

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**

Date: **31 August 2023**

THE APPEALS CHAMBER

Before: Judge Gocha Lordkipanidze, Presiding Judge
Judge Piotr Hofmánski
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF

THE PROSECUTOR v. BOSCO NTAGANDA

Public document

**Observations on Requests for Suspensive Effect
and
Request under rule 103 of the Rules of Procedure and Evidence**

Source: The Trust Fund for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Victims Participation and Reparations
Section**

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BACKGROUND

1. On 8 March 2021, Trial Chamber VI (the ‘Trial Chamber’) issued an order for reparations against Mr Ntaganda (the ‘Reparations Order’) awarding collective reparations with individualised components to direct and indirect victims of the crimes for which Mr Ntaganda was convicted through the Trust Fund pursuant to rule 98 (3) of the Rules of Procedure and Evidence (‘Rules’) and assessing his liability at USD 30 million.¹
2. In the Reparations Order, pursuant to regulations 54 and 69 of the Regulations of the Trust Fund (the ‘TFV Regulations’), the Chamber ordered the Trust Fund to prepare a draft implementation plan, and an interim draft implementation plan for ‘Priority Victims’ based on existing mechanisms, for the Chamber’s approval, setting the deadlines, respectively, to 8 September and 8 June 2021.²
3. On 8 April 2021, one of the two common legal representatives of the victims, i.e. the common legal representative of the victims of the attacks (‘CLR2’) and the defence team of Mr Ntaganda each filed a notice of appeal against the Reparations Order pursuant to article 82 (4) of the Rome Statute (the ‘Statute’).³
4. On 7 June 2021, the CLR2 and Mr Ntaganda respectively filed their appeal briefs against the Reparations Order.⁴ In his appeal brief, Mr Ntaganda requested the Appeals Chamber, *inter alia*, to order suspensive effect.⁵

¹ Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#), (‘Reparations Order’) paras 249-253 and 257, and disposition.

² Reparations Order, paras 249 and 252, and disposition.

³ Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order, 8 April 2021, [ICC-01/04-02/06-2668](#); Defence Notice of Appeal against the Reparations Order, 8 April 2021, [ICC-01/04-02/06-2669](#).

⁴ Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order, 7 June 2021, [ICC-01/04-02/06-2674](#); Defence Appellant Brief against the 8 March Reparations Order, 7 June 2021, [ICC-01/04-02/06-2675](#) (‘Mr Ntaganda’s Appeal Brief’).

⁵ Mr Ntaganda’s Appeal Brief, para. 273. *See also* paras 260-272.

5. On 8 June 2021, the Trust Fund submitted its initial draft implementation plan (the ‘IDIP’) to the Trial Chamber.⁶ On 23 July 2021, the Trial Chamber approved the IDIP, subject to conditions, in particular the Trust Fund’s proposal to use for IDIP purposes two assistance projects that have been in place in the DRC since May 2020.⁷

6. On 22 June 2021, upon invitation of the Appeals Chamber,⁸ the Trust Fund filed its observations on issues arising from the suspensive effect request.⁹ On 2 July 2021, the Appeals Chamber rejected Mr Ntaganda’s request for the appeal to have suspensive effect, ruling that it was not convinced that failing to suspend the Impugned Decision would lead to an irreversible situation or create consequences that would be difficult to correct, or defeat the purpose of the appeals at hand.¹⁰

7. In line with the Trial Chamber’s Decision on the IDIP, the Trust Fund periodically submitted every two months an update report, first, relevant to the development of an eligibility process and, later, on the progress of implementation.¹¹ The Trial Chamber issued decisions thereon

⁶ Report on Trust Fund’s Preparation for Draft Implementation Plan, submitted on 8 June 2021, ICC-01/04-02/06-2676-Conf; With Annex A Initial Draft Implementation Plan with focus on Priority Victims. A public redacted version was filed on 14 June 2021: [ICC-01/04-02/06-2676-Red](#).

⁷ Decision on the TFFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#) (“Decision on the IDIP”).

⁸ Order setting a time limit for responses to the request for suspensive effect and invitation to the Trust Fund for Victims to submit observations on that request, 11 June 2021, [ICC-01/04-02/06-2678](#).

⁹ Observations on the Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence, 22 June 2021, [ICC-01/04-02/06-2679](#), (‘Observations on the Defence Request for Suspensive Effect’) para. 25.

