative and financial framework governing services contracts with implementing partners.

*Principles guiding the development of the IIP*

42. The Trial Chamber adopted the do no harm principle, finding that it should have particular application at all stages of the reparations, in particular "(ii) when developing reparations orders and plans; and (iii) when carrying out the approved reparations measures".<sup>27</sup> The Trust Fund has endeavoured to give full application to the do no harm principle. Concretely, this means that the Trust Fund's practices are such that they avoid re-traumatising victims in the process of being consulted or approached for eligibility and potential intake into the reparation programme.

43. The Trust Fund has also been mindful of the reparation principles relevant to dignity, non-discrimination, and non-stigmatisation.<sup>28</sup> Designing inclusive reparations requires the measures to apply to all victims of the crimes committed by Mr Ntaganda and not exclusively to those who have already been identified or have participated in the proceedings.

44. In the preparation of this IIP, the Trust Fund has made sure to adopt a gender-sensitive and gender-inclusive approach, in particular in the design of the proposed reparation measures.<sup>29</sup> At least two of the proposed measures will either directly or indirectly lead to reparations for SGBV victims, as one measure directly aims at Child Soldiers who suffered from rape or sexual slavery and children born out of rape or sexual slavery, while a second

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<sup>27</sup> Reparations Order, para. 52.

<sup>28</sup> Reparations Order, paras 41 *et seq.*

<sup>29</sup> Reparations Order, paras 60-62.

measure aims at Priority Victims of the Attacks, many of whom will belong to the category of SGBV victims.

45. Due to the prevailing security situation, neither the Trust Fund nor the LRVs have been able yet to comprehensively consult<sup>30</sup> with Priority Victims and will need to do so in the course of starting the implementation of the first measures under the IIP. In addition, as the consultations in the field started only at the end of May 2021 (due to health restrictions that impeded prior missions to Bunia), the Trust Fund does not yet have a full picture as to possible tensions, jealousy and animosity among affected communities and between co-habiting groups, mindful that the Reparations Order requires it to take this into account.<sup>31</sup> Accordingly, such consultations may lead to certain adjustments of the proposed measures as they are developed and implemented, including in furtherance of the do no harm principle. The Trust Fund will keep the parties, participants and the Trial Chamber informed at all times.

46. In the IIP, the Trust Fund sets out the proposed measures, as well as a related procedure for the identification and verification of the eligibility of victims. For each of the reparation measures proposed in this IIP in response to the harm suffered by the victims, the Trust Fund has provided the overall objective, expected outcomes as well as the necessary activities, i.e. implementation steps, together with a timeline for implementation and a procedure for identifying victims and for determining their eligibility.

## **2. Categories of Priority Victims**

### **a) Child Soldiers**

#### *Harm to be addressed*

47. Child Soldiers form a separate victim group and at the same time a separate category of Priority Victims. In addition, as demonstrated by the LRV Child Soldiers, they also belong to other categories of Priority Victims, such as victims who require immediate physical and/or psychological medical care, victims with disabilities or the elderly (such as indirect victims). Child Soldiers who were also victims of rape and sexual slavery belong to the Priority Victim categories of children born out of rape and sexual slavery and victims of SGBV. The latter categories are addressed separately below under b).

48. The design of reparations for the direct<sup>32</sup> and indirect<sup>33</sup> Child Soldiers must address the harm they suffered. The harm suffered by Child Soldiers as described in the Reparations Order

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<sup>30</sup> See Reparations Order, paras 45 *et seq.*

<sup>31</sup> Reparations Order, para. 44.

<sup>32</sup> See Reparations Order, paras 120-123.

<sup>33</sup> See Reparations Order, paras 124-128.

includes physical and psychological harm, the loss of family education, childhood, schooling, the loss of a life plan, material and economic harm, and the non-development of ‘civilian life skills’, all of this leading to stigmatisation and rejection, the breakup of families and impacting close relatives.<sup>34</sup>

#### *Proposed Measures*

49. The proposed measures to address the above-described harm of Child Soldiers who are Priority Victims are for them (i) to have recourse to the *Lubanga* service-based reparation programme that is in place since 15 March 2021; and (ii) to have recourse to the planned *Lubanga* symbolic reparations programme.

