

1 International Criminal Court
2 Trial Chamber II
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Thomas Lubanga Dyilo -
5 ICC-01/04-01/06
6 Presiding Judge Perrin de Brichambaut, Judge Olga Herrera-Carbuccia and
7 Judge Péter Kovács
8 Reparations Hearing - Courtroom 1
9 Thursday, 13 October 2016
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:15] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 THE COURT OFFICER: [9:30:32] The International Criminal Court is sitting in open
15 session in the case of the Prosecutor versus Thomas Lubanga Dyilo reparations case,
16 case number ICC 01/04-01/06.
17 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [9:30:47] (Interpretation) Good
18 morning, ladies and gentlemen.
19 I thank the court officer for calling the case. We will continue with our hearing on
20 the collective reparations following the conviction of Mr Lubanga.
21 And this morning we will begin with the Trust Fund for victims. They have 60
22 minutes to respond to the observations of yesterday by amici curiae. I think it is
23 Mr Pieter de Baan who will present for the Trust Fund.
24 Mr Pieter de Baan, you have the floor.
25 MR DE BAAN: [9:31:38] Good morning. Thank you very much for allowing the

1 Trust Fund to intervene in these proceedings.

2 On behalf of the Trust Fund's board of directors, let me first say that the Fund greatly
3 appreciates this opportunity to address not only the Chamber and the parties and
4 participants, but also those in the public gallery and those following these
5 proceedings online regarding the implementation of collective reparations awards
6 from the victims in the Lubanga case.

7 The Trust Fund is acutely aware of the Trial Chamber's desire to have a more detailed
8 understanding of the specific projects that the Trust Fund will implement as collective
9 reparations in this case. In recognition of this, today the Trust Fund will propose a
10 way forward specifically addressing this matter that it hopes will fully satisfy the
11 Trial Chamber's concerns and permit the current proceedings to move forward
12 towards the realisation of reparations awards for the victims of Mr Lubanga.

13 The Trust Fund has been invited to respond to the written submissions received last
14 Wednesday as well as the oral submissions made in court this Tuesday. The Trust
15 Fund has carefully reviewed these written submissions and taken note of the wealth
16 of information contained therein.

17 In our response, the Trust Fund has also endeavoured to address points raised in the
18 oral submissions of Tuesday. However, given that yesterday was a Court holiday
19 and that the transcript of Tuesday's hearing was not notified to the Trust Fund in
20 order for us to review it before today's hearing, we would respectfully suggest that
21 any matters that I was unable to address in this presentation can be raised during the
22 question and answer session.

23 The Trust Fund recalls that the purpose of these hearings is to discuss projects for
24 former child soldiers that have taken place or are taking place currently in the eastern
25 Democratic Republic of the Congo, in terms of informative experiences to date as well

1 as in terms of possible specific project ideas that may nurture the collective
2 reparations awards in this case.

3 In this regard, I would like to recall how the Trust Fund has laid the foundation for its
4 draft implementation plan, submitted in November 2015, and for its subsequent
5 filings in these reparations proceedings. Certain elements of this foundation have
6 already been referenced in the oral submissions of Tuesday, and in the amicus curiae
7 briefings. However, we believe that a more thorough exposition of this foundation
8 will be useful to understand and appreciate the Trust Fund's approach as being in line
9 with recognized best practices -- many of which have been outlined in the oral and
10 written submissions -- as well as being responsive to the particularities of this case.

11 As the first layer of this foundation, I would like to begin by sharing the Trust Fund's
12 experience of implementing projects in the eastern Democratic Republic of the Congo,
13 where the Trust Fund has been active since 2008 operating under its assistance
14 mandate. During that time, the Trust Fund has overseen the implementation of 16
15 projects. The examples we give today are limited to the DRC in view of their
16 situational relevance, however, the 18 assistance projects carried out by the Fund in
17 northern Uganda have also been a source of experience and insights. Taken together,
18 the Trust Fund is currently assisting over 300,000 direct and indirect beneficiaries in
19 northern Uganda and in the eastern DRC.

20 Before describing these projects, let me briefly explain that the Trust Fund does not
21 itself implement projects. Rather, the Trust Fund selects, after a procurement
22 process in accordance with the financial Regulations and Rules of the Court, specific
23 projects that are to be implemented by selected organisations. The Trust Fund's
24 implementing partners are therefore almost exclusively local organisations that are
25 based in the DRC and whose staff are Congolese, oftentimes coming from the same

1 victim communities themselves. Indeed, the Trust Fund was pleased to see that
2 several of the written submissions come from organisations that are either current or
3 past implementing project partners of the Fund under its assistance mandate.
4 With its implementing partners, the Trust Fund concludes performance-based
5 services contracts. This means that partners are continually monitored and
6 evaluated by the Trust Fund on their performance, in terms of achieving results as
7 well as in terms of ensuring that the Trust Fund's resources are managed and used in
8 a transparent, efficient and effective manner.

9 As highlighted last Tuesday in the submission of Women's Initiatives, it is of
10 paramount importance that our partners are trusted within the communities that they
11 serve. Without such trust, projects will simply not be successful because victim
12 beneficiaries will be hesitant to actively engage in these projects and so will not be
13 able to become the autonomous agents in their own recovery from the harm that they
14 have suffered.

15 The Trust Fund invests a significant amount of time and effort in accompanying its
16 partners to build and maintain these relationships of trust -- with victims, with their
17 communities and with other stakeholders, such as the local government authorities.
18 This is not done from The Hague. The Trust Fund has staff based full-time in our
19 field office in Bunia, the capital of Ituri, serving also our projects in the Kivu
20 provinces. Our Bunia field staff are themselves Congolese citizens and come from
21 the very communities that have been affected by the crimes under the court's
22 Jurisdiction. It is precisely because of this intimate knowledge and familiarity with
23 the local context and realities on the ground that the Trust Fund has been able to
24 successfully implement projects in the eastern DRC.

25 Can we have the first slide please.

1 I would like to direct your attention to your screen where you can see an overview of
2 the categories of services provided through the Trust Fund's assistance projects in the
3 eastern DRC. This information comes from the external, independent evaluation of
4 the Trust Fund's programme carried out by the International Centre for Research on
5 Women. And this independent evaluation was conducted in 2013 when the Trust
6 Fund was assisting nearly 73,000 victims. As of the end of 2015, the Trust Fund has
7 provided assistance in eastern DRC to over 62,000 direct beneficiaries and over
8 170,000 indirect beneficiaries.

9 I will now highlight the activities undertaken and the results achieved in a few of
10 these projects that we deem to be of particular relevance to collective reparations
11 awards in the Lubanga case. These projects were also referenced in our filing
12 accompanying the draft implementation plan of November 2015. We believe that
13 these projects demonstrate that the Trust Fund's experience resonates quite well with
14 many of the written and oral submissions received in these proceedings.

15 The first project is the Peace Building School curriculum project. Under this project,
16 the Trust Fund's local implementing partner developed a curriculum of workshops
17 for primary and secondary schools throughout Ituri and elsewhere focused on the
18 themes of cooperation and teamwork, on the importance of tolerance and respect for
19 others, and developing techniques for resolving conflict in a peaceful manner.

20 The curriculum uses the mediums of art, group discussions, theatre, poetry and
21 music.

22 Since 2008, around 5,000 workshops have been conducted, reaching approximately
23 55,000 students, of which around 26,000 are girls.

24 Another aspect of this project involves presenting the students' work to the broader
25 communities through what is called a "mobile museum", which allows community

1 members to reflect and comment upon the students' work, thus developing
2 something that can be called a shared history -- "l'histoire partagée".
3 So what happened as a result of this project? I can give you the following examples.
4 Children who grew up in an environment blighted by generations of violent conflict,
5 not knowing anything else than this, have learned how to become 'ambassadors for
6 peace' -- amongst their peers, within their families and within their communities.
7 Former child soldiers returning to school were no longer involved in daily fighting in
8 the schoolyards; they learned to adapt their behaviour and the other students learned
9 to appreciate them as children, like themselves, who happened to have gone through
10 the most horrendous experiences. An interesting result is that the project was
11 credited by the schools with improving the overall academic performance of classes
12 and decreasing student drop-out rate.
13 Given the success of this project, in 2013, the DRC Minister of Education held a
14 conference in Goma to look at how to incorporate the peace building curriculum
15 project nationwide in the DRC. And, not much later, the Trust Fund was flattered to
16 learn that an organisation, which shall remain unnamed, has taken this programme to
17 elsewhere in the DRC -- without any changes, merely replacing the Trust Fund's Logo
18 with their own.
19 The next project focuses on teenage female former child soldiers who became mothers
20 during their wartime experience. This project, which is based in Bunia, began in
21 2008 and is ongoing today. The expected outcomes of this project are to remedy the
22 loss of education, to reintegrate these female former child soldiers into the regular
23 school system and to address the issues of stigmatisation and discrimination by
24 strengthening the mother-child relationship, and encouraging the acceptance of these
25 children by their communities.

1 The former female child soldiers first participated in a modified school curriculum
2 that addressed the years of schooling that they had lost, which was designed to allow
3 them to be able over time to be reintegrated into the regular school curriculum with
4 their peers.

5 As part of this project, the female former child soldiers had access to daycare for their
6 children, which our project partner constructed adjacent to the school. In addition to
7 providing daycare so that the girls could attend school, the project also included
8 trainings for the girls on how to care for their children, counselling sessions to
9 address the girls' feelings regarding the circumstances surrounding how they became
10 mothers, and sessions with the family members in order to encourage familial
11 support for these former female child soldiers to continue their education, as well as
12 acceptance of their daughters' children.

13 The rejection and marginalisation of former child soldiers who have children by their
14 family members and their community, as well as the non-acceptance of children born
15 in these circumstances, are major obstacles to successful reintegration. I'm very
16 proud to tell you that this project has resulted in numerous individual success stories,
17 not just in terms of these former female child soldiers returning to school, but also in
18 terms of family members and the wider community embracing and supporting them
19 and their children.

20 Finally, many of these young women are now participating in vocational training
21 activities, such as being trained, as example, for hairdressers, clothes tailors, and other
22 small businesses. Approximately 600 former female child soldiers and their children
23 have benefited from this project. An additional 1,000 community members
24 participated, as indirect beneficiaries, in the sessions aimed at reducing the wider
25 social issues of stigmatisation and discrimination faced by these victims and

1 increasing community acceptance and support for their reintegration.

2 The next two projects I would like to highlight relate to the Trust Fund's experience
3 implementing projects to provide vocational training to victims so that they become
4 self-sufficient and contributing members of their communities. The first project is
5 connected to the Panzi Hospital in Bukavu, which was mentioned before in these
6 hearings, and began in 2008. It provides training to 2,850 victims of sexual and
7 gender-based violence in, for instance, sewing and soap-making, which are traditional
8 business enterprises in the DRC. The second aspect of this project involved the
9 creation of a micro-credit loan system for the participating victims so that they could
10 start their own small businesses.

11 Recently, Dr Denis Mukwege, from Panzi Hospital, visited the Court and, in a
12 meeting with the Trust Fund's staff and management, Dr Mukwege spoke about his
13 patients who participated in this project. Let me share with you what he said
14 regarding the success of this project in reducing the stigma associated with these
15 victims. And I quote:

16 "People in the community do no longer see the women as sexual violence victims, but
17 as women who contribute to the economic development of their village. This change
18 of attitude and perception in the community provides victims with hope, dignity and
19 empowerment -- and it creates community cohesion." End of quote.

20 The second project, implemented near Bunia, integrates many of the components
21 listed in the written and oral submissions as being relevant or even indispensable for
22 collective reparations. Since 2008, the Trust Fund's partner organisation has assisted
23 almost 1,000 victim survivors of sexual and gender-based violence with an integrated
24 set of services, combining medical care, individual counselling and community
25 therapy, literacy training, vocational training and income-generating activities.

1 The victims' economic activities include the participation in savings and loans groups,
2 in agricultural activities including forestry projects, raising goats, small commerce
3 and tailoring.

4 The holistic, integrated response to the harm of these victims in this project has been
5 extremely successful and has served as an inspirational model for the integrated and
6 flexible programming approach that is laid out in the Trust Fund's draft
7 implementation plan.

8 While the projects I just described are not representative for all of the different types
9 of activities conducted through the Trust Fund's assistance projects, I hope that they
10 provide a clearer understanding of our varied and pertinent experience of
11 implementing projects within the context of the eastern DRC, and for former child
12 soldiers.

13 Now, returning to the elements that made up the foundation of the Trust Fund's draft
14 implementation plan, I will now briefly move to the Expert Conference held in Belfast
15 in May 2015 following the issuance of the Appeals Chamber's Amended Order for
16 Reparations in this case.

17 The Trust Fund convened 23 experts and practitioners from more than
18 20 organisations from a range of disciplines relevant to collective reparations in the
19 context of the Lubanga case. Relevant sections of the Registry, the Legal
20 Representatives of Victims in this case and the OPCV were also invited to participate.
21 And as mentioned in their written submissions, Women's Initiative was one of the
22 expert groups that participated in this conference.

23 Mindful of the principle established by the original Trial Chamber and affirmed in the
24 Amended Order for Reparations that, and I quote: "A gender-inclusive approach
25 should guide the design of reparations", end of quote, the Trust Fund worked closely

1 and specifically with Ms Inder's initiative to ensure that this principle was included in
2 all aspects of the draft implementation plan.

3 In this same respect, the four experts who jointly submitted written submissions for
4 these hearings also participated in the Expert Conference and provided tremendously
5 important input in the drafting of those aspects relevant to adopting a
6 trauma-sensitive approach towards victims in the Trust Fund's draft implementation
7 plan. The Trust Fund is pleased to note the positive manner in which these
8 submissions were referred to at Tuesday's hearings.

9 The third and final foundational element that I will discuss today is actually the single
10 most important one, the single most important source that informed the Trust Fund's
11 draft implementation plan. And I refer to the views of the victim participants in this
12 case and the views expressed during the community consultations conducted in May
13 and June of 2015.

14 In this regard, the Trust Fund notes that it was specifically instructed by the Appeals
15 Chamber to take into account these views in designing the collective reparations
16 awards.

17 The objectives of the community consultations were to inform victims and
18 communities about the Trust Fund and the reparations proceedings in the Lubanga
19 case, to discuss the harms suffered by the victims in relation to the case, to collect the
20 communities' views about what they would consider to be appropriate collective
21 reparations awards, and finally to hear the communities' views on the demobilisation
22 and reintegration process of former child soldiers.