¹⁰ Decision on the Defence request for suspensive effect, 2 July 2021, [ICC-01/04-02/06-2691](#), para. 23.

¹¹ Twelve such reports have been submitted at the time of writing: Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director’s decision pursuant to regulation 56 of the Regulations of the Trust Fund, submitted on 23 September 2021, ICC-01/04-02/06-2710-Conf. A public redacted version was filed on 7 October 2021: [ICC-01/04-02/06-2710-Red](#) (“First Update Report”); Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan, submitted on 23 November 2021, ICC-01/04-02/06-2723-Conf. A public redacted version was filed on 28 December 2021: [ICC-01/04-02/06-2723-Red](#); Trust Fund for Victim’s Third Update report on the Implementation of the Initial Draft Implementation Plan, 24 January 2022, ICC-01/04-02/06-2741-Conf. A public redacted version was filed on the same day: [ICC-01/04-02/06-2741-Red](#); Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 March 2022, ICC-01/04-02/06-2751-Conf, With one confidential annex. A public redacted version was filed on 20 May 2022: [ICC-01/04-02/06-2751-Red](#); (“TFV’s Fourth Update Report”). Trust Fund for Victims’ Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 May 2022, ICC-01/04-02/06-2767-Conf. A public redacted version was filed on 20 July 2022: [ICC-01/04-02/06-2767-Red](#); Trust Fund for Victims’ Sixth Update Report on the Implementation of the Initial Draft Implementation Plan, 25 July 2022, ICC-01/04-02/06-2775-Conf. A public redacted version was filed on the same day: [ICC-01/04-02/06-](#)

progressively.¹² In March 2022, the Trust Fund submitted the Guidelines for eligibility for the purposes of the IDIP in an annex to one of its update reports.¹³ Upon the Trial Chamber's approval of the eligibility process,¹⁴ the Trust Fund determined eligibility and assessed the urgency of the victims's needs. The first beneficiaries began to benefit from the programme in the first half of 2022.

8. On 17 December 2021, the Trust Fund submitted the Draft Implementation Plan (the 'DIP').¹⁵ On 24 March 2022, the Trust Fund submitted the second version of the DIP.¹⁶

9. On 12 September 2022, the Appeals Chamber delivered its judgment ("the Judgment") on the appeals against the Reparations Order of 8 March 2021.¹⁷ The Judgment reversed the findings

[2775-Red](#); Trust Fund for Victims' Seventh Update Report on the Implementation of the Initial Draft Implementation Plan, 26 September 2022, ICC-01/04-02/06-2783-Conf. A public redacted version was filed on 25 October 2022: [ICC-01/04-02/06-2783-Red](#); Trust Fund for Victims' Eighth Update Report on the Implementation of the Initial Draft Implementation Plan, 28 November 2022, ICC-01/04-02/06-2796-Conf. A public redacted version was filed on the same day: [ICC-01/04-02/06-2796-Red](#); Trust Fund for Victims' Ninth Update Report on the Implementation of the Initial Draft Implementation Plan, 30 January 2023, ICC-01/04-02/06-2817-Conf With Confidential ex parte Annex A only available to the CLR1 and the Trust Fund for Victims and Confidential Annex B. A public redacted version was filed on 30 March 2023: [ICC-01/04-02/06-2817-Red](#); Trust Fund for Victims' Tenth Update Report on the Implementation of the Initial Draft Implementation Plan, 30 March 2023, ICC-01/04-02/06-2839-Conf. A public redacted version was filed on 31 March 2023: [ICC-01/04-02/06-2839-Red](#); Trust Fund for Victims' Eleventh Update Report on the Implementation of the Initial Draft Implementation Plan, 30 May 2023, ICC-01/04-02/06-2854-Conf. A public redacted version was filed on 31 May 2023: [ICC-01/04-02/06-2854-Red](#); Trust Fund for Victims' Twelfth Update Report on the Implementation of the Initial Draft Implementation Plan, 31 July 2023, ICC-01/04-02/06-2859-Conf. A public redacted version was filed on 16 August 2023: [ICC-01/04-02/06-2859-Red](#) ("Twelfth Update Report").

