

ANNEX 1
PUBLIC



Fonds au Profit des Victimes
The Trust Fund for Victims



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Date	5 July 2022	Through Via	
Ref.		Copies	Philipp Ambach, Chief of VPRS Jamila Zoubir-Affi, Judicial Coordinator Soraya Brikci, VPRS Legal Coordinator Franziska Eckelmans, TFV Legal Advisor Kizita Forgwe, TFV Programme Manager
Subject Objet	Memorandum re: Dedicated staff member for the verification process in the <i>Ntaganda</i> case		

I. Executive summary

1. This memorandum describes that there is a need for a staff member dedicated to the verification process in the *Ntaganda* case and potentially the *Ongwen* case. This need is described for the Registry to assess whether and in which form to provide support to the TFV in relation to the verification process in the *Ntaganda* and, potentially, the *Ongwen* case.
2. As a preliminary note, the TFV submits this memorandum in order to avoid requesting additional staff resources that raise the budget of the ICC/TFV through States Parties' assessed contributions and mindful of the Trial Chamber VI's invitation to the Trust Fund to take into account the Registry's capacity to assist.
3. The second section of the present memorandum provides background information in relation to steps taken so far to enable cooperation and assistance between Registry and TFV in terms of the verification process. The third section of the memorandum provides an explanation of why a dedicated staff member is necessary for the purpose of verification. The fourth section explains the need for a dedicated staff member for the purpose of the verification process.

4. The Trust Fund wishes to express its gratitude and appreciation to the Registry for its support received in the verification process in the *Ntaganda* case so far, and looks forward to enhancing the collaboration with the Registry in this and other reparations proceedings.

II. Background

5. In the *Ntaganda* Reparations Order, the Trial Chamber instructed the TFV “to include in its draft implementation plan a detailed proposal as to the way in which it expects to conduct the verification process, based on the eligibility requirements established by the Chamber in the present order. The TFV shall ensure that its proposals ensure a fair, efficient, and expeditious process, taking into consideration the Registry’s capacity to assist”.¹

6. Pursuant to the Reparations Order, the Trust Fund submitted on 8 June 2021, an IDIP for priority victims in urgent need, which included a proposal of an eligibility mechanism, focusing on identification and verification for this category of potential beneficiaries.² The IDIP was partly approved by the Trial Chamber in the Decision of 23 July 2021,³ but the Trial Chamber directed the Trust Fund to “present an alternative proposal for the verification and urgency screening of victims to benefit from the IDIP, fully taking into consideration the instructions of the Reparations Order and the additional guidance provided in this Decision”.⁴ The Trial Chamber’s order extended only to the verification and urgency screening of those individuals who shall benefit from the measures proposed in the IDIP. In its First Report on the implementation of the IDIP submitted on 23 September 2021,⁵ the Trust Fund made limited submissions on the proposed verification process for the purpose of the IDIP only, which were approved by the Trial Chamber.⁶

7. The approved proposals on beneficiary verification in the context of the IDIP integrate within the general system proposed to the Trial Chamber in the second submission of the Draft Implementation Plan (“DIP”)⁷. The TFV started close consultations with VPRS and

¹ Reparations Order, 8 March 2021, ICC-01/04-02/06-2659, para. 253 (“Reparations Order”).

² Report on Trust Fund’s Preparation for Draft Implementation Plan, 8 June 2021, ICC-01/04-02/06-2676-Conf.

³ Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, ICC-01/04-02/06-2696 (“Decision of 23 July 2021”).

⁴ Decision of 23 July 2021, ICC-01/04-02-06-2696, para. 38.

⁵ Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director’s decision pursuant to regulation 56 of the Regulations of the Trust Fund, ICC-01/04-02/06-2710-Conf (“First IDIP Report”).

⁶ First IDIP Report, ICC-01/04-02/06-2710-Conf, paras. 39-54; Decision on the TFV’s First Progress Report on the Implementation of the Initial Draft Implementation Plan and Notification of Board of Director’s decision pursuant to regulation 56 of the Regulations of the Trust Fund, 28 October 2021, ICC-01/04-02/06-2718-Conf.