23 The Trust Fund's Bunia-based staff took the lead in ensuring that a broad array of
24 community leaders and interested members of the community were aware and took
25 part in the consultations. And on the screen in front of you, you can see a list of

1 these various stakeholders.

2 The Trust Fund also worked to ensure that it reached as many as possible affected

3 communities in this consultation process, logistics and security permitting. We held

4 consultations in 22 localities and involving over 1,100 members of the community

5 who are participating. The Trust Fund also paid particular attention to ensuring that

6 there was appropriate gender balance and youth representation in the makeup of the

7 participants of these consultations.

8 The Fund conducted the consultations under a variety of settings in order to ensure

9 that all of the participants were comfortable expressing their views and ideas. For

10 example, we organised interactive question-and-answer sessions, breakout sessions

11 for men and women separately, focus groups and one-on-one interviews.

12 After discussing the harms caused to victims from the crime in this case, the

13 participants discussed their views on possible collective reparations awards that

14 could remedy these harms, and four main categories of potential collective awards

15 were identified:

16 1, projects providing educational assistance, in both informal and formal settings;

17 2, projects aimed to provide employment opportunities and vocational training;

18 3, projects aimed to provide physical and mental health services; and

19 4, projects aimed at community reconciliation and reintegration.

20 It's worth observing that the views expressed at the community consultations are in

21 fact similar to those expressed by the victim participant in the proceedings leading up

22 to the original Trial Chamber's order for reparations.

23 And I refer in this regard to ICC documents ending in 2869 and 2864.

24 For example, and I wish to be clear that I am paraphrasing and not quoting verbatim,

25 the victims represented by the Legal Representative of Victims V02 proposed

1 workshops to introduce victims to a trade and the provision of assistance in
2 developing vocational skills, such as carpentry and sewing, as well as the need for
3 services of medical professionals to address physical injury and psychological trauma
4 suffered by the victims. Here I am referring to pages 6 to 8 of ICC document ending
5 in 2869.

6 Regarding the victims represented by the Legal Representatives of Victims V01, the
7 Trust Fund notes that, with regard to possible collective reparations awards, these
8 victims suggested: Measures enabling them to undertake an income-generating
9 activity, a micro-credit loan programme, vocational training or educational assistance,
10 and, in order to address the effects of the trauma that they suffered, medical and/or
11 psychological care. I am referring to paragraphs 20 to 22 of ICC document ending
12 in 2864.

13 Your Honours, the Trust Fund appreciates the significant amount of effort and
14 thought that went into the development of the amicus curiae briefings and the oral
15 submissions of Tuesday.

16 If anything, these submissions underline the complexity and variety of challenges
17 related to the development of appropriate collective reparations responses to the
18 harms suffered by the victims in this case. They also demonstrate that the lion's
19 share of this complexity and challenge comes from the real-life situations in which the
20 victims, their families, and their communities find themselves today.

21 Many submissions have highlighted the situational challenges inherent to
22 implementing reparations in this case. The two amicus presenters, the legal
23 representatives, and others noted the continued sense of insecurity that victims are
24 experiencing, their shame and stigma attached to the crimes and the harm they
25 suffered, the fact that families and communities did not welcome former child

1 soldiers back, the continuing deviant behaviour of former child soldiers caused by the
2 trauma that they experienced, further deepening their alienation from the
3 communities, and the continuing political and social influence of Mr Lubanga and the
4 UPC in Ituri.

5 The Trust Fund was and is well aware of these factors. They are much more than
6 subjective perceptions. Together, they constitute an objective and imposing reality
7 check, requiring perseverance and determination to negotiate the way towards
8 achieving meaningful and credible reparations for these victims.

9 In November 2015, when submitting its draft implementation plan for collective
10 reparations in this case, the Trust Fund went on record with a carefully researched,
11 thoughtful proposal for a way forward to enable collective reparations to become a
12 reality for victims.

13 It was developed in consideration of the circumstance that the large majority of the
14 prospective beneficiary victims, and their exact location, are as yet unknown. This
15 circumstance, which may be expected to occur in many, if not most, reparations
16 proceedings before this Court, has informed the Trust Fund's plan to be clear and
17 consistent in its approach, method and the major elements of the awards, while
18 allowing the implementation of the plan and its translation into concrete activities to
19 be guided by the best practices regarding project proposal development processes,
20 which are also bound by the financial Rules and Regulations of the Court, and to be
21 informed by the specific conditions and needs of the participating victims as they
22 enter into the programme.

23 As such, the Fund's plan is designed to be responsive to the Amended Reparations
24 Order of the Appeals Chamber, yet to also possess the necessary adaptive qualities
25 that enable victims to get the most out of the awards, rather than to be subjected to an

1 all too rigid implementation paradigm that may end up being insufficiently
2 responsive to the actual harms suffered by the victims.

3 Today, the Trust Fund is in a position to provide the Chamber with a more detailed
4 set of informational layers in regard of the scope, the purpose and the anticipated
5 outcomes of the proposed collective reparations programme.

6 This is made possible by the insights contained in the various submissions in this
7 procedure, as well as by the evolving insights of the Trust Fund itself, nurtured by its
8 programme experience, by its continuous engagement with the stakeholders in the
9 field, as well as by the experience of drafting the project framework for symbolic
10 reparations on the request of this Chamber.

11 What is at stake? This question was answered to a large degree by the original Trial
12 Chamber, and affirmed by the Appeals Chamber, in laying out the principles and
13 purpose of reparations in this case.

14 We recall that the original Trial Chamber held that collective reparations before the
15 ICC in the Lubanga case should seek to relieve victim suffering and afford justice by
16 alleviating the consequences of the crimes of enlisting and conscripting children
17 under the age of 15 years and using those child soldiers to actively participate in
18 hostilities.

19 According to the reparations principles developed by the original Trial Chamber,
20 reparations should also deter future crimes, contribute to the effective reintegration of
21 former child soldiers, and to, quote," promote, wherever possible, reconciliation
22 between the convicted person, the victims, and the affected communities." End of
23 quote.

24 That Trial Chamber further held that, as a general principle, collective reparations
25 need to address any underlying injustices and should avoid replicating

1 discriminatory practices or structures that predated the commission of the crimes.
2 Equally, reparations should avoid further stigmatisation of the victims and
3 discrimination by their families and communities. A gender-inclusive approach
4 should guide the design of reparations. It also emphasised the need for consultation
5 with and participation of victims, their families and, where applicable, communities.
6 With a view to the particular circumstances of this case, the original Trial Chamber
7 held that "reparations may include measures to address the shame felt by some
8 former child soldiers, and to prevent any future victimisation. The reparations
9 awards should, in part, be directed at preventing future conflicts and raising
10 awareness that the effective reintegration of the children requires eradicating the
11 victimisation, discrimination, and stigmatisation of young people in these
12 circumstances."
13 The Appeals Chamber affirmed all of these principles and did not amend any of them
14 on appeal.
15 And to the Trust Fund, the stated purpose and principles of reparations constitute the
16 fundamental guidance for the entirety of its undertakings to design and implement
17 collective reparations awards.
18 This is already clearly apparent in the implementation plan, from which the Trust
19 Fund derives three cross-cutting objectives of reparations that should apply to all the
20 projects and activities forming the collective reparations awards.
21 And they are, the first one is that court-ordered - judicial - reparations to victims
22 should be characterised throughout the phases of design and implementation of
23 awards by a scrupulous sensitivity to trauma. This means no victim should
24 experience additional trauma as a result of his or her association with the reparations
25 process, which may range from eligibility screening to actually participating in the

1 awards. It means that all victim engagement with the reparations programme
2 should take place on a voluntary basis and be respectful of the victims' well-being
3 throughout. It means that reparations should proactively mitigate any social or
4 political stigma that victims may be suffering as a result of the harm that they have
5 suffered.

6 The second cross-cutting goal is that reparations should indeed be sensitive to gender.
7 This means that the design and implementation of awards should proactively
8 consider the gendered impact of the convicted crimes, that is women and girls are
9 affected by crimes and experience harm differently than men and boys. Secondly,
10 the implementation should demonstrate a gender-sensitive approach in identifying
11 and engaging with victims, as there are likely to be social and economic conventions
12 preventing female victims from coming forward in a similar manner as male victims.
13 And thirdly, awards should always display a gender-sensitive approach in
14 discovering and in addressing the particular types of harm suffered by female victims
15 and in no way serve to re-enforce a practice of social stereotyping of female victims
16 that will frustrate their full and dignified recovery.

17 The third cross-cutting goal is that reparations should be sensitive to the local context
18 and, in this case, that's a context characterised by a long-standing -- and in some parts
19 of the intervention area, a continuing -- experience of conflict and insecurity. This
20 means that reparations should be mindful of the personal, social and economic
21 security and well-being of victims in an intervention area that is heavily impacted by
22 armed conflict. Collective reparations should endeavour to induce conflict
23 mediation within communities and build the capacity of victims and their
24 communities to achieve reconciliation and peace building on the basis of a mutual
25 appreciation of how conflict and strife affected the social fabric of communities.

1 Reparations should thus favour an approach that will bring positive transformation to
2 victims, individually, and have preventative effect on the re-occurrence of the
3 convicted crimes within the affected communities.

4 Let me now take you forward to describing what a number of key components of the
5 reparations awards in this case would actually look like in terms of goals, their
6 anticipated results, and the likely range of possible activities that will achieve these
7 results. And that is building on the draft implementation plan submitted in
8 November 2015.

9 I will highlight three key components of the plan, by way of an example: symbolic
10 reparations, psychological support and, finally, livelihood support in the form of
11 vocational training.

12 All three featured prominently in the feedback received in the community
13 consultations, as well as in the submissions of the victim participants and the amicus
14 curiae briefings and, hence, in the draft implementation plan of the Fund and together
15 they account for a major part of the total collective awards. All three, as I said, also
16 strongly featured in the oral and written submissions in these proceedings. In the
17 interest of time, the Trust Fund will not today address other important components,
18 such as medical support or the broader dimensions of livelihood development.

19 The Trust Fund recalls that it submitted on 16 September a detailed project
20 framework for symbolic collective reparations, in response to a request by this
21 Chamber.

22 In the view of the Fund, the implementation of symbolic reparations should have,
23 next to achieving its inherent objectives, the following additional benefits: it propels
24 the actual long-awaited implementation of the awards, it paves the way for the social
25 acceptance of reparations awards in the affected communities, and it creates a safe

1 environment for victims to come forward and voluntarily participate in the
2 service-based collective awards without undue fear for their safety or reputation.
3 In so doing, the symbolic reparations will be responsive to the cross-cutting objectives
4 that I just mentioned above: to be sensitive to trauma, gender and to the context of
5 conflict and insecurity.

6 The main specific objective of the Trust Fund's detailed project framework for
7 symbolic reparations is that the reintegration and redress of former child soldiers will
8 be enabled by the awareness and acknowledgment of the affected communities that
9 the enlistment, conscription, and use of child soldiers under the age of 15 are crimes,
10 are crimes causing enduring harm to the former child soldiers and their families and
11 consequently continuing to disturb the well-being of their communities.

12 The expected the outcomes of this project are to foster awareness and
13 acknowledgment within the affected communities about the convicted crimes and the
14 harm suffered by victims, to significantly reduce the stigma attached to former child
15 soldiers, affecting their ability to reintegrate and rehabilitate, to provide for an
16 enabling environment to develop and implement service-based collective reparations
17 awards and, beyond the affected communities, to inform other stakeholders in the
18 public domain about the objective and results achieved in this project as a first
19 expression of the joint reparative justice mandates of the Court and of the Trust Fund
20 for Victims.

21 The proposed collective symbolic reparations in Ituri province would contain two
22 main components: To develop and construct symbolic structures, in the form of
23 commemoration centres that will host interactive symbolic activities, in three
24 communities, and to undertake mobile memorialisation initiatives in five additional
25 communities, initially, that will promote awareness raising of the crimes and

1 resulting harms, and about reintegration, reconciliation, and memorialisation.

2 The selection of the locations that will host the commemoration centres has been done

3 following consultation with, and obtaining informal endorsement of, the community

4 leadership in these communities.

5 The situation of former child soldiers in this case is particularly precarious because,

6 although they are adults by now, they remain deeply affected by their experiences as

7 children. They do not only have to cope with their experience, but they're also

8 subjected to shame and stigma that accompanies their status of former child soldiers.

9 Symbolic reparations, in this case, can thus precede -- and enable -- service-based

10 collective reparations. And they must therefore be understood and perceived to be

11 an integral part of the entire collective reparations award. In other words, symbolic

12 reparations are extremely important, but, at the same time, they are insufficient.

13 They should not be understood as redressing the entirety of the harm suffered from

14 mass crimes or the crimes in this case.

15 Your Honours, the Trust Fund recalls that in its view, informed by expert advice as

16 well as by its own findings, there should be a presumption of psychological harm for

17 all former child soldiers, as well as for the indirect victims, who are the family

18 members and many of whom were pressured into providing their children to the

19 UPC, in this case.

20 Consequently, the Trust Fund developed the implementation logic of its plan, in as

21 far as it concerns victims that will have been successfully screened to be eligible for

22 reparations, to have psychological support to victims as both the entry point for their

23 participation, and the essential condition for the Fund and its partners to develop an

24 in-depth understanding of their interest and their need to join in other parts of the

25 collective awards programme.

1 The main objective of psychological support is to mitigate the negative impacts of
2 disrupted personal development, traumatic experiences, and the lowered social status
3 that stem from the enlistment, conscription and use of child soldiers.

4 Traumatic stress is one of several ways in which wartime experiences impact former
5 child soldiers, alongside disrupted development pathways, and lowered social status
6 due to stigma. Taken together, traumatic stress, disrupted development, and social
7 stigma result in reduced coping capacities, which then leads to poorer psychosocial
8 health. It is manifest that these harms have also extended to their family members as
9 indirect victims.

10 The Trust Fund described a psychosocial sensitive approach in the draft
11 implementation plan for the intake of victims into the reparation programme. With
12 the assistance of our implementing partner, the Centre for Victims of Torture, the
13 draft implementation plan outlined and further discussed this 'soft touch' approach in
14 the annex 9 observations, and the Trust Fund adopted a psychologically sensitive and
15 receptive manner of dealing with victims from their first moment of contact with the
16 awards.