50. In light of an overlap of the scope of the *Ntaganda* case with the *Lubanga* case, the Trial Chamber recognised the responsibility *in solidum* of Mr Lubanga and Mr Ntaganda to repair each in full the harm suffered by the overlapping Child Soldiers in both cases. At the same time, the Trial Chamber found that “[t]he reparations programmes implemented in the *Lubanga* case, which comprehensively repair the harm caused to the overlapping direct and indirect victims of both cases, should be understood to repair the victims’ harm on behalf of both, Mr Lubanga and Mr Ntaganda”.<sup>35</sup>

51. By way of background, an overview of the overlapping scope is presented below.

52. On 14 March 2012, 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.<sup>36</sup>

53. In the present case, 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.<sup>37</sup> 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.<sup>38</sup>

54. Consequently, while the geographical scope of Mr Lubanga’s conviction is broader, the temporal and material scope is narrower in the *Lubanga* case. However, the impact of these

<sup>34</sup> Reparations Order, paras 161-167.

<sup>35</sup> Reparations Order, paras 220-221.

<sup>36</sup> *Prosecutor v Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, 14 March 2021, ICC-01/04-01/06-2842.

<sup>37</sup> Reparations Order, para. 118.

<sup>38</sup> Reparations Order, para. 119.



differences e.g. on the liability amount can only be determined upon further developments and consideration and may, in terms of the temporal scope, be marginal. It is noteworthy that the Trial Chamber held that all *Lubanga* victims “will be eligible for reparations in the *Ntaganda* case”.<sup>39</sup>

*Objective and outcome of the measures*

55. The reparations for all Child Soldiers should address all of the different kinds of harm suffered by Child Soldiers through the ordered collective reparations with individualised components, and in particular through rehabilitation but also through other forms of redress such as training and education opportunities or pensions for indirect victims. The harm suffered by Child Soldiers should be addressed comprehensively, in the same way as the *Lubanga* reparation programme is designed. These reparations should enable the victims in the first place to overcome physical injuries, address psychological problems, including within the context of their families. On that basis, victims receive support for income-generating activities, including by training, and for the education of their children. The elderly or those who cannot pursue an income-generating activity may receive for a certain period a stipend. Based on these measures victims are enabled to re-build their life plans and to take active part in their communities. The symbolic measures are aimed at raising awareness of the situation of child soldiers and to creating a culture of remembrance that recognises that recruiting and using them is a war crime.

*Administrative eligibility assessment*

56. The *Lubanga* reparation programme is accessible to victims who have been found eligible by the Board of Directors of the Trust Fund for Victims, as confirmed by Trial Chamber II. The cut-off date to submit application forms to VPRS to take part in this process is 1 October 2021.

57. The eligibility requirement for Child Soldiers is that they must have been less than 15 years old at the time the crimes were committed against them and, in addition, must fall within the scope of the crimes for which Mr Ntaganda was convicted. Considering that it appears that only few Child Soldiers, if at all, were recruited after the time frame relevant to the conviction of Mr Lubanga and that Mr Lubanga was higher in rank than Mr Ntaganda, the expectation is that all *Ntaganda* victims will be found eligible for the *Lubanga* reparation programme. Accordingly, the eligibility process applicable to the *Lubanga* reparation programme can also apply to the *Ntaganda* reparation programme. To the extent that this assumption proves correct,

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<sup>39</sup> Reparations Order, para. 246.

the Child Soldiers of the *Ntaganda* case who are not yet participating in the *Lubanga* case should therefore apply to the *Lubanga* reparation programme.

58. With respect to all Child Soldiers represented by the LRV Child Soldiers, who have not yet applied to participate in the *Lubanga* reparation programme, the Trust Fund considers that a simplified application process may be appropriate, subject to further consultations with the LRV Child Soldiers and VPRS. In that respect, the Trust Fund proposes that the victims' application forms for participation in the proceedings, as well as any additional information that the LRV Child Soldiers deems relevant, be submitted through VPRS to the Trust Fund. A preliminary assessment of VPRS is not required, considering it has already carried out such an assessment during the *Ntaganda* judicial reparation proceedings.<sup>40</sup> By proceeding in this way, the Board of Directors of the Trust Fund would be in a position to decide as communicated in the Trust Fund's quarterly report of July 2021 to the *Lubanga* Trial Chamber on the eligibility of, at the minimum, the Priority Victims as indicated by the LRV Child Soldiers.<sup>41</sup>