⁷ Trust Fund for Victims’ second submission of Draft Implementation Plan, 24 March 2022, ICC-01/04-02/06-2750-Conf-Exp.

with the legal representatives of the *Ntaganda* case in the summer of 2021, holding several intensive meetings with them. Thereupon in November 2021, the TFV developed a written proposal for victim identification and verification relevant to the entire *Ntaganda* case that contained three options relevant to the verification body. The proposal was shared for inputs with the parties and the Registry on 23 November 2021. The TFV received the requested inputs on 1 December 2021⁸ and 10 December 2021⁹ respectively, just before the first version of the DIP was submitted to the Trial Chamber on 17 December 2022.

8. Given there was agreement that a third option was not efficient, the following two remaining options were envisaged for the verification process with related review processes that differed in scope and method:

Option 1: a one-step verification process, i.e. one verification body only: Full delegation by TFV of the verification to VPRS.

Option 2: a one-step verification process, i.e. one verification body only: Verification by the TFV with the assistance of a Registry staff.

9. A follow-up meeting between the Registry/VPRS and the TFV was held on 1 February 2022, which brought further clarity to the process to be pursued in finding the most resource-efficient solution to the body carrying out the verifications. At this meeting, it was agreed that at issue is a matter of resources, given the Trial Chamber decided that the verification (not identification) had to be carried out “in-house” and not by implementing partners. The Registry expressed that they were prepared to find a solution for the TFV, if they get a better idea in writing of what this work exactly entails. At this meeting it was agreed that the TFV would submit a document setting out the Terms of Reference (ToR) of the work that was required to be carried out. The Registry expressed as well that they were prepared to look into a solution that extended beyond the VPRS.

10. On 24 March 2022, the TFV submitted the second version of the DIP in which, rather than considering the options presented in the original DIP, it reported about the meeting held on 1 February 2022. The TFV expressed that the Registry as such (not limited to VPRS) expressed its willingness to cooperate with the TFV to address this matter, aware of the time and resources that will foreseeably be necessary to conduct this process successfully and expeditiously – not only for the current case but also for future cases. In

⁸ Email from the CLR 1 on 1 December 2021 at 15h51; Email from the CLR2 on 1 December 2021 at 16h10; Email from the Defence on 1 December 2021 at 15h58.

⁹ Email from the VPRS on 10 December 2021 at 17h27.

the second version of the DIP, the TFV expressed that, pending the outcome of this process, the TFV remains, for the purposes of the IDIP in particular, the relevant verification body.

11. On 18 May 2022, the Registry submitted their observations on the DIP,¹⁰ indicating their ability to cater for a verification process conducted by the VPRS as envisaged under option 1 of the TFV proposal in the first DIP version, while underlining their willingness to provide support to the TFV in relation to option 2. The Registry also reminded that “while the VPRS is not in a position to detach its own staff member(s) to assist the TFV, the Registry stands ready to envisage other avenues to support and assist the TFV”.¹¹

12. On 20 June 2022, Trial Chamber II instructed the TFV and the Registry, in light of their submissions, to ensure that consultations aimed at finding a workable solution take place and inform the Chamber accordingly, through a joint filing to be submitted by 22 July 2022, at the latest.¹²

13. On 23 June 2022, the Trust Fund Secretariat and the Office of the Director of the Division of Judicial Services held a meeting in order to discuss about the solution to be jointly presented to the Trial Chamber. It was understood that the overall responsibility for the eligibility process would be the TFV’s, given the TFV is held responsible for the implementation, keeping in mind that the purpose of this process is to seek efficiencies in terms of resources. Furthermore, it was agreed in the course of this meeting that the Trust Fund would submit in writing details about the work description of the dedicated staff (section IV) and explain the need for a dedicated person for the verification process (section III). At a subsequent meeting held on 29 June 2022 with the Trust Fund Secretariat, the Office of the Director of the Division of Judicial Services and VPRS, the content of this memorandum was presented orally.

