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Date: **18 April 2012**

TRIAL CHAMBER I

Before: **Judge Adrian Fulford, Presiding Judge**
Judge Elizabeth Odio Benito
Judge René Blattmann

SITUATION
IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO

Public

Observations on issues concerning reparations

Source: Office of Public Counsel for Victims

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

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I. BACKGROUND

1. On 14 March 2012, Trial Chamber I delivered its "Judgment pursuant to Article 74 of the Statute" (the "Judgment")[1] by which it found Mr. Thomas Lubanga Dyilo guilty of the crimes of conscripting and enlisting children under the age of fifteen years into the *Force Patriotique pour la libération du Congo* and using them to participate actively in hostilities within the meaning of articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute (the "Statute") from early September 2002 to 13 August 2003[2].

2. On the same day, the Chamber issued a "Scheduling order concerning timetable for sentencing and reparations" (the "Scheduling Order of 14 March 2012")[3] by which it invited *inter alia* "other individuals" and "interested parties" to apply in writing for leave to file submissions on the principles to be applied by the Chamber with regard to reparations and the procedure to be followed by the Chamber, by 28 March 2012 at 16:00[4]. Furthermore, the Chamber invited the parties and participants to file submissions on said issues, by 18 April 2012 at 16:00[5].

3. On 19 March 2012, the Registry submitted its Second Report on Reparations (the "Registry's Report")[6].

4. On 23 March 2012, the Trust Fund for Victims (the "TFV") submitted a public redacted version of its First Report on Reparations (the "TFV's Report")[7].

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[1] See the "Judgment pursuant to Article 74 of the Statute" (Trial Chamber I), No. ICC-01/04-01/06-2842, 14 March 2012 (the "Judgment").
[2] *Idem*., par. 1358.
[3] See the "Scheduling order concerning timetable for sentencing and reparations" (Trial Chamber I), No. ICC-01/04-01/06-2844, 14 March 2012 (the "Scheduling Order of 14 March 2012").
[4] *Idem*., par. 10.
[5] *Ibid*., par. 8.
[6] See the "Second Report of the Registry on Reparations", No. ICC-01/04-01/06-2806, 1st September 2011 (reclassified as public pursuant to Trial Chamber I's instructions dated 19 March 2012) (the "Registry's Report").

5. On 28 March 2012, the Office of Public Counsel for Victims (the "OPCV" or the "Office") requested leave to appear before the Chamber on issues related to reparations proceedings[8].

6. On 5 April 2012, the Chamber issued a "Decision on the OPCV's request to participate in the reparations proceedings"[9] by which it (a) instructed the Registry to appoint the OPCV as the legal representative for any unrepresented applicants and to provide the OPCV with the applications for reparations that have been received thus far, as well as any future applications from unrepresented victims; and (b) instructed the OPCV to file submissions on the principles to be applied by the Chamber with regard to reparations and the procedure to be followed by the Chamber on behalf of those victims who have not submitted applications but who may fall within the scope of an order for collective reparations, by 16:00 on 18 April 2012[10].

7. Accordingly, the Principal Counsel of the OPCV respectfully submits her observations on the issues concerning reparations proceedings.

8. As a preliminary remark, the Office observes that pursuant to regulation 38(1)(f) of the Regulations of the Court, "[u]*nless otherwise ordered by the Chamber*", the page limit for representations under article 75 of the Statute shall not exceed 100 pages.

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[7] See the "Public Redacted Version of ICC-01/04-01/06-2803-Conf-Exp-Truct Fund for Victims' First Report on Reparations", No. ICC-01/04-01/06-2803-Red, 23 March 2012 (the "TFV's Report").
[8] See the "Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to reparations proceedings", No. ICC-01/04-01/06-2848, 28 March 2012.
[9] See the "Decision on the OPCV's request to participate in the reparations proceedings" (Trial Chamber I), No. ICC-01/04-01/06-2858, 5 April 2012.
[10] *Idem*., par. 13.

9. The Office agrees with the general approach of the Registry and of the TFV as explained in their respective submissions[11] and it will therefore limits its observations to matters not fully explored in said submissions or on controversial issues.

II. PRINCIPLES TO BE APPLIED WITH REGARD TO REPARATIONS

1) General reflections

10. According to article 75(1) of the Statute, "*the Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation*". These "principles" have not yet been established within the legal framework of the Court[12].

11. Albeit the current case being the first case before the Court having reached the sentencing phase, Trial Chamber I should not be required to establish principles with regard to reparations that should apply to all other ongoing and upcoming cases before the Court but only the ones relevant to the present case, *i.e.* case specific principles.

12. On the one hand, it appears that to date, no assets belonging to the convicted person which could be used for the purpose of fines or forfeiture to support reparations awards have been identified[13]. It further appears that the TFV has limited resources available for victims' reparations at its disposal[14]. It follows that the

[11] See the Registry's Report, *supra* note 6. See also the TFV's Report, *supra* note 7.
[12] The Office observes that although during the preparatory works a committee of judges worked at drafting a set of "principles", the project was dropped and it was decided that this was better left to the Trial Chambers to elaborate the principles as required in the course of deciding upon reparations. In this sense, see SCHABAS (W.A.), "Article 75. Reparations to victims / Réparations en faveur des victimes", in *The International Criminal Court: A Commentary on the Rome Statute*, Oxford, Oxford University Press, 2010, pp. 878-883, at p. 881.
[13] See the Registry's Report, *supra* note 6, par. 10.
[14] See the TFV's Press Release of 23 March 2012. The document is available at: http://www.trustfundforvictims.org/news/press-release-23-march-icc-trust-fund-victims-assists-over-80000-victims-raises-reparations-res.

Chamber will obviously not be in a position to award individual reparations to all victims concerned.

13. On the other hand, objective practical difficulties are likely to arise when considering implementing collective reparations[15]. In particular:

- The *Union des Patriotes Congolais* being mostly comprised of members of the Hema community, is alleged to have recruited child soldiers predominately from this ethnic group. Consequently, should reparations be awarded in the case, the majority of the benefiting victims will be from one side of an ethnic conflict in which different groups of people suffered harm[16];
- Given that the crimes in question occurred over a relatively wide geographical area, many of the victims are now dispersed both within the DRC and further afield. This could, in turn, give rise to considerable challenges in identifying and verifying potentially eligible beneficiaries[17].

14. In light of aforementioned circumstances, the Office is of the opinion that a combination of individual and collective reparations would be the best response to challenges faced by the Chamber in the present case.

15. It appears that the Registry has informed the most important stakeholders in the DRC of the Judgment[18]. Also, it appears that, to date, 85 applications for reparations have been received and were transmitted to the Chamber[19]. It is not clear however whether the Chamber would allow new individual applications for

[15] See the Registry's Report, *supra* note 6, paras. 7-9. See also the TFV's Report, paras. 149-152.
[16] See the Registry's Report, *supra* note 6, par. 7. See also the TFV's Report, paras. 151 and 174.
[17] See the Registry's Report, *supra* note 6, par. 8.
[18] See the "Registry's report on the notification of the Judgment", No. ICC-01/04-01/06-2850, 28 March 2012, p. 7.
[19] See the "First Report to the Trial Chamber on applications for reparations", No. ICC-01/04-01/06-2847, 28 March 2012, par. 7.

reparations to be submitted. Should the Chamber allow the submission of new applications, a deadline should be set out for this purpose.

16. At the same time, identifying victims for the purpose of submitting new individual applications for reparations not only will give rise to material delays in the reparations proceedings but will also involve a need for the Registry "*to organise the use of resources available in an efficient and timely fashion in order to receive, process and report on applications received*"[20].

17. Accordingly, given the limited number of applications for reparations submitted to the Court to date, the Chamber should consider awarding reparations on both individual and collective basis. Indeed, individual measures are important because "*international human rights standards are generally expressed in individual terms. Reparation to individuals therefore underscores the value of each human being and their place as rights-holders*"[21]. Individual reparations are able to respond more adequately to the specific experiences of each victim taking into account the harm suffered as a result of the crimes that have occurred.

18. With regard to other victims who have not submitted individual applications for reparations to date and in order to prevent delays in the proceedings, the Chamber should consider using its *proprio motu* powers under article 75(1) of the Statute and awarding reparations on a collective basis only. By awarding collective reparations by virtue of said powers, the Chamber would therefore address objective difficulties in identifying all the victims linked with the convicted person and would attempt to repair as many victims as possible. Moreover, the purpose of ordering reparations "in respect of" victims may be to extend the scope of application of article 75 of the Statute to persons indirectly affected by the crime, or the heirs of

[20] See the "First Report to the Trial Chamber on applications for reparations", No. ICC-01/04-01/06-2847, 28 March 2012, par. 28.
[21] See the International Center for Transitional Justice, (ICTJ, Lisa Maggarrell), *Reparations in Theory and Practice*, p. 3. The document is available at: http://ictj.org/publication/reparations-theory-and-practice. See also the TFV's Report, *supra* note 7, par. 18.

victims, and thus to enable the Court to award reparations to the benefit of as many of those affected by the crimes under the jurisdiction of the Court as possible, including family members of direct victims, other indirectly harmed persons or collectives of victims[22].

2) Adequateness of reparations to be awarded

19. In accordance with the internationally recognised principles, reparations for victims of gross violations of international human rights shall be adequate, effective, prompt and proportional to the gravity of the violations and the harms suffered[23].

20. According to the Permanent Court of International Justice (the "PCIJ"), "*reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability have existed if that act had not been committed*"[24].

21. Article 2(3) of the International Covenant on Civil and Political Rights (the "ICCPR") provides that States have an obligation to ensure and enforce an effective remedy for a violation of the rights recognized in the Covenant[25]. In its General Comment No. 31, the Human Rights Committee (the "HRC") clarified the scope of the right to an effective remedy as follows:

> *"Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy,*

[22] See DWERTMARM (E.), The Reparations System of the International Criminal Court, Martinus Nijhoff Publishers, Leiden, 2010, pp. 111 and 112 with further references. See also the TFV's Report, *supra* note 7, par. 44.
[23] See the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", Resolution adopted by the UN General Assembly at its 60th session on 21 March 2006, UN Doc. A/RES/60/147 (the "Basic Principles"), Principle 15. The document is available at: http://www2.ohchr.org/english/law/remedy.htm.
[24] See PCIJ, *Case Concerning the Factory at Chorzów*, Claim for Indemnity, Merits, Judgment, 13 September 1928, PCIJ Series A, No. 17, par. 29, p. 47.
[25] See article 2(3) of the International Covenant on Civil and Political Rights (the "ICCPR"). The document is available at: http://www2.ohchr.org/english/law/ccpr.htm.

> *which is central to the efficacy of Article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by Articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."*[26]

22. Article 14 of the Convention against Torture provides victims of torture with "*an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of a victim as a result of an act of torture, his dependents shall be entitled to compensation*"[27].

23. Article 6 of the Convention on the Elimination of all Forms of Racial Discrimination provides for "*effective protection and remedies* […] *against any acts of racial discrimination which violate human rights and fundamental freedoms contrary to this Convention, as well as the right to seek* […] *just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination*"[28]. In its General Recommendation XXVI, the Committee on the Elimination of Racial Discrimination (the "CERD") specified that the right embodied in article 6 is "*not necessarily secured solely by the punishment of the perpetrator of the discrimination*" and that "*the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate*."[29]

24. Article 2(c) of the Convention on the Elimination of All Forms of Discrimination against Women, similarly to the ICCPR, does not contain specific provisions dealing with reparations. But the Committee's on the Elimination of

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[26] See HRC, General Comment No. 31, *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/ Add.13, 26 May 2004, par. 16 (We underline).
[27] See article 14 of the Convention against Torture (We underline). The document is available at: http://www2.ohchr.org/english/law/cat.htm.
[28] See article 6 of the Convention on the Elimination of all Forms of Racial Discrimination (We underline). The document is available at: http://www2.ohchr.org/english/law/cerd.htm.
[29] See CERD, General recommendation XXVI on Article 6 of the Convention, 24 March 2000 (We underline).