59. The Trust Fund notes that it may be possible that victims may wish to apply to the *Ntaganda* reparation programme after the deadline of 1 October 2021 for the *Lubanga* reparation programme. The Trust Fund will therefore, in cooperation with the LRV Child Soldiers, VPRS, and in consultation with the implementing partner, develop and propose in the DIP an administrative eligibility mechanism, keeping in mind that in the case of Child Soldiers a community-based approach, as proposed below for the Victims of the Attacks, may not be preferable.

#### *Activities*

60. Considering the programme is already in place and outreach activities have started that will also include information about the *Ntaganda* Child Soldiers, the focus of the Trust Fund's activities lies on the simplification of the administrative eligibility assessment for the Child Soldiers:

- Meet with LRV Child Soldiers and VPRS to agree on a simplified application process for the *Lubanga* reparation programme (June 2021) and agree on a timeline before the cut-off date of 1 October 2021;
- Meet with LRV Child Soldiers and VPRS to develop an eligibility process for *Ntaganda* Child Soldiers not yet identified before 1 October 2021 and include this plan in the DIP (meetings to be held by August 2021); consult with implementing partner.

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<sup>40</sup> See Reparations Order, para. 19.

<sup>41</sup> See *supra*, para. 15.

61. Administrative activities:

- In the quarterly report of July 2021, inform the *Lubanga* Trial Chamber that the *Lubanga* reparation programme also becomes part of the *Ntaganda* reparation programme;
- Rename both, the *Lubanga* service-based reparations and symbolic reparation projects to include the *Ntaganda* reparation programme for Child Soldiers;
- Take the necessary action to extend the scope of symbolic reparations in *Lubanga* also to *Ntaganda*.

62. Finally, at the latest upon the conclusion of the assessment of all applications for the *Lubanga* reparation programme, the Trust Fund will assess how the programme refers in financial terms to the liability of Mr Ntaganda, with the adaptations required for accounting purposes.

*Timeline*

63. The reparation programme in the *Lubanga* case is in place since the contract was concluded on 15 March 2021 and activities will intensify in summer 2021. The programme will last for five years, subject to yearly extensions, i.e. until 14 March 2026.

64. It is expected that the contract with an implementing partner for the symbolic reparation programme will be concluded by the end of 2021/early 2022.

**b) Child Soldiers who were also victims of rape and sexual slavery and children of Child Soldiers born out of rape or sexual slavery**

*Harm to be addressed*

65. As set out in the Reparations Order,<sup>42</sup> child soldiers having experienced sexual violence during the time spent in the UPC/FPLC (“Child Soldiers/SGBV”) have suffered physical harm and still suffer injuries – sometimes gynaecological injuries or infertility – and diseases,

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<sup>42</sup> Reparations Order, para. 68 *et seq.*

including sexually-transmitted diseases,<sup>43</sup> loss of life plan and loss of life chances,<sup>44</sup> but also suffer from social stigmatisation from their communities,<sup>45</sup> as do their children born out rape or sexual slavery, who are sometimes rejected by their own mothers,<sup>46</sup> and often suffer from PTSD or other forms of psychological trauma.<sup>47</sup>

66. Particular attention is drawn to the fact that the children born out of rape were found by the Trial Chamber to be direct victims of the crimes for which Mr Ntaganda was convicted, as a separate measure of satisfaction.<sup>48</sup>

#### *Proposed Measures*

67. In order to meet the objective of repairing the specific harm endured by Child Soldiers/SGBV, as well as the harm suffered by children born out of rape or sexual slavery, the Trust Fund is proposing to set up a reparation project for these victims so that they receive services that address their specific harm in addition to the more general measures that form part of the *Lubanga* reparation programme. In that regard, the Trust Fund recognises that the services to be offered in the *Lubanga* reparation programme are not specifically designed to address the harm of SGBV victims, since this harm is not part of Mr Lubanga's liability.<sup>49</sup>