¹² Decision on TFV's first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director's decision pursuant to regulation 56 of the Regulations of the Trust Fund, 28 October 2021, ICC-01/04-02/06-2718-Conf. A public redacted version was notified on 28 October 2021: [ICC-01/04-02/06-2718-Red](#) ("Decision on the TFV's First Report"); Decision on the TFV's Second Progress Report on the implementation of the Initial Draft Implementation Plan, 17 December 2021, [ICC-01/04-02/06-2730](#) ("Decision on the TFV's Second Report"); Corrigendum of 'Decision on the TFV's Third Update Report on the Implementation of the Initial Draft Implementation Plan', 26 April 2022, [ICC-01/04-02/06-2745-Corr](#) ("Decision on the TFV's Third Report"); Decision on the TFV's Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 12 May 2022, [ICC-01/04-02/06-2761](#) ("Decision on the TFV's Fourth Report"); Decision on the TFV's Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, 6 July 2022, [ICC-01/04-02/06-2772](#); Decision on the TFV's Sixth and Seventh Update Reports on the Implementation of the Initial Draft Implementation Plan, 16 November 2022, [ICC-01/04-02/06-2792](#).

¹³ Annex 1 to TFV's Fourth Update Report.

¹⁴ Decision on the TFV's First Report; Decision on the TFV's Fourth Report.

¹⁵ Trust Fund for Victims' submission of Draft Implementation Plan, 17 December 2021, [ICC-01/04-02/06-2732](#).

¹⁶ Trust Fund for Victims' second submission of Draft Implementation Plan, 24 March 2022, [ICC-01/04-02/06-2750](#).

¹⁷ Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", 12 September 2022, [ICC-01/04-02/06-2782](#).

of the Trial Chamber on several matters and remanded them for the Trial Chamber to issue a new reparations order.

10. On 25 October 2022, the Trial Chamber issued an order for the implementation of the judgment on the appeals, in which it clarified that the IDIP is “now fully operational and has not been affected by the Appeals Judgment”.¹⁸ As such, implementation of the IDIP programme continued for priority victims in urgent need.

11. On 16 November 2022, the Trial Chamber instructed the Trust Fund: (i) not to include for the IDIP purposes any victims claiming to have suffered only (a) transgenerational harm; or (b) harm as a result of the destruction of the health centre in Sayo; (ii) not to rely on the Reparations Order’s presumption of physical harm for victims of the attacks; and (iii) to submit to the Chamber only, together with its periodic update report, its administrative decisions on applications of additional victims, with all the supporting documentation taken into account when ruling on the victims’ eligibility, before integrating any additional victims into the IDIP programmes.¹⁹

12. On 14 July 2023, the Trial Chamber delivered the Addendum to the Reparations Order (‘Impugned Decision’).²⁰ The Trial Chamber ruled therein on the eligibility of a sample of applicants and found that 39 out of the 171 applicants in the sample had not established, on a balance of probabilities, their eligibility as victims of the crimes for which Mr Ntaganda was convicted. Four out of these 39 applicants were beneficiaries of the IDIP. They were found to be non-eligible with regards to the geographical scope of the alleged crimes they were victims of, which, according to the Trial Chamber, did not correspond to a locality for which Mr Ntaganda was convicted. The Impugned Decision provided reasons to support its findings in the Reparations Order as to transgenerational harm and as to Mr Ntaganda’s liability to repair the

¹⁸ Order for the implementation of the Judgment on the Appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 25 October 2022, [ICC-01/04-02/06-2786](#).

¹⁹ Decision on the TFCV’s Sixth and Seventh Update Reports on the Implementation of the Initial Draft Implementation Plan, 16 November 2022, [ICC-01/04-02/06-2792](#).

²⁰ Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659 With Public Annex I, Confidential ex parte and Confidential Annex II, Public Annex III, 14 July 2023, ICC-01/04-02/06-2858-Conf. A public redacted version was filed on the same day: [ICC-01/04-02/06-2858-Red](#).

harm caused as a consequence of the attack to the Sayo health centre. It concluded that no presumption of physical harm shall be applied to victims of Count 3 (attack against the civilian population), Count 11 (pillaging), Count 17 (attack against protected objects), and Count 18 (destruction of property). The Impugned Decision estimated that the approximate number of direct and indirect victims of crimes against child soldiers, would amount to approximately 3,000 individuals in total; and to 7,500 individuals in total for direct and indirect victims of the attacks. Finally, it set Mr Ntaganda's liability for reparations at USD 31,300,000.