Discrimination against Women (the "CEDAW") General Recommendation No. 19 calls on States parties to provide victims of violence with compensation [30], rehabilitation in the form of medical and psychological services[31], prosecution as a form of satisfaction[32], and human rights education in different forms as guarantees of non-repetition[33].

25. The International Convention for the Protection of All Persons from Enforced Disappearance contains the most complete provisions on reparations, clearly influenced by the UN Basic Principles:

> *"24.4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.*
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> *24.5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:*
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> *(a) Restitution;*
>
> *(b) Rehabilitation;*
>
> *(c) Satisfaction, including restoration of dignity and reputation;*
>
> *(d) Guarantees of non-repetition."*[34]

26. Article 9.4 of the Convention on the Rights of the Child states that "*State Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible*"[35]. Article 39 of the Convention states that "*States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such*

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[30] See CEDAW, General Recommendation No. 19 on Violence against Women, (11th session, 1992), par. 24(i).
[31] *Idem.*, paras. 24(b), (k), (o), and (r)(iii).
[32] *Ibid*, par. 24(r)(i).
[33] *Ibid.*, paras. 24(b) and (p).
[34] See articles 24.4 and 24.5 of the International Convention for the Protection of All Persons from Enforced Disappearance (We underline). The document is available at: http://www2.ohchr.org/english/law/disappearance-convention.htm.
[35] See article 9.4 of the Convention on the Rights of the Child. The document is available at: http://www2.ohchr.org/english/law/crc.htm.

recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child"[36]. The Committee on the Rights of the Child (the "CRC") reaffirmed this duty[37].

27. The right of children to reparations is clearly established in the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime according to which "[c]*hild victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery*"[38].

28. Article 16(9) of the Convention on Migrant Workers provides as follows: "*Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation*"[39].

29. The HRC stated that compensation has to be "*adequate*"[40]. The CEDAW upheld that combat violence against women, "*remedies, including compensation should be provided*"[41]. The CERD enshrined the right to "*just and adequate reparation or satisfaction* […] *including economic compensation*"[42].

30. Moreover, even in the absence of specific treaty provisions for reparations, as it is the case in the Convention for the Elimination of Discrimination against Women,

[36] *Idem*., article 39.
[37] See CRC, General Comment No. 5, *General measures of implementation of the Convention on the Rights of the Child (arts.4, 42 and 44, para.6)*, CRC/GC/2003/5, 27 November 2003, par. 24.
[38] See the UN ECOSOC Resolution 2005/20, "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime", par. 35, in Chapter XIII: "The right to reparation" (We underline).
[39] See article 16(9) of the Convention on Migrant Workers. The document is available at: http://www2.ohchr.org/english/law/cmw.htm.
[40] See HRC, *Stering v. Jamaica*, 18 October 1994, par. 10; *Blanco v. Nicaragua*, 18 August 1994, par. 11; *Sarma v. Sri Lanka*, 31 July 2003, par. 11.
[41] See CEDAW, General Recommendation No. 19 on Violence Against Women, 29 January 1992, par. 24(i).
[42] See CERD, Article 6, *B.J. v. Denmark,* 10 May 2000, par. 6.2; *L.K. v. The Netherlands,* 16 March 1993, par. 6.9; *Habassi v. Denmark,* 6 April 2001, par. 11.2 (We underline).

the CEDAW noted the State's obligation to provide reparations proportionate to the physical and mental harm suffered and to the gravity of the violations of the rights[43].

3) "Collective reparations" in their narrow and large sense

31. While collective reparations can sometimes be understood narrowly as measures which address pre-existing groups tied by a cultural or ethnic link[44], or the social, cultural or spiritual life of a community[45], the international practice is actually more flexible when dealing with this criterion.

32. In the case of *Ituango Massacres v. Colombia*, the Inter-American Court of Human Rights (the "IACHR") included the provision of free medical services, *inter alia* counselling, to victims next-of-kin and a programme to provide housing for individual beneficiaries as part of its "collective" reparations award[46]. Even though these processes do not seek to redress collective harm in its narrow sense, with victims benefiting individually rather than as a group, such processes are nevertheless sometimes described as "collective" reparations[47], as interpreted in their large sense. Also, a reparations measure may be collective when the beneficiaries form a specific group of people, in contrast to a community[48].

4) Type of harms suffered by the victims in the present case

33. Principle 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law

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[43] See CEDAW, *Ms. A.T. v. Hungary*, 26 January 2005, par. 9.6 I (b) (We underline).
[44] See the International Commission of Jurists, The Right to a Remedy and to Reparations for Gross Human Rights Violations: A Practitioners' Guide, 2006, p. 40. The document is available at: www.icj.org/dwn/database/PGReparationsENG.pdf.
[45] In this sense, see McCARTHY (C.), *Reparations and Victim Support in the International Criminal Court*, Cambridge: CUP, 2012, Chapter V. See also in this sense ROSENFELD (F.), "Collective Reparation for Victims of Armed Conflict", *International Review of the Red Cross*, 2010, p. 732.
[46] See IACHR, *Ituango Massacres v. Colombia*, Merits, Reparations and Costs, 1st July 2006, para. 397.
[47] *Idem*.
[48] See IACHR, *'Juvenile Institute' v. Paraguay*, Preliminary Objections, Merits, Reparations and Costs, Series C No. 112, 2 September 2004; and *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Series C No. 150, 5 July 2006.

and Serious Violations of International Humanitarian Law (the "Basic Principles") provides as follows:

> "*victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization*"[49].

34. The IACHR also adopted a broad interpretation with regard to who is eligible for reparations, and awarded reparations to both direct and indirect victims, including both immediate and non-immediate family members of direct victims[50].

35. In the present case, the Trial Chamber specified persons who fall with the definition of "victims". In particular, according to the Chamber, direct victims are "*the children below fifteen years of age who were allegedly conscripted, enlisted or used actively to participate in hostilities by the militias under the control of the accused within the time period confirmed by the Pre-Trial Chamber*"[51]. The Chamber limited indirect victims to the direct victims' close personal relations, such as parents, and those who intervened to prevent their recruitment[52].

36. With regard to direct victims, there exist numerous forms of harm, material, physical and psychological, to which the crime of child conscription could give rise, in particular:

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[49] See the Basic Principles *supra* note 23, Principle 8.
[50] See IACHR, *Blake v. Guatemala,* Reparations, Judgment of 22 January 1999, par. 37 [parents and brothers and sisters of disappeared person, without differentiation in proof]; *Juan Humberto Sánchez v. Honduras*, Judgment of 7 June 2003, par. 152 [family members for victim and in their own right; siblings; non biological father; wife and other partner]; *19 Merchants v. Colombia*, Judgment of 5 July 2004, par. 249 [children, partner, parents and siblings].
[51] See the "Redacted version of "Decision on 'indirect victims'" (Trial Chamber I), No. ICC-01/04-01/06-1813, 8 April 2009, par. 47.
[52] *Idem*., paras. 49 to 61.

- physical injury as a result of training in military camps and of participation in military hostilities;
- psychological harm and suffering as a result of having been forced to conscribe into army and to participate in hostilities with the very real risk of serious injury or death;
- psychological suffering as a result of having been forced to separate from their family while being in a very young age;
- harm as a result of having been forced to stop studying;
- physical and psychological harm and suffering for female child soldiers who were subjected to sexual violence.

37. The indirect victims may have suffered *inter alia* the following harm:

- psychological harm and suffering as a result of forced recruitment of their relatives into army with the very real risk of serious injury or death;
- psychological harm and suffering due to continued uncertainty as regards the situation of their relatives;
- psychological harm and suffering due to the sudden loss of a family member.

5) Standard and burden of proof for the purpose of reparations

38. It is possible to infer from the practice of human rights bodies that a flexible approach to the standard and burden of proof in reparations claims applies. As the HRC explained, "[the] *burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information*"[53]. Accordingly, in order to balance this situation with the victim's capacity to prove the damage suffered, international adjudicatory bodies have relied on presumptions and

[53] See HRC, *Elena Beatriz Vasilskis v. Uruguay*, Communication No. 80/1980, U.N. Doc. CCPR/C/OP/2 at 105 (1990), 18th session, par. 10.4.

circumstantial evidence "*when they lead to consistent conclusions as regards the facts of the case*"[54].

39. Therefore, the *prima facie* standard of proof, as applied by the Trial Chambers of the Court for the purpose of establishing eligibility for participation seems to be an appropriate one for the purpose of awarding individual reparations given the availability of most relevant evidence, victims' inability to obtain new evidence and the fact that events underlying reparations are not in principle be contested at this stage of proceedings, having been proven at trial.

40. Regarding collective reparations, mass claims mechanisms have established variable standards of proof, recognizing the existence of difficulties for the claimants in making out their claims. In particular numerous post-conflict recent claims processes have established "relaxed standards of proof". These standards include:

- Plausible evidence making out the claim[55]. A "plausible case" requires a claimant to show "*that it is plausible in light of all of the circumstances that he or she is entitled, in whole or in part, to the dormant account*"[56].
- Predominantly probable claims[57]. In particular, "*the causality shall be deemed to have been substantiated when the partner organisation or the arbitration commission appointed by it is convinced that the claims made by the claimant are predominantly probable*"[58].

[54] See IACHR, *Gangaram Panday v. Suriname*, Merits, Reparations and Costs, Judgment of 21 January 1994, Series C No. 16, par. 49.
[55] See the Governing Rules of the Claims Resolution Tribunal for Dormant Accounts, Article 17, para. 1. The document is available at: http://www.crt-ii.org/faqs.phtm.
[56] *Idem*.
[57] See the Common guidelines for the partner organisations concerning the compensation of other personal injuries, decided by the Board of Trustees of the Foundation "Remembrance, Responsibility and Future" on 21 June 2001, para. 6. The document is available at: www.stiftung-evz.de.
[58] *Idem*.

- Credibly demonstrated claim[59]. According to this standard, a fact shall be considered established if it has been credibly demonstrated; a claim cannot be rejected on the sole ground that it is not supported by official documentary evidence[60].

41. The IACHR has used presumptions in relation to establishing certain facts. For instance, the IACHR held as follows: "[i]*n determining whether or not the State is responsible for violations of the substantive rights under the American Convention, the Court freely takes into account circumstantial evidence, presumptions of fact, and to draw inferences. In this regard, the Court has recognized that: in the exercise of its jurisdictional function, and in the process of obtaining and assessing the evidence it needs to decide the cases it hears, it may, in certain circumstances, use both circumstantial evidence and indications or presumptions as a basis for its pronouncements, when consistent conclusions regarding the facts can be inferred from same*"[61]. Similarly, in the case of *Cantoral-Benavides*, the IACHR noted as follows: "[i]*n addition to direct evidence, be it testimonial, expert or documentary, international courts, as well as domestic courts, can base their judgments on circumstantial evidence, indications and presumptions, provided same lead to sound conclusions regarding the facts*"[62].

42. National truth telling commissions also resorted to presumptions. For instance, the National Commission on Illegal Detention and Torture in Chile indicated that victims who were able to prove detention in certain detention facilities

[59] See the International Organisation for Migration, Property Claims Commission, Supplementary Principles and Rules of Procedure, 29 January 2002, Section 22.1. The document is available at: www.compensation-for-forced-labour.org.
[60] *Idem*., Section 22.2.
[61] See IACHR, *Castillo-Petruzzi et al*., 30 May 1999, par. 62; *Loayza-Tamayo,* Reparations, Judgment of 27 November 1998, Series C No. 42 (1998), par. 51; *Paniagua Morales et al. v. Guatemala* (the *White Van* case), Merits, 8 March 1998, par. 72*; Blake v. Guatemala,* Merits, 24 January 1998, par. 49; and *Gangaram-Panday v. Suriname,* Merits, Reparations and Costs, Judgment of 21 January 1994, Series C No. 16, par. 49.
[62] See IACHR, *Cantoral-Benavides v. Peru (Merits),* 18 August 2000, par. 47.

in Chile at a certain time were presumed to have been tortured due evidence of systematic torture being used in those facilities at that time[63].