68. The Trust Fund seeks to achieve this objective through two consecutive measures:

- a. The measure of creating a residual *Ntaganda* SGBV project as an annex to the *Lubanga* reparation programme. This may be achieved through a single source procurement with the same implementing partner, which would avoid a specific

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<sup>43</sup> Joint Expert Report, [ICC-01/04-02/06-2623-Anx1, para. 92](#). Expert Report for Victims of Rape, Sexual Slavery and Attacks on Healthcare, [ICC-01/04-02/06-2623-Anx2, paras 28-31, 35-39](#). [Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, ICC-01/04-02/06-2632, para. 90](#). [Submissions on Reparations on behalf of the Former Child Soldiers, 28 February 2020, ICC-01/04-02/06-2472, para. 42](#).

<sup>44</sup> Joint Expert Report, [ICC-01/04-02/06-2623-Anx1, para. 68](#). [Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, ICC-01/04-02/06-2632, para. 47](#). [ICC-01/04-02/06-2632, para. 47](#).

<sup>45</sup> Joint Expert Report, [ICC-01/04-02/06-2623-Anx1, paras 66-67-101](#). [Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, ICC-01/04-02/06-2632, para. 50](#). [ICC-01/04-02/06-2632, para. 50](#). [Submissions on Reparations on behalf of the Former Child Soldiers, 28 February 2020, ICC-01/04-02/06-2472, para. 42](#).

<sup>46</sup> Expert Report for Victims of Rape, Sexual Slavery and Attacks on Healthcare, [ICC-01/04-02/06-2623-Anx2, paras 32-34](#). [Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, ICC-01/04-02/06-2632, para. 59](#).

<sup>47</sup> Joint Expert Report, [ICC-01/04-02/06-2623-Anx1, paras 96 and 101](#); Expert Report for Victims of Rape, Sexual Slavery and Attacks on Healthcare, [ICC-01/04-02/06-2623-Anx2, paras 41-52](#).

<sup>48</sup> Reparations Order, para. 123.

<sup>49</sup> [Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, ICC-01/04-02/06-2632, para. 108](#). [Joint Expert Report, ICC-01/04-02/06-2623-Anx1, para. 211](#); [Joint Expert Report, ICC-01/04-02/06-2623-Anx1, para. 211](#). [ICC-01/04-02/06-2632, para. 108](#). [Joint Expert Report, ICC-01/04-02/06-2623-Anx1, para. 211](#).

eligibility assessment to enter this SGBV project. Operationalising such a project will take about six to nine months after the development of a Scope of Work.

- b. The interim measure of using an existing assistance project of the Trust Fund to start addressing the particularly vulnerable situation of Child Soldiers/SGBV. This project is designed for the specific group of girl mothers, who were former child soldiers, and their children born out of rape and sexual slavery. With the agreement of the partner, that would have, with additional financing, to extend its services to additional regions in Ituri (which is within the Scope of Work), this project could address these Priority Victims even before they receive further reparations under the collective, service-based reparation programme.

*Outcome:*

69. The expected outcome of the measures is that the Child Soldiers/SGBV regain their life-plan and livelihood as a result of specialised medical treatments, individual and group counselling sessions, and socio-economic reintegration programmes including vocational training, material support and educational assistance.

*Administrative eligibility assessment*

70. With regard to the eligibility of beneficiaries, the Trust Fund refers to the eligibility mechanisms set up for the Child Soldiers as set out in paragraph 58 above, which is a precondition to take part in these measures addressing the harm of Child Soldiers/SGBV and children born out of rape or sexual slavery. In the full application of the do no harm principle, the Trust Fund currently considers that the implementing partner is in the best position to assess whether a Child Soldier should join in these particular measures. For victims pre-identified by the LRV Child Soldiers, a simple referral mechanism may be appropriate once they are found eligible as Child Soldiers.

*Activities with timeline*

71. In order to achieve these objectives, the Trust Fund will, in particular:
  - Further consult with [REDACTED] in June 2021 as to the possibility to expand its assistance activities to relevant regions with an increase in the annual budget;
  - Hold consultations with the LRV Child Soldiers, [REDACTED] as well as with the victims themselves from July 2021 onwards, in order to clarify what is required in terms of services or of approach to properly address the specific harm suffered by Child Soldiers/SGBV and prepare a Scope of Work on this basis;

- Upon having established a Scope of Work during July and August 2021, based on the above-mentioned consultations, start a single source procurement process for a residual *Ntaganda* reparation project, if this is considered the appropriate way forward to address the specific harm of the SGBV Child Soldiers.