13. On 11 August 2023, the Trial Chamber issued its First Decision on the Trust Fund's Draft Implementation Plan for Reparations ('First DIP Decision').²¹

14. On 16 August 2023, the Legal Representative filed an appeal against the Impugned Decision ('CLR2 Appeal'), including a request for suspensive effect of this appeal in relation to only one distinct part of one of his three grounds appeals, i.e. the Trial Chamber's decision on the eligibility of four victims ('CLR2 Request').²² On the same day, Mr Ntaganda filed an appeal against the Impugned Decision²³ ('Defence Appeal') and separately filed a request for its appeal to be given suspensive effect ('Defence Request').²⁴

15. On 18 August 2023, the Appeals Chamber designated the Presiding Judge for the above-mentioned appeals.²⁵

²¹ First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations, 11 August 2023, [ICC-01/04-02/06-2860-Red](#) ('First DIP Decision').

²² Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the "Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659", and Request for Suspensive Effect in relation to Trial Chamber II's Decision on the eligibility of Victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13, 16 August 2023, [ICC-01/04-02/06-2862](#).

²³ Defence Notice of Appeal against the 14 July Addendum to the Reparations Order of 8 March 2021, 16 August 2023, ICC-01/04-02/06-2863-Conf. A public redacted version was filed on 21 August 2023: [ICC-01/04-02/06-2863-Red](#).

²⁴ Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect, 16 August 2023, ICC-01/04-02/06-2864-Conf. A public redacted version was filed on 21 August 2023: [ICC-01/04-02/06-2864-Red](#).

²⁵ Decision on the Presiding Judge of the Appeals Chamber in the appeals of the common legal representative of the victims of the attacks and of Mr Bosco Ntaganda against the decision of Trial Chamber II entitled "Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659", 18 August 2023, [ICC-01/04-02/06-2865](#).

16. On 22 August 2023, the Appeals Chamber invited the Trust Fund to submit observations on the requests for suspensive effect on Thursday, 31 August 2023, and set the time limit for the Legal Representatives’ and Mr Ntaganda’s responses on Thursday, 7 September 2023 (‘Invitation’).²⁶

OBSERVATIONS

17. In accordance with the Invitation, the Trust Fund hereby provides its observations on issues arising from the Defence Request and the CLR2 Request (together referred to as ‘Requests’).²⁷

18. The Requests are based on article 82 (3) of the Statute providing that an appeal may have suspensive effect, if the Appeals Chamber so orders, upon request. The Appeals Chamber has repeatedly held that deciding on the suspensive effect is a matter within its discretion and that it will accordingly “consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under the circumstances”.²⁸

19. In earlier appeal proceedings against reparations ordered in the same case, the Appeals Chamber adopted the below criteria in relation to its discretion to grant suspensive effect, set out in its previous jurisprudence, and considered “that they are of a demanding nature and should be rigorously applied in view of the overriding importance of delivering reparations to victims following the Trial Chamber’s decision on conviction and in circumstances in which that decision is final”.²⁹ The criteria are the following:

whether the implementation of the decision under appeal (i) ‘would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant’, (ii) would lead to consequences that ‘would be very difficult to

²⁶ Order inviting the Trust Fund for Victims to submit observations on the requests for suspensive effect and setting a time limit for responses to the requests and observations, 22 August 2023, [ICC-01/04-02/06-2866](#) (“the Invitation”).

²⁷ See Appeals Chamber order, para. 7.

²⁸ Decision on the Request of the Prosecutor for Suspensive Effect, 3 September 2009, [ICC-01/05-01/08-499 \(OA 2\)](#), para. 11; and Decision on the Defence request for suspensive effect, 2 July 2021, [ICC-01/04-02/06-2691](#), para. 20.