43. Another tool, used in mass claims cases, particularly in the United States is the *Cy Pres*[64]. This doctrine, which evolved through the law of trusts is translated as meaning "as near as possible". It has been used to endow beneficiary groups with entitlements where a specified group cannot be found, or has ceased to exist[65]. The *Cy Pres* doctrine is appropriate for instance where collective awards or fixed lump sums are foreseen for a large number of victims, and where the extent of individual harm and suffering within a given category is immaterial[66].

44. Applying this in the context of the Court, more rigorous verification processes may be required of victims seeking to benefit from more resource-intensive forms of reparations than in the context of reparations where the *per capita* expenditure on each beneficiary is marginal. Depending also on what form of reparations – collective and/or individual – is chosen, there may be a difference as far as the applicable standard of proof is concerned. The Chamber might, at its discretion, apply a more relaxed standard than the one it applied during the trial.

6) Individual reparations

45. The Office is of the opinion that the Chamber should consider awarding the former child soldiers as well as their close family members, who have submitted individual applications for reparations to date, individual reparations under the form of compensation.

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[63] See the Informe de la Comision Nacional sobre Prision Politica y Tortura (Santiago, 2005), highlighted in DE GRIEF (P.), Paper on "Implementation of Reparations, 2006. The document is available at: http://www.redress.org/downloads/events/CollectiveReparationsMG.pdf.

[64] In this sense, see McCARTHY (C.), Reparations and Victim Support in the International Criminal Court, Cambridge: CUP, 2012, Chapter VIII.

[65] See the Registry's Report *supra* note 6, paras. 27 to 31.

[66] See NIEBERGALL (H.), Overcoming Evidentiary Weaknesses in Reparation Claims Programmes, in FERSTMAN (C.), GOETZ (M.) and STEPHENS (A.) (eds), *Reparations for Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making*, Martinus Nijhoff, 2009.

46. Principle 20 of the Basic Principles provides as follows:

> "*Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services*"[67].

a. Compensation for the former child soldiers based on the concept of "project of life"

47. None of existing forms of compensation is able to provide the former child soldiers with full reparations for the harms suffered as a result of the loss of their childhood. In this regard, the concept of "project of life" as developed by the international jurisprudence seems to be the most appropriate approach to be adopted by the Chamber for the purpose of determining a relevant form of compensation to be applied in respect of former child soldiers.

48. The concept of "project of life" was first developed by the IACHR in the case of *Loayza Tamayo*[68]. In this case, the Court observed first that material damages for expenses and lost wages are generally insufficient to truly grant the person *restitutio in integrum.* In addition to being stripped of monetary means during their deprivation of liberty as well as other rights, the violations affected a person's life plan which "*deals with the full self-actualisation of the person concerned and takes account of her calling in life, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals*"[69]. In particular, the IACHR went on to state: "[...] *acts that violate rights seriously obstruct and impair the accomplishment of an anticipated and expected result and thereby substantially alter the individual's development. In other words, the damage to the 'life plan',*

[67] See the Basic Principles, *supra* note 23, Principle 20.
[68] See IACHR, *Loyaza Tomayo v. Peru*, Reparations, Judgment of 27 November 1998, par. 147.
[69] *Idem*.

understood as an expectation that is both reasonable and attainable in practice, implies the loss or severe diminution, in a manner that is irreparable or reparable only with great difficulty, of a person's prospects of self-development"[70]. Although in that case, the Court did not find the jurisprudence sufficiently evolved to make such a compensation award[71], the subsequent jurisprudence has endorsed measures to repair a life plan.

49. Indeed, since the case of *Loayza Tamayo*, the IACHR has used the concept of "life plan" in three other cases, in particular *Cantoral Benavides v. Peru* (2000), *Tibi v. Ecuador* (2004), and *Gutiérrez Soler v. Colombia* (2005). In all these cases, the Court held that the violations in question had caused a serious alteration in the life plan of the victims, which led to additional non-pecuniary damage.

50. In particular, in the case of *Cantoral Benavides*, the IACHR ordered Peru to provide the victim with the means to carry out and complete his studies at a university of recognized academic quality, since his unlawful imprisonment denied his life project to pursue a university degree[72]. In the case of *Tibi*, the Court calculated the damage to the victim's "life plan" in the form of a monetary award, while in the case of *Cantoral Benavides*, in which the victim was a student who had suffered arbitrary detention, torture and unfair trial, the Court was careful to make a more specific reparations award. In this case it ordered the State to: "[...] *provide him with a fellowship for advanced or university studies, to cover the costs of a degree preparing him for the profession of his choosing, and his living expenses for the duration of those studies, at a learning institution of recognised academic excellence, which the victim and the State select by mutual agreement*"[73].

51. Similarly, the European Court of Human Rights (the "ECHR") has recognised the possibility to award reparations for "loss of opportunity". In particular, in the

[70] *Ibid*., par. 150.
[71] *Ibid*., par. 153.
[72] See IACHR, *Cantoral Benavides v. Peru,* Reparations and Costs, Judgment of 3 December 2001, Series C No. 88, par. 80.
[73] *Idem*.

case of *Campbell Cosans v. United Kingdom* the Court found that the violation in question had deprived the victim "*of some opportunity to develop his intellectual potential*"[74]. In the same vein, in the case of *Thlimmenos v. Greece*, the Grand Chamber of the ECHR stated that the violation suffered by the victim had harmed "*the applicant's access to a profession, which is a central element for the shaping of one's life plans*"[75].

52. The concept of "project of life" as developed *supra*, is particularly relevant in the context of former child soldiers as well as female child soldiers who, in addition, were sexually abused.

53. Indeed, the active involvement of children in military activities creates significant psychological trauma that is very likely to continue long after their demobilisation from the armed group. The stress of childhood maltreatment is associated with alterations of biological stress systems, which in turn, leads to adverse effects on brain development and delays in cognitive, language, and academic skills[76]. The negative impact of their experience as a child soldier can be life-long and may in turn cause further suffering and human rights violations in the future. There is large and growing scientific evidence that prolonged and/or excessive exposure to fear and states of anxiety can lead to levels of stress that can impair early learning and adversely affect later performance in school, the workplace, and the community[77]. An underdeveloped cortex can lead to increased impulsive behaviour, as well as difficulties with tasks that require higher-level thinking and feeling; these individuals may show delays in school and in social skills

[74] See ECHR, *Campbell Cosans v. United Kingdom*, Just Satisfaction, 22 March 1983, par. 26. See also ECHR, *T.P. and K.M v. United Kingdom*, Grand Chamber, 10 May 2001 par. 115.
[75] See ECHR, *Thlimmenos v. Greece*, Merits, Grand Chamber, 6 April 2000, par. 70.
[76] In this sense, see WATTS-ENGLISH (T.), FORTSON (B.L.), GIBLER (N.), HOOPER (S.R.) and DE BELLIS (M.D.), "The Psychobiology of Maltreatment in Childhood", 2006, *Journal of Social Issues,* No. 62, Issue 4, pp. 717-736.
[77] See the National Scientific Council on the Developing Child, Persistent Fear and Anxiety Can Affect Young Children's Learning and Development: Working Paper 9, Center on the Developing Child: Harvard University, 2010.

as well[78]. They may be more drawn to taking risks, and they may have more opportunity to experiment with drugs and crime if they live in environments that put them at increased risk for these behaviours. Those who lack stable relationships with adults who can provide guidance and model appropriate behaviour may never have the opportunity to develop the relationship skills necessary for healthy adult relationships[79]. Research on the impact of communal violence and war also suggest that children's social and moral development may be greatly affected by the kinds of trauma and deprivations associated with child soldiering[80].

54. Therefore, the former child soldiers, who have suffered severe injury or psychological trauma, may experience a much greater disruption to their "project of life", preventing them from continuing studying or finding work, or being able to marry and start a family in the future. All those recruited at a young age have been deprived of vital aspects of their childhood, such as education and family life, which are very likely to impact on the quality of their "project of life" in the future.

55. Victims of sexual violence during their involvement into armed groups are subject of a particular concern. Girls, who were raped during armed conflicts and consequently become pregnant, face major disruptions to their "project of life". They face great difficulties during the process of being accepted back into their families and communities, with girl mothers and their children experiencing the highest levels of rejection and abuse upon return[81]. They may be unable to marry, which may also deprived them of emotional, financial and material security particularly in the African context. They may be denied access to productive activities such as

[78] In this sense, see CHAMBERLAIN (L.B.), "The amazing teen brain: What every child advocate needs to know", *Child Law Practice*, No. 28, Issue 2, 2009, pp. 22-24.
[79] See the Child Welfare Information Gateway, Understanding the Effects of Maltreatment on Brain Development, 2009.
[80] In this sense, see GARBARINO (J.) and KOSTELNY (K.), The effects of political violence on Palestinian children's behaviour problems: A risk accumulation model, *Child Development*, No. 67, 1996, pp. 33-45.
[81] See the Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS), 2006. The document is available at: www.unddr.org/iddrs/download/iddrs_1-5.pdf.

communal farms or local markets, which may force them to live in poverty. They may be prevented from attending school, which may deprive them of the opportunity to raise themselves out of poverty. They may suffer from HIV/AIDS or other sexually transmitted diseases as a consequence of the rape, which have very serious implications for their health and hence their life plan[82]. A girl who was repeatedly raped and forced into sexual slavery is very likely to suffer similarly, if not more severely.

56. Therefore, it is generally understood that participation in conflicts seriously disrupts the normal development of a child and that the concept of a "project of life" can be used as an effective tool to assess damages of this kind and to contribute to victims' future development.

57. The forms of repairing a "project of life" to be applied in the present case should vary depending on the current situation and/or the needs of the specific individuals. They should include *inter alia* reintegration into society, physical and mental health care, provision of some form of education or vocational training and sustainable work opportunities.

58. In particular, according to the Paris Principles adopted in February 2007[83],

> "*'Child Reintegration' is the process through which children transition into civil society and enter meaningful roles and identities as civilians who are accepted by their families and communities in a context of local and national reconciliation. Sustainable reintegration is achieved when the political, legal, economic and social conditions needed for children to maintain life, livelihood and dignity have been secured. This process aims to ensure that children can access their rights, including formal and non-formal education, family unity, dignified livelihoods and safety from harm*"[84].

[82] In this sense, see DUGGAN (C.) and ABUSHARAF (A.), "Reparation of Sexual Violence in Democratic Transitions: The Search for Gender Justice", in GREIFF (P.) (ed.), *The Handbook of Reparations*, Oxford, Oxford University Press, 2006, p. 623-49.
[83] See the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007, Paris. The document is available at: http://www.un.org/children/conflict/english/parisprinciples.html.
[84] *Idem*., Principle 2.9.

59. The aim of reintegration programmes for former child soldiers is to ensure their effective and sustainable reintegration [85]. Former child soldier specific reintegration aims at allowing them to access education, a livelihood, life skills and a meaningful role in society. The higher a child's level of education, the more their reintegration is likely to succeed. It is therefore important for former child soldiers to try to reach (or recover) as high a level of education as possible, often starting with basic literacy. However, returning to school is often difficult and even impossible, not only for financial reasons, but also because of the adjustments both teachers and learners have to make[86].