**c) Priority Victims within the Victims of the Attacks**

*Harm to be addressed*

72. The Victims of the Attacks suffered, as expressed by the Trial Chamber, “multidimensional harm due to the nature of the crimes, which entailed mass victimisation”.<sup>50</sup> The harm of the victims of the many different crimes, i.e. of murder and attempted murder, intentionally directing attacks against civilians, persecution, pillage, forcible transfer and deportation and ordering the displacement of the civilian population, intentionally directing attacks against protected objects and destroying the adversary’s property, as well as of victims of rape and sexual slavery, is described in detail in the Reparations Order.<sup>51</sup> The DIP will address the harm of each of these categories of victims and the collective measures to address them.

73. Priority Victims may have been subject to any of these crimes, as the Priority Victims of the Attacks are defined by reference to their current situation except for the victims of rape and sexual slavery and children born out of rape and sexual slavery, who are defined by the crimes they suffered. Accordingly, Priority Victims of the Attacks are those who require immediate physical and/or psychological medical care, victims with disabilities and the elderly, victims of SGBV, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery. Merely based on the current circumstances in Ituri, it can be assumed that these descriptions apply to the vast majority of Victims of the Attacks.

*Proposed Measures*

74. The measures proposed for implementation are to provide the Priority Victims of the Attacks with recourse to the relevant rehabilitation services and other forms of redress as provided similarly under the relevant TFV assistance project run by the organisation mentioned above to victims. Accordingly, the Trust Fund does not yet endeavour to redress the totality of the harm suffered by the Priority Victims of the Attacks. As the current project could only

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<sup>50</sup> Reparations Order, para. 149.

<sup>51</sup> Reparations Order, paras 149 *et seq.* and paras 168 *et seq.*

incorporate [REDACTED], the Trust Fund intends to raise the implementing partner's yearly grant by the maximum of [REDACTED] (maximum amount under the second contract year). This will allow the organisation to create additional room for beneficiaries, carry out the eligibility assessment and perhaps increase the value of, for example, the socio-economic support measures for the Priority Victims of the Attacks.

*Outcome*

75. As the focus of providing redress lies, in line with the order of the Trial Chamber,<sup>52</sup> on the victims' most urgent needs, the outcome shall be that they will be placed in a situation that is such that the beneficiaries arrive in a position where they can sustain themselves and can await more comprehensive reparations.

*Administrative eligibility assessment*

76. The Priority Victims of the Attacks must fulfil two requirements of eligibility: they must fall (a) within the scope of Mr Ntaganda's conviction, and (b) within a further prioritisation mechanism, considering the limited number of currently available places within the project of the implementing partner and the high number of Priority Victims.

77. In determining an order of priority, a number of factors will need to be taken into account, starting with the current level of vulnerability of the Priority Victims and the connection to the harm that the reparations should address. One main indicator to determine the vulnerability is to establish whether the consequences of the crimes (i.e. the harm suffered as described in general terms in the Reparations Order) have sporadic effects (for instance sporadic nightmares as a result of experiencing the attack), regular effects (regular nightmares having a moderate impact on the ability to conduct one's life normally) or constant effects thereby impeding the ability of an individual to conduct his or her life normally. The other main indicator is the concrete circumstances and is based on the particular vulnerability of the victim. Together, these main indicators will help determine priority. Aspects such as geographical area, reachability, whether already identified (if urgently to be included in a project ) will also be considered. This categorisation will be discussed for agreement with the LRV Victims of the Attacks and the implementing partner.

78. The Trial Chamber instructed the Trust Fund to include in the DIP a detailed proposal to the way in which it expects to conduct the administrative eligibility assessment.<sup>53</sup> The Trust Fund will do so, comprehensively, in the DIP. Pending the approval of this comprehensive

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<sup>52</sup> Reparations Order, para. 252.