17 Psychological rehabilitation does not start with counselling and meeting victims. It
18 starts with community engagement, in which our Trust Fund and our partners
19 engage with community leaders and trusted stakeholders to discuss the projects and
20 process with them. This engagement model was extensively discussed in our
21 reparations, symbolic reparations project. It is crucial for the success of the collective
22 awards that the community be consulted, local leaders, cultural leaders, religious
23 leaders, civil society, and trusted stakeholders should be informed of the projects, that
24 we seek their support and their co-ownership in the implementation and
25 dissemination of information about the awards.

1 Building trust and confidence within the community improves victim mobilisation
2 and identification efforts. It dispels myths and rumours about the awards, it
3 promotes public information and understanding for the awards, including the
4 beneficiary selection process.

5 At the victim's first encounter, at home or in the village, with the collective
6 reparations awards there will be a brief introductory conversation with a specially
7 trained local counsellor. The counsellors discuss the awards with the victim, the
8 process, the types of services available through the collective awards, in addition to
9 collecting basic information from the victim in a conversational non-threatening
10 environment.

11 During those conversations the counsellor learns of the particular experiences of the
12 victim and what coping strategies he or she has developed and whether they are
13 harmful. Counsellors will be in a position to offer corrective coping strategies and
14 talk victims through their feelings and experiences. These sessions over several
15 months will permit the counsellor to understand the depth of trauma and to develop
16 a therapeutic recovery process. It is in this period and through this process that the
17 counsellor provides therapy to the victims and they will become able to assess the
18 extent of a victim's harm.

19 Counselling is provided to victims because they need it and can benefit from it. It is
20 important to respond to their psychological needs first to improve their clarity of
21 thought and to improve their coping capacity so that they can take full advantage of
22 other rehabilitative services. In our experience victims that are troubled by trauma
23 cannot take full advantage of socio-economic services. Victims suffering from
24 mental trauma may find it difficult to focus and to manage the low levels of stress
25 that accompany the challenges of new training and learning opportunities.

1 Therefore, the Trust Fund has structured its programme and project intake processes
2 to best enable a successful victim experience and to give them the tools they require
3 for reintegration. The local counsellors will be able to mentor the victim throughout
4 the process as they make use of other rehabilitative services.

5 As an integrated programme it is designed to address the damage done to victims'
6 coping capacities. It will strengthen affected individuals' internal coping capacity
7 and equip them to be more effective in identifying, utilising external coping resources
8 available to them.

9 The Trust Fund has extensive experience in adopting this approach with partners for
10 use in psychological rehabilitation projects. It develops a trusting environment
11 between the counsellor and the individual victim, and we reiterate our proposal that
12 this approach be used when implementing collective reparation awards in this case.

13 The subtle and sensitive approach is effective and necessary. As the Legal
14 Representatives for Victims V01 noted on Tuesday, if you would ask his clients if they
15 need counselling they would be likely to respond by saying "no". But in
16 conversation with those same clients it became readily evident that they do suffer
17 from trauma, have trouble coping, and would greatly benefit from counselling
18 support.

19 Now the proposed expected outcomes of psychological support are the following:

20 Victims possess strengthened coping capacity to deal with the detrimental effects of
21 the harm they suffered, as well as post-conflict life in general.

22 Community understanding and support of psychological support to victims
23 contributes to its effectiveness.

24 And mentors are in place to follow up counselling sessions with other forms of
25 support to victims, to assist them in applying skills learned that will support them

1 during other elements of the reparations programme.

2 Central to the success of all forms of collective reparations is the sensitivity to the
3 emotional and interpersonal functioning of each intended victim. This is true
4 whether people are conducting assessments for eligibility of harm, providing medical
5 care, teaching skills, or facilitating a cooperative income-generating project.

6 Psychosocial awareness and education helps other stakeholders in the community to
7 understand that many reactions and behaviours of child soldiers, former child
8 soldiers are a part of the problem that collective reparations are intended to address.

9 Your Honours, next to psychological harm, the life of all former child soldiers is
10 characterised by one big deficiency, having been deprived of a proper education.

11 It is not by their own intent that former child soldiers have, at best, a disrupted
12 educational path towards becoming valued and contributing members of their
13 communities.

14 Lack of basic education and vocational skills put former child soldiers at a significant
15 social and economic disadvantage, which results in them being perceived to be of
16 limited value to the community and which may, by itself, cause harmful behaviour to
17 themselves, as well as to the communities where they reside.

18 Vocational training and skills training would be part of an integrated package for
19 victims to improve their livelihood opportunities following the psychosocial support.

20 The main objective of the vocational education component is for victim beneficiaries
21 to achieve a sustainable livelihood improvement that mitigates and overcomes the
22 socioeconomic harms that comes from being recruited, enlisted and used as a child
23 soldier.

24 The first step is to undertake market surveys, local market surveys: What skills are
25 in high demand in the local economy? What vocational training services are already

1 available or would need to be developed to meet the skills demand? And based on
2 those findings from the market survey, a menu of skills training programmes is going
3 to be developed in response to the local market environment.

4 In this process, victims participate in discussions about the findings of the market
5 survey regarding their current education level, including literacy and numeracy,
6 work experience and career development options. The victim explores training
7 options and the related training requirements, which may include farming, mechanics,
8 catering, carpentry, or other skills. The victim can then be placed on the appropriate
9 training path.

10 When necessary, victims can enrol in accelerated literacy and numeracy courses to
11 account for their lost educational opportunities, and which will enable them to join in
12 vocational training programmes.

13 The expected outcomes of the vocational education component are that victims
14 experience a significant improvement and transformation of their ability to undertake
15 economic activities. They are able to provide for their families in a sustainable way.
16 They will be empowered to establish businesses and to acquire assets from the
17 proceeds of their trade practices. They will benefit from accelerated literacy training
18 and educational training in order to access and create other forms of
19 income-generating activities.

20 Your Honours, during these public hearings, as well as in the written amicus curiae
21 submissions, we've learned about a wide variety and range of insights and ideas on
22 how to construct projects that will constitute effective collective reparations awards to
23 the victims in this case. These insights focused on respecting the victims' right to
24 reparations, acknowledging the amount of time that has passed since the crimes were
25 committed, and the urgent need for victims to actually transform their lives for the

1 better.

2 In all of its undertakings, the Trust Fund is receptive to comments, observations and
3 constructive criticism. We have set ourselves up as a learning organisation, tasked
4 with the responsibility to deliver reparative justice as a meaningful and tangible
5 offering to victims of the most serious crimes.

6 Reparative justice was constituted newly in the Rome Statute and its regulatory
7 framework. It is not a finished product, and while the institutions of the Rome
8 Statute may gather experience and develop jurisprudence, every case transitioning
9 into the reparations phase will be different, which means that reparative justice is
10 never likely to be a fully-finished product.

11 The Lubanga case is the first occasion in the history of the ICC for collective
12 reparations to victims to become a reality. The Court, the Trust Fund, the parties to
13 the proceedings, the victims and their communities, we are all actively participating
14 in this vision. And we are all learning along the way. Learning is listening. These
15 hearings are an excellent opportunity for listening. What we have heard this week,
16 though, is extremely important at two levels.

17 First, we learned that judicial reparations do not take place in a void. We have to be
18 mindful of the context of the crimes and of the harm suffered by the victims, as well
19 as the wider social and security context, which may determine the success of the
20 implementation of the reparations awards.

21 There is extreme poverty in eastern Congo, compounded by years and years of
22 conflict and violence, which have not even abated entirely by today. Enduring
23 poverty and lack of sustainable security are the realities shared by victims in this case
24 with almost everyone in their environment. If individual victims are to effectively
25 benefit from collective reparations, others around them will need to understand how

1 improving their lives and remedying their harms can also benefit the broader
2 community. If not, there is a real risk that reparations will cause jealousy and
3 further stigma and undo any benefit for the victims.

4 Related to this, there is another important insight of these hearings, confirmed in
5 these days, and that is that, in collective reparations, the individuality of victims
6 cannot be overlooked. And yet, active communal support is needed for victims to be
7 able to transform their lives for the better; to reintegrate, to reconcile or, just simply,
8 to move on with their lives.

9 All harm suffered from international crimes inevitably affects the lives of individual
10 human beings. Yet we cannot ignore the inherent and often intentional injury of
11 these crimes to their communities. Mass victimisation, typical of the so-called ICC
12 crimes -- war crimes, crimes against humanity, genocide -- both defines and
13 transcends individual harm.

14 This is a challenging circumstance to negotiate in the design of appropriate and
15 meaningful collective reparations awards for victims, while maintaining regard of the
16 individual criminal responsibility and financial liability of a convicted person.

17 Your Honours, as I said in the beginning, the Trust Fund is aware of the desire of the
18 Trial Chamber to have a more detailed understanding of the eventual awards
19 proposed by the Trust Fund as collective reparations in this case.

20 I would like to reiterate that it has always been the logical intent of the Trust Fund to
21 follow up on its draft implementation plan with the development of a more detailed
22 description of the proposed specific awards to respond to the harm suffered by
23 victims in this case.

24 I would like to refer to the Trust Fund's project framework for symbolic reparations as
25 the one concrete example that we have now of how to get from a plan to the awards:

1 by developing a quite detailed framework including objectives, outcomes and
2 necessary activities.

3 This framework will then be transformed in a call for proposals, to be submitted by
4 locally established service providers. The resulting project proposals further provide
5 details to the project framework based on the applicants' knowledge, their experience
6 and their local standing. Successful applications will be further refined by the Trust
7 Fund's staff, including by suggestions and adaptations necessary to make the projects
8 comprehensively responsive to the overall objectives of the collective reparations
9 awards. And the resulting awards will then require the review and approval of the
10 board of directors of the Trust Fund prior to being shared with the Trial Chamber.

11 In light of the above, the Trust Fund would like to propose to the Trial Chamber a
12 two-stage approval process for collective reparations awards, as designed and
13 proposed by the Fund in response to the amended reparations order in this case.

14 The first stage is the draft implementation plan, containing the overall programmatic
15 framework and a fairly detailed set of project frameworks along the lines developed
16 by the Trust Fund for the symbolic reparations plan, as well as in the further
17 examples that we provided today.

18 The second stage are the actual awards, in the form of projects resulting from the
19 procurement procedure managed by the Trust Fund, which includes the fine-tuning,
20 as may be required, of the successful projects to make them responsive to the overall
21 plan, as well as mutually cohesive and reinforcing, in order to maintain the integrity
22 of the reparations and the adherence to the stated purpose and principles of
23 reparations.

24 The Chamber's approvals at these two key moments should serve, in the view of the
25 Trust Fund, the dual purpose of, one, the eventual awards will be responsive to the

1 reparations order and, as such, to the type and scope of harm identified by the
2 Chamber in that order for reparations; and, two, the procedure will be conducive to
3 establishing a meaningful and effective partnership between the Court and the Trust
4 Fund in mutual respect of each other's roles and responsibilities according to the
5 Rome Statute's regulatory framework, and a partnership characterised by the
6 common interest to make justice a meaningful and tangible reality for victims.

7 Your Honour, I note I'm ending the 60 minutes almost. There is a couple of issues
8 that I would still like to address with your indulgence. Thank you.

9 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: (Overlapping speakers)

10 MR DE BAAN: I will now turn to a few matters that need to be addressed following
11 the oral --

12 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: (Interpretation) Please.

13 Please, go ahead.

14 MR DE BAAN: -- submissions on Tuesday.

15 The Trust Fund's complement of €1 million to the payment of the reparations awards
16 ordered against Mr Lubanga has been raised as an issue in these hearings.

17 Let me first be clear on this. The Trust Fund's complement in the form of a financial
18 contribution, whatever its size, to the payment of reparations awards that were
19 ordered against a convicted person is, by definition, inside the boundaries of a
20 convicted person's financial liability.

21 Now, regarding the 1 million allocated by the board of directors in this case, it was
22 said -- it was said to be insufficient.

23 And of course it's insufficient to repair all the harm to all the victims in this case.

24 The Trust Fund has been saying as much since 2011, already when it was first invited
25 to make observations in this case. This is simply because the widespread nature of

1 the crimes under the jurisdiction of the Court, as well as the resulting harm to a large
2 number of victims, implies that all-inclusive reparations always come at an enormous
3 cost, much higher than what the Trust Fund may be able to cover from its limited
4 funds originating from voluntary contributions and donations.

5 And this is important: The Fund's complement comes from voluntary contributions
6 and donations. The Trust Fund has not been set up by the trust -- by the States
7 Parties as a guarantee fund. This would imply that the States Parties would have a
8 duty to ensure that the Trust Fund's resources to co-fund reparations are sufficient,
9 which is at odds with the voluntary funding model established by the States Parties
10 for the Trust Fund.

11 Let me assure you that there has been no light-heartedness in deciding on the Trust
12 Fund's complements, in which the board has taken into account the applicable
13 regulatory framework, as well as the parameters of the case, the prevailing conditions
14 of the victim,s, and the potential reparations orders.

15 The Trust Fund does foresee the opportunity of raising further funds towards the
16 financing of reparations awards, while noting the reluctance of Trust Fund's donors,
17 most of which are States Parties, to be seen as taking over a financial obligation that
18 they view to be the sole responsibility of the convicted person, a responsibility not to
19 be shifted to States Parties. And this sentiment was echoed in the assembly's
20 resolution that go -- went as far as to state that no States Parties may be held
21 responsible by the Court for reparations.

22 While the sentiment may seem to be a paradox, in view with the deliberate creation
23 by the same States Parties of the Trust Fund's ability to complement reparations
24 awards with resources originating from their voluntary contributions, it is a market
25 reality that the Trust Fund has to contend with.

1 For the Trust Fund the 1 million complement is not carved in stone. The amount
2 may be subject to change, upwards or downwards, based on the contents of the
3 implementation plan as eventually approved by the Chamber, the amount of
4 Mr Lubanga's liability which necessarily serves as the absolute ceiling for any
5 complement of payments towards that same amount and obviously based on the
6 availability of resources.