III. Need for a dedicated person for verification

14. As set out in the DIP, the identification of new potential victims is to be conducted by the Trust Fund. Once there are implementing partners, this identification will be carried out with the support of them; before that, insofar as identification is required before that, the Trust Fund can confer with the County Office whether they have staff available to support any such processes. The Trust Fund expects, as set out in the DIP, that the main part of the

¹⁰ Registry Observations on the Trust Fund for Victims’ Draft Implementation Plan, 18 May 2022, ICC-01/04-02/06-2766-Conf.

¹¹ *Idem*, para. 32.

¹² Instruction received from Trial Chamber II by email on 20 June 2022, at 12:09.

identification process takes place once the implementing partners started their work and very closely in time to awarding reparations to the relevant beneficiaries.

15. The collection of information for the purpose of collective reparations takes place outside of a judicial process; it is an administrative process, which is part of the reparations implementation phase. The potential beneficiaries do not fill in application forms, but the relevant information is collected by TFV and implementing partners in simplified forms (electronically, or on paper and then digitalised). The collection and identification process is envisaged to be most intense during the first year of implementation. It will continue throughout the implementation process. The information collected by the implementing partners under the supervision of the Trust Fund is made available then to the TFV legal team and, in particular, to the staff in charge of the verification.

16. As set out in the DIP, the determination on eligibility should be carried out on a rolling basis and within a short period of time, ideally within 15 days of receipt of the information, insofar as no additional information is required. This ensures that the determination will be made closely in time to the moment when the information has been collected, as required by the Trial Chamber and the do no harm principle. The staff in charge of the verification will therefore need to be readily available, without delay, to expeditiously process information as it is received, and to coordinate and organise the workflow.

17. In consideration of the complexity of the scope of the case in relation to Victims of the Attacks, the Trust Fund foresees the need for additional information from the victims in the field (for new potential victims) and from the OPCV legal representatives (for participating victims), as the material submitted may not be complete or raise questions requiring additional information. Therefore, as part of the verification process, the staff in charge of the verification must be able to contact the victims be it through the implementing partner (new victims) or the legal representatives (participating victims).

18. The most intense period of work for the relevant dedicated staff member is expected to be during the first year after the implementing partner started its work (the contract has been concluded), given that the identification of potential beneficiaries should reach a peak in this period too. At the time of starting the contract with the implementing partner, the dedicated staff should start assessing the participating victims, given many of them will need to provide additional information. In the process of reviewing the applications for participation of participating victims in the *Ntaganda* IDIP (Victims of the Attacks), it became clear that a considerable percentage of those victims will need to provide more detailed information. Again, such information should be sought as closely as possible to the time the relevant victims would be able to receive reparations.

19. In addition, the dedicated staff member will need to consult and seek advice from the TFV legal team to resolve any new, complicated or unusual issues arising, given the determinations of the dedicated staff member will affect directly the implementation of the reparations programme and the acceptance of the programme by the victims and their communities. In that respect, as the recent *Lubanga* implementation shows, any victim that should not have been a beneficiary will be brought as a matter of course during implementation to the attention of the implementing partner, Trust Fund and LRVs, thereby requiring considerable additional time and resources to address and resolve any such issue.

20. To ensure continuity and consistency in the determinations and their correctness, and to enable more efficiencies through learning and familiarity with the relevant case, the Trust Fund's experience is that it is inevitable to ensure that one staff member is fully dedicated to this matter, who takes the responsibility for the process. Such a responsibility should over a longer period of time, e.g. one calendar year or, ideally, longer.

21. Insofar as this dedicated staff member is not part of the TFV team, and keeping in mind that the TFV has the overall responsibility for the efficient conduct and reliable outcome of the identification and verification process, it is necessary that the relevant staff member is continuously available to engage, has experience of similar processes, and is able to perform under time pressure with an eye for detail.

22. The relevant dedicated staff member will also have to keep the relevant statistics and needs to maintain the relevant information in the database (as determined by the TFV for use). Furthermore, the dedicated staff member needs to make any such data available to the Trust Fund, at any time, for reporting purposes to Board of Directors, Chamber, ASP and donors.