²⁹ Decision on the Defence request, para. 21.

correct and may be irreversible’, or (iii) ‘could potentially defeat the purpose of the [...] appeal’.³⁰ [Footnotes omitted]

20. The Trust Fund’s observations will focus only on these criteria, and not on any *prima facie* assessment of the underlying merits, and provide a factual assessment of practical implications of not ordering a suspensive effect of the appeals, thereby referencing the current circumstances of implementation. In addition to the circumstances set out in the background above, the Trust Fund observes that the Trial Chamber in its First DIP Decision, shortly after the Impugned Decision was rendered, approved the DIP in main parts, leaving limited parts to further submissions and decision-making within clearly set timelines. The Trial Chamber also held that “it would expect” that the Trust Fund commences the implementation of the reparations programme as from 1 January 2024.³¹ It determined the cut-off date for eligibility assessments by the Registry’s Victims Participation and Reparations Section (‘VPRS’) to be 31 December 2025.³² To meet these deadlines, eligibility determinations and commencement of the reparations programme will need to be initiated as soon as possible, and therefore before the Impugned Decision is final. The Trust Fund’s observations in the present submission are therefore informed by the impact on potential or participating beneficiaries, or on the programme, that a change to the order for reparations may have if the change is done after the start of the reparations programme. The implications are also on the Court, the Trust Fund, the donors and other stakeholders, and have operational, programmatic, reputational, financial and security ramifications.

1. Implications

21. The Trust Fund notes that the substantiated³³ arguments set forth by Mr Ntaganda in the Defence Request relate to Mr Ntaganda’s grounds of appeal on victim eligibility matters. Similarly, CLR2’s Request focuses on victims’ eligibility matters. While Mr Ntaganda requests

³⁰ *Prosecutor v. Ali Muhammad Ali Abd-El-Rahman*, Decision on Request for Suspensive Effect, 25 August 2020, [ICC-02/01-01/20-134](#), para. 6. See also *Prosecutor v. Joseph Kony et al.*, Decision on the Prosecutor’s “Application for Appeals Chamber to Give Suspensive Effect to Prosecutor’s Application for Extraordinary Review”, 13 July 2006, [ICC-02/04-01/05-92](#), para. 7.

³¹ First DIP Decision, para. 127.

³² *Ibid.*, paras 187-188.

³³ The Trust Fund notes the additional considerations warranting in the Defence view an order for suspensive effect for which no demonstration was made *vis-à-vis* the rigorous criteria justifying that suspensive effect be granted.

the suspension of the entire Impugned Decision, the CLR2 requests the suspension of the effects of the Impugned Decision on four specific victims.

22. The Trust Fund underlines the central role of eligibility determinations for the victims and the programme, given that only eligible victims are included as direct beneficiaries into the reparations programme. Once victims are found to be eligible, they have been recognized as victims of the relevant convicted person and they can partake in the relevant reparations programme.

23. In addition, the Trust Fund for Victims recalls that the four victims referred to by CLR2 have taken part in the IDIP programme. CLR2's Request aims at awaiting the Appeals Chamber's judgment on whether they are ineligible, before having to take steps to inform them of their ineligibility and to actively exclude them as victims of Mr Ntaganda from any programme, given such information and exclusion may have to be labelled as an error, once the Appeals Chamber delivers its judgment. The aim of the Defence Request is to avoid a situation, where victims will be found eligible, then be included in the reparations programme, and may later have to be informed that this was an error and they have not been victims of Mr Ntaganda.

24. The Trust Fund considers that changes in the eligibility determinations, once the eligibility process has started, impacts considerably the victim's rights and certainty, and affects the *do no harm* principle. In relation to the four victims in the CLR2's Request, the Trust Fund underlines that they have been found to be in urgent need, and were included in the IDIP programme due to their specific vulnerability. Judicial uncertainty may re-traumatize them. The Defence Appeal on the other hand does not only affect four victims, but potentially a great number of victims. Starting implementation of the reparations order conveys a sense of finality for the beneficiaries. Informing a high number of victims of their eligibility, thereby recognizing them as *Ntaganda* victims, and perhaps having their harm repaired, to inform them later that such recognition is reversed may come at the cost of re-traumatization, in particular for vulnerable victims.

25. The Trust Fund highlights that these implications only arise, if the Registry/VPRS starts informing victims of their eligibility to the programme or actively explains to potential victims in the communities the non final eligibility criteria to identify new beneficiaries. Keeping in mind

that the First DIP Decision ordered victims eligibility to be carried out by the Registry/VPRS,³⁴ the Registry/VPRS may be better placed to present the Appeals Chamber with arguments on the possibility to take mitigating measures as to the time frame, in which to determine the eligibility of victims.