7 I don't wish -- I do not wish to dwell on this issue, given that it's beyond the scope of
8 these hearings, despite being addressed at length in the oral submissions. I will
9 simply conclude by reaffirming that the Trust Fund's board of directors remains fully
10 committed to working in partnership with the Court to develop an effective and
11 successful fundraising strategy and campaign, including during the upcoming
12 meeting of the Assembly of States Parties, in order to ensure that sufficient resources
13 are available to complement reparations ordered by the Court.

14 Your Honours, several parties alluded to the role that the government of the -- of the
15 Democratic Republic of the Congo should play in the implementation of reparations.
16 The Trust Fund does not believe that this Court can order the government financially
17 or otherwise in this regard. I recall again the assembly's resolution stating that no
18 States Parties may be held responsible for -- by the Court for reparations. That does
19 not take away the fact that the government of the DRC does bear a general
20 responsibility, according to its own laws and the different international treaties to
21 which it is a party, for the well-being of all of its victims -- of all of its citizens and
22 communities, including those affected by war crimes and crimes against humanity.
23 In operating the Trust Fund's assistance mandate, we maintain that our interventions
24 in no way can be seen to replace this general responsibility and that they should work
25 with any reparative actions and initiatives of the national governments in the

1 situations concerned. And this is another example of how the principle of
2 complementarity may work in the Rome Statute system.

3 The Trust Fund would welcome very much the moral, political and even financial
4 support and encouragement of the government of the DRC in making the
5 Court-ordered reparations in this case a successful reality. I do not wish to preempt
6 the observations of the government still due in these proceedings, but I do -- would
7 like to say that the Trust Fund has an excellent experience in collaborating with the
8 authorities in the DRC, especially local government agencies in Ituri province, not
9 least during the development of this draft implementation plan. And we fully
10 intend to continue to build on these relationships of trust and support during the
11 actual implementation of the awards.

12 Finally, I would like to acknowledge the statements made by the Defence regarding
13 Mr Lubanga's intentions vis-à-vis the implementation of the reparations awards.

14 The Trust Fund strongly welcomes this statement and intends to begin discussions as
15 soon as possible with Mr Lubanga's Defence team, as well as with the Legal
16 Representatives of Victims, regarding how and in what manner Mr Lubanga could
17 potentially participate in the awards.

18 To conclude, your Honours, in dealing with court-ordered reparations, we are
19 witnessing an important transition in how we perceive and engage with victims.

20 It is the transition from asking the administrative question, "What is a victim?" to
21 asking the reparative question, "Who is a victim?" The reparative question "Who is a
22 victim?" goes beyond eligibility screening and the recording of names and birth
23 certificates. These are matters dealt with administratively. Asking "Who is a
24 victim?" invites a wholistic reparative response that takes into account the victims'
25 own and personal experience of harm and suffering, past and present, as well as the

1 victims' own choice of measures and support that may help to overcome this harm.
2 This is a very important transformative quality of reparations, taking place at the level
3 of the victim, which has been highlighted this week in other submissions. As such, it
4 needs to be a core paradigm of Court-ordered reparations to victims.

5 A similar translation -- transformation, sorry, is taking place at the systemic level.

6 We are in a courtroom today debating projects and ideas. However, reparations to
7 victims require a shift of the focus from the courtroom to Ituri where the victims are.
8 At the end of the day it is the victims who should benefit from justice in the form of
9 reparations.

10 In reparations, victims themselves transition from being participants in judicial
11 proceedings, or from not even being known to the system yet, to being rights bearers
12 and to having a stake, and a say, in the reparations awarded to them.

13 It is time to move on.

14 On to the localities where the victims are, continuing our listening and learning in
15 their presence, and enlisting their active involvement, as individuals, and as members
16 of their communities, to reap the tangible benefits of collective reparations in this
17 case.

18 Thank you.

19 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:35:42] (Interpretation)

20 Thank you very much for your remarks. And we realised that you wanted to deal
21 with these issues in a very practical way and, in light of the information that you have
22 provided us, I would like to express a wish. I do hope that you will be in a position
23 to append some of the slides to the transcript of today's hearing. And I thank you
24 very much.

25 Now, how shall we proceed? I believe that the Chamber will have a few questions

1 for you in order to obtain additional clarifications from you regarding your initial
2 remarks, then we will have our break and after the break the Legal Representatives of
3 Victims and the Defence will have an opportunity to make their views in light of your
4 own remarks, which were quite dense and detailed. I would like to begin with
5 questions from the Chamber. My colleague, Judge Kovács.

6 JUDGE KOVÁCS: [10:37:05] (Interpretation) Thank you. I was very attentive to
7 your presentation, sir, and of course one might write a good many Defence theses
8 about these issues of reparations, be it in financial terms, or from a theoretical point of
9 view, or from a legal point of view. Now, I don't want to enter that particular field.
10 What's quite striking though, I find, is that many of these services that are provided to
11 the victims, general victims or the specific victims in this case, are quite similar,
12 practically -- well, you have demonstrated, thanks to your experience, that when it
13 comes to the treatment at hospitals, psychological treatment, teaching programmes,
14 school catch-up programmes, vocational programmes, you have remarkable
15 experience in this field, thanks to your assistance programme, and yesterday the
16 representative from the victims, Ms Massidda, made reference to your experience and
17 projects in this regard, but I must point out that there are a number of financial
18 restraints, limits when it comes to budgets, the number of staff in the field. And I
19 think it would be quite useful for us to hear from you how you see the usefulness -- is
20 it useful to set up these brand shiny new services for the victims of Mr Lubanga, or do
21 you see your projects somewhat differently?

22 Joint services, existing institutions with a broader mandate, if necessary, would
23 provide services to the local people, the victims, the others, the other people in Ituri in
24 relation to the victims of Mr Lubanga.

25 The true tangible consequence here I believe is the right to compensation. And I

1 think we must be specific, the reimbursement of certain costs means a budget is

2 necessary so that we can distinguish victims of Mr Lubanga from others.

3 Now, if we hark back to our core issue, do you think that it would be best for the

4 institutions themselves to offer their own projects to Mr Lubanga's victims within the

5 framework of reparations, or would it be better sometimes or repeatedly have joint

6 projects? And it would be up to you to make the distinction from a financial point of

7 view from the reparations part and the assistance part.

8 Thank you very much.

9 Thank you, your Honour, for allowing me to take the floor.

10 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:40:56] Mr Director.

11 MR DE BAAN: [10:40:58] Thank you. Thank you, your Honour, for this question.

12 And actually it's a very important subject that you are addressing.

13 What we have tried to do in developing our plan for reparations in this case is to

14 avoid a situation in which the Fund or the Court would create new institutions or

15 new buildings and to be making use of existing capacities, existing structures that

16 could be enlisted, so to speak, to work with the Trust Fund, deliver services, to deliver

17 services specifically related to the harm suffered by the victims in this case.

18 This makes sense from a financial point of view, because you would avoid setting up

19 expensive new structures. It makes sense from an ownership point of view, because

20 we believe that local services and local structures should be owned locally and not

21 internationally, and as they are also there, it also makes sense to make use of those

22 capacities to ensure that the services are not only delivered during the reparations

23 plan, but may be available to victims further down the road; that we are not only

24 creating a project, but that we are creating a practice of providing certain types of

25 services needed by victims over a long period of time.

1 I did not address the suggestion made by Women's Initiatives on last
2 Sunday -- Tuesday that the project should be five years instead of three years. For
3 the Trust Fund, the three years, we've developed that as what we see to be, given our
4 financial limitations, a conceivable project with the right kind of results coming out
5 within the three years.

6 If it becomes clear during the implementation that more time is needed, the Trust
7 Fund obviously in consultation with the Court is willing and able to see to what
8 extent the time period of the implementation of awards can be extended.

9 We believe in answer to your question that -- and there is a difference between
10 assistance and reparations here in the sense that these services would be targeted at
11 the individual needs of those victims eligible for reparations, but then still within the
12 parameters of existing structures as much as possible.

13 To the extent that these services do not exist or are not strong enough, we will work
14 with our partners to strengthen the capacity and provide additional capacity to
15 ensure that the right level of services are being provided to victims. And this may
16 regard in particular the provision of counselling, that is an expertise which requires
17 highly developed skills which may not be readily available. And the Trust Fund has
18 in eastern DRC and in Uganda experience working with partners who train local
19 counsellors to perform these services.

20 And having this capacity, they may be able to work with victims beyond the three or
21 five-year limit of the reparations limitations period.

22 I hope this answers your question.

23 JUDGE KOVÁCS: [10:44:28] (Interpretation) Thank you very much.

24 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:44:31] (Interpretation)

25 Thank you very much, Mr de Baan.

1 I have four questions for you. And I think I will put them to you one at a time rather
2 than all in one go.

3 Now, my first question is about local security, which was mentioned on Monday.

4 You made mention of the visit by Dr Mukwege to the Court and the project that has
5 been underway for a while, all of us who viewed the documentary regarding the
6 doctor and his experience are aware that the security and safety conditions that he
7 operates in are quite problematic. Thus, I would like to ask you, what is your take
8 on the security situation in the area where you would be implementing programmes
9 for the former child soldiers who were victims of Mr Lubanga? Would there be an
10 impact on the feasibility of certain programmes? Would additional costs be caused?
11 What would the dealings be like with the UN peacekeeping force or the Congolese
12 authorities? Could you elaborate.

13 MR DE BAAN: [10:46:05] Thank you, your Honour, for this question, which relates
14 to a very important subject. I've also seen the documentary about Mr Mukwege, and
15 it is a very, very impressive document because it does convey the very difficult
16 situation in which Mr Mukwege and his team has to operate in doing their work.
17 I would like to say, however, that this is taking place in a different part of eastern
18 Congo, in the south Kivu province, which has a different security situation than Ituri.
19 This is not to say that there is no security concern to be aware of in Ituri. And to give
20 an example, during our consultations we were forced sometimes not to go to some
21 places for security reasons because we were prevented also by the security assessment
22 made by the Court and United Nations that it wouldn't be safe to travel there.
23 Having said that, the advantage also for the Trust Fund to work with local partners,
24 they don't have the similar, same constraints as the international staff of the Trust
25 Fund have. And so they may be operating in areas, which is the case already under

1 the assistance mandate which Trust Fund staff cannot go and they may thus be
2 achieving results, even if the security environment would prevent the Trust Fund to
3 go there themselves.

4 So yes, it is something to be aware of. It is something that may affect the
5 implementation of the programme. I think we have to be clear on that.

6 It's difficult to predict now how in Ituri, which is a rather large area and where still
7 pockets of violence and armed conflict persist, how this will play out in the next three
8 to five years. However, I think we have the responsibility to develop a programme
9 that would potentially be accessible to all victims, and if there are security issues that
10 prevents that, that is something then beyond the powers of the Court and of the Trust
11 Fund.

12 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:48:17] (Interpretation)

13 Thank you. My next question has to do with the problems you spoke to, namely, the
14 combination of collective projects and the need to work individually with particular
15 victims so as to involve them in practical psychosocial programmes, dialogue
16 initiatives, encourage them to take part in various personal endeavours.

17 So this a very sensitive problem really because, first of all, you must have an
18 opportunity to identify these individuals, and then you must be in a position to
19 design your programmes so that they are collective in nature, yet at the same time
20 targeting assistance, providing targeted assistance to the people in question as much
21 as possible.

22 I listened very carefully Judge Kovács' question a few moments ago. Obviously
23 there will be a combination of assistance initiatives and reparations initiatives for
24 people who may not have been victims of Mr Lubanga, and this point was raised
25 several times by the Defence, but this would come under the assistance mandate,

1 whereas your efforts to help Mr Lubanga's victims would come under the reparations
2 component.

3 And I do realise that it will not be an easy task to make a distinction between these
4 two components and also to calculate the cost or the accounting, so to speak.

5 My question is quite an open-ended one. We realise what your difficulties are.

6 How do you intend to manage this interface between collective projects and more
7 individual treatment?

8 MR DE BAAN: [10:50:38] Thank you. Thank you for your question. It's a very,
9 very, very -- it's a very difficult question to answer comprehensively. What we tried
10 to do is to develop the collective awards in such a way that they may have individual
11 benefits so that the individuality of victims is recognized within the framework of the
12 collective awards. The psychosocial support component that we presented just now
13 is a collective award, but it will result in a very individual engagement of the victim
14 with the award, with the project, and as such is not at odds with the collective nature
15 of the award.

16 As for the relationship between reparations and assistance, that is in the eye of the
17 beholder. For the Trust Fund, and I would hope also for the Court, it will be quite
18 clear what is reparations and what is assistance.

19 Reparations are undertaken within the very specific paradigm of a case where crimes
20 have been convicted and where the harm resulting from those crimes have been
21 typified by the Court. That is the guiding, those are the guiding parameters for the
22 exclusivity of the reparations project in relation to victims who may be eligible to
23 benefit.

24 Assistance projects do not have such a selection system, and they are developed in
25 much more of a programmatic nature, not involving individual victim screening on

1 the basis of their eligibility to the extent that is operated by the reparations
2 programmes, and for the Trust Fund, the administration of the two different types of
3 projects will be very, very evident and important also.

4 Taking the perspective however of communities, they may not necessarily see or
5 understand what is the difference between assistance and reparations. Because both
6 these mandates originate from the Rome Statute system, there is a general concept of
7 reparations and it is not easy for a lot of people to understand what exactly is the
8 nuance between what our reparations and what are victims. Even if it is very clear
9 that reparations are linked to individual criminal responsibility of a convicted person,
10 that the assistance mandate does not ask the question: Who has been the perpetrator
11 of the crimes for which victims have been suffering harm throughout an entire
12 situation?

13 Conceptually it may be clear. And I think it will require a very clear and consistent
14 communication effort jointly by the Court, the Registry, and the Trust Fund for
15 Victims to make sure that communities which are going to be the theatre of the
16 reparations awards do understand very clearly what is happening and how this is
17 related to the case of Mr Lubanga or any other case that might come to this stage, and
18 what this means and how it is related to the crimes and the harms suffered in the
19 particular case and what is not reparations, what is assistance and what is more
20 general.

21 We've included this component of outreach and dissemination already as a
22 standalone component in our project framework for the symbolic reparations
23 initiative because it's important that the communities and the other stakeholders and
24 local government, and the national government and the international community
25 understands what this is about. It's the first time ever that the reparations system of

1 the Rome Statute comes into play. People are aware of it in a very general way, but I
2 think this is the first opportunity to be very clear and consistent in our messaging,
3 how reparations look like, why are they there, how are they linked to the individual
4 criminal responsibility of a convicted person, and what makes that different from any
5 other assistance that the Trust Fund may provide to victims in the general situation.