60. For the purpose of awarding individual reparations based on the concept of "project of life", the Chamber is not supposed to request from the victims concerned any proof of damage to their "life plan". Indeed, the very fact of conscription of children below the age of fifteen into the FPLC between September 2002 and 13 August 2003 constitutes *per se* sufficient proof of damage to the "life plan" of the former child soldiers concerned.

61. With a view of implementing reparations based on the concept of "project of life", the identification of the current situation and needs of the victims concerned will be required. These measures should be undertaken by the Registry or the TFV eventually in cooperation with local intermediaries and/or the State authorities. Giving cash to the former child soldiers concerned would not be an appropriate option for the purpose of reparations, as far as this may lead to a number of negative outcomes [87]. Therefore, the Court may consider that former child soldiers

[85] See the Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS), 2006. The document is available at: www.unddr.org/iddrs/download/iddrs_1-5.pdf.
[86] *Idem*.
[87] In this sense, see MAZURANA (D.) and CARLSON (K.), Reparations as a means for Recognizing and Addressing Crimes and Grave Rights Violations against Girls and Boys during Situations of Armed Conflict and under Authoritarian and Dictatorial Regimes, in RUBIO-MARIN (R.) (ed.), *The Gender of Reparations, Unsettling Social Hierarchies while Redressing Human Rights Violations*, Cambridge University Press, 2009, pp. 190, 193, 194. See also UNICEF, The Disarmament, Demobilisation and

beneficiaries of reparations should instead be given access to education and health services. The TFV should develop appropriate modalities of reparations for the said category of victims depending on the latter's needs and manage the resources required in this regard. Those modalities should include *inter alia* granting of scholarship funds for the former child soldiers, as well as micro-enterprise loans and business skills training[88].

b. Compensation for non-material damages suffered by former child soldiers

62. In addition, or in complement, to the individual reparations suggested above, the Chamber should consider awarding in respect of the former child soldiers a compensation for physical injury and non-material damage.

63. While the Basic Principles uses the terms "moral damages" as a sub-concept of non-material damages separate from "physical and mental harm", the IACHR uses the terms "moral damages" to encompass all elements of physical, mental and emotional suffering reflected in the overarching concept of "non-material damages".

64. In particular, in the case of *Bayarri v. Argentina*, the IACHR described non-material damage to include: "[...] *both the suffering and grief caused to the direct victims and their close relations, and detriment to very significant values of the individuals, as well as non-pecuniary changes in the conditions of existence of the victim or the victim's family*"[89].

65. In the case of *Ringeisen v. Austria*, the ECHR awarded non-material damages for suffering of an individual during his imprisonment, even though he was later

Reintegration of Children Associated with the Fighting Forces: Lessons Learned in Sierra Leone, 1998-2002, New York, 2005. See also the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007, Paris.

[88] See ECCC, Case No. 001/001/18-07-2007-ECCC/TC, Civil Party Group 1 – Final submission, 10 November 2009, par. 121(viii).

[89] See IACHR, *Bayarri v. Argentina*, Preliminary Objection, Merits, Reparations and Costs, Judgment of 30 October 2008, par. 164.

found guilty of the crime for which he had been imprisoned, stating that "*the applicant protested his innocence and certainly felt such excessive detention on remand to be a great injustice*"[90]. For this psychological harm, he was ultimately awarded 20,000 DM.

66. While the Basic Principles clearly draw a distinction between physical, mental and moral damages, the jurisprudence of the IACHR reflects that these principles are examined holistically when considering non-material damages[91]. The Court recognizes that such calculations are inherently difficult and rely on "*principles of equity*"[92]. It encompasses the "*suffering and afflictions*" caused to the direct victim and their families, the significant detriment to very important values to the victims, and the non-material changes in the living conditions of the family[93].

67. The review of the IACHR's jurisprudence on non-material damages in cases of multiple acts of violence against multiple victims, including forced displacement, provides some guidance on the implementation of equitable principles. For instance, in the case of *Aloeboetoe*, the victims were illegally detained, beaten and then killed[94]. The Court held those victims suffered moral damages due to the "*beatings received, the pain of knowing they were condemned to die for no reason whatsoever* [and] *the torture of having to dig their own graves*"[95]. In that case, the Court simply accepted the Commission's calculation of 29,070 USD "*in fairness*" for all but one of the victims, who notably suffered greater injuries, and was awarded 38,755 USD[96].

68. In the massacre case of *Plan de Sánchez*, the IACHR noted that when determining non-material damages for the surviving victims, the factors generally

[90] See ECHR, *Ringeisen v. Austria,* 16 July, 1971, Application No. 2614/65, par. 26.
[91] See IACHR, *Cantoral Benavides v. Peru,* Reparations, Judgment of 3 December 2001, par. 80.
[92] See IACHR, *Aloeboetoe v. Suriname,* Reparations, Judgment of 10 September 1993, par. 87.
[93] See IACHR, *El Caracazo v. Venezuela*, Reparations, Judgment of 29 August 2002, par. 94.
[94] See IACHR, *Aloeboetoe v. Suriname,* Reparations, Judgment of 10 September 1993, paras. 11-15.
[95] *Idem.,* par. 51.
[96] *Ibid.,* paras. 91-93.

considered are the gravity of the facts of the case including situations of impunity, the intensity of the suffering of the victims, the alteration of non-material living conditions, and "*other consequences*"[97]. The Court then turned to the specific facts of the case and applied the following "*parameters*" to guide its calculations: (1) the lack of proper burial and the great importance of burial rites to the Maya-Achi culture; (2) the victims could not properly celebrate ceremonies for some time, which negatively impacted the transmission of their culture as many elders had passed away; (3) the impact of constant military presence, causing terror, fear, anguish and humiliation at being stigmatized as "*guerrillas*;" (4) the impact of an imposed vertical military structure on a traditional community based structure; (5) the frustration and anguish suffered by the continued impunity for the responsible perpetrators; (6) the discrimination experience by the victims negatively impacted their access to justice; and (7) the physical and mental harms endured by the victims[98]. In due consideration of those factors and "*in fairness*", the Court awarded each victim 20,000 USD, resulting in a total award of 3.62M USD[99].

69. In subsequent cases involving widespread and systematic violations, the IACHR applied the approach adopted in the *Plan de Sánchez* case. For instance, in the case of *Moiwana Community* the Court referred to the following relevant factors when determining non-material compensation: (1) the continued impunity of the perpetrators and the adverse effect that impunity has on the community who believe that their deceased will seek revenge upon them; (2) the inability to bury the deceased according to community rituals, which also adversely affects the community because of its belief that it will suffer "*spiritually-caused illnesses*" from the failure to properly bury its dead; and (3) the disconnection of the community's connection to their ancestral lands, "*which devastated them emotionally, spiritually,*

[97] See IACHR, *Plan de Sánchez v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 19 November 2004, par. 83.
[98] *Idem*., par. 87.
[99] *Ibid*., paras. 88-91.

culturally, and economically"[100]. The Court awarded 10,000 USD to each victims, numbering at roughly[101].

70. In those cases, the communities complained of violations and sought redress in connection to their continued displacement from their ancestral homes in relation to the massacre events. However, in the *Mapiripán Massacre* case in an agricultural community, the community complained of right to life violations of 49 of their kin and sought related damages[102]. In that case, the rural community was caught between State-backed paramilitary forces and armed rebel groups. The paramilitaries conducted a raid on the community, kidnapping dozens of individuals in an effort to obtain information about rebel groups. The army was aware of such potential plans and failed to prevent the actions of the paramilitaries, who tortured, dismembered and killed 49 persons, throwing their bodies in the river[103]. In determining the non-material damages award of 80,0000 USD on behalf of each victim, the Court considered the barbaric torture endured by some victims, the extreme psychological endured by others who had to watch such torture, with all foreseeing their fatal destiny before being executed[104]. An additional 10,000 USD was awarded to any victim that was a minor at the time of the incident, on the basis that minors are entitled to special protections from such violations[105].

71. A fair comparison of those cases suggests that the Court is implementing proportionality principles to analyze the gravity of the violations with the harm suffered. Accordingly, the determination of non-material damages is based on a case-by-case approach that takes into account the impact of the violations on the victims.

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[100] See IACHR, *Moiwana Community v. Suriname,* Preliminary Objections, Merits, Reparations and Costs, Judgment of 15 June 2005, par. 195.
[101] *Idem.,* par. 196.
[102] See IACHR, *Mapiripán Massacre v. Colombia,* Merits, Reparations and Costs, Judgment of 15 September 2005, paras. 96(30)-(47).
[103] *Idem*.
[104] *Ibid.,* par. 288.
[105] *Ibid.*

c. Compensation for non-material damages suffered by family members of former child soldiers

72. In accordance with the international jurisprudence, family members of victims can obtain compensation either as successors to the interests of the deceased or as victims in their own right before an international mechanism. In the case of *Akhmadova and Sadulayeva v. Russia*[106], the applicants were respectively the mother and the spouse of the victim, Mr. Akhmadov, whose right to life under Article 2 of the European Convention had been violated. The applicants claimed the sum of 44,236 EUR for loss of earnings, basing their calculation on minimal wage, the average life expectancy of men in Russia, the inflation rate and other factors[107]. They also claimed 1,225 EUR for funeral expenses. The ECHR, however, awarded only 15,000 EUR of material damages and gave no explanation as to how it reach said sum. Non-material damages were also awarded for the suffering endured by the applicants, but again no formula or rules of calculation were provided[108].

73. It is also possible for family members to seek compensation not as successors, but as victims themselves. This was typically made it possible in cases of enforced disappearances where the family members of the victim claim to be subjected to inhumane treatment under Article 3 of the European Convention or deprived of an effective remedy against the situation under Article 13 of the Convention. Thus, for instance, in the case of *Çakici v. Turkey* the applicant claimed that the emotional distress he suffered as a result of his brother's unlawful detention, torture, disappearance and subsequent murder rendered him a victim of inhumane treatment[109]. Apart from bringing a claim against the Turkish government on behalf of his brother and seeking compensation for his wife and children, Mr. Çakici also claimed that his own rights under Article 3 had been violated[110]. Although the ECHR

[106] See ECHR, *Akhmadova and Sadulayeva v. Russia*, 10 May 2007, Application No. 40464/02.
[107] *Idem*., par. 140.
[108] *Ibid.*, par. 146.
[109] See ECHR, *Çakici v. Turkey*, 8 July 1999, Application No. 23657/94.
[110] *Idem*., par. 94.

did not accept the latter as a basis for his ability to seek reparations as a direct victim of the Article 3 violation,[111] it nevertheless stated that the applicant "*undoubtedly suffered damage in respect of the violations found by the Court and may be regarded as an 'injured party' for the purposes of Article 41*" [112]. He was ultimately awarded compensation for non-material damages amounting to 2,500 GBP. Again, it is not clear how this sum was calculated. The Court only stated that it took into account the "*gravity of the violations and* […] *equitable considerations*"[113].

74. In the *Mapiripán Massacre* case, in determining the non-material damages award to the indirect victims of 50,000 USD to each parents, spouses, and children, and 8,500 USD to all siblings, the IACHR considered both the impacts of the disappearance of their loved ones on the families' physical and psychological integrity, but also the factors which prevented them from obtaining official investigations and the continued impunity of the perpetrators that is a source of anguish and suffering[114]. The award is increased by 5,000 USD for any indirect victim who was a minor at the time of the disappearance and execution, based on the concept that minors are entitled to special protections[115].