23. In the Trust Fund's assessment and based on prior experience, all this may require a part or full time engagement depending on the number of victims who need to be verified on a rolling basis.

IV. Description of the dedicated staff member's tasks

24. The dedicated staff would have to perform the following duties, in light of the process summarized under section III above:

- Take part in the training of implementing partners relevant to the identification process and in the design of the process of collecting information;

- Advise as required the TFV implementing partner in the field on relevant criteria or factual circumstances to take into account during the identification of potential victims and collection of information thereon;
- In coordination with the TFV programme team's focal point, carry out quality control of information submitted;
- Request the TFV programme team's focal point and implementing partner or legal representatives, as appropriate, to contact the victims and produce missing documentation related to applications for reparations (for victims already participating) or the information before him/her (for new victims);
- Request the TFV programme team's focal point to verify certain information with the relevant DRC authorities, as required;
- Analyse application forms (for victims already participating) or the information before him/her (for new victims) and assess the information provided with a view to determine eligibility to reparations (whether positive or negative);
- Seek advice as required from the TFV legal team, in particular the relevant focal point and the Legal Adviser;
- Produce the draft eligibility determination for submission to the TFV legal team's focal point;
- Maintain the information accessible to the TFV and provide any statistical information upon request;
- Proceed to the relevant tasks within the required timeline; and
- Provide support as needed with additional tasks related to the verification process, as they may arise.

The dedicated staff will liaise with the focal point in the relevant TFV programme team in the Country Office, the TFV implementing partners and coordinate closely with the focal point in the TFV legal team.

Essential qualifications for the dedicated staff should include:

- Advanced university degree in law, public international law or international relations, or other relevant degree; or a first-level university degree, in combination with two additional years of qualifying legal experience is accepted in lieu of the advanced university degree;

- Work experience in a legal team with a proven ability to analyse complex legal and factual matters;
- Proficiency, and good drafting skills in both French and English;
- Proficiency in Excel and other databases
- Ability to communicate effectively;
- A highly performing staff member (insofar as ICC performance records exist);
- Clearly demonstrated attentiveness to details.

25. Currently, the verification of the IDIP beneficiaries consumes between 0,05 to 0,2 FTE. Once the numbers rise, this will require full dedication in certain peak periods followed by low workload period, when no new transmissions occur. It is estimated that the *Ntaganda* Victims of the Attacks verification process can be carried out on a rolling basis with about 50 percent of a staff member's time.

26. The numbers will rise once the implementing partner for the Victims of the Attacks has been procured and the programme will start; shortly before and during contract conclusion, the relevant staff member will be able to address the participating victims based primarily on the information in the participation application forms and any additional information provided by the legal representatives. In that respect, it is important to note that the victims who have been found preliminarily not eligible by VPRS, all will need to provide additional information that needs to be assessed.

27. Once the staff member becomes fully familiar with the scope of the case and the relevant intricacies, it is expected that efficiencies will be possible.

V. Conclusion

28. The Trust Fund reiterates its appreciation for the support provided by Registry to date and wishes to express its gratitude to the Registry for the commitment to establish a common ground for cooperation in relation to the above-mentioned matters, thereby making it unnecessary to request additional resources from the ASP.

29. The Trust Fund currently foresees that this cooperation will be relevant, earliest as of early 2023 and would focus on the Victims of the Attacks. Until then, the TFV is in a position to address the limited numbers of victims for the IDIP process. In relation to the Former Child Soldiers, the TFV currently considers that the majority of them has already been identified and found eligible and that therefore the gist of the work relates to indirect

beneficiaries; a work that can be continued for efficiency purposes by the TFV's legal staff member who has been dedicated to the victims who are Former Child Soldiers.

30. The Trust Fund stands ready to further discuss any aspect of this memorandum, should the Registry wish so, and looks forward to enhancing cooperation in this process for the benefit of the victims in the *Ntaganda* case.

31. Should the Registry express that support is possible, the TFV stands ready to discuss the administrative processes and intricacies relevant thereto.