6 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:55:15] (Interpretation)

7 Thank you very much, sir.

8 There is an implicit question that comes out of your presentation, namely, the balance
9 that you intend to strike between the various components of the overall plan for
10 reparations to Mr Lubanga's victims. You mentioned three key components, if I've
11 understood correctly. First of all symbolic reparations, secondly psychological
12 assistance, and thirdly training initiatives.

13 We have reviewed this information regarding symbolic reparations and the
14 possibility of the possible cost of that part of that programme. And at the same time
15 we have focused on this concept of an overall budget envelope.

16 Could you tell us more about the resources that you would allocate to the various
17 components of the overall plan? Perhaps if you could tell us, amongst the various
18 proposals that we have seen from NGOs who responded to the request from the
19 Chamber and who have provided written proposals to us, could you tell us whether
20 you think some particular initiatives are of particular interest, other than the partners
21 that you have worked with and that you mentioned in your slide show, organisations
22 other than the usual ones that you have been working with.

23 Thank you.

24 MR DE BAAN: [10:57:17] Thank you, your Honour, for this question, which is about
25 the resources that may go to the different components.

1 I don't have for you now specific amounts. What we tried to do today is to indicate
2 which key components that we think are going to be of significant importance in the
3 eventual awards, how they would look like. And that's already an indication of, let's
4 say, the share of the award that they might take.

5 And I think it would be the moment for the Trust Fund, when we are translating the
6 plan into a project framework, to go to a tender procedure. At that time I think we
7 will be better in a position to provide the Chamber with information of what the
8 envelope might be suggested by the Trust Fund for each of these components for
9 which we would be inviting proposals. This is saying that today I would not be
10 comfortable to give you that information very concretely, because it needs some
11 further, some further thoughts.

12 In regard of the second part of your question, we've listened with interest, very much
13 so, to the contribution made by Child Soldiers International based on their obvious
14 expertise that they have. Even if they did not propose a specific project, the
15 description of the work that they are doing right now resonates very strongly and
16 provides further layers of understanding to what we might be understanding, and we
17 would be very much interested in having further access to that type of expertise in
18 going forward.

19 We've also listened very carefully to the suggestions and ideas of Women's Initiatives
20 for Gender Justice on what the elements should be of symbolic reparations. And as
21 they do align they much with what we have been proposing, some of these elements
22 could further, you know, strengthen the understanding that we have when we are
23 looking at proposals that come in response to our call for proposals.

24 We have seen a number of projects coming from local organisations which we think
25 are extremely important, but which we also see that are more related to the general

1 context of poverty and insecurity in Congo than to the specific parameters of this case.
2 So, as such, as a proposal, I think they wouldn't fit automatically with what we would
3 like to see come forward on the basis of the detailed project framework which is
4 designed based on the parameters of this case. But some of these ideas, and
5 obviously these organisations, as far as we are concerned, would be most welcome to
6 participate in any competitive bidding process that we would organise to get the best
7 quality proposals for the implementation of the awards.

8 That's what I can say right now.

9 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [11:00:44] (Interpretation)

10 Thank you very much.

11 My last question, sir, has to do with the responsibility that the Appeals Chamber has
12 conferred upon the Trial Chamber to ensure ongoing monitoring of implementation
13 of the reparations order which that Chamber issued.

14 I thank you for mentioning in your remarks that you were considering consulting and
15 having a dialogue with the Trial Chamber as part of this programme of collective
16 reparations, and I believe that the Chamber has duly noted your intent to do so. Do
17 you have more details about how you intend to have this dialogue about this process
18 of defining needs, issuing RFPs, and then the practical implementation of the -- rather,
19 the practical oversight of the implementation?

20 The Chamber will be setting the financial amount that will be defined, Mr Lubanga's
21 responsibility. And I believe you have that responsibility as well. This is a very
22 delicate matter that has to consider all the reparation, all the collective reparations
23 programmes that you will have defined and implemented.

24 So this will necessitate a dialogue between the Chamber and the Trust Fund for
25 victims, so I would be very grateful if you can elaborate and tell us what your current

1 thinking is on these particular points.

2 MR DE BAAN: [11:02:46] Thank you. Thank you, your Honour. Before

3 answering this question I would like to clarify one last point related to the previous

4 question, and that is to say that the Trust Fund has not yet selected any implementing

5 partner for the reparations process. I think it's important to understand for the

6 Chamber, for the parties and participants, but also for the general public, we do not

7 have any process in place yet to do that.

8 Dialogue between the Trust Fund and the Chamber, I think I can say perhaps

9 something more about the proposal I just made in my presentation, which is going

10 one step further than what was basically understood perhaps to be the case so far.

11 If you look at the regulations of the Trust Fund it is up to the regulations, by

12 invitation of the Court, to submit a draft implementation plan to the Court, to the

13 relevant Chamber for its approval.

14 This we have done. And we have come to realise, based on the feedback that we

15 have received from the Chamber, but also from other parties, that the plan as it is

16 doesn't constitute yet the concrete awards. And we do appreciate the Chamber's

17 desire to be informed about the concrete details of those awards before giving a final

18 approval. So that is why we have proposed a dual approval process first regarding

19 the plan which would include as much as possible detail under project frameworks

20 that we envisage in response to the harms suffered by the victims, and then a second

21 moment of approval once the Trust Fund has gone through the process of collecting

22 project proposals and perfecting them. And then to present these as the eventual

23 awards, including the financial envelope related to those projects, to those awards, to

24 the Trial Chamber for a final round of review and approval. And it would of course

25 be up to the Chamber to invite also observations by parties and participants.

1 It is cutting into -- looks like making it a longer process. I think it also helps to
2 improve the process and to ensure that whatever comes out of it is going to be the
3 best possible response in terms of awards to the harm suffered by victims of any
4 particular case.

5 So the financial amount of the awards would be part of the information provided to
6 the Trial Chamber in the form of projects selected by the Trust Fund resulting from
7 the procurement process.

8 To the extent that this financial information has a relationship with the liability of Mr
9 Lubanga, or any other convicted person, we have said before that we do not
10 necessarily believe that the liability of a convicted person should be based on the
11 financial value of what the Trust Fund is actually able to complement from its
12 reparation reserve. We have always said that, and then echoing also what Women's
13 Initiative said on Tuesday, whatever we can propose, it's unlikely that it will be the
14 required amount to repair all the harm suffered by all the victims. And so in setting
15 the liability, we would suggest to the Court that they you wouldn't only look at what
16 is being provided by the Trust Fund, but that you would take other factors which
17 have already been developed in the jurisprudence of the case as related to the type
18 and nature and the widespread nature of the harm as determining factors of what the
19 liability might be.

20 I realise that I'm now going beyond the scope of the hearings prompted by your
21 questions, and I would like to leave it at that.

22 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [11:07:10] (Interpretation) Yes,
23 you are quite correct, and I thank you. But I was trying to remain strictly within the
24 framework of these proceedings and the prospect of collective reparations.

25 So, Mr Pieter de Baan, the director of the Trust Fund for Victims, I would like to thank

1 you for your very comprehensive presentation.

2 We have the possibility of listening to the legal representatives and the Defence, as
3 well as OPCV. So I'm proposing that we take our 30-minute break right now to
4 enable them to prepare and we will resume at 11.40, after which we will determine
5 how much time we need. But I would like to give each of the speakers the necessary
6 time to express themselves.

7 This is a new type of session in this Court and we have to benefit from it as much as
8 possible. Thank you once again.

9 (Recess taken at 11.08 a.m.)

10 (Upon resuming in open session at 11.51 a.m.)

11 THE COURT USHER: [11:51:54] All rise.

12 Please be seated.

13 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [11:52:16] (Interpretation) We
14 are going to resume our proceedings now and I will give the floor to the Legal
15 Representatives and to the Defence.

16 As indicated in the order organising this hearing, the parties have the possibility of
17 putting questions to the Trust Fund for Victims and, to ensure the good conduct of
18 the hearings, if you have no objection, I would suggest that you ask this question at
19 the beginning of your presentation so that the TFV can answer you, and then you can
20 intervene on the issues that are important to you.

21 So we will begin with the legal representative of the V01 group of victims,

22 Mr Walley.

23 So, Counsel, if you wish to ask questions to the Fund, I would like to call on you to do
24 that immediately.

25 Thank you.

1 MR WALLEYN: [11:53:24] (Interpretation) Thank you, your Honours. In fact, I
2 have two questions that I would like to put to the Fund.
3 The first one relates to the role of the Legal Representatives and, specifically, in the
4 implementation of the plan and also the assessment of admissible files. We would
5 also like to know to what extent there are any possibilities for the victims who wish to
6 take part in the programme, but who are deemed not to have met the criteria defined
7 by the programme, for example, because at the time of their joining the militia,
8 they might have been older than 15 years and also possibly because they come from
9 localities that are not covered by the reparations order. Is there any type of
10 alternative measure that can be taken by the Fund, or can the victims contact the Fund
11 if they are rejected from the programme or excluded from the programme?
12 Secondly, my other question relates to symbolic reparations. You have underscored
13 the fact that all collective reparations, especially symbolic reparation, requires a
14 positive attitude of the community leaders. Those leaders are also involved in the
15 implementation of that symbolic reparation which will be carried out in those
16 localities, and these are localities dominated by the ethnic group of Mr Lubanga.
17 So my question is as follows: We have talked about security issues, but if these
18 authorities have the will to collaborate, how can you guarantee that this programme
19 of memorials or commemoration should not be rid of its specific purpose because one
20 can commemorate the actions of child soldiers as martyrs and so on, and this may
21 actually lead sometimes to encouraging these types of crimes. Thank you.

22 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [11:56:27] (Interpretation) Do
23 you want to answer immediately, director?

24 MR DE BAAN: [11:56:30] Yes, thank you. (Overlapping speakers) two questions.
25 The first questions, I find it a bit difficult to answer, yeah, to answer it right now in

1 much detail because it does relate to an issue that we understand is not the topic of
2 the proceedings in these hearings.

3 We have already I think clearly and extensively described our positions in this matter
4 in the filings that we have submitted to the Court, ranging from -- from May until
5 very recently. And I would like to submit that it is now up to the Court to consider
6 what the situation is and what the question is rather than me intervening again on
7 that question.

8 So with all due apology, I would not feel comfortable providing you a very specific
9 answer to that question now.

10 The other question on the -- the importance that the symbolic reparations are not only
11 well received in the communities but also actively supported by the leadership in the
12 communities and that there may be a risk that they are going to be so-called, you
13 know, kidnapped or, you know, and to give them another -- another direction, first
14 I'd like to reiterate again that in developing the proposal that we wrote on symbolic
15 reparations we did go out to those communities, we did have informal consultations
16 with the leadership of those communities, whether or not they would be willing, in
17 principle, to host and to provide the -- the land, these commemoration structures and
18 the response was positive.

19 Now, that is not a guarantee. That's a first response. But that's what we needed to
20 be able to propose this to -- to the Chamber as -- as a plan.

21 Like I said, there is no guarantees but, of course, the Trust Fund and its partners will
22 be there. And it is a programme going to be managed by our partners under the
23 supervision of the Trust Fund. And any initiative or any risk that would take it into
24 a different direction than was foreseen is going to be noted immediately and is going
25 to be responded to immediately also.

1 It cannot be that this symbolic reparations process will be turned into something that
2 is an apology for what happened. It's actually something that should
3 turned -- should be turned towards acceptance of the communities, as stated in the
4 objectives, that the conscription, the enlistment and use of former child soldiers is a
5 crime and that the harm suffered by victims, in the sense of former child soldiers, is a
6 legitimate harm. And that is the foundation that we are trying to build for an
7 understanding in the communities that should enable further components of the
8 reparations to take place in such a way that victims, that former child soldiers will feel
9 safe to participate, safe physically but also safe in terms of their reputation.
10 So as this is a very important element, we will make every effort that these symbolic
11 reparations will stay within those parameters.

12 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [11:59:45] (Interpretation) Thank
13 you, Mr Director.
14 Counsel, you have the floor.

15 MR WALLEYN: [11:59:50] (Interpretation) Thank you, Mr Director for the
16 answers.

17 I believe, indeed, that it will be important to follow up the process to the very end,
18 even though it is necessary to -- it would be necessary to stop if there is a misdirection.
19 And this is the responsibility of the Fund for the entire implementation project.
20 With your leave, Mr President, before I conclude, I would also say a word about the
21 role of the person convicted in this proceedings, and specifically what was said on
22 this matter on Tuesday.

23 After Ms Mabile's intervention on Tuesday, all the representatives here were
24 pleasantly surprised to hear a distinctly more nuanced or qualified position because
25 in the previous hearings they had a different position.

1 The Defence let it be known that the control that they would like to exercise over the
2 future beneficiaries of collective reparations would not be of the same type as the
3 battle that they fought over years to discredit, credit and undermine the credibility of
4 the victims participating in the criminal proceedings.

5 There was also the intention of Mr Lubanga to apologise publicly to the victims, not
6 before the Court or in a video, as some other convicted persons have done, or in a
7 press communiqué, but rather in the setting of a traditional ceremony, which
8 presupposes that he would have -- have to have been released before that.

9 Nevertheless, we are quite happy with that announcement which seems to imply that
10 Mr Lubanga will finally admit the reality of the recruitment of children under 15 in
11 the UPC, that he assumes his personal responsibility in these crimes, and that he is
12 ready to contribute to the reparation process.

13 We also hope that this change in the position of counsel reflects a real change of
14 attitude by the condemned or convicted person rather than a mere manoeuvre or
15 tactic, because if a radical change in the attitude of the convicted person were to be
16 confirmed, this would create not only the necessary conditions for the success of the
17 collective reparations process, but in itself would constitute a form of reparation.

18 There is still continuing disagreement in relation to the type of control that the
19 Defence wishes to exercise on the identity of the future beneficiaries of the collective
20 reparations programme. Maître Mabilie has stated and quite logically so that if the
21 Court has to rule on the applications for reparation, filed by victims against the
22 convicted person, then that convicted person should be able to react to that
23 application and assess the supporting evidence produced. However, my learned
24 friend seems to have forgotten that we are no longer in such a situation, and in this
25 case such a situation never arose.