75. In cases of forced disappearances, similar to the ECHR and IACHR, the HRC considered that compensation in connection with a disappeared person likely encompasses physical and mental damages suffered by the direct victims, as well as the mental harm suffered by their families as a result of their disappearance. The relatives of the persons who disappeared are victims of cruel treatment because of the anguish caused to them by the person's disappearance and, therefore, are entitled to compensation[116]. This view was first adopted by the HRC in the case of *Quinteros v.*

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[111] *Ibid*., par. 99.
[112] *Ibid.,* par. 130.
[113] *Ibid.*
[114] See IACHR, *Mapiripán Massacre v. Colombia,* Merits, Reparations and Costs, Judgment of 15 September 2005, par. 284.
[115] *Idem.*
[116] See HRC, *Quinteros v. Uruguay*, Views of 21 July 1983, par. 16; *Schedko v. Belarus,* Views of 11 January 1999, par. 13; *Khalilov v. Tajikistan,* Views of 30 March 2005, par. 9; *Bondarenko v. Belarus,*

Uruguay, in which it held that "*the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts*" rose to the level of a violation of Article 7 of the ICCPR[117], and thus, the applicant was entitled to compensation for the wrongs suffered[118].

76. In the most recent and landmark decision *El Hassy v. the Libyan Arab Jamahiriya*, the HRC found that the treatment of Mr. El Hassy, including his torture and disappearance, amounted, *inter alia*, to violations of the prohibition of torture under Article 7 of the ICCPR and ordered compensation to the victim's family[119]. Importantly, in finding that Mr. El Hassy's disappearance constituted a breach of Article 7, the Committee relied on the definition of "disappearance" contained in the Rome Statute of the International Criminal Court[120]. The decision of the HRC in this case is of particular significance because it is one of the first decisions by an international human rights body that directly concerns systematic violations of human rights[121].

d. Compensation of medical expenses

77. The case of *Blake v. Guatemala* is the first case in which the IACHR awarded money for future medical treatment, in addition to reimbursing costs already paid: 138,470 USD for "*the medical treatment received and to be received*"[122]. In the *Suárez Rosero v. Ecuador* case, the Court awarded both medical and psychological treatment

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Views of 3 April 2003, par. 9; *Sarma v. Sri Lanka*, Views of 16 July 2003, par. 11; *El Hassy v. the Libyan Arab Jamahiriya*, Views of 24 October 2007, par. 8.

[117] See HRC, *Quinteros v. Uruguay*, Views of 21 July 1983, par. 14.

[118] *Idem*., par. 16.

[119] See HRC, *El Hassy v. the Libyan Arab Jamahiriya*, Views of 24 October 2007, par. 8.

[120] Article 7, paragraph 2 (i) of the ICCPR reads as follows: "'*Enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time*". The document is available at: http://www2.ohchr.org/english/law/ccpr.htm.

[121] The case concerns the notorious massacre at the Abu Salim prison in 1996 in which scores, possibly hundreds of political prisoners where arbitrarily executed by the Libyan authorities. See HRC, *El Hassy v. the Libyan Arab Jamahiriya*, Views of 24 October 2007, paras. 2.1-2.8.

[122] See IACHR, *Blake v. Guatemala*, Reparations and Costs, Judgment of 22 January 1999, par. 50.

for a direct torture victim who had been detained in violent conditions, as well as psychological treatment for his wife as an indirect victim[123]. In the *Cantoral Benavides v. Peru* case, the Court awarded, for the first time, separate amounts of money to specific victims for future medical costs, rather than ordering a general fund. The direct victim of arbitrary detention and torture were awarded 10,000 USD for medical treatment, while his brother was awarded 3,000 USD. The Court also ordered the State to provide the victim's mother with physical and mental treatment for her health problems caused by her son's torture[124]. Though the Court categorized this as compensation, this monetary award was specifically to fund rehabilitation measures, and is best classified as rehabilitation under the Basic Principles.

78. In the case of *Loayza Tamayo*, the IACHR made an award for past and continuing medical treatment expenses where the victim likely suffered irreversible physical and psychological damage resulting from her illegal imprisonment and cruel, wages for the inhumane and degrading treatments endured for more than four years[125]. In the *El Caracazo* case, the Court granted awards in equity for future expected medical expenses of the three survivors, one of whom was a paraplegic and the other two were amputees[126].

79. With respect to indirect victims, the IACHR made numerous awards related to the consequential damages suffered by family members, in particular in cases of disappeared individual victims that were part of a systematic pattern or in massacre cases in which the bodies were not recovered. Some of the most common awards for the benefit of indirect victims were made as to cover medical expenses incurred by family members for physical and psychological damages resulting from the rights'

[123] See IACHR, *Suárez Rosero v. Ecuador*, Reparations and Costs, Judgment of 20 January 1999, par. 60(c).
[124] See IACHR, *Cantoral Benavides v. Peru*, Reparations, Judgment of 3 December 2001, par. 43.
[125] See IACHR, *Loyaza Tomayo v. Peru,* Reparations, Judgment of 27 November 1998, paras. 106(i) and (j).
[126] See IACHR, *El Caracazo v. Venezuela,* Judgment of 29 August 2002, par. 87. The Court awarded 15,000 USD to the paraplegic victim, and 7,5000 USD to each amputee victim in future medical expenses.

violations of the direct victims. For example, the Court awarded compensation to a victim's mother for medical expenses related to stress related conditions resulting from her son's disappearance[127]. The wife of a disappeared victim was also compensated for medical expenses related to the health problems she endured in relation to violation[128].

80. Rehabilitation was also awarded by the HRC in the form of medical assistance in the case of *Raul Sendinc Antonaccio v. Uruguay*[129] after Mr. Sendinc was repeatedly denied medical care, including a necessary hernia operation due to a severe beating from guards[130]. The HRC also included "*all necessary medical care*" among reparations awarded in the *Elena Beatriz Vasilskis v. Uruguay* case[131]. According to the author, Ms. Vasilskis repeatedly did not receive her required medication for Raynaud's disease[132]. As in the case of *Raul Sendinc Antonaccio v. Uruguay*, Ms. Beatriz's condition had likely been caused by mistreatment during her detention and the condition, combined with prevention from receiving treatment, caused her state of health to deteriorate[133]. The HRC requested that the State substantiate its claim that her medicine had been delivered with evidence, including medical reports[134].

81. The CAT has also awarded rehabilitation measures, in accordance with Article 14(1) of the Convention. In the leading case of *Guridi v. Spain,* three civil guards were convicted and subsequently pardoned for torturing the complainant[135]. Although compensation had already been ordered by a domestic court and paid by the offenders, the Committee found a violation of Article 14 considering that

[127] See IACHR, *Trujillo Oroza v. Bolivia*, Reparations, Judgment of 27 February 2002, paras. 53(g) and 75.
[128] See IACHR, *Bámaca Velásquez v. Guatemala,* Reparations, Judgment of 22 February 2002, par. 54(b).
[129] See HRC, *Raul Sendinc Antonaccio v. Uruguay*, Views of 28 November 1979, par. 21.
[130] See HRC, *Raul Sendinc Antonaccio v. Uruguay*, Views of 28 November 1979, paras. 12.1, 16.1, 20 and 21.
[131] See HRC, *Elena Beatriz Vasilskis v. Uruguay*, Views of 31 March 1983, par. 12.
[132] *Idem*., par. 8.2.
[133] *Ibid*., par. 2.7. According to the Mayo Clinic, Raynaud's disease is typically brought on by constant exposure to the cold, and the author endured "prolonged detention in a cold cell". See in this regard: www.mayoclinic.com/health/raynauds-disease/DS00433.
[134] See HRC, *Elena Beatriz Vasilskis v. Uruguay*, Views of 31 March 1983, par. 10.3.
[135] See CAT, *Guridi v. Spain,* CAT/C/34/D/212/2002, Views of 17 May 2005.

"*compensation should cover all the damages suffered by the victim, which includes, among other measures, restitution, compensation, and rehabilitation of the victim, as well as measures to guarantee the non-repetition of the violations, always bearing in mind the circumstances of each case*"[136]. This wording demonstrates the Committee's tendency to assess which types of reparations are appropriate in each individual case and, more significantly, the application of the notion of full reparations.

82. In its decisions, the CEDAW also emphasized the State's obligation to provide for rehabilitation services. In the case of *A.T. v. Hungary*[137], the applicant was subjected to regular and severe domestic violence by her husband. She claimed that she was not effectively protected by the State because of the irrationally lengthy criminal procedures against her husband, the lack of protection orders under Hungarian law and the fact that her husband had not spent any time in custody. The Committee acknowledged the violation of her rights and, taking the specific circumstances of the case into account and especially the fact that the child of the applicant suffered from a mental disability, recommended Hungary to: "[t]*ake immediate and effective measures to guarantee the physical and mental integrity of* [the applicant] *and her family; and to ensure that* [the applicant] *is given a safe home in which to live with her children, receives appropriate child support and legal assistance*"[138].

7) Collective reparations in their large sense

83. In addition or in complement to the individual reparations suggested above, the Chamber should consider awarding "collective reparations" in their large sense as interpreted by the international jurisprudence in respect of victims who have submitted applications for reparation to date, *i.e.* addressing specific groups of

[136] *Idem*., par. 6.8.
[137] See CEDAW, *A.T. v. Hungary*, Views of 26 January 2005.
[138] *Idem*., par. 9.6.

victims depending on the harm suffered or the needs of the members of the group, in contrast to the members of a community as a whole[139].

84. For the purpose of implementing such collective reparations, some form of individual identification and verification process would be required.

85. Rehabilitation is an appropriate form of collective reparations in their large sense to be awarded to both former child soldiers and their relatives. Indeed, "*rehabilitation is envisaged as a sort of 'antidote rite' which is expected to have the same transformative potential as that of militarization: to reverse power relations so as to make its subjects not only capable of living in a peaceful society but capable of resuming their roles as children who will be taken care of and controlled by adults*"[140]. Rehabilitation can be "*defined around the aspirational notion of a functional life*"[141] and is meant "*to reflect the complex and diffuse nature of the harms victims experienced before, during and after the conflict*"[142].

86. Principle 21 of the Basic Principles provides as follows:

> "*Rehabilitation should include medical and psychological care as well as legal and social services*"[143].

87. To a greater extent than its regional peers, the IACHR ordered rehabilitation measures for physical and mental harm suffered to both direct and indirect victims. This is a part of the Court's holistic approach to reparations, and has always been awarded alongside other types of reparations. Most commonly, the Court has ordered funding for medical and psychological care.

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[139] See par. 32 *supra*.
[140] See KYULANOVA (I.), "From Soldiers to Children: Undoing the Rite of Passage in Ishmael Beah's 'A long way gone' and Ashley's Little Soldiers", in *Studies in the Novel*, 1st April 2010, pp. 28-47.
[141] See RUBIO-MARIN (R.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*, International Center for Transitional Justice, Social Science Research Council, New York, 2006, p. 30.
[142] *Idem*.
[143] See the Basic Principles, *supra* note 23, Principle 21.

88. In the case of the *Mapiripán Massacre*, the IACHR covered several types of reparations[144]. First, it ordered the State of Colombia to provide the next of kin of the victims, upon notification of those already identified and upon identification of others not yet individually identifiable, adequate medical treatment through national health services so as to reduce psychological disorders[145]. In the *Plan de Sánchez* case, the Court ordered the State of Guatemala to provide victims with medical care and medicine. It also ordered the State to establish a free program of psychological and psychiatric treatment[146].

89. The IACHR ordered States to provide medical and psychological treatments to victims' next of kin in several other cases, such as the case of *Castro-Castro Prison*[147], the *Massacre of Pueblo Bello* case[148], and the *Massacres of Ituango* case[149]. In the *Aloeboetoe* case, the Court ordered a medical dispensary to be re-opened in the village[150]. Interestingly, in the *Massacres of Ituango* case the Court went even further by ordering Colombia to implement a housing program and provide appropriate housing to the surviving victims who lost their homes[151].