<sup>53</sup> Reparations Order, para. 253.

eligibility assessment, the Trust Fund proposes a method to determine eligibility in order to allow it to address the urgent needs of Priority Victims of the Attack as ordered by the Trial Chamber, with the expectation that the experiences drawn from this interim period will inform the detailed proposal in the DIP.

79. In devising the administrative eligibility assessment, the Trust Fund is mindful that the Trial Chamber ordered collective reparations with an individualised component, which requires an administrative eligibility assessment of potential beneficiaries. The Trust Fund is also mindful of the potentially high number of Victims of the Attacks. An application-based identification and verification process, as is being carried out by the Trust Fund, VPRS and legal representatives, as well as the Trial Chamber, in relation to the *Lubanga* Child Soldiers, appears to be too disproportionately burdensome and inefficient for the Trust Fund, the Court as a whole, and in relation to legal aid resources. Furthermore, the Trust Fund recommends that the eligibility screening for Victims of the Attacks will be conducted by the implementing partners in the field, preferably through a community-based approach, with the Trust Fund's involvement at all stages and with the creation of proper database and track-records. The Trust Fund is yet to continue consultations with the LRV Victims of the Attacks, the Court, including the VPRS, and the affected communities, insofar as possible.

80. The Trust Fund considers that verification of eligibility of reparation beneficiaries is a critical step to ensure that the purpose and scope of the reparation awards themselves are properly understood and accepted by the communities. In Ituri Province, where recurrent violent conflict has taken place since over 20 years, the quasi-totality of its inhabitants have been victims in one form or another of crimes. Accordingly, there is a major risk that reparations for only a certain part of the community affected by such crimes are perceived as discriminatory and may be rejected by the communities, or, worse, fuel already existing tensions. Rejection by the community can take several forms, including, for instance, unspoken pressure by community leaders to not associate with the Trust Fund and the Court, to the detriment of the victims themselves. Fuelling the tension is also a major risk if a group is perceived as taking advantage of the international community over another group. As a result, certain victims of crimes will have to be excluded as not falling within the scope of the charges.

81. These risks can be avoided if proper outreach is conducted. In simple terms, this consists of communicating with community leaders and affected communities themselves about the criteria set by the Court. When properly informed, affected communities do understand and accept that reparations are rolled out as a result of a court's decision. The Trust



Fund is in a position to assert this as a result of its experience in other situations and cases<sup>54</sup> and as well as in Ituri Province. Affected communities may be even more understanding, if they can be part of this process.

82. In short, it will be essential for the affected communities to be informed that the eligibility mechanism is based on *objective*, rather than a subjective criteria. This is the purpose of the verification mechanism: setting out objective criteria and ensuring, by way of proper outreach and involvement of communities in the process, that they are understood.

83. The Trust Fund is confident that the overall eligibility screening system that it is currently designing for *Ntaganda* reparations will ensure the appropriate balance between, on the one hand, the rights of victims, the Defence and properly informing the Trial Chamber, and, on the other hand, the necessity to proceed in the most efficient and least traumatic way for the beneficiaries, with full respect for the do no harm principle.

84. For the interim period until the approval of the DIP and the more detailed eligibility assessment, the Trust Fund will determine the eligibility of beneficiaries as follows:

85. The determination of eligibility and of whether a Priority Victim of the Attacks will be included in the project lies with the implementing partner that will carry out the intake of the person, which will also be the occasion to verify the eligibility of the victim. The implementing partner will closely liaise with the TFV programme staff in Bunia and the legal staff in The Hague, in particular in the start-up phase of the IIP. The implementing partner will be in a position to take on already identified victims, i.e. participating victims and victims who submitted application forms for reparations in the course of the last year, as well as victims who are not yet prior identified.

86. With regard to already identified victims, the Trust Fund will have the role of channelling the relevant information to the implementing partner, including with the necessary recommendations. In that regard, the Trust Fund will require the LRV Victims of the Attacks to pre-identify those victims belonging to the Priority Victims who are currently in urgent need or particularly vulnerable due to the harm suffered as a result of the crimes committed by Mr Ntaganda (see above para. 77). In that regard, it is essential that those victims who submitted merely application forms for reparations to VPRS will be represented by the LRV Victims of

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<sup>54</sup> For instance the individual reparations in the *Al Mahdi* case are directed at certain groups of people associated with 10 protected buildings (9 mausoleums and a mosque) destroyed during the occupation of Timbuktu. Consultations in the field demonstrated that inhabitants of Timbuktu felt that one other important building (the Tamba Tamba mausoleum) had been overlooked and that these people should also have access to reparations. Yet, upon explanation of the reasons why they cannot have access to individual reparations, individuals understood.

the Attacks. The Trust Fund and the LRV Victims of the Attacks therefore seek a ruling of the Trial Chamber on this matter.