1 There has been a broad framework defined for reparations and the role of victims in
2 criminal proceedings. In the national systems where victims participate, their role is
3 to apply for compensation for their harm suffered. This is not the case for the Court.
4 Victims can participate in the proceedings even if they do not have any intention to
5 ask for reparation. And on the other hand, they can participate or even submit
6 applications for reparation without having taken part in the criminal proceedings.
7 With regard to our clients, out of the 23 victims that we represent, only two or three at
8 the beginning of the proceedings applied for participation in the proceedings and
9 reparation. The majority of them prefer to wait for a final conviction and
10 establishment of the guilt of the accused before making such an application. And
11 this is consistent with the instruments of the Court.

12 And even before the final conviction, the Trial Chamber clearly stated that individual
13 reparation applications would not be dealt with. There were many people who
14 submitted such applications. And the applications that were filed 10 years ago, it
15 was decided that they would simply be forwarded to the Fund and the victims would
16 simply be treated as the others who never asked for anything.

17 Our clients who were already interviewed by the Fund were reproached for not
18 having complete files. First of all, out of the 12 files that were certified, to be
19 complete by the Fund, those 12 actually are members of our group of victims. And
20 some of the other files were completed with proof of identity because you have to
21 understand that the young people do not all have an election card or an identity card.
22 They might have lost such documents during the events and were unable to have
23 others issued.

24 However, the crucial issue here is why a victim who did not apply for anything, who
25 simply asked to participate in the proceedings and expressed their feelings should

1 have to prepare a file, a complete file? Because a complete file is simply a
2 preliminary necessity which can be used to assess the harm suffered by the victim. It
3 does not fall within the framework of an application made or addressed to
4 Mr Lubanga.

5 In fact, if Mr Lubanga is ordered in the future to financially contribute to the
6 collective reparations, the amounts decided will not be paid to our clients. The
7 amounts will be paid to the Fund.

8 So in the proceedings here, it is more the Fund that is the adversary of the Defence
9 rather than the Legal Representatives of the Victims or the victims themselves.

10 So these are participating victims who, in reality, given the programme that has to be
11 implemented, are also waiting to see what the substance of this programme will be,
12 just like the other potential victims.

13 Our clients do not know whether they will really be interested in certain aspects of
14 the programme that would be implemented by the Fund, for the simple reason that
15 that plan has not been approved and they need to know what has been approved.

16 Will there be microfinancing, loans, training? Not everyone is interested in being
17 trained as a carpenter. So it will be based on the contents of the plan that they will
18 decide.

19 That said, why then would the Defence need to have all the identity details of the
20 victims, both current victims and potential details?

21 My learned friend says that the intention is not to harm the witnesses. And I would
22 like to believe that. But the Defence can only cross-check those details by making
23 contact in the environment of the victims and, yet, it is this context in the environment
24 of the victims that pose a risk, because people may react badly to the fact that these
25 people were involved in the activities of the Court and also in a programme that

1 underscores the liability of Mr Lubanga.

2 So I believe that it would be more realistic for the role of the Defence to be more in
3 relation to controlling the substance of the plan, the assessment procedures, and to
4 ensure that the amounts allocated for reparations either by the international
5 community or Mr Lubanga should not be misappropriated to benefit groups and
6 communities which did not really suffer from the effects of those crimes. This
7 should be used to provide reparation for the benefit of direct and indirect victims.

8 Regarding the plan that has been presented by the Fund, Mr President, I said
9 yesterday that the implementation plan is not perfect. It is true that it can be
10 fine-tuned and completed. It has to be adapted. But I would also like to point out
11 that we have heard from the Fund that there is a genuine will on their part to
12 implement the programme with the necessary flexibility and to adapt it as the
13 implementation goes on, while involving the concerned persons and communities.

14 On Tuesday I already told you, and I reiterated what our clients want, this plan
15 should be implemented. It is the implementation of reparations that they have been
16 waiting for more than 10 years. And other things could have been done, such as
17 individual reparations, but they want progress to be made.

18 I would like to add that the work that the Fund has been doing ever since the order
19 for reparation by the Appeals Chamber was issued, is they have done stellar and
20 professional work, and they have consulted experts from elsewhere in order to be
21 able to present a plan that is detailed, realistic and consistent with the framework set
22 out by the order for reparation, and that is not easy.

23 I believe that in the course of the implementation it will be improved. So at the end
24 of these two days, Mr President, I would like to ask you and your Honours to
25 approve the implementation plan presented by the Fund, even if certain guidelines

1 have to be included for its improvement in practical terms, and that the
2 implementation of that plan should be started. Thank you.

3 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:14:14] (Interpretation)

4 Thank you, Counsel.

5 I believe that the Chamber is fully aware of the complexity of the issues raised and
6 particularly the delicate nature of the issue of the identification of the victims and
7 their relations with the reparation proposed. So our theme here is basically
8 collective reparations. So various speakers should limit themselves to that.

9 I recognize and the Chamber is aware that when you have opportunities to express
10 yourself and to have adversarial interventions, these are seized, but we want to be
11 rigorous and to ensure that there are no deviations. This has been respected and
12 appreciated by the Chamber.

13 MR WALLEYN: [12:15:19] (Interpretation) I beg your pardon, your Honour, if I
14 went a bit beyond the topic of the day. But it is extremely difficult to distinguish
15 between the various aspects of collective and individual reparations.

16 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:15:34] (Interpretation) Yes.
17 We are aware. And you will notice that the Chamber did not interrupt you.

18 MR WALLEYN: [12:15:42] (Interpretation) Thank you.

19 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:15:44] (Interpretation) We
20 can now hear the team V02.

21 Maître Keta, you have the floor.

22 MR KETA: [12:15:52] (Interpretation) Thank you, your Honour, your Honours.

23 Members of the composition, I would like to mention three main issues before I
24 respond by way of a number of comments on the presentations made by the various
25 parties thus far.

1 The first question relates to the participating victims. We know that, according to
2 the Chamber's programme, one last group of victims is to be sent to the Chamber in
3 December. We've been working together with the Fund since February of this year,
4 in particular identifying the victims. But the Fund stopped that work unilaterally.
5 So our question is how are we going to proceed to complete this task in order for us to
6 be up to date? And how we are going to be analysing the other applications on the
7 part of victims so that they can be analysed by the Chamber. That was my first
8 question.

9 The second question relates to the situation in the DRC. The Legal Representatives
10 of Victims, that is the V02 group, have a number of applicants, between 300 and 400,
11 who could participate in the Lubanga case. Unfortunately, all of these applications,
12 or at least many of them have not been examined by the Chamber in order for them to
13 be able to participate. We consider that all of those applications correspond to
14 potential victims. And we would like to know exactly how the Fund is proceeding
15 so that the Legal Representatives be able to work hand in hand with the fund so that
16 those who have made these requests indeed have the opportunity to participate in the
17 reparation programme. And there are many of them.

18 Our third concern is something that I read in the Fund's publications regarding
19 symbolic reparations. The Fund has defined a number of sites that do not have a
20 favourable impact amongst the V02 group because the Fund selected two territories
21 out of the five that are in Ituri, and yet the charges that Mr Lubanga was convicted for
22 covers the entire province of Ituri with its five departments. Many of the victims in
23 the V02 group happen to reside in territories that are ignored by the Fund, they have
24 (Redacted) should also be
25 included, and therefore we request that the Fund take account of that.

1 We would like to know what the criteria were on the part of the Fund in order to
2 select these reparations. We noted that gender issues and psychological impact have
3 been mentioned. Did they take account of work done by local NGOs that exist in
4 Ituri? There are a large number of NGOs who are in contact and have been in
5 contact with victims for more than 10 years and who indeed can play an important
6 role. Psychologists in particular, because they have met with the victims and the
7 victims trust these individuals. We know that because these intermediaries have
8 played the role of a psychologist. And you can ask specialists, rather than having
9 specialists coming from elsewhere, we would prefer that these local individuals who
10 have already been involved.

11 Those are the initial questions I wanted to put forward before I come to my actual
12 comments.

13 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:20:48] (Interpretation)

14 Thank you very much. Please feel free to respond now.

15 MR DE BAAN: [12:20:52] Thank you. Thank you, your Honour.

16 If I may recall what you just said also yourself about staying on topic of these
17 proceedings, the question of victim identification I would like not to respond to in this
18 hearing, and I would leave it to the discretion of the Trial Chamber to follow up on
19 this.

20 However, the second question related to the 300 to 400 possible eligible victims that
21 have not been examined, their applications.

22 In general, obviously, if the programme would indeed take place, the Trust Fund
23 would encourage everyone who has knowledge about potential eligible beneficiaries
24 to ensure that they take note and that they engage with the programmes. And the
25 Trust Fund itself would be most happy to work with the Legal Representative and

1 with any other party who may be in a position to mobilise victims for the reparations
2 programme, in general.

3 In relation to the choice of places for the symbolic reparations, I'd like to recall that
4 this was a filing submitted by the Trust Fund on a confidential basis, and we have
5 submitted a public redacted filing which excludes, or has redacted the sites of
6 implementation because, first of all, I think this is something that would need to be
7 considered by the Chamber first and by the participants.

8 If there are any observations and suggestions that can be made by any party to the
9 proceedings, I would suggest that these would be made, with the permission of the
10 Chamber, to the Chamber directly, so that they can take that into consideration when
11 reviewing the plan by the Trust Fund. And, obviously, the Trust Fund itself would
12 always be interested and open to any concrete and constructive suggestion that is
13 submitted to them.

14 The fourth question is about the criteria that we use to choose our partners. Let me
15 repeat again we did not choice any partner yet for the implementation of reparations
16 awards. However, in general, we do operate several criteria that we applied to the
17 eligibility of applicants to our procurement processes. And one of the criteria, which
18 is actually one of the most important ones, is that organisations who wish to submit
19 have to be registered locally. So that applies to local organisations. It also applies
20 to international organisations.

21 We would like to ensure that any party submitting any proposal to the Trust Fund
22 has relevant and thorough working experience in the area where we want and intend
23 to implement programmes.

24 And then this is reflected, if you look at our current group of partners, the majority of
25 them are locally based local NGOs.

1 That is mobilising local expertise, as you expressed the wish that should be done.
2 They are Congolese experts. They are Congolese networks, Congolese organisations.
3 They do have the experience and the trust of working in these communities and, for
4 us, that's one of the most important preconditions, to have a partnership, that we do
5 work with partners that have an intimate knowledge of the target group, the victim
6 beneficiaries in this case before starting, because otherwise it's a waste of time and
7 money to contract partners who do not have that.
8 So we fully agree and we can assure the Legal Representative that this is our full
9 intent to make use, to the extent possible, of local expertise, local knowledge, local
10 networks in bringing into fruition the awards to be implemented in this case.
11 Thank you very much.

12 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:24:59] (Interpretation)

13 Thank you, Director.

14 Yes, you've raised a delicate issue as to, in particular, the non-divulging of names.

15 Can you hear? And indeed, I don't believe it's a problem to have mentioned the
16 names of provinces, but if you would please not mention specific places. This is a
17 public hearing. It can be followed on the Internet by a large number of members of
18 the public and, therefore, let's protect the future and take all necessary precautions.
19 You have the floor.

20 MR KETA: [12:25:48] (Interpretation) Thank you, your Honour.

21 And thank you for those relevant comments. I wasn't perhaps cautious enough
22 mentioning certain sites where the victims we represent reside, and I apologise for
23 that.

24 I would like to reply on behalf of my team to the various comments that were made
25 on Tuesday, and also contribute a number of proposals on behalf of my team.

1 Now, in keeping with the reasoning of our initial pleadings, we will endeavour to
2 meet with the concerns of the various parties, in particular keeping in mind the two
3 elements of our position: Number one, the identification and eligibility of victims
4 and number two, the forms and modalities of reparations.

5 As regards first of all the identification and eligibility of victims, the observations
6 made by the NGO Women's Initiative for Gender Justice on reparations, we would
7 like to add to their reasoning regarding the financial liability on the part of
8 Mr Lubanga, who should not be associated to the eligibility mechanism of victims.

9 Indeed, in order for the reparation process to take place without difficulty, in order to
10 ensure the security of victims given the future release of Mr Lubanga, a decision will
11 have to be taken as regards his indigence, in other words, whether or not he would
12 provisionally be ordered to pay a certain share of reparations. By way of example,
13 during missions that we carried out in February, April and June of 2016 on the
14 ground, many victims in Bunia, in the area, told us that they felt that he should not be
15 asked to pay these amounts because the truth is they say he is indeed indigent.
16 Others, on the contrary, that we met elsewhere felt that there should be a prior
17 condition, that is that there be a public request for pardon put to the victims, and it
18 was felt that a video conference would be necessary during which Mr Lubanga could
19 express apologies and ask for pardon.

20 However, before such a hearing there would need to be an awareness-raising
21 campaign in Ituri. The NGO concluded that declaring Lubanga's liability would
22 remain associated to the symbolic reparations that would be a transformational
23 award of reparations.

24 We agree with that position on the part of the NGO.

25 As regards Child Soldiers International's comments, we would like to support the

1 idea expressed by this NGO saying that indeed there is a similarity with the cases of
2 the girls from Kivu, that is the 150 girls that were interviewed, and the girls from Ituri
3 who are victims of international crimes.

4 Indeed, some girls were forcefully recruited by the FPLC/UPC and some of them
5 were left with a handicap and others found themselves with undesired pregnancies.

6 The Legal Representatives of the V02 group represent about 10 such girls, and their
7 main concern is how to be reintegrated into their families and into their communities.

8 And very often they've been victims of stigma.

9 As regards the comments made by the Defence, we would like to respond to the
10 concern expressed by the Defence regarding the incomplete files. It is normal that in
11 the joint task carried out with the TFV that the Fund may consider that certain
12 applications are incomplete. Indeed, during the mission, indeed, the Fund wasn't in
13 possession of the original documents.

14 The truth is many of these victims have lost their original documents, and sometimes
15 they sent a photocopy to the Chamber, and others have been kept by the VPRS.

16 And in other cases the Legal Representatives have simply had to trust them. It's a
17 technical issue that needs to be understood and settled in the future.

18 As regards the form and modalities of reparations, Women's Initiatives for Gender
19 Justice on reparations considered that the TFV should devote money, but that the
20 government of the DRC must also contribute and that the amount of 1 million euros
21 over a three-year period was insufficient. In addition, it felt that a duration of three
22 years for the programme is too short and that five years would be more reasonable.