90. In some cases involving the victimization of groups, the IACHR ordered States to establish trust funds on behalf of the whole community, so as to enhance

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[144] See IACHR, *"Mapiripán Massacre" v. Colombia*, Merits, Reparations and Costs, Judgment of 15 September 2005, paras. 7-18.
[145] *Idem*., operative paragraph 15.
[146] See IACHR, *Plan de Sánchez Massacre*, Reparations, Judgment of 19 November 2004, Series C No 116, paras. 106-108 and 117.
[147] See IACHR, *Miguel Castro-Castro Prison v. Peru*, Merits, Reparations and Costs, Judgment of 25 November 2006, operative paragraphs 13-14.
[148] See IACHR, *Pueblo Bello Masacre v. Colombia,* Merits, Reparations and Costs, Judgment of 21 January 2006, par. 11.
[149] See IACHR, *Ituango Massacres v. Colombia,* Preliminary Objections, Merits, Reparations and Costs, Judgment of 1st July 2006, operative paragraph 19.
[150] See IACHR, *Aloeboetoe et al. v. Suriname,* Reparations, Judgment of 10 September 1993, par. 96.
[151] See IACHR, *Ituango Massacres v. Colombia,* Preliminary Objections, Merits, Reparations and Costs, Judgment of 1st July 2006, operative paragraph 19.

their economic and social development. In the case of *the Moiwana Community*, for example, the Court ordered Suriname to establish a community development fund[152].

91. In the *Aloeboetoe* case, the IACHR ordered Suriname to establish two trust funds, one on behalf of the minor children and the other on behalf of adult beneficiaries, and a foundation to the benefit of all the victims of the community[153]. Also, the Court incorporated several educational measures reparations orders under the notion of rehabilitation[154]. This demonstrates the Court's use of rehabilitation as a form of collective reparations with victims benefiting individually rather than as a group.

92. Within the ECCC, the Civil Parties in Case 001 have submitted several claims for rehabilitation measures given the long-term consequences of the physical and mental harm suffered by the victims of the Khmer Rouge regime. Among these measures are the provision of medical care, both psychological (in the form of free counselling services and reinforcement of existing assistance structures), and physical (in the form of free medical treatment, including free transportation to the medical facilities)[155]. Another rehabilitation measure requested in this case is related to education: the granting of scholarship funds for the Civil Parties, but also micro-enterprise loans and business skills training[156].

93. The ECCC Supreme Court Chamber, while agreeing with the Civil Parties that provision of medical and psychological care fall under the term "collective and

[152] See IACHR, *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgement of 15 June 2005, operative paragraph 5.
[153] See IACHR, *Aloeboetoe et al. v. Suriname*, Reparations and Costs, Judgment of 10 September 1993, par. 100.
[154] See IACHR, *Barrios Altos v. Peru*, Reparations and Costs, Judgement of 30 November 2001, operative paragraph 4.
[155] See ECCC, Case No. 001/18-07-2007-ECCC/TC, Civil Parties' Co-Lawyers' Joint Submission on Reparations, 14 September 2009, paras. 17-22.
[156] See ECCC, Case No. 001/001/18-07-2007-ECCC/TC, Civil Party Group 1 – Final submission, 10 November 2009, par. 121(viii).

moral" reparations[157], declared itself unable to grant the Civil Parties' request for that purpose given the indigence of the convicted person[158]. In contrast to the ECCC, within the ICC system, the Chamber could request the TFV to address collective reparations even in the case of an indigent convicted person.

94. In the present case, the collective reparations should first be directed in addressing the harm suffered by both the former child soldiers and their relatives. This type of reparations can be provided as part of a social service care package, which seeks to address physical and psycho-social health; the provision of education or organised learning opportunities such as vocational training and social care, in order to help restore family relationships.

95. The experience of the TFV in fulfilling its rehabilitation mandate[159] could, in these circumstances, play an important role in materialising such reparations, using money gathered through international cooperation. With the TFV's mandate to investigate and provide assistance to victims generally, the Fund is better informed and placed to provide incentives on the design of reparations programmes[160].

8) Collective reparations in their narrow sense

96. The Chamber should consider awarding "collective reparations" in their narrow sense in cases when it is possible to identify a precise community or collectivity having been concerned as a whole by recruitment of children into armed groups[161]. In such a case, it would not be necessary for each and every beneficiary to be identified.

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[157] See ECCC, Supreme Court Chamber, Case File/Dossier No. 001/18-07-2007/ECCC/SC, 3 February 2012, par. 701.
[158] *Idem*., par. 703. Pursuant to ECCC's Internal Rule 23 *quinquies*, orders for reparations can only be born by convicted persons. The document is available at: http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8.
[159] See the TFV's Report, *supra* note 7, paras. 189 to 214.
[160] *Idem*., paras. 319 to 326.
[161] See par. 31 *supra*.

97. Possible forms of collective reparations directed at repairing the harm suffered by a community as a whole, would be for instance the establishment of a range of social, infrastructural and educational facilities for the community[162]. In particular, the IACHR ordered a State to implement a housing program for the victims[163]. The Court listed these measures under "development" programs that also included education and medical services[164].

98. Regarding standard of proof to be applied for the purpose of awarding collective reparations in their narrow sense, as submitted above[165], the Chamber should consider using evidentiary presumptions as established within mass claims mechanisms.

99. In particular, the Governing Rules of Claims Resolution Tribunal for Dormant Accounts provide that if it is known that the Account owner died in a Nazi death camp, it is presumed that her or his heirs did not receive the benefit of the Account, and thus an award to a valid claimant would be appropriate[166]. The said Rules also provide value presumptions with respect to Accounts with unknown values[167]. The Commission of Real Property Claims (the "CRPC") implemented jurisdictional presumptions, assuming that potential claimants are not in possession of their property or are presumed to be refugees or displaced persons[168]. The Housing and Property Directorate and Claims Commission of Kosovo (the "HPD-CC") allowed

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[162] See IACHR, *Plan de Sánchez Massacre v. Guatemala*, Reparations and Costs, 29 April 1994, Series C No. 105, pp. 23 *et seq*., 93 and 86.
[163] See IACHR, *Plan de Sánchez v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs Judgment of 19 November 2004, paras. 74 and 105; *Moiwana Community. v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 15 June 2005, paras. 187 and 214.
[164] *Idem.*
[165] See paras. 40 to 43 *supra*.
[166] See the Governing Rules of the Claims Resolution Tribunal for Dormant Accounts, Article 28. The document is available at: http://www.crt-ii.org/faqs.phtm.
[167] *Idem*., article 29.
[168] See CRPC, Book of Regulations on the Conditions and Decision-Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees (Consolidated Version), 4 August 1999, paras. 11 and 12. The document is available at: www.imldb.iom.int.

for "*uncontested claims*" to be considered under summary procedure[169]. In such cases, the Commission is authorised to make an order for recovery of possession of the property if it is satisfied that there is evidence that the claimant was in uncontested possession of the property prior to 24 March 1999[170].

100. When considering the possibility of the reparations programmes outlined below, it is therefore crucial for the Chamber to consider how it might make effective use of the TFV to ensure their successful implementation.

101. For instance, education can play a major role in facilitating the return and reintegration of former child soldiers into families and communities. The most vulnerable groups – former child soldiers, out-of-school children, children with disabilities, victims of sexual violence – frequently need additional assistance to overcome the obstacles they face in restarting their education. Reparations awards that include support for back-to-school programmes and vocational training can address these issues and act as a catalyst for reintegration.

102. The Chamber should therefore consider educational benefits that include full access to primary and secondary education or accelerated programmes of education for former child soldiers. In this regard, the cooperation with the Congolese authorities, as well as with third States, would be essential.

103. Implementing said benefits would require a case-by-case assessment of the local communities to which the victims belong, in order to determine whether the provision of access to education, would not only require the waiving of school fees, but the provision of school buildings, and the training of staff as well. International cooperation and assistance would be essential for those purposes.

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[169] See HPD-CC, Regulation No. 2000/60 on residential property claims and The Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission Rules of Procedure and Evidence, 31 October 2000, Section 23. The document is available at: http://www.unmikonline.org/regulations/2000/reg60-00.htm.
[170] *Idem*.

104. Former child soldiers may also need access to health care facilities and treatment. Some might have serious untreated diseases and disabilities. They may also have drug and alcohol dependency. Post-traumatic reactions and mental health problems may also be common among former child soldiers and can be debilitating. Meanwhile, girls are at particular risk from violent sexual abuse during armed conflict, which can result in much more extensive health needs including surgery or long-term medical care.

105. The Chamber should therefore consider addressing the issue of access to physical and psychological health care benefits for former child soldiers and those who have been abducted and/or sexually abused, when making reparations awards.

106. Many former child soldiers may have encountered and still encounter a number of psychological and social challenges upon family or community reunion. Some may be still shocked to find changes in their family such as new siblings or separated or re-married parents. Parents may still face challenges to their authority and some children could still face resentment stemming from circumstances connected to their recruitment. Former child soldiers may also blame their parents for their inability to protect them. Some have encountered rejection from their families, or from particular members, thus splitting the family.

107. Interim care centres, created as part of a community based reparations programme, could still provide a useful and neutral place to full re-integration in the family and community. Families may still need advice and support in relation to: changes in the former child soldier and family and (with their permission) any special difficulties the young person has; resolving family conflict without violence or abusive language; accepting and adjusting to the fact that their daughters returned with children, and being sensitive to the abuse they have undergone. This type of

work can be undertaken in a family or group format, so that families can support each other, and young people benefit from sharing experiences with peers.

9) Satisfaction

108. Principle 22 of the Basic Principles provides as follows:

> "*Satisfaction should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels*"[171].

109. Said measures are symbolic and are directed at preserving the memory of what has happened during a conflict or period of repression, and most importantly, could serve as a reminder that society must not allow it to happen again[172]. Those measures are not likely to require significant financial resources.

110. Since its first judgment on reparations in 1989, the IACHR has established that a judgment "*is in itself a type of reparation and moral satisfaction of significance and*

[171] See the Basic Principles, *supra* note 23, Principle 22.
[172] In this sense, see SCHONSTEINER (J.), "Dissuasive Measures and the Society as a Whole: A Working Theory of Reparations in the Inter-American Court of Human Rights", in *American University International Law Review*, Volume 23, 2007, p. 127. See also IACHR, *Trujillo-Oroza v. Bolivia*, Reparations and Costs, Series C No. 92, 27 February 2002, para. 110.

importance for the families of the victims"[173]. However, it has generally considered that its rulings do not constitute a sufficient remedy and that further measures are necessary to grant satisfaction to victims, in particular when the facts are of an extreme gravity and the damage produced of a collective nature. The Court has therefore distinguished itself with a unique reparative approach in developing a practice of satisfaction measures meant to repair damages to the dignity or reputation of a person, "*which are not of a pecuniary nature, but rather have public repercussions*"[174]. According to the IACHR, these violations constitute an "*aggravated impact that entails international responsibility of the State*"[175] and which should be taken into account when deciding on reparations.

a. Public Apology and Acknowledgement of Responsibility

111. Pursuant to the jurisprudence developed by the IACHR, public apologies are an essential form of satisfaction, in addition to the right to an investigation and the right to truth, as they provide to the victim and/or his relatives with an acknowledgement of the State's responsibility for said violation. In the past few years, States have increasingly acknowledged their responsibility in the course of the proceedings before the IACHR. However, the Court has considered that for these declarations to be effective as reparations measures, the State concerned must organize a public act to acknowledge its responsibility for all the facts proven in the case and honour the memory of the victims, usually in the place where the violations occurred and in the presence of high-ranking State authorities[176]. In cases of

[173] See IACHR, *Velásquez-Rodríguez v. Honduras*, Reparations and Costs, Judgment of 21 July 1989, par. 36.
[174] See IACHR, *Plan de Sánchez Massacre v. Guatemala*, Reparations, Judgment of 19 November 2004, par. 93.
[175] *Idem*., par. 51. Both the Inter-American Commission and the representatives of the victims and their next of kin mention that this massacre occurred in the context of a genocide. The IACHR did not decide on the issue of genocide as it lacks jurisdiction over this crime but did take into account this context when ordering reparations.
[176] The Court has ordered this measure both in cases of collective violations (*Massacre of Plan de Sánchez*, Reparations, Judgment of 19 November 2004, paras. 100 and 101; *"Las Dos Erres" Massacre v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 24 November 2009, par. 261) and individual violations (*Goiburú et al. v. Paraguay*, Merits, Reparations and Costs, Judgment

violations against indigenous peoples, States have been requested to take into account the indigenous peoples' traditions and customs in those public acts and to translate the judgments into the relevant indigenous language[177]. Furthermore, the IACHR systematically orders States to publish the pertinent parts of its judgment in a daily newspaper with widespread national circulation.