26. Beyond this, the success of the implementation of a programme depends greatly, among other factors, on the trust in the programme and in their voluntary participation. Reversing the status of a great number of beneficiaries may alienate not only them, but their families and the affected communities. This may impact the success of the implementation of the reparations in the Ntaganda case and the programme's reputation. Beyond this, it may expose the programme, the Court's and Trust Fund partners' staff and other victims to a hostile environment, thereby negatively reducing the reparative value of the programme.

27. Furthermore, the Trust Fund recalls that in June 2021 in the context of Mr Ntaganda's request for suspensive effect at the time, it had argued that beneficiaries of the IDIP programme could be transferred to the two pre-existing assistance projects that catered for the IDIP programme, if their status as beneficiaries was to be reversed later.³⁵ The Trust Fund notes that the context of the IDIP programme was very specific. The Trust Fund is currently not running a programme that could cater for the transfer on great scale of non-eligible victims of the *Ntaganda* programme.

28. Ramifications of changes in eligibility can also be understood concerning the financial management of funds for reparations. Given Mr Ntaganda has been held to be indigent in the Reparations Order, the programme implementation will need to be funded by Trust Fund donors, who have increasingly earmarked their contributions over the past years. Earmarked contributions require the Trust Fund for Victims to be accountable on the specific use of funds. Where great numbers of victims have received reparations through funds for reparations, when

³⁴ First DIP Decision, para. 185.

³⁵ Observations on the Defence Request for Suspensive Effect, para. 29.

victims may be later not be recognized as beneficiaries of reparations, contractual, fund management and reputational issues of the Trust Fund for Victims vis-à-vis its donors will arise.

2. Consequences of ordering suspensive effect

29. The Trust Fund further observes that if the Appeals Chamber was to suspend the entire or part of the Impugned Decision, clarity on the relevant part of the Impugned Decision and a clear articulation of the consequences of any such suspension would assist the Trust Fund in taking any steps that mitigate the effects of the suspension on the timeline for implementation.

30. In relation to the CLR2 Request: The Trust Fund respectfully submits that clarity will be required as to the consequences of the suspensive effect, including as to whether the four victims at issue should be included in the main reparations programme for the victims of the attacks. The Trust Fund takes the opportunity to inform the Appeals Chamber that the application of the eligibility guidelines applicable to the IDIP led to the referral of seven additional victims in May 2023 to the Trust Fund's implementing partner to gather information concerning the urgency of their needs. These seven victims are therefore in a comparably vulnerable situation as the four victims at issue. However, they have not yet received initial reparations. In the process of assessing their eligibility for the purposes of the IDIP, the Trust Fund will address the Trial Chamber, which will be in the best position to assess the consequences of the suspensive effect, if any, ordered by the Appeals Chamber on the applicability of the standard that led to the rejection of the four victims.

31. In relation to the Defence Request: The Trust Fund respectfully submits that clarity will be required as to whether the suspensive effect relates to all or only part of the Impugned Decision, i.e. whether it relates to all or only part of the victims (e.g. only the victims of the attacks and the start of eligibility and programme for these victims). In addition, it will be essential to ensure that steps can be taken to mitigate the effect of any order for suspensive effect on the timeline for the implementation of reparations. In the view of the Trust Fund, any preparatory steps, including procurement, which need to be taken before starting a specific part of a programme with an implementing partner should not be affected by an order for suspensive effect of the appeals. In

terms of eligibility, any Registry and Trust Fund internal process should also continue, as well as external processes, insofar as they do not impact victims or communities.

OBSERVATIONS ON THE APPEALS PURSUANT TO RULE 103 OF THE RULES OF PROCEDURE AND EVIDENCE

32. The Trust Fund notes that the Defence Appeal and the CLR2 Appeal address numerous issues, on which the Appeals Chamber may deem it appropriate to invite further observations from the Trust Fund pursuant to rule 103 of the Rules. The Trust Fund stands ready to make observations, if any, if leave is granted by the Appeals Chamber.

RELIEF SOUGHT

The Trust Fund hereby respectfully requests the Appeals Chamber

- 1) to consider these observations in adjudicating on the Requests.
- 2) to grant the Trust Fund the opportunity to submit observations pursuant to rule 103 of the Rules as set out above in paragraph 32.



Deborah Ruiz Verduzco
Executive Director of the Secretariat of the Trust Fund for Victims,

Dated this 31st Day of August 2023

At The Hague, The Netherlands