23 We believe that the period of three years is sufficient and that five years would be too
24 long and, therefore -- but we do agree that there be joint participation on the part of
25 the DRC government in the reparations process.

1 But there is no legal text that requires that a government participate in such
2 reparations, reparation awards, regardless of the fact that the victims are their citizens
3 or not.

4 But we believe that the Chamber could perhaps hand down a non-binding ruling, a
5 recommendation perhaps, and that the DRC could decide on a discretionary basis to
6 participate or not.

7 But we believe that the participation of the Congolese government could really
8 participate in reconciliation on the ground. I'm not going to take time now to give
9 the various reasons, but we believe it's very important.

10 The NGO responded to the concerns of the Chamber regarding the rehabilitation of
11 victims in generalist hospitals or specialised centres, and it would appear that it's also
12 useful to set up specific clinics in existing hospitals that would deal with the former
13 child soldiers. The case of the Panzi Hospital in Bukavu, pointed out by Madam
14 Paolina, and that is the representative of the OPCV, is in keeping with that.

15 We believe that it would be worthwhile to carry out such an experiment in the five
16 territories of Ituri where there is a general hospital.

17 The NGO also mentioned that the Chamber's strategy of working -- rather, mentioned
18 to the Chamber a strategy of working in partnership with partners of a local nature,
19 local NGOs who work in the field of defending women's rights, for example. And
20 we believe that that's particularly important as well, because -- however, some NGOs
21 have said "Why just the women?"

22 Child Soldiers International also suggested that the Paris Principles should be
23 included, in particular the work in order to redress child soldiers. And it mentioned
24 adopting income-generating approaches, in particular teaching animal husbandry
25 and more modern agricultural methods.

1 The Legal Representatives of the V02 group agree that it would be in that manner
2 once we have regrouped the victims that, for example, those who were involved in
3 animal husbandry or those who were involved in farming, for example, could obtain
4 collective reparation, which would nonetheless have an individual impact. And
5 such programmes could either be of a one-off nature or a more long-lasting nature.
6 We also share the concern with the Chamber that the implementation of programmes
7 for victims in the Lubanga case must take place in the long term. Indeed, most of the
8 victims are no longer minors. They are now adults. In particular, the example of
9 former child soldiers who were elementary pupils at the time are now students at the
10 university and therefore these programmes need to take account of this long-term
11 aspect.

12 As regards our comments, comments on the V01 team and comments made by
13 Defence, the Legal Representatives of V01 felt that the reintegration of victims, if I've
14 understood their reasoning, would only be possible if local leaders are involved.

15 The Defence suggested the involvement of Mr Lubanga in the collective reparation
16 process, in particular through participation in reconciliation rights.

17 The Legal Representatives of V02 believe that Mr Lubanga indeed has a dual
18 obligation in the transformational reparations. First of all, a responsibility to the
19 direct victims, he must ask -- he must express apologies and ask for pardon for having
20 recruited them in spite of their youth.

21 And secondly, he has an obligation vis-à-vis the entire community expressing
22 apologies to the parents of the children from the various different communities.

23 In order for reconciliation to succeed, that is in terms of symbolic reparation, an
24 inventory of the various sites where these reconciliation ceremonies would take place,
25 and we believe here that Mr Lubanga's participation will be crucial. He will have to

1 be given the opportunity to tell the Chamber where he believes such ceremony
2 should take place.

3 Your Honour, thank you. Thank you.

4 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:37:47] (Interpretation)

5 Thank you very much, in particular for your last comments which I find particularly
6 interesting.

7 We can now go on to the third group, the OPCV.

8 You have the floor. I believe you have a few questions first. Go ahead.

9 MS MASSIDDA: [12:38:06] (Interpretation) I have four questions for the Trust

10 Fund. I will be brief. I realise the time. And I will be taking 5 to 7 minutes.

11 Let me begin with one question. I will be putting my questions in English in order to

12 follow the same line of reasoning. (Speaks English) First question: Considering the

13 type of prejudice suffered from by former child soldiers, which projects already

14 successfully implemented under the Fund's assistance mandate could be converted, if

15 I can put that way, into projects for reparation phase? In other words, can you

16 provide us at least with some examples of projects which has already been

17 implemented in the assistance mandate for this specific category of people and which

18 could be mutatis mutandis also a project for the reparations phase?

19 The second one, according to the presentation of the Trust Fund this morning, the

20 Trust Fund has suggested a two-step approach. Now, I would be interested in

21 knowing a little bit about the time frame of a two-step approach. What is the time

22 estimated by the Trust Fund for Victims in order to achieve this two-step approach?

23 Third question: Has the Trust Fund for Victims already engaged, I think, Mr

24 Director, you have touched upon on these during the previous question by my

25 colleague Joseph, but has the Trust Fund already engaged in informal consultation

1 with local partners with whom you have already worked during the assistance
2 mandate in order to, for instance, verify their willingness to continue to work with the
3 Trust Fund for the purpose of the reparation phase? In the affirmative, can we have
4 some more information about this process and if there is any concern raised by these
5 local partners?

6 And the last one, which is again linked to the local partners that you use in your
7 assistance mandate, I'm making an assumption, maybe my assumption is incorrect,
8 but I'm assuming that you would prefer to continue to work with local, to some
9 extent with some local partners with whom you have already worked for the
10 assistance mandate mainly for two reasons, one, you explained this morning, because
11 they gained the trust of the community, second, because they have the know-how.
12 Now, assuming that for the reparation mandate you will be using local partners,
13 some of whom you have already worked with during the assistance mandate -- and
14 I'm sorry for the term "using," which is not the correct one, but just to for the purposes
15 of the conversation -- now, how this factor, the fact that you will be working with
16 some of the same local partners, could have an impact on the time needed by the
17 Trust Fund to start implementation of a plan once the plan is approved by the
18 Chamber?

19 Thank you.

20 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:42:18] (Interpretation)

21 Thank you.

22 Mr Director.

23 MR DE BAAN: [12:42:23] Thank you. Thank you, your Honour.

24 And thank you to OPCV for asking these questions, and I believe them to be
25 questions that betray I think already a good understanding of the work of the Trust

1 Fund so far and of what we have been saying so far, so I do appreciate them.

2 The conversion of assistance programmes as far as the Trust Fund is concerned is not
3 an option, first, because these are programmes designed for a completely different
4 purpose for the assistance to victims unrelated to any particular case.

5 What we have tried to demonstrate this morning, that even if you cannot convert the
6 projects, you could use the approaches and experiences and insights gained in these
7 projects to develop awards that are in particular responsive to the rather exclusive
8 group of beneficiaries resulting from the reparations proceeding. So there is no
9 conversion, but there is inspiration, let me put it like that.

10 The time frame for the two-step approach is difficult to be very exact here. You may
11 recall that in the symbolic reparations proposal that the Trust Fund submitted, we did
12 indicate a period of time that we believe may be involved with the procurement
13 process, and there is various modalities of the procurement process. There is a
14 fully-fledged international competitive bidding process. And there is a more limited
15 process in which the expression of interest stage is skipped and in which partners will
16 be invited directly to participate.

17 That still would be a competitive process, and still transparency and adherence to the
18 Court's regulations, financial regulations and rules on procurement would apply.

19 It will take that process around in between, if I recollect correctly, 18 weeks. I'm
20 looking at my colleague now.

21 MS MASSIDDA: [12:44:33] The short one, the short one.

22 MR DE BAAN: [12:44:35] The short one, that's the short one. Well, that is a process
23 that would have to be conducted anyway. So that is not inherent to whether or not
24 this two-step approach is going to be adopted by the Trial Chamber. This process
25 would need to take place anyway.

1 The reason why we proposed this structure is not to save time, because the time
2 would essentially be the same, but to insert into the process a couple of specific
3 moments where the Chamber would be in a position to review what exactly is being
4 proposed and to approve it and as such also to gain ownership over the exact nature
5 and type of awards that are going to be implemented in the form of reparations.

6 Your third question, informal consultations with partners, there have been indeed
7 very, very informal discussions, because being a partner under the assistance
8 mandate is a very different situation than being partner under the reparations
9 mandate. There is much more visibility for a partner of the Trust Fund under the
10 reparations mandate because it is linked to a court decision than being a partner
11 under the assistance mandate, because that is basically taking place within the
12 discretion of the Trust Fund for Victims and allowing partners to be much more
13 invisible as a partner of the Trust Fund than it would be under the reparations
14 mandate.

15 What can I say? Some partners have said: No, we don't have any problem. Some
16 partners have said: Well, in that case we will not participate because we do feel that
17 we will be exposed to too much.

18 I'm not going to give you any names, but this has been a general response.

19 I would like to reiterate, however, that this is just a very informal conversation and in
20 no way an exploration whether or not this would be a partner for the Trust Fund.

21 I'd like to reiterate again that the selection of partners for the Trust Fund to participate
22 in the implementation of reparations is going to be done through a competitive
23 procurement process in which possibly partners, existing or former partners of the
24 Trust Fund can participate. But I'm sure that other organisations who have similar
25 qualities, similar expertise, even perhaps different qualities that may be needed in

1 regard of the particular nature of the awards will and have to participate in order for
2 the Trust Fund to make the choice of the best proposition, the best value for money,
3 and in this regard we're not going to be taking any sides. There is going to be a very
4 clear and transparent review process which is going to be documented, which is
5 going to be documented in consultation with the procurement section and the legal
6 section of the Registry. So that is part of the partnership that the Trust Fund has
7 with the Court to ensure that all the partners selected for implementation are done so
8 in a transparent and fair and effective way and also in view of the need to get the best
9 value for money.

10 I hope that answers your question.

11 MS MASSIDDA: [12:47:45] Thank you. I think there was a fourth one, which is in
12 relation to assuming that local partners will be working with the Trust Fund also for
13 the purpose of reparation, how much this factor could impact on the timing for the
14 implementation of a plan?

15 MR DE BAAN: [12:48:05] Right. I think I answered part of that question also, that
16 assumption should not be there, because they're going to be part of the competitive
17 process, and there shouldn't be any consequent impact on the time, because all
18 partners selected by the Trust Fund will go through the same process and as such will
19 be on equal terms, and there shouldn't be any difference between former or existing
20 partners and new partners of the Trust Fund.

21 MS MASSIDDA: [12:48:30] Thank you very much.

22 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:48:32] (Interpretation)
23 Thank you very much.

24 I'll now give Ms Massidda an opportunity to address the Court.

25 MS MASSIDDA: [12:48:44] (Interpretation) Thank you, your Honour.

1 Mr Presiding Judge, your Honours, we are somewhat doubtful about the value of this
2 opportunity to respond to the remarks made by the Trust Fund today. In actual fact
3 the first part of their presentation provided a review of projects underway as part of
4 their third mandate, and that is not particularly timely.

5 We do not challenge the fact that the Trust Fund has established a number of projects,
6 but that is not the issue. The projects to be established as part of legal reparations
7 must be adapted to the realities of the victims today. The victims are now young
8 adults, who unfortunately cannot resume their primary education as could have been
9 the case in 2008. They are young adults who live with this stigma of being a former
10 child soldier, and this has been the case for more than 12 years.

11 We are talking about young women who see the consequences of their rapes every
12 day in the faces of their very children who are now teenagers themselves. The
13 victims are young adults who are fighting drug or alcohol addiction or other major
14 psychological problems.

15 Regarding the principles set out by the fund this morning, of course we are in
16 agreement with them, but these principles have been known for a number of years
17 now. By summarizing once again the various projects that are underway as part of
18 the assistance mandate, the fund has reiterated the observations made by various
19 friends of the Court since a number of them have been submitted by the NGOs
20 implementing the projects in question.

21 Thus, we do not think it is necessary for us to spend too much time on these matters.

22 We would simply direct your attention to our oral observations made Tuesday in
23 which we analysed the remarks made then regarding the current needs of the victims.

24 According to the Trust Fund, 73,000 direct or indirect victims have been assisted
25 thanks to projects set up in the DRC. However, not all the people that we met were

1 able to benefit from this assistance. That is why we made a point of specifying on
2 Tuesday that the project should be established not only in and around Bunia, but also
3 throughout the entire Ituri territory, and in particular in the localities that are
4 mentioned in the judgment against Mr Thomas Lubanga.

5 The Trust Fund also provided a description -- the Trust Fund also described its
6 consultations with the victims and the affected communities. These consultations
7 were held throughout all of Ituri.

8 In this regard we believe it is important to mention that if the consultations and then
9 the subsequent implementation of legal reparations programmes are restricted to the
10 localities mentioned in the decision, many victims will not be in a position to benefit
11 from reparations, which was the case for the projects that came under the heading of
12 assistance.

13 As was mentioned several times today and Tuesday, many former child soldiers were
14 not able to become part of their communities again. Once more, they lead
15 precarious lives and for this reason they have had to travel throughout the entire Ituri
16 territory.

17 In this connection we also note that the Trust Fund is restricting itself to five affected
18 communities. I won't give the names of the communities in question because that
19 information has been redacted, but these five communities are not the only places
20 where people were affected by the crimes. Major communities were not considered
21 in this draft or this project for symbolic reparations.

22 I refer the Chamber to a filing we made in July, this is filing 3223, which -- correction,
23 3212 which mention the other communities that should be considered. And when I
24 say Tuesday, of course, I would like to say we are still quite willing and able to confer
25 with the fund.

1 To conclude, your Honours, allow me to say that we would have liked to have
2 discussed the various projects today, and we are still waiting for the Trust Fund to
3 submit these projects so that we can provide written observations. But time is of the
4 essence. Time continues to go by. And, thus, the victims' expectations regarding
5 reparations continue to increase.

6 We would have preferred the Trust Fund to tell us more about the practical aspects of
7 the various projects considered, a list of practical -- a list of projects that could actually
8 be carried out.

9 Perhaps if we could we would make a suggestion. The Chamber could perhaps ask
10 the Trust Fund to draw up a list of projects that have already borne fruit as part of
11 their mandate of assistance, and that could meet the needs of the former child
12 soldiers.

13 We realise, of course, that the same projects established as part of the assistance
14 mandate may not necessarily be -- could be carried over to the reparations stage, but
15 some parts of these projects could be considered for future reparations projects.