87. With regard to represented victims, the Trust Fund has received the pre-assessment of their applications by VPRS. In the event that the LRV has identified a victim as particularly vulnerable who received a negative pre-assessment, the Trust Fund will not discard the individual right away but will proceed to a separate evaluation of the case following the guidance provided in the Reparations Order and in the Clarification Decision. A positive pre-assessment will be considered by the Trust Fund as a strong indicator that the victim is eligible for reparations in this case.

88. In the event that a victim is not recognised by the implementing partner as eligible to the project, the partner will first consult with the TFV staff in the field. A negative decision with short reasons will be made available to the LRV Victims of the Attacks, who shall be provided with an opportunity to contest this decision to the Trust Fund. Should such a circumstance present itself, the Trust Fund will consult with the parties and, if necessary, seek guidance from the Trial Chamber.

89. The Trust Fund will train the implementing partner, jointly with the LRV Victims of the Attacks, if he so wishes, and make sure they understand exactly the scope of the charges. To this effect, the Trust Fund is currently expecting to organise a training in July 2021 and is preparing training materials, making clear what the exact scope of the charges is and what it means concretely. The focus of the training will be to understand exactly each “incident” to make sure that only those individuals who suffered from crimes addressed by the Reparations Order are enrolled. This is of particular necessity as Mr Ntaganda was found responsible for different crimes depending on the location (and sometimes these locations are very close) and because certain locations have been attacked multiple times and in some instance close in time to the attack forming part of the charge. Additionally, the Trust Fund will make sure that the implementing partner understands the applicable standard of proof and standard of causation and is capable of applying them in practice.<sup>55</sup> Concrete scenarios will be presented for the implementing partner to make a determination. The partner will also be trained in the use of a simple database<sup>56</sup> and the data protection standards to be applied.

90. Considering the limited number of victims that can receive reparations from the implementing partner (pending an extension of the project of the implementing partner with

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<sup>55</sup> Reparations Order, paras 76-77 and 131-147, in which the Trial Chamber provides guidance as to how the standards can be met factually.

<sup>56</sup> [REDACTED].

additional resources), it will be necessary to establish an order of priority according to vulnerability as set out above. The Trust Fund will closely coordinate with the implementing partner and the LRV Victims of the Attacks in that respect, in particular to ensure respect of the do no harm principle.

*Activities:*

91. The following activities will be conducted, within the scope of the implementing partner's available budget, to the benefit of Priority Victims of the Attacks:

- physical rehabilitation: by referencing the type of injuries and directing the victim to the appropriate medical facility (which includes taking into account all associated costs, such as medicalised transportation if necessary);
- psycho-social rehabilitation:
  - o individual active listening sessions and psychological *prise en charge* by psycho-social workers, at the place of residence of the victims if necessary, psychological support before and after medical referrals;
  - o psychoeducation sessions aimed at the relatives of the beneficiaries so that the symptoms of the beneficiaries prior to, during, and after treatment are understood and "normalised";
  - o follow-up of the work of the psychosocial agents; psychological monitoring post-treatment and reinforcement of the capacities of community leaders on the issue of mental health;
- socio-economic reintegration: identification of the income generating activity suitable for the beneficiary, training of the beneficiaries to entrepreneurship and accounting, supply, management of MUSO tool<sup>57</sup> and monitoring and support for developing IGAs.<sup>58</sup>

92. The following activities will be conducted by the Trust Fund in ensuring that the partner will start providing reparations to a limited group of Priority Victims of the Attacks:

- Agree with the implementing partner and LRV Victims of the Attacks on a protocol for an order of priority within the Priority Victims, preferably by early July 2021;
- Agree with the implementing partner to take on about [REDACTED] new victims into the assistance project, but as part of a reparation measure under this IIP and agree with

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<sup>57</sup> [REDACTED].