112. In some cases, the Human Rights Treaties Bodies have requested States to publish their decisions, as in the case of *Gelle v. Denmark*. In this case, the CERD suggested to "*give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies*"[178].

113. The ECCC, which can only order "c*ollective and moral*" reparations[179], despite being a criminal court, have clearly demonstrated that an individual perpetrator of a crime can also be called to provide reparations on a collective basis. In Case 001, the Trial Chamber of the ECCC granted collective reparations. It included all the names of civil parties and victims in its judgement, and ordered the compilation and publication of all statements of apology and remorse made by the perpetrator during the course of the trial[180]. The Supreme Court Chamber upheld the said decision while stressing in particular that "[a]*pology transcends the time and the scene of the courtroom and in this sense contributes to just satisfaction in the long term and beyond the immediate audience, leaving the victims the choice of how to receive it*"[181].

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of 22 September 2006, par. 173; *Bámaca-Velásquez v. Guatemala*, Reparations and Costs, Judgment of 22 February 2002, par. 84 and operative paragraph 3).

[177] See IACHR, *Massacre of Plan de Sánchez*, Reparations, Judgment of 19 November 2004, paras. 101 and 102.

[178] See CERD, *Gelle v. Denmark*, Opinion of 6 March 2006, CERD/C/68/D/34/2004, par. 9.

[179] See ECCC, Internal Rules (Rev.8), 12 August 2011, Rule 23 *quinquies*. The document is available at: http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8.

[180] See ECCC, Trial Chamber, Case File/Dossier No. 001/18-07-2007/ECCC/TC, 18 July 2010, paras. 667-669.

[181] See ECCC, Supreme Court Chamber, Case File/Dossier No. 001/18-07-2007/ECCC/SC, 3 February 2012, par. 677.

114. According to the Civil Parties, additional specific measures by the outreach office could include the compilation and distribution of the apologetic statements made by the accused during the trial process, combined with public comments of the Civil Parties made before the Court or the media. The Court could also facilitate sincere public apologies by the accused[182].

b. Commemorations and Tributes

115. In addition to the measures specifies above, the IACHR required other "symbolic" forms of reparations to commemorate the memory of the victims as a measure directed towards present and future generations. In particular, the Court ordered public commemoration to honour both individual victims and groups of victims. These have consisted in the naming of a street, the inauguration of an educational centre with the names of the victims[183] or the erection of public monuments, often in cases of violations against a high number of persons such as massacres, as a collective form of reparation[184]. In the case of Peru, the building of the monument *El Ojo que Llora* is a good example of the result of the Court's orders and the supervision of compliance with these orders. It is now a well-known monument located in the centre of the capital, Lima, which includes the names of all victims that were identified in the 2003 report of the Truth and Reconciliation Commission[185].

[182] See ECCC, Case No 001/18-07-2007-ECCC/TC, Civil Parties' Co-Lawyers' Joint Submission on Reparations, 14 September 2009, par. 16.
[183] See IACHR, *"Street Children" (Villagrán Morales v. Guatemala)*, 27 November 2003, operative paragraph 7. See also IACHR, *Trujillo-Oroza v. Bolivia*, Reparations and Costs, Judgment of 27 February 2002, operative paragraph 6: in this case the Court ordered Bolivia to officially assign the name of the victim to an educational establishment in Santa Cruz.
[184] See IACHR, *Barrios Altos v. Peru*, Reparations and Costs, Judgment of 30 November 2001, operative paragraph 5. See also *"Mapiripán Massacre" v. Colombia*, Merits, Reparations, Costs, Judgment of 15 September 2005, operative paragraphs 10-13; *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 15 June 2005, operative paragraphs 2-7; and *"Las Dos Erres" Massacre v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 24 November 2009, par. 265.
[185] For the full report of the Peruvian Truth and Reconciliation Commission, see: http://www.cverdad.org.pe/.

116. Within the ECCC, the Civil Parties requested the building of public memorials to honour the memory of the victims. The foremost request was to build a memorial pagoda at the site of the S21 camp, where the atrocities committed by the defendant took place[186]. However, in an effort to benefit the whole victim community outside the capital, the building of pagodas in local communities, to honour lost loved ones, was also requested[187]. Additionally, other memorial requests involved writing the victims' names on a plaque at the S21 site, circulating those names to educational institutions, establishing a travelling museum displaying victims' stories and experiences, and the naming of important institutions such as hospitals after victims[188]. Finally, some Civil Parties also emphasized the need for a national commemoration day to victims who died at the hands of the Khmer Rouge[189].

117. The ECCC Supreme Court Chamber recognised the S21 Victims' Memorial as an appropriate form of reparations, as requested by the Civil Parties[190], and held in this regard as follows:

> "*The 'moral' requirement is satisfied by the fact that memorials restore the dignity of victims, represent a public acknowledgement of the crimes committed and harm suffered by victims, and, as lasting and prominent symbols, assist in healing the wounds of victims as a collective by diffusing their effects far beyond the individuals who were admitted as Civil Parties. Additionally, memorials contribute to national reconciliation by strengthening public knowledge of past crimes, promoting a culture of peace among the current and future generations, and contributing to a global message of concord to all potential visitors*"[191].

[186] See ECCC, Case No 001/18-07-2007-ECCC/TC, Civil Parties' Co-Lawyers' Joint Submission on Reparations, 14 September 2009, par. 29.
[187] *Idem.*, par. 29.
[188] *Ibid.*, par. 30.
[189] See ECCC, Case N° 001/001/18-07-2007-ECCC/TC, Civil Party Group 1 – Final submission, 10 November 2009, par. 121(xii).
[190] See ECCC, Supreme Court Chamber, Case File/Dossier No. 001/18-07-2007/ECCC/SC, 3 February 2012, par. 691.
[191] *Idem.*, par. 683.

118. The ECCC Supreme Court Chamber further held that designating a national commemoration day, holding of official ceremonies, and erection of informative and memorialising plaques are appropriate measures of reparation[192].

c. Inclusion of an Accurate Account of Violations in Training and Education

119. As part of the official recognition of the violations, but also as an essential preventive measure against future violations, the IACHR has repeatedly required States to include the facts in educational and training materials[193].

120. The ECCC Supreme Court Chamber acknowledged that the dissemination of materials of the proceedings is an appropriate form of reparations[194]. In particular, it held that "*the wide circulation of the court's findings may contribute to the goals of national healing and reconciliation by promoting a public and genuine discussion on the past grounded upon a firm basis, thereby minimising denial, distortion of facts, and partial truths*"[195].

d. Guarantees of Non-Repetition

121. Unlike other regional bodies, the IACHR regularly ordered guarantees of non-repetition as a measure which "*benefits society as whole*"[196]. This type of reparations is particularly relevant in the context of collective reparations of victims of gross violations of human rights.

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[192] *Ibid*., par. 713.
[193] See IACHR, *Barrios Altos v. Peru*, Reparations and Costs, Judgment of 30 November 2001, operative paragraph 5. See also *"Mapiripán Massacre" v. Colombia,* Merits, Reparations, Costs, Judgment of 15 September 2005, operative paragraphs 10-13; *Moiwana Community v. Suriname,* Preliminary Objections, Merits, Reparations and Costs, Judgment of 15 June 2005, operative paragraphs 2-7; and "*Las Dos Erres" Massacre v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of 24 November 2009, par. 265.
[194] See ECCC, Supreme Court Chamber, Case File/Dossier No. 001/18-07-2007/ECCC/SC, 3 February 2012, par. 708.
[195] *Idem*.
[196] See IACHR, *Trujillo-Oroza v. Bolivia*, Reparations and Costs, Judgment of 27 February 2002, par. 110.

III. CERTAIN PROCEDURAL ISSUES RELATED TO REPARATIONS

1) Whether it is possible or appropriate to make a reparations order against the convicted person or through the Trust Fund for Victims

122. According to Article 75(2) of the Statute, the individual convicted persons may be the "*natural target*" against whom the Chamber could make orders concerning restitution, awards of compensation and means of rehabilitation[197]. But the statutory language is of a permissive nature, thus underlining the potential application of the provision, as it deemed appropriate by the Chamber. The Chamber may, "*where appropriate*", order that an award for reparations be made through the TFV. Rule 98(2) of the Rules of Procedure and Evidence specifies that this shall be done if "*at the time of making the order it is impossible or impracticable to make individual awards directly to each victim*"[198]. In these circumstances, the TFV is to separate such sums from its other resources and ensure that the individual victim receives the money as soon as possible[199]. The Chamber may also order that an award for reparations be through the TFV "*where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate*"[200].

123. "Other resources" of the TFV may be used "*for the benefit of victims subject to the provision of Article 79*"[201]. Provided that "*the responsibility of the Trust Fund is first and foremost to ensure that sufficient funds are available in the eventuality of a Court reparation order pursuant Article 75 of the Statute*"[202], "[t]*he Court may* [also] *order the Trust Fund to*

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[197] See DONAT-CATTIN (D.), "Reparations to victims", in TRIFFTERER (O.), *Commentary on the Rome Statute of the International Criminal Court – Observers' notes, Article by Article*, Second Edition, C.H. Beck, Hart, Nomos, 2008, p. 1406.
[198] See the Rules of Procedure and Evidence, rule 98(2).
[199] *Idem*.
[200] *Ibid*., rule 98(3).
[201] *Ibid*., rule 98(5).
[202] See the "Decision on the Notification of the Board of Directors of the Trust Fund for Victims in accordance with Regulation 50 of the Regulations of the Trust Fund" (Pre-Trial Chamber I), No. ICC-01/04, 11 April 2008, p. 7.

provide the equivalent amount of reparations to victims to the extent that the convicted person is not able to make reparations ordered by the Court"[203].

124. Given the lack of identified assets belonging to the convicted person that could be used for the purpose of fines or forfeiture to support reparations awards to date[204], it would be inappropriate for the Chamber to make reparations orders of pecuniary nature requiring significant material resources or States cooperation measures, directly against the convicted person. Therefore, the Chamber should consider making such awards through the TFV.

125. At the same time, although requests for cooperation for those purposes were already made by the Pre-Trial Chamber at the very early stage of the proceedings[205], the Chamber, while making reparations orders, should consider urging States Parties, pursuant to article 93(1)(k) of the Statute, to provide to the Court the assistance by way of "*identification, tracing, and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of* bona fide *third parties*", while basing "*on its own motion or on the application of the Prosecutor or at the request of the victims or their legal representatives who have made a request for reparations or who have given a written undertaking to do so, determine which measures should be requested*"[206].

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[203] See the proposal of Japan submitted within the Preparatory Committee framework, March 2000. The document is available at: http://www.legal-tools.org/en/go-to-database/record/file.html?fileNum=49981&hash=bae0a20dcd0fa16a506404a3b1b0eaaed30ce55783d8523fc64593437e0cd7f2&cHash=4b9f933764101d5a2d290b4094d0851a.