16 And finally, your Honours, we do wish to express a concern, a small concern that we
17 have, namely, the priority that has been given to symbolic reparations as I have
18 interpreted the words from the Trust Fund's director today, this priority for symbolic
19 reparations means that funding for collective reparations may be reduced to almost
20 nothing.

21 Finally, I wish to thank the Bench for this opportunity that we have had to debate
22 together an issue that is of concern to many people in Ituri, and we do hope that
23 concrete and practical measures will be implemented henceforth.

24 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:57:07] (Interpretation) I
25 thank the parties and participants for their remarks.

1 We do have a scheduling problem, and I am looking at Defence counsel, I believe
2 there had been agreement that they would, well, require a certain amount of time at
3 this juncture, and it would not be in the interests of these proceedings to put you up
4 against a time limit of any particular nature. I would suggest that we resume at 2.30
5 this afternoon so that you will have all the time you need to put questions. Does this
6 suit you?

7 MS MABILLE: [12:57:53] (Interpretation) Completely.

8 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [12:57:56] (Interpretation)

9 Thank you.

10 I would now like to instruct all parties and participants that we will resume at 2.30.

11 And I thank you once again for your useful contributions.

12 (Recess taken at 12.58 p.m.)

13 (Upon resuming in open session at 2.30 p.m.)

14 THE COURT USHER: [14:30:24] All rise.

15 Please be seated.

16 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [14:30:40] (Interpretation)

17 Thank you for accepting to extend your stay and take part in this afternoon's session.

18 I'll now give the floor to the Defence team of Mr Lubanga. And just like the Legal
19 Representatives, you're free to talk to matters, the very substance of the issues if you
20 wish.

21 MR BIJU-DUVAL: [14:31:16] (Interpretation) Thank you, your Honour. I have
22 two brief questions to put to the director of the Fund.

23 First of all, when you mentioned your last project of 5 September 2016 you talked
24 about a process of sorting to determine those who are qualified. Can you tell us a
25 little bit more about that process of sorting out those who are eligible that you

1 envisage putting into place?

2 Secondly, you also indicated that it seemed to you to be essential that there should be
3 a commitment on the part of the international community to reintegrate the victims,
4 but you also mentioned that an advisor designated from within the community
5 should be able to follow up the beneficiary victim during that process of
6 reintegration.

7 My question to you is as follows: In that process of reintegration into the
8 community, do you believe that the idea of keeping the identity of the victim
9 absolutely confidential would be a good idea?

10 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [14:32:58] (Interpretation)

11 Thank you, Counsel. Let me add to your question, that is in light -- that is within the
12 framework of collective reparation (Overlapping speakers) --

13 MR DE BAAN: [14:33:21] Thank you. Thank you very much. I understand that
14 the question relates to the plan submitted by the Trust Fund for victims on 16
15 September concerning symbolic reparations.

16 And my recollection and understanding, this plan works on the assumption that there
17 is no victim identification procedure to be applicable within this reparations, as has
18 also been noted in the request by the Chamber to the Trust Fund to develop this plan.
19 So as far as I'm aware, we do not propose actually to have a screening or victim
20 identification procedure to be applied within the framework of the symbolic
21 reparations award.

22 And this would be my first answer. Perhaps if there is anything more specific that
23 you would like to ask in this regard I could answer that.

24 MR BIJU-DUVAL: [14:34:35] (Interpretation) I'm simply referring to my notes.

25 When you talked about a screening process to be eligible, that is within the

1 framework or in anticipation of collective reparations, it is this screening process that

2 I wanted to ask about. I wanted to have more details.

3 I believe I'm not mistaken that you mentioned this process when you filed this

4 presentation of 16 September.

5 MR DE BAAN: [14:35:07] (Overlapping speakers) I'm sorry, there has been a

6 mention of a screening procedure, but not in relation to this particular plan but in

7 relation to the more service-based reparations.

8 As I've indicated before, to my understanding, this particular procedure is not part of

9 these hearings, not a topic of these hearings. We have addressed this in our draft

10 implementation plan and in the other filings that we have submitted, and I would like

11 to limit my response to referring to those filings in this regard as I think they contain

12 sufficient information in this regard.

13 In regard to your second question, the question whether the work of a counsellor with

14 a victim inside a psychosocial support project would presuppose that the victims'

15 identity is confidential, I think that is a question for the victim herself and it concerns

16 her relationship of confidence between a counsellor and a victim that is at place. So

17 within that relationship, I would see no need for the identity of the victim to become

18 known outside of that relationship.

19 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [14:36:33] (Interpretation)

20 Thank you, Mr Director.

21 The Defence has the floor.

22 MR BIJU-DUVAL: [14:36:41] (Interpretation) Thank you, Mr President, your

23 Honours.

24 There is at least one point on which the Legal Representatives of the Victims and the

25 Defence are absolutely in agreement, and that is the fact that this is a matter of

1 urgency, it is a matter of urgency because today the ICC, and specifically the instant
2 Chamber, is facing up to a situation that is not very effective because the accused
3 person has been convicted finally, and it is necessary for the victims to receive
4 reparation. And the Appeals Chamber decided that it should be collective
5 reparations.

6 But in order to accomplish this mission, and I dare say this promise of the
7 International Criminal Court, the Court and the Chamber have to limit themselves to
8 what is actually a court of justice, and this means the respect of the fundamental
9 principles of law and compliance with the principles of a fair trial. There are also
10 major international humanitarian organisations that are involved in repairing such
11 situations throughout the world.

12 Now, these principles and Rules constitute a limited framework, but we know that
13 this is the foundation for the legitimacy and credibility of the Court, and it is also and
14 should be the foundation for its sufficiency.

15 Now, regarding an assessment of the proposals made by the fund in its filings and in
16 its oral submissions this morning, I would like to look at those proposals from the
17 perspective of these requirements, that is situate these proceedings within the
18 judgment, the legal judgment and the order for reparation. We also need to situate
19 those collective reparation projects within a legal framework.

20 Now, in light of the convictions that have been handed down and the framework set
21 out by the Appeals Chamber, we have to look at the limitation of the group of victims.
22 Thomas Lubanga is compelled to contribute to contributions towards the reparation,
23 but only for the victims who have suffered harm for the crime for which he was
24 convicted. And this mainly refers to children of less than 15 years old who were
25 recruited into the ranks of the UPC/FPLC between early September 2002 and

1 13 August 2003. That is the category of victims defined by that conviction and
2 underscored by the Appeals Chamber in its judgment. So it is within those
3 parameters, those limits that the proposals made by the fund and by other NGOs
4 must be discussed.

5 Thomas Lubanga was not found guilty of the civil war in Ituri. He was not found
6 guilty of the destruction of hospitals, schools, sporting, cultural and other
7 infrastructures in Ituri. And it is not because those infrastructures are absolutely
8 necessary. And they are for the reintegration of child soldiers that the rehabilitation
9 of those structures have to be put at the doorstep of Thomas Lubanga. So your
10 Chamber should immediately exclude the projects that are clearly out of the realm of
11 responsibility of Thomas Lubanga.

12 Now, when it comes to projects, the projects of the fund that target specifically child
13 soldiers, even there your Chamber has to permanently bear in mind the following
14 questions: Which child soldiers? Because everyone knows that ever since the end
15 of the 1990s, Ituri and the entire east of the DRC was overwhelmed by the
16 phenomenon of child soldiers.

17 During the period 2002-2003, there were at least nine forces or armed groups
18 operating in Ituri and all of them recruited minors, and amongst those groups, there
19 was the UPC, which was one of about nine or ten groups.

20 The fund is proposing extremely interesting projects for collective reparations, major
21 projects that include medical or academic aspects at an individual level, training at an
22 individual level. So it is these collective reparations with an individual impact that
23 my learned colleague Keta, Mr Keta talked about. But as far as we are concerned, we
24 have to bear in mind that Thomas Lubanga can only be compelled to repair
25 collectively the harm suffered by children of less than 15 years enlisted between

1 September 2002 and August 2003.

2 Now, there are two difficulties that are very difficult to resolve. The first one is the
3 following: How can we exclude all the child soldiers of the other armed groups
4 from these programmes and projects proposed by the fund because they are not the
5 responsibility of Thomas Lubanga? How can you exclude children of less than 15
6 years who were recruited into the UPC before September 2002 or just after August
7 2003, which is the legal framework? How can you exclude child soldiers who are
8 15 and a half years old who strictly do not fall within the framework of the
9 conviction?

10 It certainly appears that that would not be reasonable, because all those groups, all
11 those victims who would be excluded, and this would make people believe that it is a
12 situation, an unacceptable situation of illegality or unfairness if only a certain limited
13 group of Lubanga victims benefit from that programme.

14 So there is a situation here or there is a risk that the situation in Ituri can be inflamed
15 again, because we are now talking about, we are now talking about an impossibility
16 which is a legal impossibility, the impossibility within the framework of the
17 conviction against him to place on him the burden of programmes that would benefit
18 others, whereas it is others who should assume the responsibility.

19 Beyond the legal liability which is inevitable, there is also a moral and political
20 impossibility, because if this should happen Thomas Lubanga would have simply
21 been made a scapegoat for the phenomenon of child soldiers in Ituri with all the
22 consequences that one can imagine. So even there there will be a risk of a major
23 misunderstanding, because there will be a risk of stirring up the tensions once again
24 that we would all like to calm down and that in any case should not be stirred up
25 once again.

1 It is true that the situation is very complicated. So can we envisage programmes
2 which can be at once accessible to everyone, but for which a small group of Thomas
3 Lubanga victims can be set aside to benefit specifically from that. It seems to me to
4 be very complicated, if not impossible.

5 These types of programmes are welcome and beneficial, particularly when it comes to
6 the projects, but if those types of projects are integrated into the framework of a
7 reparations order issued against Thomas Lubanga, that would not be possible. It
8 seems to us that in reality these complex, commendable and ambitious programmes
9 which aim to be beneficial to a maximum number of victims, including all the child
10 soldiers of that period, we of course would like to support those types of programmes,
11 but within a humanitarian framework, and the fund can initiate such projects under
12 Article 50, for example, but within the framework of a reparations order issued
13 against Thomas Lubanga, it seems to us to be extremely difficult and not even
14 possible.

15 This is linked to the questions that you asked, Mr President, and even Judge Kovács
16 relating to this distribution or distinction between reparation assistance and
17 specifically reparations ordered against a convicted person.

18 In conditions that are extremely strict and restrictive for the identification of victims,
19 well, I do not want to dwell on the issue of the principle of the identification of
20 victims for a very simple reason, because this matter has already been settled. This
21 issue was settled by the Appeals Chamber.

22 Yes, there has to be an individual identification of victims. It was settled on 9
23 February 2016 by the Trial Chamber itself. So the matter has been settled.

24 However, there is another matter that arises that is from the perspective of the legal
25 context. These proceedings are actually a case or a trial, we can call it a civil case if

1 we wish, but it is a trial. Initially the questions that arise when it comes to the rules
2 of procedure are not limited to the identification of victims and the position of the
3 Defence. There is an essential matter, that is the principle according to which all the
4 information that is submitted to the judges and which are of a nature to be taken into
5 consideration in view of the decision on reparations, all that information has to be
6 debated in an adversarial setting.

7 We are being told that these are not individual applications for reparation and,
8 therefore, you cannot examine individual files. That is not the issue here. This is
9 not the issue. The issue is to know whether -- to know that those individual files are
10 submitted to the judges; and therefore I find it hard that someone would say that the
11 individual files sent to the judges and which the judges would use to take a decision
12 on essential matters, well, I don't understand why we are being told that the Defence
13 cannot have access to that information and it should not be debated in an adversarial
14 setting.

15 So the ICC has a challenge in terms of credibility, effectiveness and legitimacy.

16 There is an essential rule of a fair trial, if tomorrow someone says that before the ICC
17 within the framework of a civil trial there is no adversarial debates before the Court,
18 so there is a problem there in terms of credibility, legitimacy, and we, the Defence, do
19 not want that tomorrow the International Criminal Court should be the laughing
20 stock of its detractors simply because a fundamental principle of a fair trial would
21 have been overlooked.

22 Well, I'm basically through. Obviously the Defence is a party to this reparations
23 proceedings. Obviously the Defence would like to see the reparations implemented,
24 but which reparations? It is difficult, it is complicated, and we have to look at them
25 together.

1 And as Maître Mabilille said, the day before yesterday, Mr Thomas Lubanga has made
2 a proposal. It is not a new proposal. That proposal was made in our observations
3 of 1 February 2016. It is not something that was simply brought to the fore before
4 yesterday. This is something that has been well thought out over a long period of
5 time.

6 We are looking for a form of reparation that is expeditious, effective and acceptable.

7 That is what Mr Thomas Lubanga is proposing. The personal, physical participation
8 in a ceremony for apologies, reconciliation and closer ties. That is what Mr Thomas
9 Lubanga is proposing.

10 So the form of reparation that is symbolic, expeditious and effective, you have it in
11 front of you.

12 We have had international NGOs and all sorts of intermediaries. With all due
13 respect to them, and I'm not talking about the Trust Fund for victims, well, that
14 solution is there, a simple and sincere meeting of Thomas Lubanga and those whose
15 lives have been ruined by the war. That is the end of my presentation.

16 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [14:56:45] (Interpretation)

17 Thank you very much, Counsel.

18 I believe that I'm expressing the feelings of the entire Chamber when I thank very
19 sincerely all those who have taken part in the hearings. We know that there has
20 been a very constructive dialogue. The parties have listened with keen attention and
21 mutual respect. And for the Chamber I can say that the proceedings have been very
22 useful.

23 Just a few words. The Chamber is of the opinion that the reparation process for the
24 victims of Mr Lubanga should be initiated as soon as possible.

25 The Chamber is also aware of the difficulties in adopting a schedule of reparations

1 because this is a new type of hearings for the International Criminal Court and, as
2 many of you have underscored, it is very complex. And this should be done
3 additionally within the framework set out by the Appeals Chamber and the Trial
4 Chamber.

5 The Chamber will make every effort to come out with the necessary measures as
6 quickly as possible and fulfil its mandate to the extent possible.

7 I would also like to thank the interpreters and the court reporters, as well as editors.
8 The transcript is highly useful to us. I thank the court officer and all those who
9 helped us in preparing these hearings.

10 The Court is adjourned.

11 (The hearing ends in open session at 2.58 p.m.)