<sup>58</sup> By way of background, during the year 2020-2021, the implementing partner has assisted beneficiaries to develop activities in various domains such as [REDACTED].

the implementing partner on an increase in their budget for 2021 to e.g. the maximum amount available for this year, for the purposes of this reparation project under the IIP.

- Prepare the implementing partner to start the eligibility assessment and closely accompany the implementing partner in making the eligibility determinations for the first [REDACTED] pre-identified and pre-assessed (by VPRS) victims for the purposes of direct inclusion in the project;
- Organise a training session with the implementing partner in July 2021, including, if available, with the LRV Victims of the Attacks.

93. The TFV will start outreach activities and community sensitisation as of July 2021, explaining this initial reparation programme and the eligibility assessment.

#### *Timeline*

94. The Trust Fund expects that Priority Victims will be able to receive the first services within two months of the approval of this plan by the Trial Chamber. These measures will continue until the reparation measures to be devised in the DIP are operational.

### **3. Concluding remarks setting out the main conditions of the IIP**

95. This IIP proposes three different measures for Priority Victims together with eligibility mechanisms that allow victims in urgent need to receive reparations without further delay. The Trust Fund plans to use existing structures for this purpose. Pending the IIP's approval of the Trial Chamber, the Trust Fund will continue to engage with its implementing partners to prepare for this implementation.

96. The IIP's result indicators and means of verification rely on those already in place for the Trust Fund's existing delivery structures. Results relating to reparations to Priority Victims in *Ntaganda* will be reported separately to the Trial Chamber, in so far as not yet covered by reporting in the *Lubanga* case. The Trust Fund will guide the implementing partners in developing and using an appropriate reporting framework for the implementation of concurrent projects addressing different kinds of harm suffered by the same group of victims.

97. The risks specifically associated with the IIP are:

- *Risk: Security Situation in Implementation Areas* – violent conflict in Ituri causes risk to personal safety of (potential) beneficiaries of *Ntaganda* reparations awards, including Priority Victims under the IIP. Displacement of victims as well as unsafe roads disrupt the ability of LRVs and the Trust Fund to effectively communicate with clients and other (potential) beneficiaries. Trust Fund staff and LRVs are constrained

in their ability to travel to Bunia and restricted to travel outside of Bunia. *Mitigation:* recourse to remote engagement through telephone and internet, if available; recourse to intermediaries to establish contact with Priority Victims.

- *Risk:* Confusion and Misinformation in Victim Communities about the Scope and Purpose of the IIP – the IIP’s unique quality of fast-tracking rehabilitation services to Priority Victims in the *Ntaganda* case through existing delivery structures is at risk of causing confusion and misinformation in the communities where Priority Victims reside, potentially causing further risk of jealousies and stigmatisation, specifically for victims who suffered harm from SGBV. *Mitigation:* a separate communication and outreach activity aimed at these communities, explaining how IIP activities address specific harms identified by the Trial Chamber to require urgent redress and allowing communities to appreciate and validate the selection of additional Priority Victims not already included in the *Lubanga* reparations programme.
- *Risk:* Limited absorption capacity of existing structures to enrol Priority Victims, in particular for the Victims of the Attacks – the current relevant projects of the Trust Fund do not have unlimited possibility to absorb Priority Victims as new beneficiaries. The inherent capacity of the projects to absorb Priority Victims is defined by factors as the need of the project to continue services to existing beneficiaries, as well as administrative boundaries, further to the Court’s FRR, to increase funding to existing projects and/or to swiftly select existing implementing partners of the Trust Fund to administer new services contracts as may be required under the IIP. *Mitigation:* the Trust Fund consults and agrees with implementing partners on quotas to absorb Priority Victims in existing projects; the Trust Fund obtains advice and support of the Registry to maximise the funding scope of existing projects and to make best use of available procedures, including e.g. use of a sole source procedure to identify partners to undertake additional activities under the IIP; the Trust Fund ensures clear communication to effected communities about the initial character of the current reparations and the need to put in place structures for the benefit of the victims.

98. The Trust Fund will keep the Trial Chamber informed of any changed circumstances that would affect the proposals contained in the IIP.