[204] See par. 12 *supra*.

[205] See the "Request to the Democratic Republic of the Congo for the purpose of obtaining the identification, tracing, freezing and seizure of property and assets belonging to Mr. Thomas Lubanga Dyilo" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/06-22, 9 March 2006, p. 4. See also the "REQUEST TO STATES PARTIES TO THE ROME STATUTE FOR THE IDENTIFICATION,TRACING AND FREEZING OR SEIZURE OF THE PROPERTY AND ASSETS OF MR THOMAS LUBANGA DYILO" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/06-62, 31 March 2006, p. 4.

[206] See the Rules of Procedure and Evidence, rule 99(1).

126. In this regard, in accordance with regulation 117 of the Regulations of the Court, "[t]*he Presidency shall, if necessary, and with the assistance of the Registrar as appropriate, monitor the financial situation of the sentenced person on an ongoing basis, even following completion of a sentence of imprisonment, in order to enforce fines, forfeiture orders or reparation orders*".

127. Therefore, should any assets belonging to the convicted person be identified in the future, they must be used for the purpose of enforcing reparations orders under the Presidency's control on an ongoing basis.

128. Finally, the Chamber should consider making directly against the convicted person reparations orders not requiring significant material resources or States cooperation measures, *i.e.* public apology, including acknowledgement of the facts and acceptance of responsibility.

2) Whether the reparations proceedings could be referred to a different chamber or to a single judge

129. As far as the Registry tends to convince the Chamber that the matter of reparations could be referred to a different chamber or to a single judge[207], the Office recalls first that in its Decision of 23 May 2008[208], the Chamber considered the question on whether trial proceedings can be held in the absence of one of the members of a Trial Chamber. In particular, the Chamber found as follows: (i) "*it is clear beyond doubt that during the trial the three judges shall function* in banco"[209]; (ii) "*it is impossible to read into* [the Court's texts] *a power by which the* [Trial] *Chamber may appoint one of the three judges to act as a single judge*"[210]; and (iii) "*all three members of the Trial Chamber must be present for each hearing and status conference during the period*

[207] See the Registry's Report, *supra* note 6, paras. 154 and 155.
[208] See the "Decision on whether two judges alone may hold a hearing - and - Recommendations to the Presidency on whether an alternate judge should be assigned for the trial" (Trial Chamber I), No. ICC-01/04-01/06-1349, 23 May 2008 (dated 22 May 2008).
[209] *Idem*., par. 12.
[210] *Ibid*., par. 14-a.

following the confirmation of charges and leading up to the beginning of the trial (and thereafter during the trial and the Chamber's deliberations)"[211].

130. The Office submits in this regard that pursuant to paragraphs 2 and 3 of article 76 of the Statute, reparations proceedings should be held at the same time that, or in complement to, proceedings relevant to sentencing, and are in any event to be completed "*before the completion of the trial*"[212]. It follows that the Chamber's findings made in its Decision of 23 May 2008, in particular that the trial proceedings shall be held by the same three judges of a Trial Chamber, apply equally to the reparations proceedings as far as these proceedings are an integral part of the trial. Said findings are even of a greater relevance at the reparations stage as far as the Chamber shall take into account *inter alia* all reparations-related evidence produced during the main phase of the trial. The relevant *travaux préparatoires* clearly confirm the intention of the drafters of the Statute to maintain the equal composition of a Trial Chamber during the entirety of trial proceedings[213].

3) Whether reparations orders can only be issued and/or implemented after the Judgment will have become final

131. It its Report, the TFV argues that an appeal challenging the conviction of the accused could have repercussions on the implementation of the order for reparations and thus "*it would make sense*" to suspend the implementation of any reparations order until a final decision by the Appeals' Chamber is reached[214].

132. While sharing the TFV's concern that "*it would be difficult to reverse the implementation of reparations once carried out, should the conviction* […] *be overturned*

[211] *Ibid*., par. 15.
[212] See article 76(2) of the Statute. See also in this sense SCHABAS (W.A.), "Article 76", in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, Nomos Verlagsgesellschaft, Baden-Baden, 1999, p. 980.
[213] See UN Doc. A/50/22(SUPP), 6 September 1995, p. 38 ; UN Doc. A/CONF.183/13(Vol.III), 15 June - 17 July 1998, pp. 265, 288 and 300; UN Doc. A/CONF.183/13(Vol.I), 15 June-17 July 1998, pp. 22 and 41.
[214] See the TFV's Report, *supra* note 7, paras. 404-410.

upon appeal"[215], the Office submits that the legal texts of the Court do not provide for the possibility to automatically suspend either the issuance or the implementation of a reparations order, pending an appeal against the decision or sentence.

133. In this regard, the Chamber is entitled to exercise its powers under article 75 of the Statute, *i.e.* make orders for reparations, "*after a person is convicted of a crime within the jurisdiction of the Court*"[216]. Article 81(4) of the Statute provides that the execution of a decision delivered under article 74 and a sentence shall be suspended "*during the period allowed for appeal and for the duration of the appeal proceedings*". But this provision does not even envisage that an appeal against a decision under article 74 of the Statute or a sentence may have any impact on reparations proceedings under article 75 of the Statute.

134. Indeed, pursuant to article 82(4) of the Statute, an order for reparations under article 75 may be appealed by "[a] *legal representative of the victims, the convicted person or a* bona fide *owner of property adversely affected*". Such an order can be suspended by the Appeals Chamber, upon request only[217]. If an appeal is not filed against an order for reparations within the time limit set out in this respect, "*the reparation order of the Trial Chamber shall become final*"[218]. An order for reparations that has become final must be immediately implemented irrespective of whether the Appeals Chamber has dealt with an appeal against a decision for conviction under article 74 of the Statute. This is the only position of the law as provided by the legal texts of the Court.

135. The Office assumes that "*the orders for a reparations award addresses the harm victims have suffered due to crimes committed under a particular charge of which the accused*

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[215] *Idem*., par. 409.
[216] See article 75(4) of the Statute. The Office therefore contests the Registry's position in accordance to which "[i]*n case of appeal of the judgment on guilt, the Chamber may also decide to postpone the reparations proceedings until the appeals Chamber's judgement is issued*": see the Registry's Report, *supra* note 6, par. 198 (i). Indeed, this position is not supported by the Court's legal texts.
[217] See article 82(3) of the Statute.
[218] See rule 150(4) of the Rules of Procedure and Evidence.

has been found guilty"[219]. However, this is perfectly true only when addressing orders for reparations made directly against the convicted person. But given that no assets belonging to the convicted person that could be used for the purpose of fines or forfeiture to support reparations awards have been identified to date[220], it is very likely that the Chamber will order that the award for reparations be made in its entirety through the Trust Fund for Victims. In such an event, the order for reparations made by the Chamber, while addressing the harms the victims have suffered as a result of the crimes committed by M. Lubanga, would however not affect in any manner the latter's rights and interests. In this regard, it could be argued that M. Lubanga, not been directly affected by an order for reparations, would not have *locus standi* to appeal against said order under article 82(4) of the Statute. If this interpretation is retained, nothing in the legal texts of the Court would then prevent such an order, once final, from being immediately implemented, pending an appeal against the Judgment.

4) Whether the Trust Fund for Victims can be considered as "a bona fide *owner of property adversely affected by an order under article 75"*

136. It its Report, the Registry argues that in circumstances where the Chamber decides to have a portion of reparations supported by the TFV other resources, the TFV should be considered "*a* bona fide *owner of property adversely affected by an order under article 75*" within the meaning of article 82(4) of the Statute[221].

137. The terms "bona fide *owner*" refers to someone who, in good faith, has purchased an asset for stated value without notice of another's claim on the said asset[222]. It is therefore clear that the TFV cannot be considered a *bona fide* owner of property.

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[219] See the TFV's Report, *supra* note 7, par. 408.
[220] See par. 12 *supra*.
[221] See the Registry's Report, *supra* note 6, par. 198(xiv).
[222] See the definition of the term "*bona fide* purchaser" in GARNER (B. A.) (ed.), Black's Law Dictionary, abridged 7th edition, West Group, St. Paul, 2000, p. 1001.

138. This interpretation seems supported by the *travaux préparatoires*. From the early drafting process of Article 82(4) of the Statute, the term "bona fide *owner*" was employed to refer to "*a person*", in other words an individual human being, not an institution or organisation. In particular, an earlier draft of the Rome Statute contained the following drafting:

> *"3. Victims or any person acting on their behalf, the convicted person or a person adversely affected by an order under article 73, may appeal against that order. To that end, specific provisions shall be made in the Rules of Procedure and Evidence"*[223].

139. This drafting was eventually changed by modifying the terms "*a person adversely affected*" into "bona fide *owner of property adversely affected.*" In particular, a new proposal, which was later adopted, stated as follows:

> *"In article 81, add the following new paragraph:*
> *81.3 A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 73 may appeal against the order for reparations. To that end, specific provision shall be made in the Rules of Procedure and Evidence"*[224].

140. Within the Preparatory Commission, this understanding was also clear and unambiguous. In particular: the Preparatory Commission noted as follows:

> *"As Article 82(4) of the Statute also permits an appeal against the relevant decision to be brought by 'victims ... or a* bona fide *owner of property', it is suggested that draft Rule 124 should refer to a '**person** permitted by article 82, paragraph 4, to appear. The second sentence of the Rule should also be amended, and might for instance read as follows: '**The Registrar shall send copies of the notice to the other party or parties, as well as to any person or State who made representations to the***

[223] See the Working Paper on Article 81, Preparatory Committee of the International Criminal Court, UN Doc. No. A/CONF.183/C.1/WGPM/L.72, 10 July 1998, p. 2.
[224] See the Working Paper on Article 73, Reparations to Victims, Committee of the Whole, Working Group on Procedural Matters, UN Doc. A/CONF.183/C.1/WGPM/L.63/Rev.1, 11 July 1998, p. 2. See also the Report of the Working Group on Procedural Matters, Committee of the Whole, Working Group on Procedural Matters, UN Doc. A/CONF.183/C.1/WGPM/L.2/Add.7, 13 July 1998, p. 6; the Draft Statute for the International Criminal Court, UN Doc. A/CONF.183/C.l/L.76/Add.8, 16 July 1998, p. 3; and the Report of the Drafting Committee to the Committee Of the Whole, UN Doc. A/CONF.183/C.1/L.85, 16 July 1998, p. 4.

Court under Article 75(3) in the proceedings resulting in the decision appealed against'"[225]**.**

141. Consequently, it appears that that the possibility for the Trust Fund for Victims to be considered as *"a* bona fide *owner of property adversely affected"* within the meaning of article 82(4) of the Statute is groundless and is not viable in any way.

5) Matters on which appropriate experts should be appointed pursuant to rule 97 of the Rules of Procedure and Evidence

142. For the purpose of evaluating harm suffered by former child soldiers as a result of having been involved in military activities, the Chamber should consider appointing an expert to provide expertise on the following matter:

- Whether, and to which extent, military experience of children under the age of fifteen can impact – and if the case to which extent - on:

  - childhood development and learning capacity;
  - future development of life;
  - social integration;
  - intellectual capacity and concentration;
  - educational and professional performance;
  - emotional and behaviour impacts; and
  - moral development impacts.

[225] See the Observations on the discussion papers for the ICC Rules of Procedure and Evidence: Part 5 of the Rome Statute: Investigation and Prosecution: Discussion papers proposed by the coordinator (PCNICC/1999/L.3/Rev.1), 29 November 1999, p. 7 (emphasis original).

FOR THE FOREGOING REASONS, the Principal Counsel of the Office of Public Counsel for Victims respectfully requests the Trial Chamber to take into consideration these observations on issues concerning reparations.

Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Dated this 18th day of April 2012

At The Hague, The Netherlands